

## **Ansar Burney vs. Federation of Pakistan**

PLD 1983 FSC 73

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*Ansar Burney vs. Federation of Pakistan* is a landmark judgement by the Federal Shariat Court (“Court”) dealing with the status of women as judges. A petition was filed in the Court challenging the appointment of women judges. The Court framed four major questions, but the majority of the petitioner’s arguments turned on the following two issues. First, it examined whether, under Islamic principles, women qualify to serve as judges. Second, it focused on the legal status of women’s testimony and their share in inheritance—particularly whether the weight of a woman’s testimony and her share in the inheritance is half that of a man—and the implications these have on the appointment of women as judges.

The petitioner argued that appointing women as judges is against Islamic principles, claiming that such appointments not only contradict the Qur’an and the Sunnah but also lack historical precedent. Moreover, the petitioner claimed that women’s purported inferiority in inheritance claims and testimony rights reflects their unsuitability as judges. The Court, however, dismissed these claims, reasoning that the absence of historical precedent does not imply prohibition. The Court clarified that under Islamic principles, anything not explicitly forbidden in the Qur’an or the Sunnah is deemed permissible. Moreover, the Court explained that historical and cultural contexts shaped differing views among Islamic jurists. The Court concluded that judicial appointments should be based on competence and merit, notwithstanding gender.

Besides, the Court clarified that women’s purported inferiority in inheritance claims has no bearing on whether they should be appointed as judges. Moreover, it rejected the petitioner’s argument that rules regarding the testimony of women could be extrapolated to prevent women from being appointed as judges. The Court noted that “the post of a Qazi is not dependent upon the ability to testify.” Citing Islamic jurists, specifically Ibn Hazm, the Court noted that “those who confuse the rules of evidence with the qualifications for appointment to judicial posts commit a fundamental error.” Thus, the question of admissibility of evidence was deemed to be distinct

from and unrelated to the issue of judicial qualification. Regarding inheritance, the Court clarified that the shares are divided according to financial responsibilities and not because men are superior to women. Moreover, the petitioner's reliance on a Hadith to claim that women are "deficient in intelligence" was also carefully addressed. The Court clarified that the said Hadith pertains to specific societal contexts and cannot be used to lay down an axiom on women's intellectual abilities.

The judgment is significant in that it exemplifies how Islamic principles may be interpreted and applied in the modern context. For instance, it highlights that anything not explicitly forbidden in the Quran and the Sunnah is permissible. Adopting such a perspective enables the Court to reconcile Islamic principles with modern values such as gender inclusivity and women's participation. Many Islamic countries around the globe have appointed women to high judicial offices. For instance, Indonesia—the largest Muslim majority country—had around 100 women judges in its Shari'ah Courts in as far back as the 1990s. Similarly, Malaysia accords equality to women and permits them to hold judicial offices.<sup>1</sup>

The Court's shift away from rigid literalism and its adoption of a more contextual and flexible approach has its naysayers. Some argue that decrees under Islamic law should be based solely on the literal meaning accorded to Islamic texts. Critics further believe that revising scriptural interpretations to fit the modern society could compromise Islam's universal and timeless nature. In this regard, the judgment rightly clarifies that there is no single school of Islamic thought to be followed and that Islamic jurisprudence is not a monolith. The Court supports this viewpoint by referencing classical scholars such as Imam Abu Hanifa and Imam Malik, who accepted the testimony of women without restriction in certain matters. The Court also considers the views of modern scholars such as Dr. Muhammad Hamidullah, who has argued that Islamic law accommodates changing social roles. Furthermore, the Court notes that there is no binding *ijmā'* (consensus) on the issue at hand and therefore, limiting interpretation to a single viewpoint would be inappropriate in a modern legal context.

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<sup>1</sup> Nik Noriani Nik Badlishah and Yasmin Masidi, 'Women as Judges' (Sisters in Islam 2009) 33-35.

Considering this discussion, the Court's methodology has far-reaching implications. It sets an example for future cases, illustrating that Islamic law in Pakistan can adapt to the modern society's needs. However, courts must exercise this flexibility carefully, avoiding caprice and ensuring that interpretations are properly based on Islamic scholarship. A corollary of the Court's holding is an emphasis on the need for scholars to design a legal framework where Islamic principles align with the modern society.

Despite the ideals espoused by the Court in its judgement, women have by and large remained excluded from the judicial sphere. For instance, it took nearly three quarters of a century for Pakistan to have a woman appointed to the country's apex court. Moreover, in 2021, there were only two female judges in the Lahore High Court, two in the Sindh High Court, one each in the Peshawar High Court and the Islamabad High Court, and none in the Balochistan High Court. In contrast, there were 116 male judges across all High Courts, with women making up just 5% of the judicial force in High Courts.<sup>2</sup> One major issue in this regard is the seniority-based system for judicial appointments. The seniority-based framework adversely impacts women because women usually take longer to acquire the necessary experience and status, often working in environments that can be unwelcoming and hostile. If seniority remains the sole criterion for judicial appointments and in the absence of any meaningful reform, women's representation in superior courts will be severely limited.<sup>3</sup>

In conclusion, the Court's judgment in *Ansar Burney vs. Federation of Pakistan* marked a profound moment in the legal landscape of Pakistan, highlighting the potential for aligning Islamic law with modernity. Through this precedent, the Court sought to facilitate the participation of women in dynamic professional roles by acknowledging the permissibility of women serving as judges.

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<sup>2</sup> Nida Usman Chaudhry, 'The State of Women's Representation in Law 2020-21' (Women in Law Initiative 2022) <gdpakistan.org/wp-content/uploads/2021/07/Baseline-Report-Lawyher.pk\_.pdf> accessed 15 April 2025.

<sup>3</sup> Nida Usman Chaudhry, 'The Impact of the Concept of Seniority in the Legal Sector' *The Friday Times* (Lahore, 25 May 2023) <thefridaytimes.com/25-May-2023/the-impact-of-the-concept-of-seniority-in-the-legal-sector> accessed 14 April 2025.