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Woman Judges in Afghanistan: **An interview with Anisa Rasooli**

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“I believe that the Afghanistan judicial system is regaining its decency. There are still problems, but considerable progress is being implemented. If the current situation continues, I am optimistic about the future of the judiciary in Afghanistan. However, if this trend is interrupted because of conflict or political and social unrest, then no one knows what the future of the judicial system will be” says Anisa Rasooli, Head of Court of Appeal for Serious Crimes of Corruption and a prominent figure in the current Afghan judicial context. We interviewed her on June 11, 2020.¹

Background

In the salient phases of the political and juridical history of Afghanistan, the figure of the judge (*qazi*) has assumed particular relevance by embodying structural changes in the sphere of state justice. The complex articulation of each type of political regime with its particular view of “justice” (such as those embodied in the very different legal-political ideologies of the Communist and the Taliban governments) is reflected today in a judiciary whose members, although small in number, are heterogeneous and gender stratified, with the large majority of judges being men. Practically and symbolically, the Afghan judge is historically integrated into the longer trajectory of Islamic tradition. More specifically, the role and functions of the Afghan *qazi* (the Persian transcription of the Arabic term *qadi*) have to be considered in relation to the Hanafi school of jurisprudence. Heir to the *ahkam*, the pre-Islamic arbiter to whom they succeeded in jurisprudential functions, the Muslim *qadi* continued to take into account customs and legal sources external to the revealed text (the Quran), using them as interpretative and integrative tools. The close relationship throughout the history of Islamic law between the mufti (the interpreter of law) and the *qadi* shows how central the role of the latter has been in doctrinal elaboration of the law. In contemporary Afghanistan, the figure of the judge maintains a key role in continuing the normative interconnections between different sources of law, namely state law, Islamic law, and customary norms.

In the framework of post-2001 Afghanistan, the judiciary has been heavily influenced by the logic of post-war reconstruction guided by the US, the EU, the UN, Japan, and several international humanitarian organizations. The extent to which the reconstruction of the legal system – rebuilding tribunals, training judges, and codifying law (e.g., the new Constitution and new Criminal Procedural Code, both promulgated in 2004) – has strengthened the role of women judges is unclear. Structural problems and strong political interference still impede women’s access to the judiciary. In terms of numbers, however, the most significant increase of female judges in Afghanistan’s history occurred with the post-2001 legal reconstruction. As of today, there are between 250 and 300 female judges in the country, most of them in Kabul, comprising approximately 8–10 percent of the judiciary as a whole.

Elsewhere in the post-colonial world, the number of women who became judges increased soon after states achieved independence from colonial rule. Afghanistan’s case contrasts with this trend. The Third Anglo-Afghan War in 1919 led to the official recognition of Afghanistan as an independent nation by the British (although many would argue that Afghanistan was never a colony). However, it was not until fifty years later, in

1969, that Jameela Farooq Rooshna was appointed the first female judge in Afghanistan’s history, specifically in the specialized juvenile court. Later she became the head of the juvenile court and the criminal division of the appeals court. In the decades that followed, Afghanistan went through major conflicts and regime changes, with profound impacts on all state institutions, including the judicial system.

As a result of the post-2001 legal reconstruction, the judiciary has become a highly politicized arena in which international organizations and donors have pushed to implement an agenda for a specific rule of law, generating frictions between Afghan approaches to justice (rooted in customary norms and Islamic law) and externally imposed values and procedures. These frictions have emerged on both political and practical levels. Some of the fundamentalist tendencies of the Supreme Court in the past twenty years, for instance, were the by-product of a legal context heavily influenced by the policies of donors and organizations such as the United States Agency for International Development (USAID). On the practical level, an example of how top-down initiatives led to complicated judicial outcomes was the codification, coordinated by the justice project of the Italian government, of the 2004 criminal procedure code, which posed several problems concerning its applicability to the Afghan context. This was confirmed in an interview I conducted with Saber Marzai, a prosecutor of Kabul’s 11th district, who explained, “Collaboration between prosecutors and police is very difficult. We often have tough confrontations. The work hasn’t been made any easier by the 2004 code, which isn’t adapted to our system. In most cases, we have to work around it” (Marzai, March 12, 2008).

According to article 116 of the 2004 Constitution of the Islamic Republic of Afghanistan, the judiciary is an independent organ of the state that is composed of the Supreme Court, Courts of Appeal, and Primary Courts. The Supreme Court is the highest judicial forum, heading the judicial power of Afghanistan (article 116), and is made up of nine members appointed by the Afghan president and endorsed by the House of People (article 117). In each province of the country, there is an Appeal Court, which includes the General Criminal Division, the Public Security Division, the Civil and Personal Affairs Division, the Public Rights Division, and the Commercial Division. Primary Courts operate at the city and district level. The majority of female judges work in certain specialized courts, such as juvenile courts and family courts, with far fewer found in other specialized courts, such as the primary commercial courts and counter-narcotics divisions. This gendered judicial organization marks the career paths of many female judges, and it is still rare to find women in high positions in the courts.

Interview

Would you like to start with a short biographical introduction?

I am Judge Anisa Rasooli, born in 1969 in Parwan Province, Afghanistan. I attended primary school as well as high school in Kabul. I graduated from the Faculty of Law and Political Science at Kabul University, completed the Judiciary Special Course/ Stage at Supreme Court, Kabul, as well as the Interim Training Program for Afghan Judiciary, organized by the International Development Law Organization (IDLO). I have a master's degree that focuses on criminology and punishment. I am a Board member of the Afghan Women Judges Association and a member of the International Association of Women Judges. After graduation, I started working as a judge in the Kabul Public Security Court. During those years, I was an active member of the Criminal Cases Court in the High Court, as well as a member of the Judicial Inspection Department of the High Court. When the Taliban took power in Afghanistan in the early 1990s, I migrated to Pakistan, where I taught at Aryana High School in Peshawar. After a year and a half, I returned to Parwan Province in Afghanistan. Since there was no more school for girls in Parwan, a school was founded in those years, and I began to teach girls who had missed school because of the Taliban. When the interim government was established [2001], I was assigned to be Head of the Primary Juvenile Court at the Supreme Court. My professional experiences continued since then in different capacities: I have been continuing to teach in different institutions, such as IDLO, USAID, and others.

I am not married; I am single and currently live with my brother.

What was your role in the foundation of the school in Parwan Province?

I founded the school during the time of the Taliban, mainly for girls who had missed their studies because of the Taliban's rules. I am happy to say that the school has become a public school now, with more two thousand students.

Have you faced any problem because of your determination to get a university education?

Fortunately, I come from a literate family; my father was educated, my brothers are all literate. Four brothers of mine are doctors, one has a master's degree in law, and another is an engineer. Therefore, I faced less trouble from my own family. However, outside the family, there have been many problems. Our close relatives, for example, were not happy with the fact that I went to school, and then after I finished school, they didn't want me to pursue my studies and go on to university.

Luckily, my father and mother (who, although she was not literate, had a religious education) helped me to pursue my studies. Three of my elder sisters didn't have the opportunity to study, mainly because of interventions by close relatives. But in my case, the situation had improved, especially because my brothers had grown up, and since they themselves had received education, they supported me in pursuing my own education.

What are the main challenges that you have faced in your career in the judiciary?

Afghanistan is a traditional society, and therefore becoming a judge for a woman is challenging, but with the developments that have occurred in Afghanistan, judges have fewer problems today than in the past. Of course, being a female judge is still very challenging. It is not easy even in Kabul, where it is more accepted, while in other provinces it is still very difficult and dangerous to work as a female judge. There are many challenges. In my case, my position makes it even more difficult since, as the head of the Court of Appeal for Serious Crimes of Corruption, I have to deal with major criminals and corrupt individuals. So the main challenge for me now is my personal security. Consider, for instance, that I currently investigate crimes in which there are huge amounts of money and land at stake, so we are basically investigating crimes that are committed by dangerous major criminals, and this in itself demands a certain dose of courage and commitment. I will remain faithful to my commitments and the oath I took to enhance justice in Afghanistan. Every Afghan's wish is for corruption to end in Afghanistan and for the country to no longer be considered one of the most corrupt countries in the world.

In 2015, you were the first woman ever in Afghanistan to be appointed by the president to the Supreme Court, but the Parliament did not approve it. You were appointed again by the president in 2018. What is the current situation?

As for the appointment in 2015, I actually lost being confirmed to the Supreme Court by very few votes, only seven. It is important to note that the Parliament at that time was very complicated, especially with issues concerning women. Regarding the appointment in 2018, honestly, I don't know what happened; I am a bit unsure what to expect. Nevertheless, I feel proud of being the first woman who stood in front of the Parliament and explained my plans. Generally speaking, I am happy with the outcome; I believe it was a good step forward; I knocked on the door and therefore paved the way for other women or myself to eventually join the Supreme Court in the future. After the nine members of the

Supreme Court High Council, my current position is the highest in terms of administrative ranks.

What are your personal and professional goals now?

My efforts are focused on the following issues:

- Awareness: I am aiming at spreading awareness among Afghan women about their legal rights and the importance of education.
- Defending the rights of judges, particularly of female judges, since we are still vulnerable to security threats and lack support.
- One of my main goals is tackling corruption in Afghanistan.
- I am trying to build the capacity of Afghan judges' associations, especially Afghan women's associations.
- Application of international conventions: Unless they are in contrast to Islam, the international conventions that Afghanistan has signed should be effectively implemented.
- Expanding family, children, and anti-violence courts in the provinces: If I succeed in joining the High Council the Supreme Court, I am planning to contribute to the expansion of these courts all over Afghanistan.
- Promoting transparency and fighting discrimination.
- Protecting the independence of the judiciary.
- Making the process of appointing and confirming judges more transparent.

You mentioned family courts: do such courts currently exist in all provinces?

There are five or six such courts in other provinces. I am planning to expand these courts to all provinces.

Customary traditions and norms are important in Afghanistan. How do you relate to such norms as a judge?

Definitely Afghanistan is a traditional society, especially outside of Kabul. Some of those norms are very challenging for women. Customary norms are often less problematic in Kabul, but in the provinces they are very limiting for women. In some provinces, even the very presence of women outside the house is not accepted. To give an example from my own experiences, when I was going into some provinces to provide legal training, at the beginning of the semester, certain male students didn't even greet me. However, by the end the semester, often those students would

change their behavior and would respect me more than male instructors.

How extensive is the presence of female judges within the judiciary? Are there female judges outside Kabul?

There are more than 250 female judges today, mostly in Kabul but also in some provinces like Panhshir, Baghlan, Wardak, Herat, Mazar, Parwan, and Kapissa. In some of these provinces, female judges have been appointed as heads of courts.

You also headed a Special Commission for the Investigation of Women's Jails. How do you see the conditions of female prisoners and their access to justice?

In 2015, there was serious unrest among female prisoners in the Pul-e-Charkhi prison as well as in the all-female prison of Badam Bagh. Consequently, the president of Afghanistan ordered the establishment of a special commission to investigate the problems of female prisoners. The commission consisted of me, as head of the commission, along with eight other members who represented human rights organizations, civil society, the judicial branch, the presidential palace, and so on. What we found was that there were serious problems in the prisons. The conditions of female prisoners were really terrible and unacceptable. Fortunately, after presenting the findings of the investigative commission, together with measures to be considered, to the president of Afghanistan, some concrete reforms were brought about. Out of 2500 female prisoners all over the country, we succeeded in releasing about 1200 of them through different programs and decrees. Another issue worth noting is that usually some prisoners were/are released from prison through annual presidential amnesty decree, but we proposed to the president that female prisoners in particular should be entitled to an extra amnesty decree on International Women's Day, so now female prisoners can profit from two amnesty decrees.

Can you give us an example of a tangible course of action you have taken regarding the empowerment of women and their access to justice?

One of the steps I consider important in terms of women's empowerment is that, aside from teaching legal issues at the court, for three years we had a program of teaching legal issues at high schools in Kabul from which both boys and girls could profit. The contents of the classes encompassed a wide range of issues, including human rights, international conventions, how to approach courts, how to seek legal assistance, and the like. So for several years, beside my official duties, I provided students, particularly female students, with legal knowledge that could help them in different circumstances. Even today, I receive calls from some of those students who need my guidance and I happily try to help them.

How do you envision the Afghan judiciary developing and changing in the coming years?

I believe that the Afghanistan judicial system is regaining its decency. There are still problems, but considerable progress is being implemented. If the current situation continues, I am optimistic about the future of the judiciary in Afghanistan. However, if this trend is interrupted because of conflict or political and social unrest, then no one knows what the future of the judicial system will be. I really hope this will not happen.

Are you referring, for example, to political changes that might occur if the Taliban continue to regain power in Afghanistan?

Yes, exactly. There have been major achievements in terms of legal advancements in Afghanistan; women's engagement in the system has improved considerably. Today we have a central database that all 34 provinces use, which is a huge development because it definitely guarantees uniformity of justice; anti-violence courts which were nonexistent before have now expanded all over the country. We need to continue in this direction.

What concrete steps should be taken to enhance women's access to the judiciary?

There are two issues that need to be dealt with separately: the issue of female judges and the issue of women's access to justice.

Female judges need to be supported in terms of capacity building; they should be provided with higher education and scholarships to pursue master's and doctorate studies; and the issue of security of female judges who are sent to provinces is very important. If a man is sent to provinces as a judge, his children can stay in Kabul with their mother and therefore their education is not disturbed, but when a woman is sent to an insecure province and her children have to accompany her, their education can be compromised. At the same time, the presence of female judges in those insecure provinces is crucial, since it is especially in those contexts that women have less access to justice and the presence of female judges can encourage women to approach and trust the courts. In most of these insecure provinces, customary norms are the only rule, so people do not go to court. Continued conflicts and violence complicate the situation. It is also important to note that Afghan

society is a male-dominated society. I have heard many times that a good woman shouldn't appear in front of a court, and if she does, it means she is not a good woman.

Where there is security, there is a court, and where there is a court, there is a judge. We have to provide security conditions and increase women's access to the courts.

Corruption is an important factor in making citizens suspicious about the work of courts.

Yes, corruption is certainly one of the reasons why people have developed mistrust about the judiciary in Afghanistan. I believe that the level of corruption is diminishing, but this is again linked to peace and stability in the country. If a province is safe and secure, it is easier to monitor and tackle the issue of corruption. The problems are particularly bad when ongoing conflicts mean corruption goes uninvestigated.

Endnote

- ¹ The interview was conducted in Dari via phone call after some email exchanges. I thank Shahim Quraishi for his collaboration. The research was supported by the Research Council of Norway as part of the project *Women on the Bench: The Role of Female Judges in Fragile States*.