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**SUBJECT: STRIVING FOR EQUALITY: THE QUEST FOR GENDER DIVERSITY
IN THE JUDICIARY**

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"We should acknowledge differences, we should greet differences, until
differences make no difference." (Dr Adela A Allen)

Abstract

This paper examines the critical need for an inclusive and representative judicial system, emphasizing the importance of diversity and inclusion within the judiciary for the integrity and legitimacy of the justice system. The paper presents a stark picture of gender disparity in Pakistan's judiciary, with only a small percentage of women serving as judges, and calls for reforms in the Judicial Commission of Pakistan to ensure a more representative composition. It also advocates for establishing clear criteria for judicial appointments to address historical discrimination and promote gender parity. The paper discusses the pervasive issue of the 'glass ceiling' in the legal profession, where women face discrimination at various career stages, and compares the situation in different countries, revealing a global pattern of gender inequality. Finally, the article proposes a multi-level approach to confront gender bias, including immediate measures such as family-friendly policies, long-term societal changes to remove gender prejudices, institutional reforms within the Bar and Judiciary, and solidarity among female legal professionals to address gender imbalances. The paper is a comprehensive analysis of the challenges and potential solutions for achieving a more inclusive and representative judiciary, with a focus on gender diversity as a cornerstone for a fair and equitable legal system.

Inclusive and Representative Judicial system:

The notions of inclusion and diversity are often mistakenly viewed as being at odds with the principle of "merit" and are dismissed as mere symbolic gestures or superficial compliance. This misconception needs to be vigorously contested. The participation of women and other underrepresented groups in the judicial system is a multifaceted issue that affects the perceived integrity and legitimacy of the justice system within the broader society. It should be regarded both as a goal in its own right and as a crucial prerequisite for the effective safeguarding of human rights and achieving true equality.

i- The imperative of Inclusion for Judicial Integrity.

It is now acknowledged that diversity is not just an added bonus but a fundamental aspect of the judiciary's capacity to perform its duties. Diversity and inclusion should be integrated into the definition of 'merit' rather than being seen as contradictory to it. This is the reason why several constitutions acknowledge the significance of diversity in the judiciary—particularly the increased inclusion of women—as well as the consideration of religious, racial, and other factors,

depending on the context. Consequently, any modifications to the judicial appointment process should explicitly aim for the equal representation of women, and the promotion of inclusion and diversity as key objectives.

ii- Historical Inclusion of Women in Law.

The inclusion of woman in legal systems in the world still remains a fairly alien concept. Before 1900, many states of USA prohibited women from becoming lawyers. In 1869, **Arabella Mansfield** was the first woman in the United States to be admitted to the bar in her home state of Iowa. In contrast, three years later **Myra Bradwell** was denied admission to the bar of Illinois by the state Supreme Court based on her gender, and her inability as a woman to enter into a contract without the permission of her husband. In the decision denying her petition, the U.S. Supreme Court opined:

“The paramount destiny and mission of woman are to fulfil [sic] the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based on exceptional cases. Bradwell v. Illinois, 83 U.S. 130, 141-42 (1873) (Bradley, J., concurring).”

As the percentage of women admitted to the practice of law gradually increased in the USA, over the next 50+ years, the ranks of woman on the bench began to expand. Women now represent approximately 34% of the judiciary in the USA. This is in contrast to our 50% representation in the population.

The Indian legal system has made significant progress since **Cornelia Sorabji** became the first woman to practice as an advocate in the Allahabad High Court in 1921. However, despite overcoming numerous challenges, women remain underrepresented in the legal profession. According to Kiren Rijju, ex law Minister who served as Law Minister during 2021 to 2023 women hold only 7.2% of higher judiciary positions. Notably, only 13 women have reached senior designations in the Supreme Court, and merely 9 out of 237 senior positions in the Delhi High Court are held by women. These statistics highlight the disproportionate representation of women in the legal profession compared to their male counterparts.

In 1974, **Khalida Rachid Khan** was inducted into the provincial Judiciary of the erstwhile North West Frontier Province as a Civil Judge. She later became a Senior Civil Judge, District and Sessions Judge, and eventually a judge of the High Court of Peshawar (Pakistan) in June 1994, becoming the first female judge to break into the upper echelon of Pakistan's courts.

However, a recent report by the Law and Justice Commission of Pakistan (LJCP) titled **"Women in the Justice Sector"** highlights the gender disparity in Pakistan's judiciary. The report reveals that out of 126 superior court judges, only seven are women, including two in the Supreme Court and three in the Sindh High Court. There are no female judges in the Federal Shariat Court, Peshawar High Court, or the High Court of Balochistan. The report also provides statistics on female lawyers and judicial personnel, showing that women constitute 18 percent of the 3,142 judges and judicial officers in Pakistan, but only 5.5 percent at the upper tier. At the district level, there are 565 female lawyers among 3,016 active staff, and 40,000 female lawyers among 230,879 enrolled with provincial bar associations.

iii- Impact of Women in the Judiciary.

Women in the judiciary represent the *concept of inclusion* in a very visible way. Unquestionably women are very different in a number of ways from men, and therefore can provide a very different but equally relevant perspective in terms of life experience, thought process, and insight. As long as the law remains cognizant of status, gender bias will continue to be issue that requires mitigation, and the equal inclusion of women in the judicial decision-making process will continue to create a higher level of trust in our legal institutions.

Studies of the composition of courts reveal that when women are present in the deliberative process, their perspective provides input that may help the other judges to see the same problem from a very different angle. A diversity of life experience can greatly enhance the conversation between judges, and can challenge or alter the facts of a matter that the court chooses to see. Imagine if the Supreme Court in *Bradwell* case had a single female member perhaps the focus on the legal question of a competent individual's ability to contract, based not on the accident of gender or marital status, would have been determinative of a different outcome.

Glass Ceiling in legal Professions.

i- Prevalence of Gender Discrimination in Legal Careers

There is rarely any profession left where women have not faced discrimination—be it at any stage of their careers. From entry into the profession to acquiring important positions—as they progress in their respective careers, disparities based on sex increase. When they pass these obstacles, they eventually face the 'glass ceiling', which can be said to be invisible but a real barrier that stops them from reaching the apex point in their profession. This glass ceiling prevents a large number of female lawyers from attaining important positions.

ii- Cultural Paradigms and Gender Roles Affecting Career Progression

The male-oriented one-dimensional cultural paradigm, which views men as the primary breadwinners and women as homemakers, can be said to be the underlying cause of the glass ceiling in the legal profession. According to a popular belief in our society, a husband's work is more significant than a wife's and should take precedence over the latter. He is also not expected to evenly split up household duties with his wife. Further, men are expected and even encouraged to be one-dimensional, concentrating primarily—if not entirely—on providing for their families and advancing their careers. While women, at the same time, are expected to be multi-dimensional, focusing on home and family beside their professional life. The setup of the legal profession is such that it values and rewards only those who play male roles (who focus on their careers in exclusion of other interests). Thus, female lawyers are largely excluded from such opportunities because they are unable to concentrate on their professional life only.

iii- Societal Expectations and Gender Roles

Furthermore, the legal profession also upholds gender roles established by society. The field discriminates against those with feminine norms and responsibilities and rewards those who conform to masculine norms and responsibilities. To live up to these so-called professional standards established by male chauvinists for heading pillars of justice, Women are expected to severely restrict their extracurricular activities. Male lawyers often find it easier and more convenient to sacrifice other aspects of their lives in order to advance in their careers and hold influential positions. However, due to pressure from their families, female lawyers are unable to advance in their professional life and must instead restrict the number of hours and generally forego potential leaps in their profession due to marital obligations. A finding suggests that most of the women lawyers in the legal profession face severe pressure from family to get married at an early age or to bear responsibilities of family and child and thus opt out of their profession. Further, by the time they professionally settled themselves, there were considered too old to marry as per societal standards. Thus, a growing number of women legal professionals are ascending in their careers only when they are either unmarried or childless.

iv- The Legal Profession's Gender Bias

Also, it is a general mindset that women are less competent in the legal profession because of their compliant nature and more desirable within the four walls of their home. Further, derogatory remarks made by not only male advocates but also by some respectable judges also add up to their struggle significantly and contribute to the subordination of women in the legal profession.

In conclusion, all these factors in addition to other societal biases against women culminate into gender disparity in the legal profession and a semblance of this discrimination is observed at higher levels of the courts. Thus, it is clear that discrimination encountered by women in the Indian legal system stems from the patriarchal nature of our society, in which male advocates are regarded as more significant and superior to their female counterparts.

A Comparative Study of Glass Ceilings In Different Countries

i- Comparative Study of Germany and the US

According to a study conducted in Germany and the US A, the work environment in Germany makes it more challenging for female lawyers to have a family and a successful career than it is in the USA. This particular discrepancy can be attributed to the lack of infrastructure and societal prejudices which makes it a lot harder for women to align marital relationship and a career in Germany. Nevertheless, women lawyers in the US too face inequality despite it being among one of the developed economies. Every year a large number of women take entry into law school, however, only a small percentage of them reach top positions in law firms and Courts, besides being paid lower as compared to men attorneys in comparable positions. According to Glass Ceiling Report by Law360, women's participation in the legal profession in the US has observed an increment. However, men still make up more than 65% of attorneys in the US and nearly 70% of non-equity partners and over 80% of equity partners are men.

ii- Story of The UK- A Less Positive Picture

Statistics in the UK demonstrate that the Legal profession welcomes women as barristers and gives them opportunities to progress but only so far. According to a survey conducted in 2017 by a firm, the proportion of female partners in the top 10 law firms is 18% and in the next 15 firms, it's only 19%. It is even worse among barristers and judges. There are only 254 female barristers as compared to 1409 male barristers among top barristers and as for judges, only 22% of judges are women in the High Court and 24% in the Court of Appeal. This languishing picture of female representation is attributed to a massive drop-out after the appointment at the Bar, leading to the disparity even at the senior levels. The reasons behind this massive drop-out are not that hard to see. The combination of societal and financial pressure leaves no choice to female barristers other than to give up their hard-won and much-cherished career at the Bar and settle for less challenging and less paid work.

iii- China—Spearheading Gender Discrimination In The Legal Profession

In China, there is a significant gender gap in the legal profession. The bar has only recently begun to feminize, so there are significantly fewer women practicing law in China than there are men. For a long time, China's law schools have graduated roughly the same number of students, but women still seem to be underrepresented among lawyers, judges, and law school faculty members. In China, there is a power disparity between the sexes as well. While women are relegated to the background and given ancillary tasks, men enjoy a more authoritative position. In China, there is a sizable proportion of women working in low-status legal positions. In China's legal profession, the gender pay gap is also quite noticeable. Worryingly, Chinese female lawyers are unwilling to accept their gender as a barrier to a career because they have been so deeply ingrained in patriarchy. As a result, the situation there is practically worse than in India, where women do recognize that they are experiencing discrimination due to their gender and are speaking out against it. These statistics show the existence of a glass ceiling even in the most developed country.

A Road Map Ahead.

i- Confronting Gender Bias in the Legal Field: A Multi-Level Approach

The challenges of gender bias within the legal field are multifaceted, deeply rooted, and pervasive throughout our societal structure. To effectively confront these challenges, a multi-

level approach is essential. While legal reforms have facilitated women's entry into the legal profession by enforcing equal treatment, there has been no parallel reform to encourage men's participation in domestic duties, which remain unpaid. A transformation is needed both in the workplace and at home to dismantle the traditional division of roles between genders.

ii- Immediate Measures for Gender Discrimination: Family-Friendly Policies in Pakistan

Additionally, immediate measures to combat gender discrimination could include the implementation of family-friendly policies to aid female lawyers in Pakistan. These might encompass paternity leave, childcare facilities, and adaptable work schedules, which are crucial for female lawyers and would prevent them from having to choose between their personal and professional lives.

iii- Long-Term Societal Change: Evolving Attitudes and Removing Gender Prejudices

Over the long term, societal attitudes need to evolve—traditional gender roles assigned to women should be discarded. The legal community and society at large should undergo sensitization and education to focus on the capabilities of female lawyers rather than their societal roles. Moreover, there should be a systematic removal of gender prejudices fueled by widespread stereotypes. This process should be supported by policies that ensure women are evaluated on merit and advanced based on their abilities, irrespective of gender. Some law firms have already begun to implement and finance "diversity training" programs designed to enlighten staff about the fundamental differences between genders and to foster an appreciation of these differences rather than allowing them to justify subordination or discrimination.

iv- Institutional Reforms: Addressing Gender Inequality in the Bar and Judiciary

At a structural level within the Bar and Judiciary, targeted institutional reforms are necessary to tackle gender inequality. Judicial institutions should form a dedicated committee to confidentially handle complaints from women lawyers, considering the patriarchal tendencies of our society. Moreover, courts and bar associations should extend their efforts beyond the courtroom to address the systemic discrimination that women face and to raise awareness among male members of the judiciary and bar.

v- Solidarity Among Female Legal Professionals: Forming Collectives for Gender Balance

It is also vital for women in the legal sector to unite in solidarity. Female legal professionals should form a bodies to examine workplace gender imbalances, ensuring that no woman feels isolated in her fight against entrenched and societal injustices. It is equally important for such groups and organizations to be led by competent individuals to prevent biases based on caste or class from influencing the handling of gender disparities faced by women in the legal field.

vi- Creation of Women Lawyer Forums on each tiers:

The formation of Women Lawyers Forums on Provincial and District Levels is necessary to amplify the voices of women lawyers and stay connected to each other to make proper counselling of the nascent female law-graduates and bar internes for choosing right firms to enter and seeking mentorships, and inculcate the coping skills to manage their personal and marital life, without effecting his professional ambitions, apart from rendering emotional and professional support to each other and access to information and knowledge sharing.

vii- Special Protection by law and financial support.

Article 25 (3) of the Constitution of Pakistan, allow for making special laws for the protection of the women who are one of the vulnerable communities of our society. In a male-dominated society, women needs protection in all sphere of life because of their underrepresentation effected owing to stereotypes. Women underrepresentation in the legal profession is result of a long line of causes. Therefore, special laws for the protection of women lawyers should be legislated and enforced in order to remove certain hurdles which are created from within and outside of the legal institutions. That apart, the fresh law-graduates, undergoing apprenticeship should receive reasonable stipend in order to encourage and support them to stay within the legal profession instead of joining other public or private work on account of financial constraints.

viii- Institutional support. Extra Facilities and Accommodation.

Judiciary should provide facilities and accommodate to the female judges of the District Judiciary other than those which are granted to their male counterparts, for the reasons that the females judges, particularly in the area like Balochistan, faces find the common hardships more challenging such as travelling to the far flung areas' stations and remaining there with their kids, when such areas lacks the basic facilities of the life, let alone proper schooling. It is often heard from the parents that they avoid to choose for their daughters legal professions, especially in the judiciary, as careers because it is time demanding and relocation to different areas is an incident of the profession. In contrast, other professions are less time taking and certain regarding the place to stay. Consequently, judiciary should minimize such grievances so as to increase representations of women in the judiciary.

ix- Reforming Judicial Commission of Pakistan.

The composition of the Judicial Commission of Pakistan (JCP) is exclusively male. This is reflective of the broader pattern of women being underrepresented in the upper ranks of the legal field in the country. The JCP's composition also lacks diversity and does not include members from outside the judiciary or legal profession. This lack of representation negatively affects the JCP's credibility and cannot be maintained. Therefore, Article 175A of the Constitution should be amended to diversify the JCP's membership and to ensure that it more accurately mirrors the demographic composition of society in terms of gender, ethnicity, religious affiliations, and regional representation.

x- Establishing a Criteria for Judicial Appointments

There is a notable lack of specific criteria for appointments to the Supreme Court and high courts. The Constitution only specifies age, citizenship, and a minimum amount of professional experience as requirements. The Judicial Commission Rules also do not articulate any criteria for the nomination or evaluation of candidates. This absence of clear and public criteria for judicial appointments does not align with international norms and best practices. Therefore, changes to the judicial appointment process should include explicit criteria for evaluating candidates, with attention to achieving gender parity progressively and addressing other historical forms of discrimination and exclusion.

In several jurisdictions, such as the UK and South Africa, the bodies responsible for judicial appointments call for applications from interested candidates for positions on the Supreme Court. This approach democratizes the judicial appointment process, encourages a broader spectrum of qualified candidates to apply, and mitigates any actual or perceived bias at the 'initiation' stage. Thus, the government should contemplate allowing the JCP to invite applications for vacancies in the high courts and the Supreme Court.

Conclusion:

In conclusion, achieving gender diversity in the judiciary is a continuous journey that requires persistent effort and dedication. The quest for equality must remain a priority, with all stakeholders working

collaboratively to dismantle barriers and promote inclusive practices. Only through such concerted efforts can we hope to realize a judiciary that truly embodies the principles of justice and equality for all.

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The End

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