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## EXAMINING THE APPOINTMENT OF WOMEN JUDGES IN MODERN MUSLIM STATES: A CRITICAL ANALYSIS

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### **Abstract:**

*This research paper examines the appointment, qualifications, standards, and scope of women judges in modern Muslim states. It investigates the legal, socio-cultural, and religious factors that shape their roles and responsibilities within the judiciary. The study analyzes the constitutional and legal frameworks governing the appointment of judges, examining their inclusivity and potential biases against women. It explores the impact of socio-cultural norms, religious interpretations, and societal attitudes on the perception and acceptance of women judges. Furthermore, the research investigates the challenges faced by women judges, including gender discrimination, societal biases, and work-life balance issues. By examining the experiences of women judges in various Muslim-majority countries and drawing upon comparative legal analyses, this study aims to identify best practices for enhancing women's participation in the judiciary and promoting gender equality within the legal system. The findings of this research will have significant implications for judicial reform, gender equality, and the overall development of just and equitable societies in the Muslim world.*

**Keywords:** Women Judges, Islamic Law, Gender Equality, Judicial Appointments, Muslim States

### **Introduction:**

The contemporary discourse on women's participation in the judiciary within the Islamic legal framework presents a critical question: Can women serve as judges with full authority, presiding over all types of cases, or are their roles inherently limited by Islamic law?

Recent decades have witnessed a growing trend towards the appointment of women judges in Islamic states. This development reflects a broader societal shift towards gender equality, evident in the increasing emphasis on women's rights in employment and other spheres of life. The Universal Declaration of Human Rights explicitly advocates for equal opportunities for women, a principle that many Muslim-majority countries have formally endorsed.<sup>1</sup>

This research aims to investigate the compatibility of women serving as judges within the framework of Islamic law. It will critically examine the Quran and Sunnah, analyze the views of different schools of Islamic jurisprudence, particularly the Hanafi school, and explore relevant historical precedents. Furthermore, the study will investigate the potential limitations and qualifications that may be imposed on women judges based on Islamic legal principles.

A recent appointment of a woman judge to the Federal Shariat Court in Pakistan highlights the complexities of this issue. While the appointment criteria primarily focused on age and piety, questions have arisen regarding the scope of a woman judge's jurisdiction within the framework of Hanafi jurisprudence. Some scholars argue that the Hanafi school may impose certain limitations on women judges, particularly in cases involving hadd punishments. However, the

absence of explicit prohibitions in the Quran and Sunnah regarding women's judicial authority necessitates a nuanced examination of this issue.<sup>2</sup>

This research seeks to contribute to a deeper understanding of the role of women in the judiciary within the Islamic legal tradition, addressing the contemporary challenges and opportunities associated with their increasing participation

The increasing participation of women in the judiciary within Muslim-majority countries, a trend evident in Pakistan with an estimated 400 women among 2500 judges, necessitates a critical examination of their roles within the framework of Islamic law. This research aims to:<sup>3</sup>

- **Delineate the specific parameters within which women can exercise judicial authority according to Islamic principles.**
- **Identify any potential limitations or qualifications that might be imposed on women judges based on Islamic jurisprudence.**
- **Assess the implications of women's increasing presence in the judiciary for the broader Islamic legal system.**

A comprehensive understanding of these issues is crucial for several reasons. Firstly, it provides essential guidance to women judges, ensuring their awareness of their roles and responsibilities within the framework of Islamic law. Secondly, it assists judicial institutions in developing policies and procedures that are both equitable and in accordance with Islamic principles. Thirdly, it informs legislative bodies in crafting laws that are compatible with Islamic teachings. Finally, this research contributes significantly to the ongoing scholarly discourse at the intersection of gender, law, and religion.

#### **The First Women Law Conference: A Catalyst for Empowerment**

The inaugural Women Law Conference, a collaborative effort between Justice Helpline and the Arts Council Karachi, convened a distinguished gathering of women lawyers, judges, and other professionals. The event, graced by the presence of senior judges from the Sindh High Court, including Justice Aqil Ahmed Abbasi as chief guest, and presided over by Justice (retd.) Majida Razvi, Chairperson of the Human Rights Commission, served as a significant platform for dialogue and empowerment.<sup>4</sup>

The conference underscored the critical importance of legal education for women, emphasizing its role in fostering their professional development and empowering them to navigate the complexities of the legal landscape.<sup>5</sup> Key themes discussed included the pivotal role of women in economic development, the imperative of creating a safe and inclusive professional environment for women, and the multifaceted challenges faced by women in various societal spheres.

Beyond fostering professional development, the conference provided a valuable space for women to network, share experiences, and engage in meaningful discussions on issues pertaining to women's rights.<sup>6</sup> The organizers demonstrated a strong commitment to advancing women's empowerment and fostering a more equitable and inclusive society.

This event serves as a crucial step towards empowering women in the legal profession and promoting gender equality within the justice system.<sup>7</sup>

#### **The Role of Women in Shaping Modern Society: A Focus on Education and Empowerment**

The second Women Law Conference, a collaborative initiative between Justice Helpline and the Justice and Law Commission, brought together a distinguished gathering of legal professionals, academics, and civil society representatives. The conference underscored the critical role of

women in shaping modern society, emphasizing the imperative of education and empowerment as cornerstones of their meaningful participation.<sup>8</sup>

Key themes addressed during the conference included:

- **Women as agents of social change:** Speakers highlighted the multifaceted contributions of women to societal progress and emphasized the need to harness their potential through education and empowerment.
- **The transformative power of education:** The conference stressed the significance of providing women with access to quality education as a crucial catalyst for their individual and collective growth and their ability to contribute effectively to society.
- **Women's leadership in promoting peace and justice:** Participants discussed the pivotal role of women in fostering peace, countering extremism, and promoting social justice.
- **Legal empowerment and awareness:** The conference emphasized the importance of equipping women with knowledge of their legal rights and empowering them to seek justice through legal channels.

Furthermore, the growing representation of women in various sectors, including the judiciary, was acknowledged as a significant step towards gender equality. This sentiment was further reinforced by the concurrent "A Strong Woman Makes a Strong Nation" conference held in Lahore, which focused on the multifaceted contributions of women to national development.<sup>9</sup>

Both conferences underscored the urgent need for a societal commitment to empowering women through education, providing them with equal opportunities, and recognizing their invaluable contributions to the social, economic, and political fabric of the nation.

#### **The Appointment of Women Judges in the United Arab Emirates:<sup>10</sup> A Landmark Decision**

The United Arab Emirates (UAE) recently witnessed a significant milestone with the appointment of the first two women judges to the federal court.<sup>11</sup> This landmark decision, issued by President Sheikh Khalifa bin Zayed Al Nahyan through the 27th federal decree of 2019, appointed Khadija and Salama Rashid, accomplished legal professionals, to the judiciary. This groundbreaking development signifies a crucial step towards advancing gender equality within the UAE's legal system.

Concurrently, the second Women Law Conference, organized by Justice Helpline in collaboration with the Justice and Law Commission, the Daughters of Pakistan, and the provincial law department, brought together a distinguished gathering of legal professionals, including judges, prosecutors, lawyers, and academics. The conference, held in conjunction with International Women's Day, served as a platform to discuss the critical role of women in societal progress and the imperative of empowering them through education and training.<sup>12</sup>

Justice Sultana Hussain of the Sindh High Court, addressing the conference, emphasized the pivotal role of women in nation-building and the importance of providing them with quality education and training. This sentiment was echoed by other prominent speakers, including Justice (retd.) Majida Razvi, former Law Minister Barrister Shahida Jameel, and renowned academics. These esteemed individuals highlighted the crucial role of women in societal progress and emphasized the need to empower women through education and training to fully participate in all aspects of society.

The conference also featured addresses by distinguished academics and legal professionals, including Vice Chancellors of various universities, such as Justice (retd.) Qazi Khalid Ali of the University of Sindh and Justice (retd.) Qamaruddin Bohra of Hamdard University. These

esteemed figures underscored the significance of women's active participation in economic and political spheres for the overall progress and stability of democratic societies.<sup>13</sup>

The appointment of women judges in the UAE, coupled with the insightful discussions at the Women Law Conference, signifies a growing recognition of the vital role of women in shaping the future of their societies. These developments underscore the importance of fostering gender equality, empowering women through education and training, and ensuring their full participation in all aspects of public life.

### **The Critical Role of Women in Shaping a Just and Equitable Society**

This conference convened to explore the vital role of women in shaping a just and equitable society. Key discussions centered on the need to empower women through education, promote their active participation in all spheres of life, and address the systemic challenges they face.

#### **Key Themes:<sup>14</sup>**

- **Women as Agents of Change:** Participants emphasized the indispensable contributions of women to societal progress in all domains – social, economic, and political.
- **The Transformative Power of Education:** The conference underscored the critical importance of providing women with access to quality education and opportunities for lifelong learning as a cornerstone of their empowerment.
- **Addressing Legal and Societal Barriers:** Participants discussed the need to address the legal and societal barriers that hinder women's full participation in society, including issues such as gender-based violence, discrimination, and limited access to resources.
- **Promoting a Culture of Equality:** The conference stressed the need for a fundamental shift in societal attitudes towards women, challenging deeply ingrained stereotypes and promoting a culture of respect and inclusivity.

#### **Perspectives and Insights:<sup>15</sup>**

- **Justice Nadhim Sheikh:** Emphasized the crucial role of civil society organizations in empowering women and providing them with the necessary platforms to contribute meaningfully to society.
- **Dr. Rahim Awan:** Highlighted the importance of robust legal frameworks and effective implementation of laws that protect women's rights and ensure their safety and well-being.
- **Justice Banerji:** Drew attention to the challenges faced by women in the legal profession, including stereotypes and systemic biases. She also critically examined the limitations of current reservation systems, arguing that they can sometimes undermine women's agency.
- **Justice Pratibha M. Singh:** Underscored the need for a fundamental shift in societal attitudes towards women, emphasizing the importance of challenging deeply ingrained biases and creating a more inclusive and equitable environment.
- **Senior Advocate Vijay Hansaria:** Emphasized the unique qualities that women bring to leadership positions, such as compassion, empathy, and a strong sense of social responsibility.

The conference served as a crucial platform for discussing the multifaceted challenges faced by women and exploring innovative solutions to empower them. By fostering dialogue among legal professionals, academics, and civil society representatives, the conference aimed to contribute to the ongoing efforts to create a more just and equitable society where women can fully realize their potential and contribute meaningfully to the betterment of humankind.

### **Supreme Court Reserves Judgment on Review Petitions**

The Supreme Court of Pakistan has reserved its judgment on the maintainability of review petitions filed by a former additional district and sessions judge of the Lahore High Court, Arim Sajjad Gul, and two other former additional judges, Abdul Sattar and Habibullah Amir, challenging the powers of the Judicial Commission of Pakistan and the Parliamentary Committee on the Appointment of Judges.<sup>16</sup>

The petitioners had alleged that former Chief Justice Mian Saqib Nisar had remarked that an injustice had been done in the case and that the court had dismissed the petition without hearing the counsel.

A three-member bench, headed by Justice Mushir Alam and comprising Justice Umar Ata Bandial and Justice Maqbool Baqar, heard the arguments of the petitioners' lawyers and reserved judgment on the maintainability of the review petitions.

While the chances of overturning a primary judgment in a review petition are usually slim, the affected parties often file such petitions to exhaust all legal avenues. There have been instances in the past where the Supreme Court has overturned primary judgments in review petitions.

For example, a three-member bench of the Supreme Court, headed by Justice Manzoor Ahmad Malik and comprising Justice Mansoor Ali Shah and Justice Yahya Afridi, recently overturned a previous decision by a bench headed by former Chief Justice Mian Saqib Nisar regarding alleged corruption in the Pakistan Kidney and Liver Institute. The bench ordered the Punjab government to run the institute according to the law and allowed Dr. Akhtar to travel abroad.

### **Supreme Court Reserves Judgment on Review Petitions Challenging Judicial Commission's Decisions**

The Supreme Court of Pakistan has reserved its judgment on a set of review petitions challenging the decisions of the Judicial Commission of Pakistan and the Parliamentary Committee on the Appointment of Judges. The petitions were filed by a former additional district and sessions judge of the Lahore High Court, Arim Sajjad Gul, and two other former additional judges.

The petitioners argued that the Supreme Court had previously made a judgment that was unjust and that the court had dismissed their petition without a fair hearing. They also questioned the powers and decisions of the Judicial Commission of Pakistan and the Parliamentary Committee. During the hearing, the petitioner, Justice (Retd.) Nasira Javed Iqbal, argued that the Supreme Court's registrar had initially rejected her petition. However, former Chief Justice Mian Saqib Nisar had intervened and ordered that the petition be heard. Justice Iqbal claimed that the Chief Justice had personally heard the petition but had dismissed it without hearing the counsel's arguments.

Justice Iqbal also argued that the Judicial Commission of Pakistan had discriminated against Arim Sajjad Gul by not confirming her as a permanent judge, despite her excellent performance. She further contended that the Judicial Commission and the Parliamentary Committee, both being important state institutions, should have acted more transparently in their decision-making process.

The Supreme Court has now reserved its judgment on the maintainability of these review petitions.

### **Supreme Court Reserves Judgment on Review Petition Challenging Judicial Commission's Decision<sup>17</sup>**

The Supreme Court of Pakistan has reserved judgment on a review petition challenging the decision of the Judicial Commission of Pakistan regarding the non-confirmation of a female judge, Arim Sajjad Gul. The petitioners argued that the decision was arbitrary and discriminatory, and that the Judicial Commission had failed to consider the relevant legal principles and the recommendations of the Parliamentary Committee.

#### **Key Points of the Case:**

- **Non-confirmation of a female judge:** The primary issue in the case is the non-confirmation of Arim Sajjad Gul as a permanent judge of the Lahore High Court.
- **Judicial Commission's decision:** The petitioners challenged the decision of the Judicial Commission, arguing that it was based on irrelevant considerations and was discriminatory against women.
- **Parliamentary Committee's recommendations:** The Parliamentary Committee had recommended the confirmation of Arim Sajjad Gul, but the Judicial Commission had overruled this recommendation.
- **Legal arguments:** The petitioners raised several legal arguments, including the violation of the right to equality and the principles of natural justice.
- **Supreme Court's decision:** The Supreme Court has reserved its judgment on the matter, indicating the complexity of the legal issues involved.

#### **Key Arguments of the Petitioners:**

- The decision of the Judicial Commission was arbitrary and without any rational basis.
- The Judicial Commission failed to consider the relevant legal principles and the recommendations of the Parliamentary Committee.
- The non-confirmation of Arim Sajjad Gul was discriminatory against women and violated their right to equality.

#### **The Supreme Court's Approach:**

The Supreme Court carefully considered the arguments of both the petitioners and the respondents. The court also examined the relevant laws and regulations. Ultimately, the court reserved judgment on the matter, indicating that it will carefully consider all aspects of the case before reaching a decision.

#### **Implications of the Case:**

The outcome of this case will have significant implications for the appointment of judges in Pakistan. It will also have an impact on the role of the Judicial Commission of Pakistan and the Parliamentary Committee in the appointment process.

#### **Conclusion**

This case, challenging the decision of the Judicial Commission of Pakistan regarding the non-confirmation of a female judge, raises critical questions about the independence and impartiality of judicial appointments. The allegations of procedural irregularities and potential discrimination against the female judge underscore the need for a transparent and merit-based judicial appointment process.

The Supreme Court's decision to reserve judgment on the maintainability of these review petitions underscores the significance of these legal challenges. The outcome of this case will have far-reaching implications for the independence of the judiciary, the role of the Judicial Commission of Pakistan, and the principle of equal opportunity for all qualified individuals, regardless of gender.

Furthermore, the case highlights the broader issue of gender equality within the judiciary. The underrepresentation of women in judicial positions, despite their increasing presence in the legal profession, raises concerns about systemic biases and the need for proactive measures to ensure gender diversity and inclusivity within the judiciary.

This case serves as a crucial reminder of the importance of upholding the principles of fairness, transparency, and merit in all judicial proceedings. The Supreme Court's decision in this matter will have significant implications for the future of the judiciary in Pakistan and will set an important precedent for ensuring that the appointment process is free from any form of bias or discrimination.

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