



Gendered Justice: Breaking Barriers and Building

Narrative

Pakistan's Experience

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For a country that ranks 129 out of 139 on the Rule of Law Index² and 141 out of 156 countries on the Gender Gap Index 2022³, it is essential to consider why has the position not improved over 75 years, especially for women, who make up half the country's population. In this context, the women of Pakistan face cultural and social barriers where they are cast in a given gendered role, which is conditioned and limited. Although more women are educated now and the number of working women has increased, women do not have a fair share of representation in leadership and decision-making positions. So, the stereotypical role and cultural barriers prevail over education and autonomy. Nevertheless, the underlying issue is much deeper. Beyond the mindset, there are structural barriers where the laws, rules and policies do not consider the gender perspective and so the same do not allow real-time inclusivity, participation, and visibility for women. This becomes a problem when seen in the context of access to justice as the justice sector is a reflection of the narrative built on traditional roles and presumptions which work against women. So, whether it is to file a complaint or to file a petition in court, women face challenges unique to their gender as the road to access justice is obstructed.

This becomes evident when the representation of women in the justice sector is seen. At present, less than 2% of the superior judiciary and less than 15% of the subordinate judiciary are women. There is one female judge at each of the five high courts, and it was only last year when the first woman was appointed to the Supreme Court in the country's 75 years history. 12% of the

¹ Justice, Supreme Court of Pakistan

²World Justice Project Rule of Law Index 2022.

³Global Gender Gap Report 2022 by World Economic Forum.

total lawyer's community and 15% of the total prosecutors are women.⁴ On the other hand, female police officers constitute only around 1.5% of the entire police force in Pakistan.⁵ This low representation is not because there are not enough capable women for these positions, but because women do not have equal opportunities and on account of the prevailing mindset, they are not easily considered. Essentially, the barriers are entrenched in the system and have become part of the system which in turn endorses the presumed gendered role. Typically, for these reasons accessing the justice sector becomes a stigma. This mindset can manifest in decisions, in the process and procedures, in the way cases are handled and decided which means that the stereotype is perpetuated. This exclusionary dynamic is further demonstrated by the fact that the given structures are not built for women as there are no safe spaces for women to accommodate their presence and they are not facilitated to encourage access. While there may be relevant laws on paper in this respect to promote access, the enforcement and implementation is not visible. To my mind this clearly indicates that the gender perspective is entirely missing from the justice sector.

The gender perspective is about considering the experiences of women, hearing their stories, and understanding their issues, above and beyond the stereotyping, and the generalized preconception on attitudes and gender roles. It's about giving visibility to women, acknowledging their person and their needs. This is relevant when seen in the context of women judges. Women judges bring a different thinking process, with a different set of emphasis which may still lead to the same outcome required under the law but for different reasons. The reasons are what give meaning to the gender perspective and create inclusivity and visibility. Without this perspective, the portrayal of women's stories in judgments tends to lack the experiences and impact that may be necessary for an equitable outcome. Oftentimes, there is stereotyping of women in the narrative or understanding of the facts based on biases or societal norms which results in a short-sighted portrayal of female victims and their experiences which further perpetuates stereotypes and myths. It also leads to marginalization or downplaying of the voices and experiences of women which perpetuates a cycle of underrepresentation of women. When seen as a form of cultural appropriation, it takes away agency and control from women over their own experiences. Consequently, with more women in the justice sector, it helps build a narrative that includes the gender perspective.

⁴The State of Women's Representation in Law 2020-21 by Ministry of Law & Justice and Women In Law Initiative Pakistan.

⁵Female Police Officers Step into the Frontlines as First Responders in Pakistan, UNODC.Org

So, the question arises, how can gender perspective be included and enhanced in our justice sector?

Firstly, the induction of more women in the justice sector. Ensuring the induction of women in the justice sector not only promotes gender equality but also aids in overcoming gender stereotypes and improving decision-making, ultimately enhancing social cohesion. Female judges provide a gendered perspective, which can lead to more-informed decision-making and address social issues concerning women, including gender-based violence, discrimination, and social inequality. In the same way, more women in the justice sector presents a fair representation and enhances public trust as it reflects the composition of society. When women are represented in different ranks of justice sector, it improves access to justice for women as they are more likely to have great trust in the system and feel comfortable seeking justice. Moreover, women in leadership and decision-making roles can challenge gender stereotypes, changing societal attitudes and perceptions of women's abilities and contributions. Women in the justice sector bring a more informed understanding of the experiences and challenges faced by women, ensuring that the justice system is more responsive to their needs and that their voices are heard. It is worth noting that while there has been some effort in recent years to promote the inclusion of women in the judiciary, much of this work and its effect over time is difficult to make out due to the lack of reliable data on cases filed by women, their outcome and the impact of female judges. There is also limited data on the role of female lawyers, prosecutors, and police and the impact that they have on the system. Any literature that is developed on the gendered perspective and its effect and relevance is based on data from other regions, where the issues and their context may be different. To fully understand and redress the issues of women we require our own research and literature based on our experiences and sociocultural dynamics.

Interestingly, the appointment of women to positions within the justice sector of Pakistan has long been a topic of discussion and debate. While the idea of promoting diversity within this sector is certainly important, the question arises as to whether appointing women – who make up nearly half of the country's total population – should be considered an act of promoting diversity, or simply a means of ensuring fair representation. It is crucial that the voices and experiences of women are properly represented within the justice sector, not solely for the sake of achieving diversity, but for the sake of fair and equal representation. Women have long been underrepresented in

positions of power and authority within the country, and as such, their perspectives and needs have remained unnoticed.

Furthermore, in order to ensure that the justice system is truly equitable and fair, it is imperative that judges, both male and female, are properly trained in the sensitivity and sensibility required to understand and consider gender perspectives. This training should include an understanding of the ways in which gender bias can manifest within the court and the judgments and the ways to identify and address implicit bias. Judges who are well-versed in issues of gender equity and sensitivity are better equipped to handle cases in which gender dynamics are at play, and can more effectively ensure that all individuals, regardless of gender, are treated fairly and impartially. By prioritizing gender sensitivity and sensibility in the training of judges, the legal system can take an important step towards ensuring that all individuals, regardless of gender, are able to access justice fairly and without prejudice. In addition to proper training, judges should also strive to use gender-sensitive language in their judgments. The use of gender-sensitive language acknowledges the existence of gender-based inequalities and biases and can help to promote greater gender equality. This means using language that avoids reinforcing stereotypes or discriminatory attitudes towards the gender. This would also be applicable to other stakeholders in the justice sector.

Lastly, it is important to build awareness and shift mindsets and attitudes away from cultural and traditional stereotypes. Women who aspire to transcend traditional gender roles often feel compelled to exert themselves excessively to defy societal expectations. In such circumstances, women often find themselves juggling their domestic duties with their professional pursuits, striving to achieve success through increased effort and dedication. Greater awareness creates greater acceptability. Hence, it helps support the new narrative which includes the gender perspective. When women are represented in leadership and decision-making roles in the justice sector, they can serve as powerful role models for other women, encouraging them to pursue careers in these fields, and promoting fair representation in the justice system.

A new narrative which includes the gender perspective will help break barriers and improve access to justice for women.

About the Author:

Justice Ayesha A. Malik, before her elevation to the Supreme Court, was serving as a Justice of the Lahore High Court since March 2012.

Born in June 1966, her education was completed from schools in Paris, New York and London. She acquired her B. Com from the Government College of Commerce & Economics, Karachi and her LLB from the Pakistan College of Law, Lahore. She went on to acquire her LLM from Harvard Law School where she was named a Landon H. Gammon Fellow for academic excellence.

Justice Malik started her legal career working at Fakhruddin G. Ebrahim & Co and ultimately went on to become a Partner at Rizvi, Isa, Afridi & Angell, where she spearheaded the corporate & litigation department at the firm's Lahore office. She has been a Lecturer in Banking Law (University of the Punjab) and Mercantile Law (College of Accounting and & Management Sciences, Karachi).

As a Justice of the Lahore High Court, in addition to her position on the bench, she has been a member of the National Judicial Automation Committee overseeing case management, the pace of litigation and effectively harnessing information technology to ensure speedy dispensation of cases. Being a Board Member of the Punjab Judicial Academy, she has contributed successfully to the academic developments therein. She has also been a Member of the Federal Review Board and was the Chairperson for the Judicial Officers Female Supervisory Committee which dealt with issues relating to female judicial officers. She initiated the first Punjab Women Judges Conference in 2016. Successful conferences have since been held in 2017 and 2019 and have brought to the forefront the gender perspective and potential solutions to improve the litigation process for female litigants.

She has also volunteered her time to the Hermann Gmeiner School, Lahore, an SOS project, teaching both English Language and Development in Communication Skills. She has worked, pro bono, for various NGOs and has focused specifically on poverty alleviation programs, micro-finance programs and skills training programs. In addition, she is credited with several successful publications and has been featured in the International Journal of Competition Policy and Regulation Global Law Review, the Oxford Reports on International law in Domestic Courts, and the Journal of World Investment etc.