



Women judges in Pakistan

Livia Holden

To cite this article: Livia Holden (2019) Women judges in Pakistan, International Journal of the Legal Profession, 26:1, 89-104, DOI: [10.1080/09695958.2018.1490296](https://doi.org/10.1080/09695958.2018.1490296)

To link to this article: <https://doi.org/10.1080/09695958.2018.1490296>



Published online: 09 Jul 2018.



Submit your article to this journal [↗](#)



Article views: 287



View related articles [↗](#)



View Crossmark data [↗](#)



Women judges in Pakistan*

Livia Holden

Centre for Socio-Legal Studies, University of Oxford, Oxford, UK

ABSTRACT

Although the first appointment of women judges in Pakistan dates back to 1974, a significant appointment of female judges from 2009 onward has caused a jump in female representation to more than one third in family courts: a quiet move during the tumultuous years of the so-called Chaudhry Court. The challenge in this scenario was whether this change would only be temporary or whether it would also lead to substantial and accountable inclusion. This paper adopts mixed methods to scrutinize the extent of the adherence to the principle of gender equality in the judiciary as per international treaties to which Pakistan is signatory. It starts by retracing the historical steps of the appointment of female judges in Pakistan and then investigates the everyday interactions and preoccupations of women judges in their daily management of justice. The findings elucidate how the global agenda impacts local expectations and conceptualizations of gender representation within and beyond the state.

According to statistics from Pakistan's Law and Justice Commission and High Courts, female judges represent at least one third of the judiciary in family courts in Pakistan since 2009. In spite of the necessary caution toward this figure, this is a significant indicator of an increasing awareness regarding gender representation in the judiciary.¹ This paper starts with a brief methodological outline describing access to the field and methods of data collection. It subsequently provides a short account of the socio-legal background of the appointment of female judges in the so-called Chaudhry Court. It then addresses the main concerns of women judges in their daily professional lives including also a short longitudinal epilogue. Conclusions are drawn as a contribution toward the understanding of the reception and implementation of the global agenda of women's rights in Pakistan.

Ethnography and feminism in the Chaudhry Court

The politics and jurisprudence of the Chaudhry Court – derived from the name of the sitting Chief Justice Iftikhar Muhammad Chaudhry, who was appointed in

CONTACT Livia Holden  livia.holden@csls.ox.ac.uk, liviaholden@insightsproduction.net

*This paper is single authored even though I use alternatively “we” and “I” throughout because fieldwork was carried out in collaboration with Marius Holden, anthropologist and filmmaker. Since we develop our research sometimes together and sometimes independently, my considerations are sometimes inclusive and sometimes exclusive.

2005 by President Musharraf – have featured innovation and controversy, and have also included the increased appointment of female judges. In 2007 Chief Justice Iftikhar Muhammad Chaudhry was asked to resign and was suspended from office. As a result a number of Justices refused to take oath under the Musharraf regime. A protest and civil unrest then ensued under the name of the Lawyers' Movement. The culmination of the Lawyers' Movement coincided with the restoration of an independent judiciary under the guidance of Chief Justice Chaudhry.²

In 2009 Marius Holden and I were granted unprecedented access to law courts in Pakistan, where we spent more than three years observing legal proceedings in the country's four provinces (Punjab, Khyberpakhthunkhwa, Sindh and Balochistan) and three years in Gilgit Baltistan.³ I was working full time and some of my colleagues in Lahore were active in the Lawyers' Movement, which was for us a convenient entry point. I needed to combine fieldwork with my teaching load but some fieldwork sessions were carried out together with my class. On average, we could dedicate one week per month for three years and could follow up to 90 cases a day when we had access to a full day in court. We were permitted to film court proceedings and social interactions in the courts presided over by female judges. In order to film in law courts in Pakistan, similar to law courts in other countries where Marius Holden and I have been allowed to film, we obtained the required permits from the various levels of involved jurisdictions and concerned offices (District Court, High Court, Supreme Court, as well as Provincial and Federal Academies as applicable), as well as from the individuals that we filmed according to the circumstances. We filmed 120 hours of legal proceedings in courts and recorded 40 hours of interviews, sometimes in the judges' chambers and sometimes at their homes. Ethnographic data were collected also through observations and unstructured interviews conducted both in English and in Urdu. As one can see in *Lady Judges of Pakistan*,⁴ many female judges are fluent in English; however Marius and I can understand and speak Urdu and thus do not need the help of an interpreter in the field. From 2013 to 2015 we moved to Gilgit Baltistan and expanded our focus to legal proceedings in Northern Pakistan but this paper is only concerned with the first phase of our fieldwork when we were based in Lahore. During this entire period, Pakistan transitioned from its last dictatorship to two successive elected governments.

The elected governments following the Musharraf dictatorship featured opposite political agendas – from the left to the right of the political spectrum – but both shared similar failures regarding the protection of human rights. We had the opportunity to witness the culmination and fragmentation of the Lawyers' Movement. Eventually, the same social rights activists who had fought together with the Lawyers' Movement for the independence of the judiciary, started to accuse members of the apex judiciary of corruption. The judiciary responded harshly by blocking criticism in the media through charges of

contempt of court and limiting access to the media in a climate that led to increasing criticism against the Chaudhry Court.

As observers in a dangerous and intelligence-surveilled fieldwork situation, we have been concerned for our own safety and for the safety of the persons that we were filming. We wondered at times for how long we would be allowed to carry out our research but kept filming and were lucky that permission was never withdrawn. At all times we abided by the “do no harm” anthropological principle as well as adhered to the principle of academic freedom and independence from any undue influence. The combination of these principles allowed us to account for two discrepant trends: on the one hand the increasing pressure for filling the gender gap in the judiciary; and on the other the adoption of measures that were finding little or partial implementation. The leading questions of our research found the following formulations: how could the appointment of women judges co-exist with male-dominated practices in Pakistan? Will the appointment of women judges have an impact on women’s rights? Will women judges continue to be significantly represented in the Pakistani judiciary after the Chaudhry Court?

From a theoretical perspective, the challenge lay in our multidisciplinary approach that combines feminism, anthropology and socio-legal studies. Similar to our previous research in South Asia, my position has been inspired by the feminist multidisciplinary trends that criticize the male monopoly of knowledge (Hesse-Biber *et al.*, 1999), and by the classical studies of power (Bourdieu, 1994; Clastres, 1974; Dirks *et al.*, 1994; Foucault, 1969; Godelier, 1986). My standpoint is the feminist denunciation of the conventional scientific knowledge that has prioritized men’s values as the paradigm of human experience (Harding, 1987; Hirsh & Keller, 1990, pp. 370–385). My methodological approach has privileged law and society through the lenses of gender and power since my first fieldwork in South Asia in the mid-1990s. However, with the passage of time I have increasingly taken into account the criticism that women’s movements in Asia have directed at North American feminists for their exclusive focus on gender (Mohanty *et al.*, 1991). Additionally, I have become increasingly aware of the risk of over-emphasizing the role of personal laws in South Asia thereby undermining their negative impact on women’s rights (Parashar, 2015).

Notwithstanding this, I have also taken into account the scholarship on women’s movements in Pakistan that has shown how Islamic feminism has literally redefined the women rights’ agenda in Pakistan (Barlas, 2006; Hassan, 2013; Wadud, 2006; Zia, 2009). This picture is complicated by institutional standpoints that do not always reflect popular expectations. As we will see in this paper, the Federal Shariat Court (FSC) has most of the time held positions that are more progressive than the Council of Islamic Ideology (CII) on issues concerning women’s rights. This is understandable

if one looks at the different nature of these institutions, notwithstanding their overlapping competence regarding the compliance of laws with Islam. The FSC belongs to the judiciary and is competent to examine the compliance of Pakistani laws with *shariat* (article 203 of the Constitution). The CII is a constitutional body founded in 1961 with an advisory role to the parliament and the government on what concerns the conformity of laws with Islamic injunctions (articles 229 and 230 of the Constitution). Pakistani institutions and the judiciary, including the FSC, have shown so far considerable independence and distance from the controversial views of the Council of Islamic Ideology. The latter is known for having opposed much of the pro-women legislation, especially the Women's Protection Act 2006 that punishes rape, the Domestic Violence (Prevention and Protection) Bill 2012, and the Muslim Family Law Ordinance 1961 and amendments, that provide for divorce at the woman's initiative and also requires the consent of the first wife for the husband to take a second wife. In May 2016 the CII sparked outrage among social activists by arguing in favor of permitting a wife to be "lightly beaten" (Khan, 2016).

Since women judges, as we witnessed during our fieldwork, were implicitly acting as spokespersons for the judiciary, this paper is also inspired by the institutional theories that examine social structures as both imposed and perpetuated by social actors (Scott, 1985, 1990). However, the position that I developed during my research in South Asia also differs from that of Scott in that I investigated the discourse of social actors for its potential resistance rather than acquiescence to an overarching norm (Raheja & Gold, 1994). By focusing on both legal proceedings and everyday professional interactions with colleagues as well as the challenges and concerns that women judges cope with at home, I have analyzed both the mundane and institutional aspects of women's rights from the perspective of female judges. Hence, this paper connects with the scholarship that has highlighted the relationship between gender and judging (Schultz & Shaw, 2013), and the authors who have especially treated the appointment of women judges in Muslim majority countries (Sonneveld & Lindbekk, 2017), including also the perspective of donors in setting priorities in their actions regarding gender equality (Addison *et al.*, 2016).

The appointment of female judges in Pakistan

In order to better appraise the increased representation of women in the Pakistani judiciary it is important to set first the relevant socio-legal framework. Gender, language and ethnicity, together with religion, do not figure among the formal criteria for the appointment of judges. The only explicit provision for the appointment of female judges can be found in the Family Court Act 1964 as amended by the West Pakistan Family Courts

(Amendment) Act 1994 (Federal Act XXI of 1994). On this basis women may preside over family courts across the entire country. In 1974 Khalida Rashid Khan was the first woman appointed as a civil judge in Peshwar. She was then appointed as an anti-corruption judge in 1981. In 1994, she was elevated to the High Court, and then in 2003 nominated as a permanent judge elected by the General Assembly of the United Nations. While her career is undeniably a success for a country that is consistently ranked in the lowest positions in terms of gender gap,⁵ many among the judiciary itself maintain that Judge Rashid's nomination to the General Assembly of the United Nations had the hidden objective of disallowing her access to the Supreme Court of Pakistan. Such ambivalence between the legislative provisions facilitating the appointment of women judges at all jurisdictional levels including but not limited to family law, and everyday obstacles that remain in the realm of plausible deniability, have been a constant complication to the increasing presence of women judges among the Pakistani judiciary.

Recommendations to provide gender-sensitive training and reports on the number and ranking of women in the judiciary date back to the 2005 *Convention for the Elimination of Discrimination Against Women (CEDAW, 2005)*. The scant data available at the Law and Justice Commission show that post-Musharraf Pakistan has featured a significant induction of female judges at the lower level and unprecedented appointments and elevations to the High Courts, both from the bar and from the lower judiciary. In 2010 we recorded for Punjab a total increase of female judge appointments of around 46%. Yet, in November 2012, the Aurat Foundation petitioned for the greater empowerment of women in the judiciary (Aziz & Abdullah, 2012).⁶ Around the same time, in 2012, the UN Special Rapporteur Gabriela Knaul, Human Rights Watch and the Asian chapter of the Human Rights Commission petitioned against the inadequate representation of women in the higher judiciary and denounced the harassment of female judges in Pakistan. The Human Rights Commission requested a female representation of 33%, as recommended at a UN conference held in Beijing, without specifying whether or not the prescribed percentage had been reached among the lower ranks of the judiciary at the level of family courts.⁷ On 1 March 2013 however, the CEDAW committee again expressed several concerns, in particular regarding patriarchal attitudes and the perpetuation of gender stereotypes that would be supported by the constitutional recognition of the Shariat Court (CEDAW, 2013). Interestingly on 30 December 2013 Mrs Ashraf Jehan, Additional Judge at the High Court of Sindh, was appointed the first female judge in the Federal Shariat Court. There is some ambiguity about whether this should be interpreted as fighting gender discrimination or perpetuating it because of the extent of disagreement regarding the compatibility of Sharia law and gender rights. However, this step was saluted as a historical moment by the media both in Pakistan and abroad.

At the launch of *Lady Judges of Pakistan* in 2013, the public and the socio-legal scholarly community were surprised at the increasing presence of women in the lower level of the judiciary in Pakistan. In fact, whilst highlighting the pressing need for female appointments in the judiciary, petitions by social activists over the last decade have not provided much information on the actual representation of female judges.

After an initial refusal in 2010 (Holden, 2011), the Law and Justice Commission Pakistan provided us with access to their statistics with which we could verify a considerable number of brief appointments of female judges. While we acknowledge that brief appointments could be due to factors other than gender, and revolving around issues of security as well as concerns for the neutrality of justice (see also Holden, 2011), our data show a connection between the frequency of transfers and social difficulties that female judges face in Pakistan. Hence, I argue in this paper for the need of a better understanding of societal and professional expectations in relation to gender in the judiciary. However, before proceeding in this direction, we briefly set out the legal framework within which women judges have been received in post-Musharraf Pakistan.

Women judges and Shariat

Whilst the law of Pakistan has never denied the admissibility of female judges, the compliance of the appointment of female judges with Shariat law has been challenged twice before the Federal Shariat Court, first in 1982 and then again in 2010. To my knowledge, these judicial decisions have not been analyzed in depth.⁸ We find them interesting since the arguments used by the petitioner bear a close resemblance to those commonly used in the everyday socio-legal context of Pakistan. *Burney v. Federation of Pakistan* in 1982 outlined the reasons for the petition as follows, at p. 75:

- (1) They discharge their functions of Qazi [A. judge] without observing Pardah [P. curtain, religious practice of gender segregation] which is a clear violation of the Injunctions of Islam.
- (2) During the period of the Holy Prophet and his rightful companions the duties of the Qazi were never entrusted to females since it appears to be a violation of the Injunctions of Islam.
- (3) According to Muslim Law the evidence of a woman is half of that of a man and her share in the inheritance is equal to half of that of her brother. The judgment of two ladies only can be equivalent to that of a male.
- (4) The ladies do not fulfill the qualification of Qazi according to the established principles of Islamic jurisprudence.

The first and third arguments were not accepted since the Court did not consider the seclusion of women to be an injunction of Islam and because rules regarding inheritance and evidence were not held to have any bearing on

the qualities required in a judge. Similarly, the magistrates of the Federal Shariat Court found that the fact that there were no women judges at the time of the Holy Prophet could not serve as proof that their appointment conflicted with Shariat. The fourth argument relied on the following reasons: the Holy Prophet saying that there will be no blessing or prosperity for a nation which is ruled by a woman; the sovereignty of men over women; and the principle of men as the providers for women. In order to evaluate the objections, the Court also engaged in a historical and philosophical survey and ascertained that the subordination of women had been widespread in Greek and Judaic views as well as in Hindu, Buddhist and Confucian traditions, as well as in eighteenth-century England and nineteenth-century North America. The Court went on to affirm the unprecedented recognition of women's rights by Islam, saying at p. 80 that:

Islam on the other hand placed woman and man both on the same footing in economic independence, property rights and legal process. She may follow any legitimate profession, keep her earnings, inherit property and dispose of her belonging at will. (Quran 4:32)

The judgment devotes almost 10 extra pages to rebutting the inadmissibility of women judges. The historical discussions supporting the nomination of Fatimah Jinnah for the presidential elections of 1964 were also mentioned as confirming the fact that women could be appointed as judges and therefore refuting the fourth argument. The learned judges reasoned that although article 41 of the Constitution says that the Head of the State should be a Muslim male, two of the most renowned Ulemas of the twentieth century, Maulana Ashraf Ali Tanvi and Allama Syed Sulaiman Nadvi, and even Jamat-e-Islam (Islamist organization and political party), endorsed the view that a woman could be elected as President of Pakistan. It is perhaps equally telling that the current wording of the Constitution, in section 21, only refers to the President as a male. However, the conclusion was that if a woman could be elected as President of Pakistan there should be no contention that a woman could also be a judge.

In 2010 a new petition, *Murtaza v. Federation of Pakistan and others*, was submitted to the Federal Shariat Court. The petitioner's arguments were almost identical to those in *Burney v. Federation of Pakistan*, with the exception of a *fatwa* [A. non binding but authoritative legal decision] issued by the Mufti Azam of Saudi Arabia affirming that a woman cannot become the head of an Islamic state or Qazi.⁹ Hence, the petition was dismissed because the same arguments had already been evaluated more than 20 years before and no law had indeed been challenged. In fact, apart from the Family Court Ordinance 1964, which provides for the appointment of female magistrates, no law in Pakistan has formally introduced the appointment of women judges simply because no bar has ever existed to female judges.

Female judges' views in the Chaudhry Court

On the basis of the accounts that we collected during our visits to the law courts presided over by women judges in Pakistan, the appointment of women judges has never ceased to arouse heated debate. Some people, including lawyers and members of the judiciary, seemed to worry that the process of judicial decision making may become too soft and therefore inefficient due to the inclusion of women in the judiciary. While this is an argument that is often brought forward in countries with Muslim majorities, it is worth noting that it has also been raised with other gender stereotypes in Europe and North America, ever since women have entered the legal profession (Schultz & Shaw, 2013). However, the question of “softness” is more faceted than one might think at first sight.

As mentioned earlier, it is sometimes a source of surprise among international audiences to know that in countries with a Muslim majority the appointment of women judges is a rather new phenomenon and has indeed increased dramatically over the past 20 years. In addition, it may be an ever greater surprise for both domestic and international audiences alike that a disproportionately higher percentage of women judges have been appointed in Khyberpakh-tunkhwa, located in the northern area of Pakistan, which is very often portrayed as a stronghold of Islamic extremism and patriarchy. The following account collected in Peshawar outlines this view and has since been published in various local newspapers.¹⁰

[L]ady-judges were sent even to the most remote areas of Khyberpakhthunkhwa and attention was put into providing them at least with suitable accommodation and appropriate security. [...] When Justice Naseer Ul-Mulk visited the area he was expressly thanked by the elders for sending lady-judges because lady-judges are more capable than men to deal with family matters and most of all that they are not corruptible because as women they are not approachable. (District and Session Judge, Peshawar, audio extract from *Lady Judges of Pakistan*, 2013)

As this account epitomizes, women judges in Pakistan appear to make the most of the cultural principle that may favor varied degrees of gender segregation, by turning this potential downside into an upside. Hence the humorous accounts of women judges who, in spite of social constraints, can look with detachment and irony at the ruses of male lawyers who attempt to influence court proceedings or, even worse, to discredit their work. Women judges argue that since it is inappropriate for male lawyers to go to the chambers of female judges, they are at less risk than men of being accused of cutting deals out of court (see also *Lady Judges of Pakistan*).

In a similar vein, the widespread impression among lawyers and judges is that the induction of women into the judiciary has resulted in a more balanced decision-making process (especially in family law) and improvements in fighting corruption, thanks to the assumption that women are less approachable than men. However, the downside of this unapproachability is often connected

with a difficulty to execute judicial decisions. This is due to the prevailing situation of *de facto* legal pluralism, where a certain amount of negotiation with local actors is expected. By way of example, some female judges from Balochistan and Sindh confessed to having their hands tied when feudal lords or elders protect insolvent husbands. From these controversial points of view stem another set of data pointing to the conditions allowing women judges to successfully negotiate their professional lives and career progress.

Virtually all women judges expressed a wish to have more opportunities to communicate with peers and consult with seniors at different stages of their career. Gender appears to have a strong impact on the modalities through which consultation with colleagues is deemed acceptable. In some courts where senior women judges have been given an advisory role, junior women judges seem to have felt more comfortable in their first appointment. It is evident that, as women judges are becoming more professionally accomplished, they are also developing articulated self-reflection. Their situation generates unique qualities combining cultural and professional attributes that deserve acknowledgement as these women judges combine gender segregation with accountability. However, here again the risk might be to create areas of lesser justice or to simply negate opportunities for social change and professional challenges.

Many of the women judges whom we met expressed an eager interest in legal training abroad. The widespread perception was that these opportunities are given to those who are in the “good books” of the upper judiciary. This wish should come as no surprise, given the widespread assumption that Pakistan is a developing country that lacks even the most basic infrastructure. However, the modalities and outcomes of current training projects abroad might deserve attention. After all, most faculty members at the best Pakistani universities hold North American and or UK degrees, and many members of the Pakistani judiciary not only hold foreign degrees, but also have wide access to international training programs. Furthermore, the curriculum of the Federal Judicial Academy regularly includes classes and workshops led by judges and academics from abroad, especially from the UK and North America. The higher courts at times also exhibit the highest levels of legal sophistication, citing international case law as well as the finest English and Persian literature.

One of the most sensitive requests made by women judges during the course of our fieldwork was the demand for our support in obtaining childcare facilities and flexible working hours. In particular, many would find it difficult to participate in training (especially in the capital and abroad) because they would not be allowed to take their children, not even their youngest, with them. In particular, we heard several accounts of female judges who had to stop breastfeeding due to the need to travel for training and because their requests to bring a relative or a nanny who could take care of their babies in the proximity of the judicial academy were declined. Hence, at an international judicial conference in Islamabad in 2011, where we screened extracts of the footage filmed for *Lady Judges of*

Pakistan, we argued at the request of some female judges that childcare and flexible working hours should be considered as means to support the successful professional integration of female judges. To the credit of the Honorable Justice Mian Sakirullah Jehan and the Honorable Chief Justice Iftikhar Chaudhry, both publicly announced that childcare facilities were under construction at the Federal Judicial Academy and that more would be built for law courts and judicial academies in Pakistan. The need for childcare facilities was not expressed without a certain caution in the highly formal context of the judicial conference. We had in fact anonymized the voices in the footage we screened because we did not want to expose our informants in what could be seen as an unfavorable light; nor did we want to favor the impression that women judges may be voiceless; and neither did we want to unfairly undermine the current efforts of the judiciary to support the newly-inducted women judges. We felt nevertheless that it was our duty, as social scientists, to highlight not only the many merits of this overall process of women's induction into the judiciary, but also the areas that could be improved, specifically from the input of the women judges themselves. As such, it was our way to respond to their demands for action.

Epilogue

During my field research in December 2017–January 2018 I had the opportunity to visit the new judicial complex of Charssada in the outskirts of Peshawar in Khyberpakhtunkhwa. The construction of the new judicial complex was completed during the tenure of Muneera Abbasi, a female district and session judge, who is particularly proud to have included a video-link for remote witnessing, paperless court records, a daycare for children, a health club and an alternative dispute resolution center. Her success has made the headlines of national newspapers although this was somewhat undermined by her successor, who admitted lacking familiarity with technology and thus ordered the removal of much of the aforementioned changes.

During the same field research, thanks to the support of the Law and Justice Commission and with the collaboration of the High Court offices in all provinces,¹¹ I could also update my data regarding female representation among the judiciary in Pakistan and propose a comprehensive table showing the percentage of female judges sitting per province and per jurisdiction in 2010 (Table 1), 2015 (Table 2) and 2018 (Table 3). From 2010 to 2015 there was an increase of 3.2% in the overall appointment of women judges. In January 2018 there were still no women sitting in the Supreme Court and Shariat Court, only four women at the High Court, and a total of 432 female judges sitting in the District Courts. Whilst at the level of family courts women judges represent by far more than a third of the judiciary in Pakistan, overall they represent 13.1% of all judges in Pakistan, with the highest concentration in Islamabad Capital Territory, Khyberpakhtunkhwa and Punjab.

Table 1. Number of male and female judges for the year 2010.

2010	Shariat Court		Supreme Court		High Courts		District Courts		All courts total	% women judges
	M	F	M	F	M	F	M	F		
Federation	4	0	16	0					20	0%
Islamabad Capital Territory					7	0	14	1	22	4.76%
Punjab					39	0	1,222	131	1,392	9.41%
Sindh					25	1	374	63	463	13.6%
Balochistan					4	1	248	15	268	6.45%
Khyberpakhtunkhwa					15	0	378	68	461	14.75%
Total	4	0	16	0	90	2	2,236	278	2,626	10.66%

Table 2. Number of male and female judges for the year 2015.

2015	Shariat Court		Supreme Court		High Courts		District Courts		All courts total	% women judges
	M	F	M	F	M	F	M	F		
Federation	4	0	18	0					22	0%
Islamabad Capital Territory					5	0	47	13	65	20%
Punjab					55	0	1,226	181	1,462	12.38%
Sindh					30	0	351	56	437	12.81%
Balochistan					7	1	159	17	184	9.78%
Khyberpakhtunkhwa					17	1	254	82	354	23.44%
Total	4	0	18	0	114	2	2,037	349	2,524	13.90%

Table 3. Number of male and female judges for the year 2018.

2018	Shariat Court		Supreme Court		High Courts		District Courts		All courts total	% women judges
	M	F	M	F	M	F	M	F		
Federation	4	0	16	0					20	0%
Islamabad Capital Territory					6	0	59	15	80	18.75%
Punjab					48	2	1,309	257	1,616	16.02
Sindh					32	1	487	44	564	7.97%
Balochistan					9	1	197	22	229	10.04%
Khyberpakhtunkhwa					19	1	323	84	427	19.90%
Total	4	0	16	0	114	5	2,375	422	2,936	14.54%

Conclusion

Quantitative data show an overall female representation in the Pakistani judiciary that is far below international guidelines and almost non-existent in the higher jurisdictions. Nevertheless the same data consolidate an important presence of female judicial officers in the lower judiciary and its substantial increase since 2009. Qualitative data offered by this paper lead to three sets of conclusions regarding the relationship between Islam and feminism, gender and judging, and the imbalance of power between women and institutions from a global perspective.

Pakistani women judges react against the stereotype of the submissive Muslim woman and recognize a significant role in cultural practices linked to Islam as infusing legal awareness regarding women's rights. As such this paper agrees with Zia (2009) who highlighted the impact of Islamic feminism for reformulating gender equality, and a certain degree of resistance to patriarchy, but within the tenets of Islam. Pakistani women judges express a keen wish for international acknowledgement that takes cultural specificities into account. Perhaps from the point of view of the women judges themselves, the all-encompassing conclusion of this paper should be that those in Pakistan are skillful and creative in combining culturally-informed expectations with the needs of their profession, as when gender segregation becomes an indicator of accountability and a way to be accepted even by the most conventional strata of Pakistani society.

The narratives of women judges in Pakistan also develop around themes that are significant at the global level in gender and judging debates: childcare; "softness" as a controversial argument that has the potential to act as a plus and not as a minus; difficult execution of state courts' decisions in situations of *de facto* legal pluralism that exceed the state. This paper shows that women judges in Pakistan share similar preoccupations with other women and men in the judiciary around the world regarding better working conditions, training, and the need to combine family and profession.

Hence, this paper, to some extent confirm the work of Sonneveld and Lindbekk (2017) in that "the woman judge" does not exist, but the findings here go further to suggest that the ways in which women judges see themselves and develop their expectations from society have a relational impact at the local level: female judges in Pakistan claim the acknowledgement of a professionalism that relates to the local context of cultural practices as much as it connects with the global debates touching at gender and judging.

From the point of view of institutional ethnography it is evident that complex implications revolve around access to and the management of international training, especially because this is about "educating" the elites who have the power to inform political dynamics in Pakistan. Judicial education in South Asia has always been close to the concerns of the British and recently the United States, as the most effective means to inform the mindset of powerful

elites. The struggle for social scientists therefore becomes a question of how to adequately account for the institutional agenda. As this paper has shown, context-informed analysis will benefit from taking into account the making and re-making of identity processes that go beyond the narrow concept of nation in order to highlight the local implications of the global development agenda. The international trend is that the representation of women in the legal profession is crucial to a just decision-making process. Hence, the quantitative increase of women judges in Pakistan is per se a positive step. As Schultz and Shaw (2013) have shown only too well, the inclusion of women in the judiciary should be considered an achievement regardless of the issue of whether a gender-balanced judiciary is indeed more accountable and just. The challenge lies in whether this change will be mainly a formal one or also one that leads to a consistent inclusion of women at all levels of the judiciary. The epilogue confirms also the perpetuation of opposite instances, which at the same time support and undermine female representation in the judiciary. The sustainability of female representation in the Pakistani judiciary might depend ultimately on whether or not women's claims for a context-appropriate professionalism will indeed strengthen their legitimacy as to break the glass ceiling in the longer term.

Notes

1. I have developed elsewhere an analysis of how Pakistani judiciary has interpreted and applied the principle of social diversity in judicial appointments (Holden, 2011).
2. For an analytical appraisal of the politics and jurisprudence of the Chaudhry Court see Cheema and Gilani (2015).
3. Special thanks go to the the Supreme Court, especially the Honorable Justices Jawad Khawaja, Tassaduq Jillani, Mian Sakirullah Jehan, and Nasirul-Mulk, as well as the Federal Judicial Academy, especially the Director General Mr Chawla. Our gratitude also goes to LUMS and to Babar Ali Foundation for financial support. Special thanks go to the French ANR program 08 GOU 064 Justice and Governance in South Asia, which has financed the first leg of this project and provided most of the technical equipment. However, the true protagonists of this project are the women judges who have enthusiastically taken the lead on many occasions. We would like to thank in particular the following respected Judges: Muneera Abbasi, Jazeela Aslam, Phool Bibi, Sarwat Khoso, Zaira Mansoor, Sarwat Mumtaz, and Fahrat Rana.
4. The first outcome of our research is the documentary film titled *Lady Judges of Pakistan*, that inspired from the appellation of female judges in Pakistan. Special thanks go to the Supreme Court, especially the Honorable Justices Jawad Khawaja, Tassaduq Jillani, Mian Sakirullah Jehan, and Nasirul-Mulk, as well as the Federal Judicial Academy, especially the Director General Mr Chawla. Our gratitude also goes to LUMS and to the Babar Ali Foundation for financial support. Special thanks go to the French ANR program 08 GOU 064 Justice and Governance in South Asia, which has financed the first leg of this project and provided most of the technical equipment. However, the true protagonists of this project are the women judges who have enthusiastically taken the lead on many occasions. We would like to thank in particular the following respected Judges: Muneera Abbasi, Jazeela Aslam, Phool Bibi, Sarwat Khoso, Zaira Mansoor, Sarwat Mumtaz, and Fahrat Rana.

5. In 2017 Pakistan remains South Asia's lowest ranked and the second-to last ranked overall (Global Gender Gap Report, 2017).
6. The Aurat Foundation is a civil society organization established in 1986 with the aim of promoting women's empowerment and citizens' participation in governance. In common with most activist organizations in Pakistan, the Aurat Foundation is funded mainly by international donors.
7. Pakistan: The gender discrimination in superior courts allows for only three females out of 103 judges, 2012, online petition by the Asian Human Rights Commission.
8. See however Mehdi (2012).
9. Several fatwas were issued against women judges. See inter alia, Shah (2010).
10. See for example *The Nation*, 11 September 2012.
11. See for example *The Nation*, 11 September 2012.

Disclosure statement

No potential conflict of interest was reported by the author.

References

- Addison, T., Grown, C. & Tarp, F. (2016) *Aid for Gender Equality and Development*, Special Issue for the *Journal of International Development* (Hoboken, New Jersey, John Wiley & Sons). Available at: <https://www.wider.unu.edu/publication/aid-gender-equality-and-development>, accessed 1 April 2017.
- Aziz, N. & Abdullah, T. (2012) *Suggestions on Women's Empowerment for Election Manifestos of Political Parties* (Lahore, Aurat Foundation). Available at: http://www.af.org.pk/pub_files/1365680811.pdf, accessed 1 April 2017.
- Barlas, A. (2006) Women's and feminist readings of the Qur'an, in: J.D. McAuliffe (Ed.) *Cambridge Companion to the Qur'an* (Cambridge, Cambridge University Press), pp. 255–272.
- Bourdieu, P. (1994) *Raisons pratiques. Sur la théorie de l'action* (Paris, Seuil).
- Burney v. Federation of Pakistan and others*, PLD Federal Shariat Court, 73.
- Cheema, M.H. & Gilani, I.S. (Eds) (2015) *The Politics and Jurisprudence of the Chaudhry Court 2005-2013* (Karachi, Oxford University Press).
- CEDAW (2005) *Considerations of periodic reports of Pakistan as state party to the convention*. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/454/37/PDF/N0545437.pdf?OpenElement>, Accessed 1 April 2017.
- CEDAW (2013) *Considerations of periodic reports of Pakistan as state party to the convention*. Available at: <http://sim.law.uu.nl/SIM/CaseLaw/UNCom.nsf/89e6367c3ac1ba6fc12567b70027d9fb/083d4ced878a2128c1257b2c0038eb75?OpenDocument>, accessed January 26, 2014.
- Clastres, P. (1974) *La société contre l'État* (Paris, Les Editions de Minuit).
- Dirks, N.B., Eley, G. & Ortner, S.B. (1994) Structures, habitus, power: basis for a theory of symbolic power, in: N.B. Dirks, G. Eley & S.B. Ortner (Eds) *Culture/Power/History: A Reader in Contemporary Social Theory* (Princeton, Princeton University Press), pp. 124–154.
- Foucault, M. (1969) *L'archéologie du savoir* (Paris, Gallimard).
- Global Gender Gap Report (2017) Available at: http://www3.weforum.org/docs/WEF_GGGR_2017.pdf, accessed 26 January 2017.

- Godelier, M. (Ed.) (1986) *The Making of Great Men: Male Domination and Power Among the New Guinea Baruya* (Cambridge, Cambridge University Press).
- Hassan, R. (2013) Woman and man's "fall": a Qur'anic theological perspective, in: M. Hermansen & E. Medeni (Eds) *Muslima Theology: The Voices of Muslim Women Theologians* (Frankfurt, Peter Lang), pp. 101–113.
- Harding, S.G. (Ed.) (1987) *Feminism & Methodology* (Bloomington, Indiana University Press).
- Hesse-Biber, N., Gilmartin, S. & Lydenberg, R. (Eds) (1999) *Feminist Approach to Theory and Methodology: An Interdisciplinary Reader* (New York, Oxford University Press).
- Hirsch, M. & Keller, F.E. (Eds) (1990) *Conflict in Feminism* (New York: Routledge).
- Holden, L. (2011) Social diversity and the judiciary in Pakistan. Forum of Federation. Available at: http://www.forumfed.org/libdocs/Pakistan2011/Livia%20Holden_DiversityandtheJudiciaryinPakistan.pdf, accessed 2 July 2018.
- Khan, R. (2016) "Lightly beating" wife permissible, says CII's proposed women protection bill. *Dawn*, 26 May. Available at: <https://www.dawn.com/news/1260803>, accessed 28 March 2017.
- Lady judges of Pakistan. (2013) Documentary-film realized by Marius Holden and Livia Holden (Brisbane, Insights). Available at: <https://vimeo.com/ondemand/ljpsshort>, accessed 2 July 2018.
- Mehdi, R. (2012) Field notes, female judges in Southern Punjab, Pakistan, *Journal of Law & Social Research*, 3, pp. 113–132.
- Mohanty, C., Talpade, R.A. & Torres, L. (Eds) (1991) *Third World Women and the Politics of Feminism* (Bloomington, Indiana University Press).
- Murtaza v. Federation of Pakistan and others*, Shariat Petition N.1/L of 2010 reported in P L D 2011 Federal Shariat Court 117.
- Pakistan: The gender discrimination in superior courts allows for only three females out of 103 judges, 2012, online petition by the Asian Human Rights Commission. Available at: <http://www.humanrights.asia/news/ahrc-news/AHRC-CPL-001-2012>, accessed 1 April 2017.
- Parashar, A. (2015) Religious personal laws as non-state laws: implications for gender justice, in: L. Holden (Ed.) *Legal Pluralism and Governance in South Asia and Diasporas* (London, Routledge), pp. 5–23.
- Raheja, G.G. & Gold Grodzins, A. (1994) *Listen to the Heron's Words: Reimagining Gender and Kinship in North India* (Berkeley, University of California Press).
- Scott, J.C. (1985) *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Heaven, Yale University Press).
- Scott, J.C. (1990) *Domination and the Arts of Resistance: Hidden Transcripts* (New Heaven, Yale University Press).
- Schultz, U. & Shaw, G. (Eds) (2013) *Gender and Judging* (London, Hart).
- Shah, Z. (2010) Judging deoband's latest fatwa on women judges. Available at: <http://www.countercurrents.org/shah090810.htm>, accessed 29 March 2017.
- Sonneveld, N. & Lindbekk, M. (Eds) (2017) *Women Judges in the Muslim World* (Leiden, Brill).
- The Nation (2012) Mulk lauds female judges' role, 11 September. Available at: <http://www.nation.com.pk/islamabad/11-Sep-2012/mulk-lauds-female-judges-role>, accessed 30 January 2014.
- Wadud, A. (2006) *Inside the Gender Jihad: Women's Reform in Islam* (Oxford, Oneworld).
- Zia, S.A. (2009) The reinvention of feminism in Pakistan, *Feminist Review*, 91, pp. 29–46.