



Appointment of Female Judges to the Supreme Court of Pakistan

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Introduction

The controversy surrounding Justice Ayesha Malik's¹ elevation has sparked debate in Pakistan's legal circles regarding the criterion for the elevation of judges to the Supreme Court of Pakistan, ('SC') and gender parity in the judiciary of superior courts.² Thus, this article will explore the constitutional criterion for the appointment of judges to the SC; and whether there is a need for mandatory appointments of female judges to the SC. It will also make recommendations for creating greater gender parity in the SC.

1. Justice Ayesha Malik is a judge at the Lahore High Court, Lahore, Pakistan. She was nominated by the Chief Justice of Pakistan to be appointed as the first female judge at the Supreme Court of Pakistan. However, her nomination met a stalemate in the Judicial Commission of Pakistan. See: Malik, Hasnaat (September 9, 2021) Stalemate over Justice Ayesha's elevation to the top court. See link: <https://tribune.com.pk/story/2319379/no-consensus-in-jcp-over-justice-ayeshas-elevation-to-top-court>.
2. Malik, Hasnaat (September 9, 2021) Stalemate over Justice Ayesha's elevation to the top court. See link: <https://tribune.com.pk/story/2319379/no-consensus-in-jcp-over-justice-ayeshas-elevation-to-top-court>.

Is there a need for the mandatory appointment of female judges?

It is apparent that the Pakistani Constitution seeks to create a two-tier system of judicial appointments, involving both the judiciary, i.e. the Commission, and the legislation, i.e. the Committee. This is thought to ensure greater 'checks and balance' in terms of appointments. However, this system has fallen short when it comes to creating gender parity in superior courts. Particularly, there has never been a female Supreme Court judge in Pakistan yet, creating 'quota' or 'mandatory' seats for women in the SC might not be the answer.

The SC, as the Apex Court, should consist of individuals of the highest legal calibre. Appointing someone on account of a quota system dilutes the meritorious composition of the Court. However, appointing judges on grounds of open merit can also be disadvantageous to female lawyers and judges, on account of the male-dominated nature of the legal system. In simpler terms, a smaller number of female lawyers and lower court judges, when compared with the count of male lawyers and judges, creates a severely limited pool of candidates to choose from in terms of appointments to the superior courts, particularly the SC.

Recommendations

In this regard, a long term solution is to create a conducive work environment for women to feel safe and encouraged to practice law. This might increase the number of women actively practising law, resulting in the expansion of the pool of candidates to choose from for the purpose of appointments to the superior courts. Some of the suggestions for creating a more 'conducive work environment' for women are: “[...]women should be introduced to litigation and taught the requisite techniques during the course of their law degrees”;⁷ provision of training in the language of the court “[...] so that the capacity to understand the proceedings and communicate with the staff effectively, can be enhanced.”;⁸ “a chamber governance system should be introduced to ensure equal access to opportunities for all employees in the firm as well as [...] a mentor-mentee program through which on-field training is imparted to junior lawyers, including female lawyers, in a more structured and result-oriented fashion and one in which the mentor is actually made responsible for the growth of his or her mentee.”⁹; “Considering our society is still very conservative, where men and women do not freely interact, it is essential that men be acclimatized to work professionally with their female counterparts just as much as it is necessary to acclimatize the females to work with their male counterparts.”;¹⁰ “[...]a basic right to stipend should be ensured to them so that they [female lawyers] can pursue this profession with some economic return during their struggling years.”;¹¹ “The legislature, bar councils, education providers as well as women themselves should collectively work towards the elimination of bias and harassment via awareness sessions, capacity building, constructive dialogues, exchange of ideas and equal access to opportunities[...]¹²” etc.

Moreover, it might behove the Commission to actively provide strong consideration to the already existing female candidates. In addition, unlike the SC, there is no reason why the Commission and the Committee should not have mandatory female representation. Such steps might help to cut through the gender prejudice that prevents the elevation of female judges, thus creating greater gender parity.

The fiasco surrounding Justice Ayesha's elevation involved bar councils across Pakistan, vehemently opposing the elevation on grounds of “seniority”¹³. Bar councils have the potential to play an important role, by actively lobbying for the elevation of female judges, instead of going the other way around.

7. Chaudhry, Nida Usman (October 4, 2021) The Fairer Sex In The Legal Profession: Tracing Women's Place In A Man's World. <https://courtingthelaw.com/2017/02/07/commentary/the-fairer-sex-in-the-legal-profession-tracing-womens-place-in-a-mans-world/>.

8. Ibid.

9. Ibid.

10. Ibid.

11. Ibid.

12. Ibid.

13. 24news (September 9, 2021) Lawyers boycott courts against Justice Ayehsa's elevation to SC. <https://www.24newshd.tv/09-Sep-2021/lawyers-boycott-courts-against-justice-ayehsa-s-elevation-to-supreme-court>.

Conclusion

It might not be appropriate to create a quota for female judges in the SC, seeing as the SC should be constituted of the greatest legal minds in the country. However, steps are required to render the entire legal system gender inclusive. Greater female representation in the legal system, in general, will create a larger pool of candidates to choose from when appointing judges at the SC, or even at the High Courts.



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