

## GENDER BIAS IN CRIMINAL JUSTICE SYSTEM, MULTILEVEL QUALITATIVE INVESTIGATION

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### ABSTRACT

*This research investigates gender biases within the criminal justice system of Pakistan, focusing on prosecution, investigation, judicial response, family courts, and law of evidence, prisons, and appointments. Employing a qualitative approach, the study reveals pervasive discriminations faced by women throughout the criminal justice process. In the prosecution and investigation stages, the violation of human rights occurs as male officials interrogate females. Judicial response exacerbates the issue, with insufficient female representation among lawyers and judges hindering equal justice opportunities. Family courts, established to address domestic matters, fall short in providing specific facilities for women, contributing to further inequalities. The law of evidence, influenced by mixed perceptions, reflects discriminatory practices against women. Discriminations persist within prisons, where inadequate female staff, inappropriate behavior, and physical and sexual abuse are prevalent. Additionally, the underrepresentation of female judges raises concerns about impartial adjudication. Recommendations include enhancing female representation, training for sensitization, improving facilities, legal reforms, affirmative action in judicial appointments, and awareness campaigns. Implementing these measures can foster a criminal justice system aligned with principles of equality and fairness, ensuring just treatment for all individuals, regardless of gender.*

**Key Words:** Gender Bias, Criminal Justice System, Equality and fairness

### Background

Human society comprises various genders, including males, females, and transgender individuals. Unfortunately, the stark reality is that not all genders are treated equally, with a prevailing bias favoring males over females and transgender individuals (Starr, 2015). This social phenomenon is not confined to a specific country but is a global issue, manifesting with varying intensity across societies (Anwar et al., 2012). Disparities in addressing gender bias are evident among developed, developing, and underdeveloped nations. Developed countries, equipped with resources and facilities, have made strides in overcoming gender-related challenges (Becker, 1968). Conversely, developing and underdeveloped nations exhibit heightened intensity of gender issues, particularly with women receiving unequal treatment in social, economic, educational, and legal spheres (Boyd et al., 2010). Gender bias, defined as the unequal treatment based on gender, permeates various aspects of life. For instance, disparities in employment opportunities persist, and the criminal justice system poses a significant concern, with women encountering obstacles in securing equal rights and opportunities despite the universal declaration of equal human rights. Challenges range from the absence of female staff and limited representation among judges and prosecutors to inadequate facilities (Anwar et al., 2014).

## **Gender biasness in Criminal justice system**

Bukhari et al (2019) stated that the forensic laboratories also lack most of the ingredients related to investigation. The labs are not well equipped where again the females are biased because the staff gives preference to the cases of the men. The mismanagement, corruption and the lack of the accountability are also hinder the effective performance of the criminal justice system in the country and mainly the women are affected. They have limited monetary resources and lack of social support, which discourage them to lead their cases based on their non-muscular gender.

Lari & Zaman (2011) revealed that Pakistan is among those countries that have lower level of literacy rate and when it comes to the women and the deprived communities it further shrinks. The overall literacy rate of Pakistan is round about 60% but at the same time, the female literacy rate is about 30% which shows that majority of the women are uneducated. Education imparts awareness among the people, which empowers them to fight for their legal rights. However, lack of education and awareness among the females is another determinant of the gender biasness in the criminal justice system of Pakistan. The uneducated women do not have direct access to the legal except the NGOs working for the women empowerment help them in the legal assistance.

### **Global Standpoint**

Willison (1984) investigated that there is variation in the treatments of the males and female offenders based on the gender. The women offenders do not receive the same attitude due to their gender but at the same time when the same women are found in the crimes consider heinous or more than the men, the criminal justice system delays in the same way they committed the crime because the brutal murder cases need the same treatment.

Foundation (2012) reported that the women offenders are more likely to receive the preferential treatment in the criminal justice system because all of the participating members i.e., police and prosecutors prefer to females. Yes, it is true that the more of the legislations and laws in the criminal justice system are made according to the masculinity and the females receive little standings. Yet, the female offenders are dealt on preference basis than the male offenders.

Hamid & Ahmad (2011) conducted a study and resulted that females receive more probations than the males. The data was collected from the California Attorney General's Bureau, which pointed out that even the females get probation in the felony crimes. The probation is also a part of criminal justice system under which the offenders are placed under the probation officer for their counseling other than sending them to the jails where they learn more techniques of crimes.

Butt & Asad (2016) conducted a study on gender discrimination and raised a different point of view. Generally, it is perceived that women face gender bias during the prosecution and litigation but contrary to that this study found that women are more treated more leniently than the male offenders did. It shows that in all cases the women do not face gender bias.

### **Pakistani Standpoint**

Ahmad (2012) stated that in Pakistan, the women have limited access to the justice because the women's concern is not given importance. The law, police and judiciary at all levels; the Pakistani women are discriminated because the main issue behind the gender discrimination in justice is the male dominance in each institution. The women have little representation in all of the concerned departments of justice, which is the prime determinant of the denial of justice to females in Pakistan.

Lari & Zaman (2011) highlighted that it is not meant that the legislation related to the women is totally neglected but the matter is that the limited opportunities of justice are available to them. It is not a woman who determines the ways to gain justice rather it is the existing patriarchal values and norms, which define the ways that women have to adopt in certain matters. There are many cases the women have issues with their own families. This matter may be related to the property, education, justice or anything then in such matters the women adopt the way of formal criminal justice system. However, in adopting such ways, the women have to fight with both families and the existing criminal justice system (Mahmood et al, 2012).

According to Aurat Foundation (2012), there are many cases reported of the rape victims but the experts report that these cases are tinny representation of the actual rape cases happen in the society. The majority of the cases related to the women are not reported in order to preserve the family face and respect. According to the Aurat Foundation, there were round about 900 rape cases reported in 2011 and 2012 but in actual the ratio of the same cases are 60-70% higher than it is reported. This is clear gender discrimination against the women in Pakistan that the weak form of justice is available for the females, which is also not trustworthy.

### **Research Objectives**

- To highlight gender discriminations in the perspective of Pakistan
- To investigate the women discriminations at the prosecution, investigation and judicial levels in Pakistan
- To suggest the recommendations to address the gender biasness in the perspective of Pakistan

### **Statement of Problem**

Gender is one of the important areas; the social scientists are confined with them. The society has passed through the different stages i.e., traditional, agrarian, modern and post-modern. In the first two stages, the society was very simple with limited awareness and educational achievements. However, at the human society entered into the modern and post-modern stages, the new gates of awareness were opened through educational achievements. The women too gained education and started to participate into the socio-economic and political matters. This aroused them to gain their social and political rights.

Despite, the modern and post-modern stage, women still are lacking the proper civil and criminal justice system. The existing criminal and civil justice systems are framed according to the male members where there is little attention paid to the women. The current study is an effort to disclose all those discriminations the female are facing due to biased criminal justice system. The area of gender biased criminal justice system needs the attention of the policy makers and the other officials related to judiciary so the researcher opted this topic to root out the different factors playing the role in the gender biasness in the criminal justice system of the country.

### **Significance of the Study**

The current study has much significance for all those spheres associated with the criminal justice system. This study will be helpful to provide the roadmap for policy making regarding the women in Pakistan. The women are considered the marginalized community so they are ignored from the mainstream of criminal justice system too. This study highlights all of the neglected aspects related to gender biasness in the prosecution and judicial system. This is helpful at the same time for the higher authorities to take concrete steps in accordance to the problems the women face in the police stations, jails and courts.

## Methods and Materials

In this chapter, the methodology employed in the current research is elucidated, encompassing the type of research, the study's goal, the population under scrutiny, sample size determination, sampling technique, data collection tool, field experience, data analysis, and ethical considerations. The research adopts a qualitative approach, given its focus on unraveling gender-based discrimination and inequality within the criminal justice system of Pakistan. Embracing an exploratory research design, the study not only aims to investigate this novel topic but also seeks to provide a descriptive account of events and mechanisms contributing to gender discrimination within the criminal justice system. The population includes key stakeholders such as female offenders, social activists, police officers, and judiciary, with a sample size of 20 respondents chosen through purposive sampling to ensure a depth of understanding rather than generalizability to a larger population. Data collection occurred in March 2023 through an interview guide, and ethical considerations were rigorously adhered to, maintaining confidentiality, anonymity, and gender sensitivity.

The field experience was generally smooth, with the researcher, a law student associated with the criminal justice system, facing some challenges in interviewing judges due to the sensitive nature of the study topic. However, ethical assurances regarding confidentiality and anonymity facilitated their participation. The qualitative data analysis employed thematic interpretation, identifying major themes related to gender discrimination within different components of the criminal justice system. The researcher observed ethical considerations, acknowledging the importance of confidentiality, anonymity, and gender sensitivity, ensuring that participants were treated with respect and their responses did not cause harm.

## RESULT AND ANALYSIS

For the sake of qualitative data analysis, the researcher formed following themes, which encircle the whole discussion.

- 1- Prosecution and Investigation
- 2- Judicial response
- 3- Family courts
- 4- Law of Evidence
- 5- Discriminations in Prisons
- 6- Biasness in appointments

### 1. Prosecution and Investigation

Prosecution and investigation is the early stage to interrogate the nature of crime and the motives behind these crimes. The females have right to be investigated by the female officials only but contrary to that the females are interrogated and investigated by the male officials which is the clear violation of the provisions related to human rights. This section deals with all those discriminations the females face at the stage of prosecution and investigation in Pakistan.

#### Nature of Crimes and Treatment

There are primarily two types of crimes i.e. heinous and non-heinous crimes. The heinous crimes are mainly performed by the regular criminal's means who have the historical background of crimes. Such crimes include robbery, murder and other such crimes, which are mainly committed by the men (Aziz, 2020). On the other side, there are non-heinous and civil crimes whose nature is not as tougher as the heinous have. The majority of the cases of the women are the part of this crime. The similar results are found from the interviews conducted as majority of the participants of the study reposted that women face the same harsh treatment as the men do. For example, one of them told,

*“The gender bias starts from the police level because there is not a separate vehicle to bring the female offenders to police station. They are forced to sit on the same tables where the men are sitting”.*

Furthermore, there is limited female staff in the police stations that the arrest of the women is also carried out by the male police officers where such females are physically and sexually harassed.

A female respondent told,

*“Being a lawyer, I mostly pointed out the issue of harsh treatment of the women before the higher authorities but they did not pay attention to the same”.*

A political activist told,

*“I consider myself the spokesperson of the women in Pakistan especially in the backward areas. It is awful to say that even in the civil suits the women are treated harshly both in the police stations and at the court rooms which needs the attention of the policy makers to address the same issue”.*

## **2. Judicial Response**

Like many other determinants of the gender biasness in the criminal justice system of Pakistan, judicial response is also one of the prominent one. The female offenders are facing multiple issues at the social, cultural, police station level reach up to the judiciary in order to seek justice. The basic responsibility of the judiciary is also to grant maximum justice to the maximum number of the citizens apart from the gender biasness (Kazimi et al, 2019). Unfortunately, this is another level of gender biasness the women have to face at the judicial level too. The same findings were explored through the interviews of the respondents of the study. For example, a female lawyer said,

*“The majority of the women are discouraged to file the suits in court because there is little proportion of the female lawyers. The female offenders have to hire a male lawyer which is not suitable for the women and they do not attain equal justice opportunities”.*

Another respondent highlighted,

*“The majority of the women offenders are confronted in the civil suits or family matters. The male judges are fed up of such matters and do not give preferences to such cases which again hinders the equal justice opportunities to the females”.*

A public prosecutor told,

*“The judges and the collaborating staff know that the females visit fewer times to the court than the males so they take such family cases for granted. They compromise with other party soon than to defend their cases through regular visits of the court”.*

A young and looking energetic female lawyer explained the whole situation in more details. She provided,

*“The gender biasness in the criminal justice system starts in the proportion of the male and female lawyers and judges. The female lawyers only constitute 12% of the total lawyers’ community in Pakistan which again shows that the society is not willing to allow her daughters to be practicing lawyers”.*



### 3. Family Courts

Family courts are basically established in order to deal with the domestic matters. Most of these matters are civil in nature, which requires the special focus of attention to resolves such matters. However, in the developing countries like Pakistan, there are improper facilities available for the deprived communities. Unfortunately, in such countries, the women are also considered the part of marginalized communities so special concern is not shown to them. The same is the case with the women in Pakistan too where there are limited specific courts and staff available for them. The respondents of the study highlighted the variety of the sides regarding the family courts in Pakistan, which collectively result that women are not given proper facilities here too. For example, an expert told,

*“The establishment of the family courts is specifically associated with domestic matters especially to provide special environment for the women but in the case of Pakistan same objective is not fulfilled”.*

Another respondent reported,

*“In the family courts too, the women have to face the male staff. The staff should be female to deal with the women but is different levels they have to confront the males”.*

A female offender reported,

*“I did not see any difference between the family court and the rest of the courts because the same is the attitude of staff in the family courts as it exists in the other criminal matters”.*

A female judge elaborated that

*“Family courts were established to deal with domestic cases primarily but due to lack of the female judges and family courts, the women do not get the special treatment”.*

### 4. Law of Evidence

The law of evidence is also reported in the form of gender description in the perspective of Pakistan. According to the international organizations, it discriminates the women whose representation considers the half than the men. However, there are mixed perceptions available in this matter because the liberal point of the women terms it as discrimination but contrary to that, the traditional point of view relates it with the religious point of view. The same mixed perception is gained from the interviews. For example, a male lawyer told,

*“There is no legal provision contrary to the teachings of Islam and the same is the case with the law of evidence because it delivered in the Holy Quran that evidence of one man is equal to two women”.*

Another respondent explained this law in other point of view and said,

*“The normal perception reveals that this is discrimination of the females but before terming it discrimination first consult religion experts”.*

A female lawyer reported,

*“Not only are the local rather the international organizations consider it discrimination against the women than men preferred over women”.*

### 5. Discriminations in Prisons

The discriminations against the women do not end at the investigation and the judicial level rather these discriminations continue to walk side by side the women and enter into the prisons as well. During the imprisonment, the women face more difficulties and inequalities

than the earlier. They have to encounter with the new staff, new localities and the responsibilities (Klasen & Lamanna, 2008). Like the previous stages, the women also confront the inadequate staff and the lack of facilities. They are morally, physically and sexually abused during the imprisonment. The current study also found much discrimination the women face during their imprisonment span.

### **Inappropriate behavior of Staff**

The behavior of the staff is not encouraging because the women are also dealt by the in the same way as the criminals of heinous crimes are treated. According to the provisions, it is the legal right of the women to have staff of same gender but contrary to that, the women have to face the male staff as well because in many jails the female staff is not sufficient. The current study found that behavior of the jail staff is not appropriate. For example, a respondent pointed out,

*“I am a lawyer but I witnessed that women are mainly dealt by the men in the jails. They do not treat them in the way as women should be treated”.*

Another respondent disclosed,

*“Only during the visit of a judge or higher authorities, the special arrangements are made from the women prisoners but in routine the picture is totally different”.*

A female victim told,

*The attitude of the jails staff is discriminatory with the women. They ways of talking have a double meaning, which is not justified.*

### **Physical and Sexual Abuse**

The jail is the center of the all criminals and all those habits found in the criminal mined people. In the same way, the physical and sexual abuse is a routine in the jails. Not only are the females, even the young boys' victim of the sexual abuse in the jails. This study also highlights the dark side of the jails where the dignity of the women is thrashed. As one of the victims reported,

*“I was jailed in the domestic matters and I observed that the females are openly abused physically and sexually. It does not mean that all of them women have to do the same but if you wish to have relaxed atmosphere you have to do the same”.*

Another respondent told,

*“There are criminals, rapist and murderers in the jails. They have built such habits which they continue in the jails too and in doing so they target the women despite the vigilant eye of the jail staff”.*

### **Lack of Proper Facilities**

Like police and judiciary, the jails are also having the lack of proper facilities. There are not enough staff members to deal with the prisoners properly. The current study also found the similar results as one of the respondents pointed out,

*“The inhuman acts in the jails are undertaken due to the lack of the proper staff. One sentry is responsible to have looked for a long distance”.*

A female told,

*“There is insufficient female staff in the prisons which is why the male staff have to deal with the female offenders too. This is not an appropriate way as it turns down the respect of the women”.*

## 6. Discrimination in Appointments on various position in judicial system

The gender biasness in Pakistan is also undertaken in the form of lower representation of the female judges. The lower number of the female judges are mainly responsible for inadequate behavior with the women offenders (Mahmood et al, 2012). The current study also highlighted the same concern and it involved the civil judges and lawyers too who know better about this pathetic situation. In the same way one female lawyer told,

*“Unfortunately, the women are discriminated in Pakistan in the recruitment of females judges as in currently there are not more than 10 female judges at the high court’s level”.*

Another expert of the topic told,

*“The girls should be motivated to adopt judiciary and law as profession because in the current scenario there are hardly round about 15-20% of the female lawyers in the country. Such tinny proportion of the female lawyers cannot deal with the half the population”.*

A civil judge reported,

*“According to the provisions of Islam and constitution of Pakistan, all of the citizens are equal so why only 5% of the female judges are there in the country’s high courts level”.*

Another respondent told,

*“Unfortunately, there are only round about 15-17% of the judges are females. And the situation is more worsened at the high court’s level which is only 4% female judges”.*

### Conclusion

In examining the gender biases within the criminal justice system of Pakistan, this study has unveiled multifaceted discriminations faced by women at various stages, including prosecution, investigation, judicial response, family courts, law of evidence, prisons, and appointments. The findings underscore systemic issues that contribute to unequal treatment, from inadequate female representation in legal professions to inappropriate behaviors by law enforcement and prison staff. The study also sheds light on the persistence of discriminatory practices within family courts, where women encounter gender-based prejudices. The prevalence of physical and sexual abuse within the prison system further compounds the challenges faced by female offenders. Additionally, the underrepresentation of female judges raises concerns about the fair and impartial adjudication of causes related to women. Overall, this research highlights the urgent need for systemic reforms to address gender biases and ensure equal rights and opportunities for women within the criminal justice system.

### Recommendations

- Encourage and facilitate the increased participation of women in legal professions, including law enforcement, judiciary, and legal practice, to ensure a more equitable representation and understanding of gender-related issues.
- Implement comprehensive training programs for law enforcement and prison staff to sensitize them to gender-related issues, promoting respectful and unbiased treatment of female offenders.



- Invest in improving facilities within family courts and prisons to provide a supportive environment for women, including adequate female staff and measures to prevent physical and sexual abuse.
- Review and reform laws, such as the law of evidence, to ensure they align with principles of gender equality, avoiding discriminatory practices that may perpetuate biases against women.
- Take affirmative action to increase the number of female judges, particularly at higher levels of the judiciary, to enhance diversity and fairness in legal decision-making.
- Conduct awareness campaigns and advocacy programs to challenge societal norms and stereotypes that contribute to gender biases within the criminal justice system.

By implementing these recommendations, Pakistan can take significant strides toward fostering a criminal justice system that upholds principles of equality and fairness, ensuring that all individuals, regardless of gender, receive just and impartial treatment.

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