CHAPTER 8

Lady Judges of Pakistan: Embodying the Changing Living Tradition of Islam

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Introduction

This chapter examines the circumstances surrounding the steady increase in the number of female judges appointed to the lower courts of Pakistan since 2009. Female judges are commonly known as 'lady judges,' an expression which has its origin in the British colonial rule, when the term was introduced for female doctors ('lady doctors'), and was later extended to include female judges. This chapter shows that the inclusion of women in the judiciary was motivated by the lawyers' movement for judicial independence (2007), as well as a shortage of judges in the lower courts of Pakistan. This took place against the background of public and legal controversies regarding whether the appointment of women to the judiciary is permissible in Islam. Focusing on practices of women judges in daily life, the main argument is that, regardless of controversy, they have become popular with the general public by virtue of the difference they bring about, more specifically their sensitivity towards living customary norms and traditions.

This chapter is divided into three sections. It begins by providing a brief review of public and legal debates in Pakistan regarding whether women are permitted to work as judges in a Muslim society. Based on interviews with women judges, section two argues that they show sensitivity to living customary norms (plural legal realities), and dispense justice in a comparatively objective way in a legal system known for its corruption. In continuation, I argue that female judges practice 'soft justice' in order to gain a better understanding of the problems female litigants present before them. Finally, section three tackles the challenges faced by the women judges who work in a male-dominated profession as well as in a society that attaches value to a traditional and gendered division of labor.

The chapter is based on empirical data collected during 2012 in South Punjab with follow up interviews in 2014. South Punjab is located in the mid-East of the country and forms part of Punjab, one of Pakistan's four provinces. There are 36 district courts in the province of Punjab, and the lady judges whom the

research assistant[1] and I interviewed were dispersed over five district courts and their further sub-divisional courts.[2] Having obtained the permission and consent of the relevant district and session judges, we conducted qualitative interviews with ten female judges, mainly from the Southern Punjab (Mehdi 2012a; 2012b). We also had the opportunity to attend a number of court proceedings conducted by female judges in four different courts. We carried out further empirical investigation in 2014–2015 and interviewed an additional four female judges from district courts in the Northern Punjab.[3] All 14 judges worked in the lower judiciary. Their ages ranged from 27 to 40, the majority (8) of them being unmarried. Of those who were married (6), three were married to judicial officers. Those married with children included experienced judges with more than ten years of experience, while others were young law graduates, without children, who had been recently appointed. The fieldwork results from these two parts of Punjab may not be representative of the country as a whole, but provide some important insights into the subject and opens doors for further investigation.[4]

Pakistani law is based on the Common Law legal system of British India, with references to Islamic law in the constitution as well as penal and family law. The judiciary of Pakistan consists of two classes of courts: the higher Judiciary (consisting of the Supreme Court, High Court, and Federal *Shari'a* Court), and the lower judiciary (consisting of District and Session Courts).

The lower judiciary may be broadly divided into two classes: (1) civil courts, established under the West Pakistan Civil Court Ordinance 1962, and (2) criminal courts, created under the Criminal Procedure Code 1898.[5] The

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1 I am thankful to research assistant Mian Sajid Sultan, (Lecturer Gillani Law College, Bahauddin Zakariya University, Vihari Branch, Pakistan) for facilitating the interview process.

2 To maintain a standard professional confidentiality and keeping in mind the sensitive nature of their job, the names of the judges are not mentioned and fictitious names are used. Moreover, with a view to keeping the courts they work in anonymous, the expressions Southern and Northern Punjab are used as a broad indication of the different regions of the province Punjab. The position of the women judges in the court hierarchy is mentioned in parentheses.

3 Interviews were conducted in Urdu, English, Punjabi and Saraiki, whichever language was found convenient to communicate with the female judges.

4 In this regard a documentary film by Livia Holden and Marius Holden is greatly appreciated. The documentary provides glimpses of the court lives of female judges working in the lower courts of the four provinces of Pakistan, https://vimeo.com/ondemand/. . ./79861968.

5 In addition to the above, there are other courts and tribunals, both civil and criminal, created under special laws and enactments. Their jurisdiction, powers and functions are specified in the statutes that created them. The decisions and judgments of such special courts may be

civil courts are presided over by District Judges, Additional District Judges, Senior Civil Judges, and Civil Judges Class I, II & III. Similarly, the criminal court bench comprises Session Judges, Additional Session Judges, and Judicial Magistrates Class I, II & III.[6] The position of higher court judge is considered to be more prestigious than that of District Court judge. Higher court judges increasingly review the judgments of the District Court judges, which confirm the latter's low status. The District Court judges usually have to simply apply the rules; they do not play a prominent role in interpreting the law, which is mostly done by the High Court and the Supreme Court. The High Court judges have more power, due to the fact that they can interpret laws in a dynamic manner and set precedents. Furthermore, the rulings of districts courts can be appealed before the higher courts. Moreover, judgments of the High Court are published, while the judgments of the district courts are not.

However, the female judges we interviewed for the present work took into account local customary norms and, in so doing, interpreted the law in their own way. It should be noted that this way of informal interpretations are common in many systems of law, to interrelate between the state and widely spread practices of customary norms. The lower courts, which deal with the bulk of cases that affect women and their lives within families, do not always determine issues pertaining to customary law in terms of the assumed legal framework. Local courts are described as legal melting pots, as they are situated at the junction between the customary laws and state legislations. The innovative directions that are experienced in such courts are frequently not carried through at the higher levels of the judicial system (Bentzon et al. 1998; Shaheed 1997; Shaheed et al. 1998). The role of the local courts in relation to the customary law is elaborated in the subsection discussing local norms.

Pakistan's first female judge, Khalida Rashid Khan, was appointed as a civil judge in 1974 and eventually elevated to High Court judge in 1994. Subsequently, the number of female judges increased steadily, although their appointment was contested twice in the Federal *Shari'a* Court (explained in more detail below). Most female judges are appointed to the lower courts of Pakistan, where they work as district and session judges and, to a lesser extent,

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assailed before the superior judiciary (High Court and/or Supreme Court) through a petition for revision or appeal (Hussain 2015; Tiwana 1985).

6 The provincial governments appoint the civil and criminal court judges, and the terms and conditions of their service are regulated under the Provincial Civil Servants Acts/Rules. The High Court, however, exercises supervision and administrative control over such courts see Hussain (2015).

senior civil judges (Yasin and Shah 2004).[7] In 2009, the mass appointment of women judges to the lower courts of Pakistan caused the proportion of female judges to jump to approximately one third of the judiciary.[8] In 2013, the first female judge was appointed to the Federal *Shari'a* Court (Ashraf Jehan). The appointment of a large number of female judges in four provinces of Pakistan in 2008/2009 and their subsequent elevation to the high courts may be seen against the backdrop of the movement for independence of the judiciary (Abdullah 2009; Ahmed 2007; Waraich 2007).

The 2007 movement for independence of the judiciary was motivated by, suicide bombers, a shortage of electricity, dissatisfaction with the performance of state courts, as well as disappointment with the country's politicians. It originated among lawyers and enjoyed widespread popular support. Women lawyers participated actively in this movement. Their participation contributed not only to stabilizing their existence in the legal profession, but also built pressure to open the door to their appointment to lower and higher positions in the judiciary. Moreover, the post-movement period saw many reforms introduced, geared towards enhancing the operation of the subordinate courts, the employment of female judges on a large scale being one of them (Abdullah 2009; Ahmed 2007; Waraich 2007).

Another contributing factor underlying the large-scale inclusion of female judges was a shortage of judges and other court personnel. The resources of the judicial system, and its lower courts in particular, had not kept pace with the rise in litigation, leading to a huge backlog of cases. This stood in sharp contrast to the recommendations of several state-led commissions and committees that the number of cases pending before a Civil Judge should not exceed 500, and the number of units pending before a District and Sessions Judge should not be more than the prescribed limit of 450 at any one time. Thus, in order to alleviate the suffering of litigants caused by delays, in June 2009, the National Judicial Policy Making Committee (headed by the Chief Justice of Pakistan with Justices of the Federal *Shari'a* and High Courts as members) launched the National Judicial Policy. The Policy set targets for the

7 After appointment, the civil judges are usually attached for a few weeks to the Court of Senior Civil Judge/District & Sessions Judge to receive practical training. They also receive specialized training at the Federal Judicial Academy and in the respective provincial academies. This training comprises education in various substantive laws, court management, case processing, judicial procedure, code of conduct, etc.

8 A precise estimate of the number of female judges is difficult to find. The estimate mentioned is drawn from secondary sources such as newspapers and Pakistan's Law and Justice Commission, also see http://lhc.gov.pk.

disposal of cases by the superior/subordinate courts. This served as motivation for the inclusion of women as judges. Furthermore, over the past decades, the percentage of women enrolled in law schools has increased, and there was a large pool of female law graduates ready to occupy the new positions in the judiciary.[9]

These developments took place simultaneously with the increasing prominence of radical Islamism and conservatism inside Pakistani society, the most visible manifestations of which were an increase in women donning the headscarf (*hijab*), the appearance of religious schools (*madrasas*) on a large scale, and the inclusion of compulsory education in Islamic studies in general schools and colleges. In the following section 1 analyze the public and legal debates surrounding the large-scale appointment of women judges in Pakistan in 2009.

1 Public and Legal Debates

A historical review shows that the positions of traditional Muslim jurists on the inclusion of women as judges were not unanimous; therefore, there is no single, consistent view on this issue (Bauer 2010; Masud et al. 2005). Usually a *hadith* attributed to the Prophet Muhammad where he stated: "A people who entrust their affairs to a woman will never prosper," as well as Qur'anic verse 4:34 ("Men are in authority over women, because He made the one superior to the other") are cited by the jurists on the issue.

Against this background, it may not come as a surprise that the inclusion of women as judges in Pakistan has not been without challenges, something which is reflected in the public debates and in petitions filed before the courts. In the following, I analyze the arguments put forward by opponents and proponents as reflected in cases before the Federal *Shari'a* Court, which has jurisdiction to determine whether any law or provision of law is repugnant to the

9 Unfortunately, the record keeping on women in the legal profession in Pakistan is anecdotal and impressionistic rather than based on statistics. During my three years as visiting professor at Gillani Law College (2011–2013), Bahauddin Zakariya University, Multan, and the Law department of Islamia University of Bahawalpur (both in Southern Punjab), I realized that the number of female students made up half of the total students enrolled in law departments and there seems to be a steady rise in the number of females graduating with law degrees.

injunctions of Islam.[10] The way the court interprets the sources of Islamic law depends very much on the judges and *'ulama* who are sitting in the court. There has been controversy with regard to the jurisdiction of the Federal *Shari'a* Court vis-à-vis the powers of the legislature. Some describe the court as a parallel legislature (Yasin and Banuri 2004, 81).

The admissibility of women to the judiciary has been challenged twice before the Federal *Shari'a* Court, in 1982 and again in 2010, after the mass induction of female judges. The question regarding the appointment of a woman as *qadi* (judge) or *hakim* (ruler) was challenged first in the Federal *Shari'a* Court in 1982/1983.[11] At that time, the number of female judges was still insubstantial. The petition challenged the inclusion of women on the following grounds: first, it was argued that women discharge their functions of *qadi* without observing *pardah* (the veil), which is a clear violation of the injunctions of Islam. The petitioner, Ansar Burney, a philanthropist, argued that during the period of the Holy Prophet and his companions the duties of the *qadi* were never entrusted to women, since it appeared to be a violation of the injunctions of Islam. Moreover, he argued, according to traditional Islamic jurisprudence, the testimony of a woman is worth half that of a man and her share in inheritance is equal to half of that of her brother. Hence, the judgment of two ladies can only be equivalent to that of one male. Finally, women do not fulfill the qualification of *qadi* according to the established principles of Muhammadan jurisprudence.[12] The petition further relied on the abovementioned *hadith*: "A people who entrust their affairs to a woman will never prosper."

The Federal *Shari'a* Court dismissed the petition. The arguments used by the court in favor of women judges are interesting, since they shed light on the ability of the court to interpret *shari'a* in a way that accommodates changing

10 The Federal *Shari'a* Court (FSC) was constituted under Article 11 of the Provisional Constitution Order 1981. Article 203-D confers powers, jurisdiction and functions on the court. It provides that the Federal *Shari'a* Court may either on its own motion, or on the petition of a citizen of Pakistan, or the Federal Government, or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam as laid down in the Holy Qur'an and *sunna* of the Holy Prophet. By an amendment to this article in 1982 the court's powers were considerably extended by giving them *suo motto* powers to examine laws. The court is not to have more than eight Muslim judges, including the Chief Justice and three *'ulama'* that are well versed in Islamic law. For more details on the jurisdiction of the FSC, see Munir (2008).

11 PLD 1983 Federal *Shari'a* Court 73, *Ansar Burney v Federation of Pakistan and others*, pp. 73–93.

12 PLD 1983 Federal *Shari'a* Court 73, *Ansar Burney v Federation of Pakistan and others*, pp. 73–93.

social and political conditions.[13] For example, in answer to the objection that the number of *qadis* to decide a particular case should correspond to the number of witnesses, the court magistrates argued that if such a concept is given effect, it will follow that no male judge sitting alone can decide a civil or criminal case as, according to *fiqh*, in cases other than that of adultery (in which four eye-witnesses are required to prove the offence), at least two male witnesses must prove disputes of property or criminal cases such as *hudud* and *qisas*. Moreover, the second objection (excluding women from appointment as *qadi* because the Holy Prophet and his companions did not appoint any women) was rejected on the basis that "we have to see whether there is any explicit or even implied restriction on the appointment of a female *qadi*. If no such restriction can be inferred, the appointment will be legal in *shari'a*."[14] The court also decided that women's entrance into the judiciary as judges should not be restricted to family law only.

This judgment was assailed in the Supreme Court by an appeal lodged in 1983. It was dismissed; however, as it was filed after the duly required time had expired.[15] After a lapse of about 28 years, the matter was once again brought before the Federal *Shari'a* Court in 2010, through a new petition (*Murtaza v Federation of Pakistan and others*). The petition was dismissed based on the reasoning that judgment on the matter had already attained finality in the apex court of the country, and so there was no reason for further interference.

The two discussions in the Federal *Shari'a* Court reflect the arguments advanced in major newspapers following the appointment of a great number of women to Pakistan's lower courts in 2009.[16] In addition, a frequently heard argument in public debates, voiced by opponents and proponents of women judges, is that women are more emotional and sensitive than male judges and, therefore, cannot perform the difficult job of pronouncing justice. Opponents of women's inclusion in the judiciary were mostly found among religious

13 Reformists, like Fatima Mernissi, Ustadh Mahmoud Mohammed Taha and Abdullahi Ahmed An-Na'im, have provided some excellent examples of retrieving the dynamism and flexibility originally characterizing Islamic jurisprudence (see, for example, Abdullahi Ahmed An-Na'im's book *Islam and the Secular State*).

14 PLD 1983 Federal *Shari'a* Court 73, *Ansar Burney v Federation of Pakistan and others*, pp. 73–93.

15 *Shari'a* Appeal No. K-1 of 1983.

16 See, for example, http://www.indiatvnews.com/news/world/female-judges-in-pakistan-must-wear-veil-says-clerics-council-22489.html, January 21, 2015.

clerics, while human rights activists and women's rights organizations were found among the proponents.

Nevertheless, the inclusion of female judges in the judiciary is increasing, and not only in the lower courts of the county; they are also forging ahead to assume judicial posts in the higher courts.[17] As the following subsections will show, my fieldwork indicates that lady judges face more challenges from lawyers within the judiciary than the general public. Moreover, the fact that the general public is broadly positively disposed towards lady judges is documented in the public media. For example, in September 2012, a judge of the Supreme Court—Justice Nasir-ul-Malk —met with the litigant public in Swat, a remote area in the North West of Pakistan and, until recently, a Taliban stronghold. The public delegation told him that female judges do not discriminate, do not grant unnecessary adjournments, and they even asked him to replace the male judges with female ones.[18]

2 Female Judges: A Deeper Understanding of Pakistan's Plural System of Justice

This section focuses on practice, that is to say, on the issues with which women judges are confronted when they dispense justice in the Punjab. It looks at three issues in particular. It first focuses on the way women judges cope with local customs prevalent in the area, some of which are detrimental to the interests of women litigants and their children (such as child marriage and forced marriages), while others are favorable, for example, the payment of dowries to women. These local customs play an important role in the lives of the people who bring their grievances to the courthouse. I argue that female judges make a difference in dispensing justice by displaying a greater willingness to take local customs into account than their male colleagues.

Secondly, I demonstrate that the main beneficiaries of female judges' more detailed understanding of local norms are the underrepresented strata of society, such as the poor, women, and children. Moreover, women judges claim to have a better understanding of the problems that women litigants bring to the courthouse. The main reason may be that most of the lady judges are drawn from the middle class and can therefore better understand the problems of

17 See http://tribune.com.pk/story/543832/peshawar-high-court-pakistan-gets-first-all-female-bench/, May 3 2013.

18 *The Nation*, September 11, 2012.

female litigants with a similar class background. This sensitivity, arising from gender and class, towards local cultural norms is reflected in their decision-making, specifically in cases related to marriage patterns, inheritance, abduction, and rape. While opponents in the public debate used this sensitivity to accuse women judges of being 'soft,' conversations with women judges revealed that they attach different meanings to that term, such as 'agreed compromise' and 'speedy justice.'

Finally, this section looks at the way women judges deal with issues pertaining to approachability. Similar to the female litigants and other women in Pakistani society, women judges have a socially ordained obligation to maintain a certain distance from unrelated men, and I show how this influences the way they deal with members of the opposite sex, both litigants and legal professionals, who try to approach them. On the basis of women judges' accounts, I argue that they have come to make a difference in the long-practiced corruption in the country's legal system, which again goes in favor of the non-privileged and the weak who seek justice.

2.1 *Local Norms*

The Pakistani legal system is highly pluralistic; it represents a mixture of ideal justice of Islam,[19] ideas derived from the Anglo-Muhammadan law,[20] and customary laws. Customary laws are of vital importance in the rural areas of Pakistan since the state courts are expensive, time consuming, involve long procedures, and in the end the justice delivered may not be in accordance with the expectations of the recipient (Siddique 2013). This is why poor people often resort to traditional alternative methods of dispute resolution outside the purview of the courts. Pakistan's systems of justice constitute a wide network of formal and informal institutions, which interact and complement each other (Mehdi and Dhandale 1999). They are combined with instruments of informal negotiation, manipulation, power plays, and many other cultural, political,

19 The 1973 Constitution of Pakistan requires: "Pakistan shall be a Federal Republic to be known as the Islamic Republic of Pakistan" (Article 1) and "No law shall be repugnant to the teachings and requirements of Islam as set out in the Holy Quran and Sunna" (Article 29).

20 British colonialism brought to India the legal rules known as Common Law. But Hindu and Islamic law continued to be applied as the personal law of Indian litigants, which in many instances were interpreted by British judges or by indigenous judges with British training. Centralization and unification of the legal system was important for the British rule to control the vast land of India, in this effort they acted as if Islam consisted of universal rules, disregarding the diversity of Islamic law. This intermixture of common law and Islamic law came to be known as Anglo-Muhammadan law.

and social pressures which provide an added layer of complexity. The subordinate courts of the country, in which most of the female judges are working, are more closely connected to informal justice systems, as these courts are situated near rural areas where most of the population lives (Chaudhary 2011; Lawrence 2000; Mehdi 2001; Siddique 2013).

Besides the conventional sources of law, which include legislation, statutes, case law, and practices of the courts, custom was assigned a significant source in both colonial British law and in Islamic jurisprudence, and also in the combination of the two, i.e. in the colonial innovation of Anglo-Muhammadan law. Recognizing only state law, there is a tendency in the traditional mono-centralist approach to cast customary law as unchanging, stagnant or static, as opposed to the legally pluralistic perspective towards custom (Woodman 1997). In the following, I draw upon the grounded theory approach (Bentzon et al. 1998) to shed light on the practices of lady judges. Besides a close proximity to customary law, lower courts are less precedent-driven than the superior courts, as the judgments of lower courts can be appealed before the high courts. Consequently, they are better able to respond to new social and economic conditions, and changing attitudes within the community in adjudicating matters that come before them. Because the functioning of these courts is in large part pragmatic, lower courts have the potential to improve the position of women, depending on the personal characteristics of judges and lawyers. Besides being less precedence-driven, it is worth mentioning that there are several instances where judges in the lower courts have resisted applying legislation viewed as detrimental to women. Moreover, they are likely to be affected by a number of factors, such as the procedural framework within which the interplay between the different actors takes place. Hence, judges enjoy considerable flexibility in the interpretation of custom within the constraints imposed by procedural rules (Bentzon et al. 1998; Mehdi 1997, 37).

Despite the fact that most of the legal activity takes place outside the formal legal system of the country, members of the legal professions, viz. advocates and judges, tend to approach the law from a strictly legal positivistic perspective dominated by a mono-centralistic understanding of law, which makes them less equipped to secure the interests of their clients and litigants (Patel 1979). Their interaction with the informal, non-state legal sphere, however, is unavoidable, as their clients mostly come from backgrounds wherein the understanding of justice is legally pluralistic, and they use both systems as it suits them (Chaudhary 1999, 2011). My fieldwork shows that female judges are slowly breaking this mono-centralistic attitude, as most of them are keen to learn of the local customs and traditions in the places where they are appointed, with the aim of integrating these into their judgment.

Southern Punjab is known for customary practices, such as arranged marriages, child marriages, exchange marriages (also called *adal-badal*),[21] the marrying away of a woman to the Qur'an or places of worship,[22] oral marriage contracts, divorces which are orally performed, the unrestricted practice of polygamy, the practice of *hilala* (intervening marriage for a divorced woman in cases where a man wants to remarry his divorced wife), no inheritance of immovable property for women, restricted and heavily controlled mobility of women, honor killings, and violence against women (cf. Chart of Customary Practices in Pakistan in comparison with the statutory law 1995; Kurin 1986; Shaheed 1997, 1998; Weiss and Akbar 1996).

Female judges tend to look at law from the perspective of people's everyday lives, i.e. they see the significance of law in people's lived realities: what it means to people, how they interact with it, and how law does or does not impact their lives. For example, one judge in her thirties, who was among the female judges appointed in 2009, stated the following:

> I am more conscious of local customary practices than my male colleagues, and I keep them in mind while making judgments. For example, in accordance with custom in the Southern Punjab, a very high dower consisting of, for example, a house, land, and a water hand pump is fixed for women. In cases of land property and inheritance this customary practice should be taken into consideration. My husband, who is also a civil judge and who comes from an upper middle class, belongs to this area and speaks the Sariki language. I do not speak the language, but understand it.

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21 Exchange marriage is an established institution in Southern Punjab which consists of a marriage arrangement between two families where a girl and boy from one family are married to a boy and a girl from another family. The exchange marriage system is usually used to keep a balance in the relationship, which means that if one family does not treat their daughter-in-law well they should keep in mind that the exchange family may treat their daughter similarly. Any marital or other trouble in one household will affect the relations between husband and wife in the other (Jacoby et al. 2010).

22 For the Landed Feudal classes, keeping their land undivided is of primary importance as they derive their power through their lands. Allowing sisters to marry outside the family would entail letting some of the property (the sister's share of inheritance) pass out of the family. If a suitable match is not found within the family, they can forcibly be symbolically married to the Qur'an. In this way the woman is forced to remain unmarried for the rest of her life.

Even this judge, who was appointed to an area with a language she did not speak, demonstrated openness to considering prevalent customs. In a similar vein, another middle-aged female civil judge with a middle class background, who had extensive experience working as a judge, gave three examples of situations in which local customs played an important role: exchange marriages, village councils of elders, and inheritance. She said:

> In dispensing justice, it is important that one should know the people and their customs. For example, in the South Punjab, there are exchange marriages. In Lahore, where I am originally from, there is no such tradition. Cases are very simple and direct. Now, in exchange marriages there are two connected families. In both families the girls are treated equally; if one family is richer, the less rich family would try to keep the girl to a more or less similar standard as the rich one. One couple may be more compatible than the other couple. We have to keep all these things in mind when making decisions.

She continued by providing another example:

> In South Punjab we should be aware of the existence of *panchayats*.[23] This does not happen in Lahore. Here, due weight should be given to the existence of *panchayats*. People also sit in the mosque and resolve disputes through mediation. Our law allows us to acknowledge these mediations, and when decisions are made outside the courts, we just have to pass decrees from the court [i.e. approving the unofficial agreements]. Traditions in fact carry the force of law. This sometimes favors and sometimes goes against women, the poor, and children, as these groups live most of their lives under the customary laws which are used in the informal institutions. Judges can interfere with customs which are against women to a limited extent, as there are other pressures as well.

She illustrated this by pointing out the issue of inheritance:

> According to customary law, all property goes to the eldest son. This custom still exists. We, judges, have our own limits. We can use our discretion only to a certain extent and must give consideration to the local customs

23 Also called *parya* in some parts of Punjab. This is a council of village elders where disputes are settled, an informal institution of conflict resolution, with popular roots in the villages of South Punjab.

> and traditions. For the cases of inheritance, we also have to give consideration to different sects in Islam. The Shi'a sect has their own rules of inheritance. Usually there is reluctance to give property to women, so all of it is taken by the brothers, showing that sisters have given up their share in favor of their brothers. When in doubt, we want to make sure that the free consent of the sisters was given without any pressure from the brothers. If we are suspicious that it has not been given freely and there is no tradition of compensating women in the area, then we can give a strict decision in favor of the sisters.

Other increasingly widespread phenomena in rural areas of Southern Punjab are run-away brides, cases of abduction, and rape (for a similar situation in India, see Chowdhry 2013). Usually when young people in the rural areas of Pakistan do not feel that their love for each other would be accepted by their parents (the reasons for such non-acceptance could be many; for example, two persons, liking each other, may not belong to the same *biradari* (clan) or parents, in accordance with the customary laws, want to make an arranged marriage), they overcome customary rules by running away from home in order to marry of their own free will, something which is permitted under the official law of the country. In response to this, parents often file a criminal case of abduction against the runaway male. In such cases, the state usually colludes with the patriarchal family in controlling its women and in maintaining the *biradari* ideology (honor and norms of a clan) that governs marriage alliances even though this position cannot be sustained by the law.

During court proceedings in Southern Punjab, I noticed how the sensitivity shown by a female judge toward local customs facilitated compromise in a case that could otherwise easily have resulted in an incidence of honor killing. The case concerned two runaway couples who got married (two brothers married to two sisters). Charging the brothers with abduction, the case was brought before the court by the father of the sisters. Before the court handed down its final decision, the father of the two sisters was permitted a word with his daughters; he urged them to state that they had been forced to marry and had not left home of their own free will. The youngest daughter broke into tears when informed by her father that her mother was about to die due to the stress and shame emanating from dishonor. Finally, the court, in favor of the two couples, dismissed the case of abduction. Subsequently, the lady judge made a conciliatory move by asking the boys to kneel at the feet of the girls' father (a customary gesture of begging for forgiveness and showing respect to the elders). This gesture was important, as the self-esteem of the father was hurt, and he and the family could have resorted to revenge in a dispute of this

kind. However, once a gesture of forgiveness had been performed before the dishonored father, a type of compromise was reached and the two couples remained married.

This example shows that the interest of this, and most other interviewed female judges, in gaining a detailed understanding of local customs can make a big difference in the way they dispense justice. Any judge, male or female, with an understanding of the local customs would use such conciliatory methods, while cases where the judge is unaware of local customs would end up in bloodshed in the name of honor killing.

2.2 *Understanding the Needs of Female Litigants in the Context of the Extended Family: Soft Justice*

In the view of the interviewed lady judges, their interest in learning to understand customary practices leads them to be more attuned to the needs of female litigants and children. A prominent theme is the importance attached to preserving and strengthening family ties. This was reflected in the interviewed lady judges' preference for reaching mediated solutions between the parties and their concern about the perceived increase in the divorce rate. It should be noted that mediation is mainly used in customary settings, where people get together in homes or under a tree to resolve conflicts, while official courts usually pronounce judgments. One female judge justified her extra effort of mediating between the parties by referring to the rules prescribed in the Code of Conduct 2 (34) for members of the subordinate judiciary: "He (or she) should make endeavor as far as possible to act as '*musleh*' (mediator) and help the parties to resolve the dispute through amicable means acceptable to them, without leaving any impression of siding with anyone."

The following interview extract shows that female judges believe they are more sensitive to the situation of women than their male counterparts. Khadija (CJ (civil judge) Class-III),[24] for instance, considered an increase in divorce as negative because it not only affected children and social equilibrium, but also family honor. She believed strenuous efforts should be made to affect a compromise before any extreme step is taken. She said:

> First and foremost, women judges can understand women's problems better than male judges. They can share and help in family problems more than a man. Sometimes women show signs of violence on their body to us, which they would not show before a male judge. Recently, divorce rates are on the increase. The reason behind the increase is that

24 Class I is higher than class III.

> the willingness to sacrifice is disappearing and a materialistic approach towards life is on the rise.
>
> In family cases, I try to mediate between the parties, especially in cases where there are children involved. I try to make both parties think about the children and make compromises. Sometimes when you are trying to reconcile, you feel that clients come with a rigid mind, but women who come from good, educated families are more flexible. Usually when women come to the court, they are very desperate and inflexible, and come with a mind fully prepared for separation and divorce. It's very difficult to prepare them for compromise. Men are more flexible and usually want compromise. When a man feels that he would lose his respect (*Nak kut jai gi*) and would be disgraced and dishonored in the society, he wants to compromise and is ready for negotiating terms and conditions. Their ego is broken. From the very beginning, within a glance we can see if a woman is ready to compromise.

Generally speaking, divorce is considered undesirable in both rural and urban environments, but specifically in rural areas of Pakistan. Following divorce, women usually return to live with their parents, which, in many situations, become an economic burden on them. Although the percentage of women with an education and a job is increasing,[25] most women still depend on male members of the family for financial maintenance. Thus, in cases of violence or other tensions between husband and wife, the best solution is believed to be to compromise. Consequently, the families and communities concerned put great pressure on the husband to change his violent behavior while women are instructed to tame their husbands with tolerance and tactfulness. Traditionally, women are also reminded and advised to sacrifice their own interests for the sake of their children (Mehdi 2001). Interestingly, this traditional approach, seems to be the one adopted by the lady judges, and is in accordance with their 'parental' role (explained in more detail below). Judge Roukayya (CJ Class-II) said:

> Women litigants have become more confident and have started to confide their problems to us. Once, in the case of a woman who murdered her husband, she told me many things which a woman would not tell a male judge. Judges enjoy the social status of being 'parents' to their clients.

25 There is a dire need to conduct more studies in this area.

In this light, her colleague Judge Farida (CJ Class-I) said:

> As a lady judge, I have a better understanding of family matters. Whatever family matters I get, I deal with them with understanding. I am strict with divorce cases. But once a divorce case has come up in the courts, it is difficult to make compromises between the parties. For whatever reason, they are not ready to accept any conditions. The laws of our country have also made the act of divorce very easy. Most of the family law cases concern exchange marriages. If one woman in the exchange marriage is divorced there is pressure on the other woman of exchange to be divorced too. The spouses may be living happily and may not want divorce but there is family pressure and sometimes also pressure of the *panchayat* (traditional institution to resolve disputes).
>
> Some of the cases from the rural areas consist of pure revenge. We can only make limited efforts at reconciliation between the parties. If we take too much interest, we may be accused of taking the side of a particular party.

This example shows how a good understanding of local custom helps in understanding women's problems, although it does not necessarily mean that women judges will readily side with the female litigant. On the contrary, oftentimes women judges feel they are as parents to the litigants, and they will do their utmost to prevent the marriage from ending. The implications of this knowledge for a judge in terms of judicial decision-making is most important in divorce cases where the involvement of the extended family triggers the marital dispute. There are examples where a judge makes families recognize the illogic of separating a happy couple, just because the other couple of the exchange marriage are not doing well in their relationship and ended up divorced. However, as Judge Farida stresses, an ascribed objectivity as a value prevents the judges from choosing a side, making their task of reconciliation more difficult.

While the lady judges consider themselves more sensitive to context and the needs of the weaker party, their preference for mediated solutions over divorce raises the question whether they regard protecting the stability of families as more important than securing the interests of female clients.

Here it may be recalled that a frequently heard argument in public debates aired by opponents and proponents of women judges is that women are more emotional and 'softer' than male judges. The female judges countered these claims by drawing a distinction between 'softness' on the one hand and justice/consideration/humaneness on the other. In the words of Mariam (CJ Class -III/FJ):

> I am not soft. I am a judge. I often say that I am like a parent to my litigants. Having to decide between parties is like deciding between two of my children who are both dear to me. It's a great responsibility to adjudicate between two children. There is or may be a softness, but I try to decide cases based on merits. I will not decide the cases by looking at people, even though they may look innocent. You can say we are doing paper justice. I have to decide based on what's there in the files. Softness is in the sense of delivering justice and not making people suffer. And if the litigants are present in the court, I prefer that they should record their evidence; then I proceed and get their counsels in the court. Afterwards I go through the files again and again and my 'softness' is in the sense of providing speedy justice.

Roukayya (CJ Class-II) formulated the following opinion:

> We are considerate, not just soft and lenient. We should not be emotional when making decisions. For example, we all know how significant dowry is in our society. All parents give dowry to their daughters. Now, usually no evidence is kept for the dowry of a daughter and, hence, evidence is missing. But because I know that dowry plays an important role in society, I tend to be considerate in such cases. I also discuss tradition and customs with clients in the court. In a criminal case, on the one hand, there could be a habitual criminal with a big theft while, on the other hand, there could be a small theft, for example, an instance of cycle lifting. By looking at the personality of the person concerned, we can see that he is not a habitual criminal and if he goes to prison for three years, he would become a more hardened criminal. I am considerate in these types of situations as well.

The statement of Judge Roukayya shows that her knowledge of the customs prevalent in Punjab society, prompt her to take into account the significance of the dowry in dispensing justice in divorce cases. She does not describe this knowledge as soft or emotional, but as considerate. Like Roukayya and the other judges, Rehana (CJ Class-III) took issue with the term 'soft justice' and said that: "I would rather use the word 'humane' instead of soft. I am very considerate and give time to reconciliation in family cases. My aim is an agreed compromise in both criminal and civil cases."

In general, the women judges interviewed understood 'soft justice' to mean that they are humane and deliver mediated solutions on the basis of facts presented to them in the court files. They felt that they were encouraged in doing

so because, in contrast to their male colleagues, they were not approachable and did not accept bribes offered to them.

2.3 *Issues of Corruption, Limited Social Circle, and Non-approachability*

I would like to start this section on corruption with Rule 37 of the Code of Conduct, referred to by a lady judge: "One should never forget that he/she is accountable to God Almighty in the end."

One of the biggest challenges facing female judges is the corruption of the judicial system of Pakistan, which is often associated with having a vast social network. The Pakistani legal system is ranked as one of the most corrupt in the world (Chaudary 2011; Hoebel 1964; Mehdi 1994; Nadeem 2004). According to Siddique, successful litigation in the district courts of Lahore depends on the ability to stave off opponents through duress and violence, whereas the operators of the legal system constantly expect 'speed money' to push the process along; subsequently, the integrity of the judicial officers is doubtful (Siddique 2013, 143). In his analysis of the Pakistan's court system in the 1960s, Hoebel comments that papers move only on golden or silver wheels (Hoebel 1964), which is equally true today. A female judge, Rahila (CJ Class-II) from Northern Punjab, explained this as follows:

> People use the any means to get their work done. People come here on a daily basis, and we know that bribes are given to the staff and the clerks (*munshi*) of the advocates. Bribes are a burden on the clients. It is said that even the walls of the courts demand money (*kachehri ki diwarein bhi paisay mangti hein*). From the cycle stand to the reader sitting, to the advocate and his clerk, everyone demands money.

There is a dilemma here: while social networks are indispensable in a region where customary law operates as a parallel system, approachability simultaneously opens the door to partiality, bribes, and other types of corruption. The approachability or accessibility of the judges is limited by rules, provided in their code of conduct,[26] which repeatedly mentions that "He should always live within his honest means and believe in *rizq-e-halal*" (honest earning).[27]

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26 Article 111 of the Code of Conduct for judges of the Supreme Court and the High court states: "To be above reproach, and for this purpose to keep his conduct in all things, official and private, free from impropriety is expected of a Judge."

27 2(1) Revised Code of Conduct for Members of Subordinate Judiciary: Sayed Zahid Hussain, Chief Justice, 31–10–2008, says: "The judicial power is a sacred trust and divine duty. A judicial officer should exercise it honestly, efficiently and to the best of his

It is here that female judges are believed to make a difference. For example, in an interview published in a Pakistani newspaper, a judge of Pakistan's Supreme Court, Justice Tassaduq Hussain Jilani, admitted that in Pakistani society, female judicial officers are seen as more honest, more hardworking, and less accessible.[28] This statement is endorsed by most women judges we interviewed. It is difficult for female judges to have a wide social network and freely socialize with menfolk in a gender-segregated society such as that of Pakistan. Conversely, their prospects of engaging in corruption are presumably limited as compared to male judges. Fatiha (CJ Class-III) said:

> We do not have many links to society. Our social life is very limited. Our residences should also be separated from the general public. People try to approach us outside the court, but we are not approachable. We do not get a separate residence in all cities of our appointment. If we are not living in a segregated, guarded area, we are vulnerable to people who would like to approach us privately. But in general, we are more trusted than men, as women are hardworking, they are honest, and generally do not opt for unfair means. We have four female Civil Judges and one additional Session Judge,[29] and up to date, none of them have been accused with any corruption whatsoever. They are known to be straightforward, as they go by the book [of codified law] only.

The inapproachability of female judges leads to a different working relationship with advocates. While male judges meet with advocates in their offices inside the courthouse as well as outside, women judges' interaction with advocates is strictly limited to visible public interaction in the courtroom. Sometimes, so Judge Malika (CJ Class II) claims, this restriction also extends to the interaction between female judges and female advocates.

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capacity keeping always in mind that he is accountable not merely to his superior officers but to God allmighty Himself. He should all the time be conscious of his onerous duty and his integrity." The Code of Conduct continues by demanding a very high standard of character from both male and female judicial officers, it says: "A judicial officer should be God fearing, law abiding, abstemious, truthful of tongue, wise in opinion, cautious and forbearing, patient and calm, blameless, untouched by greed, completely detached and balanced, faithful to his words and meticulous in his functions."

28 See http://nation.com.pk/national/08-Jun-2010/Female-judges-more-honest-Justice-Jilani, June 8, 2010.

29 A Session Judge is a senior position in a court and not very many female judges are appointed to this post. The judge in this post is responsible for maintaining discipline among all judges in a particular court.

> Yes it is correct that even female advocates are not allowed to contact the lady judges, because when Session Judge passed the directions for a smooth operation of the system, male judges were allowed to attend to male advocates, but this access has been denied to the female judges. Male advocates should not come to our chambers; this restriction has been extended to the female advocates too. So this is a way to block any effort in approaching the female judges. Secondly, as women, we don't move in society very freely, while male judges have contacts with many different people, who subsequently try to approach them. Whether they allow them to approach them or not is another debate, but they are easily accessible. When it comes to women, if I receive a missed call and the person does not leave his name, I just switch off my phone. So the female judges cannot easily be accessed.

Judge Roukayya (CJ Class–II), whose husband is a lawyer, trying to find work in the judiciary, was very adamant about the working relationship between judges and lawyers. She expressed the following view:

> Why should we be accessible to advocates? They give service to their clients. The main stakeholder is the client. After we have heard the arguments from both sides we should be inaccessible during the time of decision-making. Yes, of course, some people try to interfere with our decision-making. Criminals ask for favors. On one occasion my husband was hurt physically by someone. He did not tell anyone about the episode, but later told me that some criminals hurt him because of a verdict I made in court. My father is very supportive. Once he was told by some clients that they would like to explain the case to me in private and my father refused, saying "My daughter has become disobedient; since she has become a judge, she no longer listens to me."

The interview fragments presented above make it clear that female judges' relationship with male lawyers can be difficult and strained. In the last section, I elaborate on this and other challenges women judges face in an environment that until recently was male-dominant.

3 Challenges

In this section I focus on the everyday practices of women judges in relation to prevalent notions of 'proper' gender roles in society. For example, how do

women perceive working in a previously male-dominant environment? Do they see their position as judges to be in accordance with their personal perception of gender roles? During the course of their work, they must respond and adjust not only to a complex structure of legal pluralism, but also to the pressure to perform in the 'manly' way, characteristic of the profession. This working style involves negotiations and upholding predominantly feudal values. When working alongside their male colleagues, they are also expected to deliver justice like men. They say: "We should not think we are women, but on the seat of the judge we are like a man." Women judges fear that if they fail to perform like their male colleagues, their authority as judges will be questioned. Does dispensing justice like men mean delivering 'hard justice' or withholding the use of consideration?

Interviews with lady judges in South Punjab suggest that they face challenges on numerous levels. First, they often encounter opposition when they express a wish to study law. When they have entered the profession they are usually appointed to the family courts and to remote areas. Moreover, there are challenges with regard to the chambers allotted to lady judges and their dress code as they become the center of attention in the courts. On entering the profession, they face considerable opposition from within the legal profession, directed by male lawyers in particular. Male judges may also experience the lawyers' harsh behavior, but, as displayed above, they can interact with them freely and find an understanding with them, an opportunity which is not afforded to female lawyers. Finally, female judges complain about not receiving adequate training which would allow them to do their work more accurately and effectively, an issue with which they have different experiences than their male colleagues. Lastly, in a context where women remain the primary caretakers, women judges face challenges in trying to combine work and domestic responsibilities.

3.1 *Choosing a Career Path and Studying Law*

Generally, Pakistani parents do not encourage their daughters to join the legal profession. This prompted me to ask the lady judges what led them to choose this career path. It struck me that most of the young women employed as judges were unmarried and from middle-class families. A young female judge, Khadija (CJ Class-II), who received her basic education in a provincial city in the South of Punjab and obtained her law degree from a university in Lahore, said the following:

> My family did not think that law was an appropriate profession for girls. Nobody in the family encouraged me to join. I had to struggle for it. Now

> that I am judge, I think they are quite pleased with it. I earn almost Rupees 83,000 [equivalent of 788 USD], which is a handsome amount for a family.
>
> Before, people did not think that law was a profession for a woman, but now they have started reevaluating it as an option for their daughters. I think decision-making power is a blessing. It is not awarded to women in our society even in small family matters, so it is a big thing that this power is awarded to the lady judges.

While Khadija had to convince her family to attend law school, other judges had different experiences, with some even being pushed by family members to study law. Mariam, a young judge (CJ Class-III), stated:

> My mother wanted me to become a medical doctor, but I couldn't get the required merit and, therefore, I was left with nothing to do. Then one of my relatives advised me that I should apply for admission to law school. I didn't have any choice, so I joined law as a profession. Now I feel that I am lucky, because I never thought I would become a judge. In fact, I did not want to be a working lady at all. It's too difficult.

A young female judge, Abida (CJ Class-II), explained in greater detail:

> My brother not only inspired but even compelled me to join the profession. However, I am very critical towards it. It's a very hectic job; I do not have any time for healthy activities. No time for reading or visiting anybody. After work, I have very little time to rest because I have to prepare and study files for the next day. I think our working hours should be until one in the afternoon instead of five in the afternoon.

While some women were intrinsically motivated to study law, others were compelled to or forced by family members. Security, financial stability, and prestige have become the aspiration of lady judges, and they encourage or are encouraged by their families to take the examination to become a judicial officer. But the profession is not without challenges for them.

3.2 *Appointment made in Remote Areas*

A number of the newly appointed female judges complained about appointments to remote areas. This may be because there were no male judges who wanted to be appointed to these places, and, since women are new in the profession, they might not dare to object. Some of these places have special housing reserved for judges. In others, there are no allotted residences for judges,

and the government rents apartments for them. Moreover, it is very difficult to find caretakers who they can trust to look after the children. In some cases, female judges get their mothers to come with them to look after their children while they are away at work. Two of the ten lady judges from Southern Punjab and two of the four from the Northern Punjab complained about the problems faced by female judges who are posted in remote areas of Pakistan[30] away from their hometowns. Firdaous (CJ Class-I) dwelled in detail on this issue:

> Our job is very hectic and challenging. We can cope better with family and our professional responsibilities if we were stationed near our permanent residence. If we are posted at a remote station, where we cannot enjoy the family life umbrella on a daily basis, life becomes hell due to multiple problems like insecurity of one's own life and of the children especially. When the mother is working in the court and the father is a hundred kilometers away from the children, the children's security and well-being becomes a real issue, and their education suffers badly. Sometimes, health problems become a very serious issue too; for example, if there is an emergency in the middle of the night, or when your child is suffering from acute vomiting, or is running a high temperature [timely medical assistance is not available due to poor medical facilities in remote areas]. What can you do and where can you go when you suffer from serious health hazards? It becomes a life and security threat, but who can come to help the lady judge in such a situation? For example, due to the long travels, a few lady judges had abortions while others still suffer from severe backache and spinal cord damage issues.

Apart from the fact that courthouses can be remote, there are also problems inside the courthouse. Although the recent appointment of women to the judiciary has led to women now representing one third of the judiciary, the courthouses have yet to accommodate this change. We asked the female judges whether they were satisfied with the arrangements of their chambers. Roukayya (CJ Class-II) narrated:

> Our working rooms are such that they were basically made for men. I would prefer a chamber made for the convenience of a lady judge. Women chambers should be more protected; our chambers are built in such a way that there is easy access from all sides of the room. Sitting

30 The expression is used for the poorly developed areas of Pakistan, i.e. areas which have a relatively low number of schools, hospitals and other basic facilities of modern life.

places and washrooms should also be according to the needs of female judges.

3.3 *Dress Code*

Here it is relevant to discuss the dress code for the lady judges. First, Islamization movements in the Muslim world in general, and in Pakistan in particular, pressure women to change their way of dressing, especially by requiring them to wear the *niqab* (where the face is fully covered and only the eyes can be seen). In Pakistan, despite rising extremism, women judges are not forced into the *niqab*; some of them wear it of their own free will. Secondly, dress code plays a part in how female judges adapt to a male-dominated environment. The lady judges seem to de-emphasize femininity in favor of 'simplicity' with minimal colour, make-up, or jewels. As one of them said: "We are here as judges, not models." The covering of the hair and the face also plays a role in the way the women judges want to present themselves to the public in the courthouse. Of the 14 judges interviewed, nine wore the *dupatta* (long traditional scarf used by women in Pakistan), four wore the *hijab* (where the face is not covered), and one wore the *niqab*.

No dress code is prescribed for the District and Session Court judges, and therefore the interviewed judges followed the dress code prescribed for the Supreme Court and High Court judges. This code mainly targets male judges requiring the *shalwar qameez* (traditional dress of Pakistan). This is a common style of dress used by both males and females in Pakistan, therefore the inference is that women may dress similarly.[31] However, the Judicial Estacode 2011 of the Peshawar high court prescribed dress for female judicial officers as follows: "Ladies: White *Shalwar Qameez* with black scarf (*Dupatta*) and black shoes (black coat—optional)."

The following statements reflect a moderate viewpoint about the dress code among the female judges. This viewpoint seems representative of most of interviewed female judges. Khadija (CJ Class-III) says:

> I like wearing simple clothes in the court. It should not go to the extent that people would come and watch us as if we were models. We are here as judges not as models. Generally, I think all female judges should display a simple appearance in the courts.

31 Superior Courts (Courts Dress and Mode of Address) Order, P.O. 15 of 1980.

Her colleague Roukayya (CJ Class-II) confirmed this, saying: "We have to look after children. I do not have time for make-up. Court is a serious place and make-up and jewelry do not make a good impression." With regard to covering up, there are two extremes, on the one side, female judges with no *hijab*, and on the other side, those who wear the *hijab* and the full *niqab*. Fatiha (CJ Class-III), who wears the *niqab*, said:

> I feel that the *niqab* is no problem in the administration of justice. In fact, it is appreciated in the courts by male judges and lawyers. I have heard this from lady judges in other courts who wear the *niqab* like me, and they have similar experiences. In Lahore, some of the female judges were without *dupatta* and they were criticized by the Session Judge that they should wear a *dupatta*.

On the other hand are female judges who wear jeans and do not want to cover their heads. They justify their view by interpreting the dress code provided. Abida (CJ Class-II) described: "I wear trousers or jeans and feel more comfortable in it, though I am much criticized in the court. In fact, in the official dress code of judges a suit is mentioned while *dupatta* is not. This means that the head cover is not necessary."

3.4 *Assignment to Family and Civil Courts Only*

While women judges try to blend into their new environment by dressing modestly, in muted colors, and by de-emphasizing their femininity, there are areas where women judges, especially the junior ones, experience gender-based discrimination. In some courts, female judges have complained about the discrimination of being assigned only to positions in the civil courts. However, most of the female judges interviewed in Northern and Southern Punjab claimed not to have experienced such discrimination. The reasons are, first, that it seems that this is a problem faced mostly by young, newly appointed judges. Senior judges do not feel as discriminated against as, owing to their experience, they are assigned to all types of courts. Secondly, in some courts where female judges are more numerous and where the workload of cases is high, such discrimination is simply not feasible. For example, senior judge Mariam (CJ Class-I) states: "My first appointment was as a family judge. For a year and a half I worked as such. I prefer to work on both civil and criminal cases. It took some time until I was allowed to do this." However, in one of the courts in South Punjab, a junior female judge recounted a conflicting experience. Khadija (CJ Class-III) said:

> Lady judges are usually not assigned to a position in the criminal court, but once they are assigned there, I think they perform better than the male judges. I love working in the criminal law court. There, you deal with the liberty of people and you enjoy considerable discretion. There are more challenges. You have to be strong, courageous, confident, and blunt. You cannot show any hesitancy. I think there should be courses for lady judges to increase their understanding of criminal matters. One reason that lady judges are reluctantly assigned to the criminal law courts is that in our society the general understanding is that a woman should not interact with men. In the criminal law court, female judges are not only interacting with men but also with hardened male criminals who are accused of matters such as robbery, physical injury, fights, and theft. Another reason why criminal work is not given to us is that male advocates do not find us easily accessible for bribes. Moreover, when women work in branches of law other than family law they come into competition with the male judges.

What we can insinuate from these interview fragments is that there seems to be a difference between junior and senior women judges in the way they feel about their appointments. Generally, junior women judges feel they are too easily assigned to a position in the family court, while senior women judges know from experience that in time they will be appointed to work in other fields of law as well. Nevertheless, the number of women working as judges in the criminal courts is still relatively small. As we have seen above, Judge Khadija claims this is because, more than in any other field of law, women judges in criminal law experience opposition from male colleagues, especially male lawyers. As mentioned before, women judges are generally not accessible, which is a requirement for corruption, and corruption is mostly prevalent in criminal cases, due to the immediate threat of punishments and fines.

3.5 *Male Lawyers and Female Judges*

This section supports the argument that the main source of opposition to female judges comes from within the legal professions and not the public. Female judges frequently complain about the aggressive attitude of male peers, advocates especially, towards them. Although the attitude of judges towards advocates is controlled by the Code of Conduct,[32] the accounts of most women

32 "His behavior and conduct should be gentlemanly particularly towards the litigants and lawyers. He should be courteous and polite but firm and dignified to maintain decorum

judges interviewed indicate that they do not feel that male lawyers reciprocate judges' courteous behavior. For example, Mariam (CJ Class-III/FJ) asserted:

> Male advocates show a lot of resistance to lady judges. In fact, it is hard for them, not for us. They are standing and looking up to us and they try to create problems by telling a Session Judge that the lady judge has done this and that. They have also gone to the Lahore High Court with complaints that madam [lady judge] is too harsh and strict. In most of the cases, I just wanted to have a short adjournment and dispose cases as quickly as possible, and the advocates filed complaints against me to the Session Judge. They said: "She is strict and works until six in the afternoon. She has no children, she is unmarried, and she has no liability. The entire staff is suffering." I am thankful to the [male] Session Judge who supported me and threw the complaint paper in the dustbin.

Now the question is why male lawyers are so aggressive. Are they aggressive to male judges too? It seems from the comments of some female judges that they are specifically aggressive towards female judges. There could be a variety of reasons for this: they are not used to women making decisions and they may perceive lady judges as less knowledgeable. They may also feel irritated by male judges who decline their cases, but with them they have the possibility to interact and negotiate freely as we have observed above. Hence, while male judges also suffer from lawyer's bad behavior, they have different ways of dealing with it.

The different ways of dealing with professional legal colleagues of the other sex might probably explain why women judges express a strong wish for more training and refresher courses. This need may point to the fact that in the male-dominated profession and its culture, newly appointed male judges adjust by learning from senior male colleagues and advocates, in a 'man-to-man understanding.' Female judges are more likely to 'go by the book' and, hence, have to work out problems with no guidance and are in dire need of extra courses. In the words of Khadija (CJ Class-II) from Southern Punjab: "I have been a judge for three years. We had only three months of training. This was sufficient in the light of the fact that there is dire need of judges in Pakistan. But I think

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of the Court. His conduct in and out of Court should be exemplary which should enhance the prestige, respectability and honor of the court in the society." 2(3) Revised Code of Conduct for Members of Subordinate Judiciary: Sayed Zahid Hussain, Chief Justice, 31–10–2008.

that refresher courses should be held periodically to overcome the absence of training."

3.6 *Choice of Husband*

A husband from the same profession seems to be a preferred choice for almost all the female judges interviewed. Interestingly, nobody mentioned the possibility of competition between the married partners. Farida, who is a civil judge, Class-I, with ten years of experience, is married to a civil judge with whom she has three children. She said:

> I have a harmonious family since my husband is also a civil judge. Because we both are in the same profession, we understand each other better. We can easily adjust to and understand a busy routine. At home, I always cook the food myself and I am skillful in many different cuisines. My husband helps me with childcare. He also makes good coffee and milkshakes. I come from the Northern Punjab and my husband from South Punjab. There is a big cultural difference between these two sides of the same province, but you know: "Couples are made in the heavens" (*jorey aasmanon per baentey hain*).

Female judges seem to be aware of the fact that combining a busy professional schedule with traditional family life is not an easy task. Abida, an unmarried civil judge (Class-II) explained:

> All women have problems: they perform the second duty of taking care of the family as well as the profession. Female colleagues are responsible for pick up and drop off of their children at school. They are always worried. My mother worried a lot about my marriage prospects. If I marry, I have to choose a right person, and it's not an easy job. My brother, who encouraged me to join the profession, actually tells me not to go for marriage.

Roukayya (CJ Class-II) said:

> A lady judge has to look after both her family and her job. So, while your husband rests, you look after the children. I feel this has to be changed. Sometimes I also fight with my husband and sometimes try to make him realize my struggle, especially when he is in a good mood. He likes my job very much, to the extent that he is also trying to get a job in the judiciary.
>
> Precisely speaking, family life is not a bed of roses for the married lady judges. They have to look after many household matters, from

> miscellaneous chores to teaching their kids in the evening, along with cooking, attending to in-laws or frequent uninvited guests. Their lives become more mechanical than that of any other professional person, because they have to work under pressure and threats. I feel that we should be provided with a permanent servant at home who can assist us in household matters in the evening, like the servants army personnel have.

3.7 *Day Care Facility for Children*

A matter of great concern for married female judges is the lack of daycare facilities for their children. Even unmarried women judges are of the opinion that it is important that there should be available daycare centers so that judges would not have to worry about their family when they work. The absence of this facility, so they argue, diverts attention away from work. Due to the lack of daycare services, some women judges bring their young children to court. Malika, a mother of two children, and a civil judge (Class-III) explained the seriousness of the situation in these words:

> The problem is that when there is no school or daycare centre, then what is there to do? So, we are pressured to appoint these *Maasi* and so-called *Mais* (traditional maid servants). Some of our colleagues bring the kids to the chambers and leave them seated there with the maids. But a child gets tired of sitting in one place all the time. Then he/she moves out in the court and sees the prisoners and litigants and hears their language.

In a bid to solve the problem of managing the household and the care for young children, other women asked their mothers to stay with them and look after their children when they were at work. This is how civil judge Fatiha (Class-III) solved the problem of having a young child and an absent husband: "My husband is an advocate working in a different city. We have a one-year old son and my mother has come to live with us so that she can look after him when I am in court."

This section shows that lady judges in Pakistan have to face challenges at the home as well as at the working front. The challenges stem from the very basic question of whether, if at all, women should enter the legal profession. Once they are in the judiciary, balancing household and professional responsibilities becomes a new challenge. Obstacles continue in professional life, where female judges are confronted with issues which male colleagues may not have

to face, such as: appointments in remote areas of Pakistan; exclusive appointments in family courts; their dress code and chambers; issues of training, etc. However, a main challenge at work is produced by male colleagues, especially lawyers, who are not used to recognizing the authority of a female judge.

4 Conclusion

Although the positions adopted by classical jurists were not unanimous in answering the question as to whether women can work in the judiciary, most of them prescribe a restricted or limited role for women as judges. However, the increasing inclusion of women as judges, motivated in Pakistan by the lawyers' movement, is evidence of the fact that the classical Islamic position is changing with the times and is allowing greater flexibility.

Moreover, the increasing presence of female judges in the lower courts of Pakistan shows that they are acquiring a great deal of experience: in working with the lower strata of society (the majority of the legal population visiting the courts) women judges are becoming aware of their living customs and traditions. Although this needs further study, there might be a relationship between female judges' interest in understanding customary law provisions and the acceptance of women judges by the people who bring their grievances to the courthouse.

However, this study has also shown that women judges face considerable challenges in performing their work as judges. Although most judges interviewed try to dress in manner that makes them appear objective and not too different from their male colleagues, the challenges they face are directly related to what it means to be a judge in a society, with patriarchal definitions of manhood and womanhood, especially in marriage, where men are expected to be the breadwinners and women the caretakers.

Women judges in Pakistan not only take care of their own children, but also view litigants as children whom they must take care of. They feel it is difficult to juggle professional commitments with domestic responsibilities, especially when they are appointed to remote areas where they cannot rely on support for raising their children. In the absence of their husbands (who often work far away), other female members of the extended family, and childcare facilities, some female judges have come to the conclusion that judgeship is not a suitable profession for women. Some women judges feel that while their sensitivity to customary norms places them in a better position to take care of their clients' interests, in the end it is difficult to take good care of litigants and family members simultaneously.

Apart from women judges' more profound understanding of local norms, another factor that possibly contributes to the public's acceptance of women judges is that the public considers women judges to be less corrupt than their male colleagues. This unapproachability is related to societal notions which do not allow women to socialize freely with men to whom they are not related. This makes it difficult for litigants and lawyers to approach the female judges and ensure 'speedy' justice through bribery. While women judges have a different notion of speedy justice—delivering a fair and quick judgment based on the facts on paper—their non-approachability disturbs their relationship with male lawyers, who treat the lady judges offensively. These challenges notwithstanding, it is likely that in time, male legal professionals will join the general public in accepting the authority of female judges in Pakistan's courthouses, both in the lower and the higher courts.

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