Attaining Justice for Women and Girls in Islamic Countries

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The Asian Development Bank (ADB) is a multilateral financial institution established in 1966 to promote economic and social development in Asia and the Pacific. ADB has sixty-seven member countries, forty-seven of which are classified as “developing member countries” (DMCs). These DMCs benefit from ADB initiatives intended to advance the interdependent agendas of environmentally sustainable growth, inclusive economic development, and regional integration.

ADB’s overall approach is contained in Strategy 2030, its long-term strategic framework. It outlines the bank’s focus on seven operational areas, two of which are accelerating progress in gender equality, and strengthening governance and institutional capacity. Strategy 2030 is supported by several institutional documents, including ADB’s Policy on Gender and Development (GAD) which serves as the guiding framework for gender and development activities. The Policy adopts gender mainstreaming as the core approach to promoting gender equality and women’s empowerment across the entire breadth of ADB operations – from country partnership strategies to the design and implementation of gender-inclusive projects and programs.

The Law and Policy Reform (LPR) Program of ADB’s Office of the General Counsel reinforces this approach by focusing on legal development through strengthened policy, legal, judicial, and regulatory systems. The central premise is that the “rule of law” – a functioning legal system – that is, comprehensive legal frameworks and effective judicial, regulatory and administrative institutions that implement and enforce laws and regulations fairly, consistently, predictably and ethically – is essential for inclusive and sustainable development. Broadly, the LPR Program is composed of five pillars – (i) environmental law and sustainable development, (ii) infrastructure law and regulation, (iii) financial law and regulation, (iv) private sector development, and (v) inclusive growth and access to justice. ADB’s work on justice sector reform in Islamic countries, discussed below, comes under the fifth pillar.
Contextual Background and Overview of the Project

Worldwide, women survivors of gender-based violence often face significant access to justice challenges. However, the situation in Islamic countries is often exacerbated by factors both intrinsic and extraneous to the justice system and the actual language of the law.

First, the legal framework of Islamic countries allows justice sector decision-makers to draw from Sharia law, i.e., religious law forming part of the Islamic tradition. This in principle should have prompted improved justice outcomes considering that Islam strongly promotes the dignity of women and girls. In reality, however, society generally tolerates violence against women due to a misreading of, among others, Verse 4:34 of the Quran, which is often mistakenly interpreted as allowing the “beating” of women in certain circumstances. As a result, many legal service providers in Islamic countries – such as judges, lawyers, prosecutors, and the police force – tend to erroneously believe that Islam tolerates turning a blind eye to, or even justifies, gender-based violence. This kind of mindset undermines the ability of women survivors to use the legal system to vindicate and protect their rights.

Second, independent of religious factors, local communities in Islamic South Asia also operate with unconscious biases rooted in centuries of customary norms. The social structure is extremely patriarchal, in which women are viewed as property and subservient to men. Women are also perceived as bearers of family honor, such that customary practices often involve the use of women and girls to resolve unrelated disputes, or forcing them into marriages as compensation (e.g., vani, swara, baad). Women are thus caught in a web of poverty, patriarchy, and a weak protective infrastructure, resulting in increased vulnerability to violence and discrimination both inside and outside their homes. This spills over to the legal domain through perceptions or unconscious biases carried by justice sector stakeholders that informally affect their decision-making process. For example, a woman who wears tight clothes and make-up is “asking for” sexual assault, and a woman or girl who does not immediately report an alleged assault must be lying.

Third, women and girls rarely turn to the formal justice system even in cases of the most egregious assaults. The court environment is perceived as unwelcoming – crime survivors are forced to share a small confined space
with their assailant, and discomfort while testifying is perceived as a point against credibility. Furthermore, women and girls do not know their rights under the law, and are forced by social and family pressure to settle disputes through informal means (such as a tribal council of local men known as panchayat or jirga).

ADB’s Legal Literacy for Women project, developed in 2015 and which started implementation in 2016, targets both male and female justice sector stakeholders in Pakistan and Afghanistan. In Pakistan, the project has thus far focused on Punjab Province, which is the epicenter of gender-based violence crimes in the country. In Afghanistan, the project was implemented nationwide, including the remote Taliban-held areas.

ADB opted to pilot the project in these two countries because, despite several pro-women laws and policies in place, more than 80 percent of women in these countries have suffered at least one form of violence. Gender-based violence is endemic and pervasive across class, religion, ethnicity, and the urban and rural divide. The United Nations’ Gender Inequality Index confirms this state of affairs, with Afghanistan ranked 153rd, and Pakistan ranked 133rd, of one hundred fifty-four countries. A survey of global experts has revealed that Afghanistan is the second most dangerous country in the world for women, while Pakistan is ranked sixth.

The project addresses gender-based violence in Pakistan and Afghanistan by taking a two-pronged approach:

1. developing the capacity of legal service providers like judges, prosecutors, magistrates, and religious scholars in responding to clients on gender issues; and

2. increased awareness of and support for women’s legal literacy and access to justice through a positive media campaign.

Capacity-Building of Legal Service Providers

Top-Down Approach

Legal literacy for women is not a new concept but the ADB conceptualization is innovative in several ways. First, ADB worked directly with the Chief Justices in the respective countries, because in countries with weak political institutions, judiciaries are often seen as the bastion of last resort. Chief Justices, if motivated, could bring change with just one directive. In addition, most development partners typically work with executive and leg-
islative bodies, but legislative reforms will not bear fruit on the ground if legal service providers lack capacity to enforce rights and resolve disputes.

Training of the judiciary required a change in mindset; understanding of the judicial system; understanding of Islamic, national, and customary laws; and international law expertise. The ADB team was a most diverse and multi-skilled team, which included (i) a gender and development law expert from ADB, (ii) a former Justice of the Supreme Court of South Australia, (iii)
a human rights expert and Islamic scholar from Malaysia, who is a former Chair of Women Living Under Muslim Laws, (iv) an award-winning anthropologist and filmmaker whose documentary on compensation marriages in Pakistan contributed to a Federal Supreme Court decision declaring that customary practice as illegal, and (v) local experts on domestic laws and customs, who are active in capacity-building and law reform in both Pakistan and Afghanistan.

With the support of the Supreme Court of Afghanistan, the Attorney General of Afghanistan, the Lahore High Court, and the Punjab Judicial Academy, ADB developed and delivered gender-responsive trainings for the judiciary and the prosecutorial service. The training programs were customized specifically for each country, and utilized multi-techniques which were interactive and encouraged discussion and critical thinking. To ensure that the trainings respond to both need and demand, the team of trainers designed the trainings on the basis of focus group needs assessments with judges and prosecutors in Pakistan and Afghanistan. ADB especially encouraged the participation of women judges and prosecutors.

The Pakistan trainings covered (i) the basics of gender sensitization, (ii) national and Islamic gender laws and culture of Pakistan, (iii) relevance of international standards, (iv) gender-sensitized judicial conduct in gender-
based violence cases, (v) gender-based violence against women, (vi) attrition and compromise, which was highlighted as a major issue in the needs assessments; and (vii) children as witnesses – giving evidence in court. On the other hand, the Afghanistan trainings threshed out the relationship of the Elimination of Violence Against Women (EVAW) Law with both the Old Penal Code and the New Penal Code, specifically with respect to general doctrines and principles, offenses covered, and applicable penalties. Withdrawal, compensation and mediation, as well as international human rights norms and best practices on court environment and conduct from other jurisdictions, were also discussed. The ADB team also produced customized manuals for each training.

Customized training manuals for judges and prosecutors in Pakistan and Afghanistan.
More than gender sensitization, these trainings focused particularly on outcomes which can change not only attitudes but actions by judges and prosecutors. In both countries, the interactive workshops began by drawing to the forefront unconscious biases that people may have regarding gender roles in society. For instance, most participants associated “brave”, “toy cars”, and “strategic thinking” with men, and “washing”, “cooking”, and “sympathy” with women. But the trainers then highlighted that the gendered perception of these words is not intrinsic but a social construct – after all, women can be brave as men can be sympathetic.

In addition, central to the trainings is the concept of “oneness” – that Islamic law, Afghanistan’s and Pakistan’s constitution and laws, and international human rights law all promote the dignity of women and girls. Judges and prosecutors therefore should not feel conflicted in drawing from international conventions, instruments and norms, or from best practices in other countries, for fear that these are “Western concepts” anathema to sharia or domestic law.

For instance, on the issue of economic abuse in Pakistan: Islam mandates that women and girls are entitled to a share of their parents’ properties upon the latter’s death. However, females are often coerced into signing these off to male family members to “keep the properties within the family.” The ADB trainers thus highlighted Section 498A of the Pakistan Penal Code (1860), which prohibits depriving women of their inheritance, along with several Quranic verses with the same message. In particular, the ADB team emphasized Surah-An Nisa 4:78 and Surah-An Nisa 4:13-14, which state that not giving women their inheritance is an offense against God whose corresponding punishment is “entering a fire […] for good.”

All told, ADB was able to train nearly five hundred judges and prosecutors in Afghanistan and Pakistan. Right after the initial batch of trainings in Pakistan, the (then) Chief Justice of the Lahore High Court, the Hon. Syed Mansoor Ali Shah (now Justice of the Federal Supreme Court), requested that ADB conduct a Train-the-Trainers course so that the training program could cascade to the remaining 1,500 judges in Punjab. ADB thus trained a cohort of twenty judges as trainers who are now delivering similar trainings using ADB’s modules. ADB also developed three courses on gender sensitization and decision writing of gender-based violence cases for the Punjab Judicial Academy. These courses are now being taught as mandatory subjects to all levels of
Training sessions in Pakistan.

the Punjab judiciary. In addition, ADB also delivered a specialized training on evidence, court procedure, and litigation processes to another batch of twenty judges who are specifically handling gender-based violence cases.

In Afghanistan, ADB, the Supreme Court, and the Attorney General’s Office are now discussing a possible Train-the-Trainers program.

Bottom-up Approach
ADB supplemented the top-down approach with a bottom-up approach. Other capacity-building initiatives under the project include training workshops for grassroots women, members of the youth, nongovernmental organizations, paralegals, religious leaders (imams), and informal mediators. Topics ranged from practical matters such as life skills and self-confidence
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for women, to religious matters such as women’s rights in Islam, and finally to legal and remedial matters, such as referral mechanisms, effective mediation methodology, and women-related legislation such as family law and the evaw Law.

**Positive Media Campaign with a Ripple Effect**

ADB utilizes a positive media campaign using both traditional and nontraditional media. The positive media campaign has centered on women’s rights that are often misunderstood, e.g., the right to inheritance and the right to education. It provides information and education with an approach that
empowers women to know how to exercise their rights, and to inspire men to support women and girls.

Traditional media initiatives include short documentaries from both Pakistan and Afghanistan. ADB has also supported legal literacy rounds-
tables, in which women and activists shared their success stories, and live radio shows where lawyers and other legal professionals raised awareness on gender-based violence and rights of women under the law.

Non-traditional media initiatives involve the creative, innovative, and culturally sensitive use of art, music, and film. For example, trucks in Pakistan have traditionally been painted with decorative floral, ethnic, commercial, or other pop culture designs. ADB utilized this art form to promote messages that are pro-women and pro-girls, highlighting, for example, the right of women and girls to inheritance. In the truck art below, the girl has written on her blackboard “My father will give me my rightful share in his property. Will you also give your daughter her due share?”

It was important that the truck art imparted legal and social messages in an easily digestible way. For instance, the illustration below underscored the right of women and girls to inheritance simply by saying “Depriving daughters of their right to inheritance is un-Islamic and illegal.”

Another variant of truck art ADB produced emphasized the value that Islam places on daughters and sisters, and the blessings that God would give
A live radio show where a lawyer would answer calls regarding legal disputes involving women and girls.

“My father will give me my rightful share in his property. Will you also give your daughter her due share?”
a man who treats them with love and kindness. Jabir ibn Abdullah, a companion of the Prophet Mohammad, reported that the Prophet had stated: “The one who has three daughters or sisters, or two daughters or sisters, and he accommodates them, show mercy toward them, and supports them, Paradise is definitely guaranteed for him.”

The truck art below, showing a man lovingly gazing at his daughter, comes with the painted message “My daughter, you are the light in my eyes. You are my ticket to paradise.”

ADB also produced puppet shows with positive messages through local community puppeteers and singers. The puppets and theaters took on a very traditional look, so that the rural communities in which they were shown could identify with them. Furthermore, the puppet shows highlighted the legal and religious basis of the specific right discussed, with banners identifying the law and religious text on both sides of the theater set-up. ADB held these puppet shows in numerous urban and rural communities in Pakistan, including Multan, Vasindawali, Khangarh, Muzaffargarh, Bahawalnagar, Khanewal, Mohri Pur and Kabirwala.

In Afghanistan, ADB worked with local artists to stage interactive mobile theater shows highlighting the rights of women and girls, the evils of domestic violence and child marriages, and other illegal customary practices. Collectively, more than 3,000 people in the provinces of Baghlan, Kunar, Kunduz, and Nangarhar were able to see the theater shows.
Adb is currently working on other non-traditional media platforms. Other products being developed are: (i) lullabies specifically for girl children in Afghanistan; (ii) positive, pro-women songs sung by famous artists
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(Above) ADB used culturally sensitive puppets and design. (Bottom) Urban and rural communities in Pakistan participated in the puppet shows.
in Pakistan and Afghanistan; (iii) public space artwork (bridges and walls) in Afghanistan; and (iv) short animated messages for messenger apps such as WhatsApp, Viber, and Facebook Messenger.

Ultimately, media is being used not just as an awareness-raising tool for the masses, but also to highlight positive news to motivate women, girls, and
men supporting them. And, especially for non-traditional media platforms such as truck art and theater shows, it is also used to sensitize the artists and community level business owners. Now, the community level truck artist has become a celebrity in Pakistan for continuing to replace frivolous messages with pro-women messages on trucks. Local puppeteers and singers are replicating the shows on their own. Wall artists and mobile theater groups are also independently planning more shows and art displays.

Institutionalizing Reforms: The Model Gender-based Violence Court

After the gender sensitization and gender-based violence trainings in Pakistan, then Chief Justice Syed Mansoor Ali Shah of the Lahore High Court requested ADB’s assistance in establishing a model gender-based violence court (GBV court) in Lahore. This GBV court, Asia’s first such court, aims to have gender-based violence cases prioritized and conducted in a gender-inclusive manner.
Victims of gender-based violence are mainly women (and girl children) and they often do not report violence against them for fear of retribution, humiliation, shame, social stigma and loss of honor. In addition, victims are also fearful of coming to the court to give evidence because the court processes are intimidating and they feel re-victimized. The GBV Court is a response to allow them to give their best evidence and minimize the trauma. Examples of innovations in the GBV court are:

- The GBV court is presided over by the trained judge, prosecutor and staff.
- The court has special infrastructure such as (i) larger courtrooms so the distance between the victim, lawyers, and audience is increased; (ii) e-court facilities so that women can give evidence through video transmission, should they so choose; (iii) screens alongside the witness box so that women who are victims of violence are not forced to see the offenders when giving evidence; and (iv) provision of female support officers who will escort the victim to a protected place, settle the victim, and remain with the victim while the victim gives evidence.
- ADB also developed the following, which have all been adopted by the GBV court: (i) court procedures based on international best practices and human rights norms; (ii) formal procedures in case the victim or the witnesses resile; and (iii) Practice Notes on evidence and other court matters, e.g., testimony recording protocols (for instance, questions put in cross-examination on behalf of the accused will be given in writing to the Judge, who will be putting them to the victim or to a vulnerable witness in a language which is clear and not degrading).

The judicial trainings, coupled with the new GBV court, have strengthened access to justice by resulting in a streamlined complaint process, sensitized judges, and provision of support to the victims. They have also challenged widespread negative perceptions that women lie when they complain of violence. Prior to establishment of this court in October 2017, the conviction rate in rape cases was 2 percent; in 2018, the conviction rate has risen to 20 percent.
Sustainability of Reforms and Project Impacts

There are several factors that contribute – and are in fact essential – to the project’s sustainability. First and most important is the access to, and the support given by, the senior officers of the relevant government institutions. This project would not have gotten off the ground without the support of the Chief Justice and Justices of the Supreme Court of Pakistan, the Chief Justice of the Lahore High Court, the Director-General of the Punjab Judicial Academy, the Chief Justice and the Director of Policy and Planning of the Supreme Court of Afghanistan, the Attorney General and the Deputy Attorney General for the Elimination of Violence Against Women, and the
Minister for Women Affairs of Afghanistan. In countries with fraught political situations and weak civil societies, and especially those transitioning to formal governance, the will of institutional heads gets things done.

ADB actively consulted these individuals (and the institutions they represented) every step of the way to ensure that they will have a deep sense of ownership over the project. This likewise assures them that the project is designed and implemented in a manner that is sensitive to the country’s unique legal, political, social, and religious circumstances. This kind of institutional buy-in has led to reforms that were implemented subsequent to project activities, and feeds into the project’s overall long-term sus-

The GBV court, with trained personnel and physical infrastructure that is compliant with human rights norms.
tainability. For instance, on top of the GBV Court and the gender sensitization trainings, ADB also assisted the Lahore High Court in notifying the Gender Equality Policy for Punjab Judges. The Policy invokes the Pakistan Constitution, Islamic precepts, and the Convention on the Elimination of All Forms of Discrimination against Women; and mandates that special measures be undertaken, whenever necessary, to ensure that female judges enjoy substantive equality with male judges.

Second, ADB’s multi-skilled team was also deliberately multi-cultural and multi-religious. The team had members based in Southeast Asia, South Asia, the Pacific Islands, Australia, and United States; some were Muslim, and some were Christian. It was important for the training participants to see that GBV is a problem that affects societies of different economic status and various faith traditions. At the same time, having Muslim members in the team was crucial to the project’s success and sustainability, because at the heart of the project is the fact that Islam is a religion of peace and promotes the dignity of women and girls. Having trainers who looked like them and believed like them helped establish rapport and goodwill between the trainers and participants, and dispelled any notion that the ADB team merely sought to bring in “Western” concepts. ADB was able to build on this rapport by selecting promising participants from the initial training program, and training them specifically as accredited trainers who can deliver the modules to other judges and prosecutors in the future.

Third, sustainability of GBV court reforms depends on whether the sitting judge actively implements the guidelines, court practice notes, and court procedures, which were all developed by ADB to promote fair trial principles and justice to both the victim and the accused. In ADB’s continuing audit of the GBV Court, ADB’s team has determined that the judge initially had the tendency to default to processes he was familiar with which were not necessarily suitable for proper GBV case management (e.g., the process that must be undertaken by the judge when the women survivor or a witness resiles from her previous statement and chooses to withdraw the case). With proper guidance and training, the GBV Court judge became more adept in applying the rules of evidence and case management specific to GBV cases.

Fourth, the project allows for flexibility, as well as responsiveness to the cultural, social, and religious contexts of the country’s laws. It is also based on international norms and provides approaches which were culled from international best practice and could be relevantly applied in the country having regard to legal systems and unique country features.
Moving Forward

ADB intends to scale up the project in several ways. First, the Pakistan leg of the project has been limited thus far to Punjab province. In 2019, ADB will be broadening the project scope in Pakistan by (among others):

- Coordinating with technical committees in Pakistan’s Federal Parliament, as well as other development partners, in reforming the legal framework that applies to GBV offenses and courts;
- Undertaking discussions with the Federal Supreme Court and officials of the Federal Judicial Academy (the Academy) to discuss possible courses on gender sensitization to be designed and delivered by ADB under the auspices of the Academy;
- Assisting other courts in Pakistan in developing similar reform initiatives; and
- Amplifying the positive media campaign. The response to the initial batch of truck art (twenty trucks traversing Punjab) and puppet shows has been extremely positive. ADB is in the process of having a second batch of trucks painted, and another batch of puppet shows produced, in addition to other traditional and non-traditional media platforms.

In Afghanistan, both the capacity development program and positive media campaign are being scaled up. Afghanistan’s Supreme Court has given permission to ADB to train a cohort of fifteen-twenty judges (who initially participated in the December 2018 Kabul trainings) under the auspices of a Train-the-Trainers program. These judges, once accredited by ADB, will be able to teach the training program to other judges in Kabul and elsewhere. ADB is also developing an access to justice and violence against women course for the Supreme Court’s Judicial Training Program (locally called the “STAGE” program). Furthermore, ADB is in the process of producing a customized benchbook on violence against women cases for use by prosecutors, judges, lawyers and other stakeholders. On the media campaign front, ADB has started working with local artists who are to paint pro-women and pro-justice messages on public walls, including the walls near the Attorney General’s Office and the Supreme Court.

Lastly, ADB is exploring the possibility of replicating project activities in Tajikistan, another predominantly Muslim Asian country. ADB will be
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fielding an exploratory mission to Tajikistan in the second or third quarter of 2018 to meet justice sector stakeholders. The objective is to determine need and demand for access to justice and violence against women training programs.

Endnotes


4 Examples of the English translation of Verse 4:34 of the Quran:

Sahih International translation: “Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband’s] absence what Allah would have them guard. But those [wives] from whom you fear arrogance - [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand.”

Pickthall translation: Men are in charge of women, because Allah hath made the one of them to excel the other, and because they spend of their property (for the support of women). So good women are the obedient, guarding in secret that which Allah hath guarded. As for those from whom ye fear rebellion, admonish them (first), (next), refuse to share their beds, (And last) beat them (lightly); but if they obey you, seek not against them Means (of annoyance): For Allah is Most High, great (above you all).

Yusuf Ali translation: Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they spend of their property (for the support of women). So good women are the obedient, guarding in secret that which Allah hath guarded. As for those from whom ye fear disloyalty and ill-conduct, admonish them and banish them to beds apart, and scourge them. Then if they obey you, seek not against them Means (of annoyance): For Allah is Most High, great (above you all).

Mohsin Khan translation: Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they spend of their property (for the support of women). So good women are the obedient, guarding in secret that which Allah hath guarded. As for those from whom ye fear disloyalty and ill-conduct, admonish them (first), (next), refuse to share their beds, (And last) beat them (lightly); but if they return to obedience, seek not against them Means (of annoyance): For Allah is Most High, great (above you all).

Yusuf Ali translation: Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they spend of their property (for the support of women). So good women are the obedient, guarding in secret that which Allah hath guarded. As for those from whom ye fear disloyalty and ill-conduct, admonish them and banish them to beds apart, and scourge them. Then if they obey you, seek not against them Means (of annoyance): For Allah is Most High, great (above you all).
to share their beds, (and last) beat them (lightly, if it is useful), but if they return to obedience, seek not against them means (of annoyance). Surely, Allah is Ever Most High, Most Great.


7 For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much - an obligatory share.” [Quran, Surah-An Nisa 4:7]

8 “These are bounds set by Allah. Allah will let the ones who obey Allah and His Messenger, enter gardens beneath which rivers flow. There, they will settle for good. That is the great triumph.

Whoever disobeys Allah and His Messenger and transgresses the bounds set by Him, Allah will cause him to enter a fire, and there, he will settle for good. He will have a humiliating punishment.” [Quran, Surah-An Nisa 4:13-14]

9 A video featuring the Afghanistan trainings is available online at www.youtube.com/watch?v=xEvE5cUSMAQ, last accessed on 24 February 2019.

10 A video featuring the Pakistan trainings is available online at www.youtube.com/watch?v=yYZ5RFQAJIU, last accessed on 24 February 2019.

11 Hadith

12 A video featuring these puppet shows is available online at www.youtube.com/watch?v=oVhBOkBhQHo, last accessed on 24 February 2019.

13 A video featuring these mobile theater shows is available online at www.youtube.com/watch?v=it4JxFsyzaA, last accessed on 24 February 2019.