

Rape Laws in Pakistan:
Exploring Case Studies Before and After the Repeal of Hudood Ordinances of 1979
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Abstract

Rape laws in Pakistan have undergone enormous changes since the implementation of the Hudood Laws in 1979. This paper focuses on one of the four ordinances of Hudood Laws, i.e., the Offence of *Zina*, where *zina* is defined as sexual intercourse with someone other than your lawful spouse – adultery, fornication, rape and prostitution. Furthermore, by delving into two case studies, I explore how rape investigations were handled before and after the repeal of the Hudood Laws and passing of the Women’s Protection Bill in 2006. Despite the fact that the current civil penal code allows the use of forensic and other circumstantial evidence in making a judicial decision, women still face tremendous difficulties in overcoming prejudice in rape trials. I argue that political parties such as Jama’at-e-Islami and government regimes like that of Zia-ul-Haq’s have justified their ideological and political agendas by misinterpreting the religious texts. Discriminatory rape laws enforced as result of such politicization has had severe consequences for women, especially those who are poor, illiterate, and cannot not afford lawyers.

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According to the Constitution of Pakistan, which was ratified in 1973, women are equal citizens (Raza, 2007, 100). However, gender inequality is not only widespread, but is also reflected in judicial laws such as the Hudood Ordinances of 1979. They were passed under General Zia-ul Haq's martial law as a measure to Islamicize the country and later repealed in 2006 (Pal, 1990, 449). Derived from Sharia – Islamic laws based on the teachings of Quran and the practices of the Prophet (“Sharia,” OED) – the Hudood Laws is an umbrella term for four ordinances concerning: prohibition of drinking, slander, theft, and punishments for adultery (Pal, 1990, 459). This paper will explore the Offence of *Zina*, which is defined as sexual intercourse with someone other than lawful spouse – adultery, fornication, rape and prostitution. I will look into two case studies, one that occurred before the repeal of Hudood Ordinances and one that occurred after the repeal of Hudood Ordinances. I argue that the politicization of Islam and misinterpretation of religious texts has led to these discriminatory laws that unfairly targeted so many women in Pakistan. The problem is only exacerbated by the high illiteracy rate among females – according to the most recent data collected by United Nations Educational, Scientific and Cultural Organization (UNESCO), only 58.7% females aged 15 and over can read and write – and the schism on women's legal rights among women themselves.

Background

Although women make up half of the population, they face the same oppression as most minorities. One definition of ‘minority’ is a group of people who are socially excluded, economically oppressed, and politically powerless. In view of this definition, women make up

the largest minority in Pakistan. They face inequitable treatment in a wide range of matters, including their legal rights.

The Human Rights Commission of Pakistan reports that a woman is raped every two hours in the country (“Pakistan Recognizes Women’s Rights,” 2006). Even this horrifying statistics is an underestimate if one keeps in mind that talking about rape, sexual assault, and other crimes of such nature is frowned upon in conservative societies of Pakistan. With a negative stigma attached to being a victim of rape, many cases go unreported. Hudood Ordinances required that to prove a perpetrator to be guilty, either the perpetrator had to confess or four male eyewitnesses had to testify of seeing the rape crime. In cases where female witnesses were involved, the Law of Evidence was applied. According to this law, a woman’s witness is half that of a man’s (Alavi, 1988, 1330). Moreover, there was a likely possibility of being accused of *zina* if a raped woman brought a case to court and she could not produce the required four male witnesses. The maximum sentence for committing *zina* was death by stoning (Khan, 2003, 76).

In Pakistan, rates of female imprisonment have increased significantly over the recent decades. Ali and Shah identify the Hudood Ordinances as one of the major reasons for the increase. According to a report by the National Commission on the Status of Women, 80% of Pakistani female prisoners are behind bars because they cannot disprove their rape charges and are locked up for adultery (Ali & Shah, 2011, 58). While 95% of women charged for *zina* are acquitted, years of incarceration before trial make these prisoners vulnerable to physical abuse, including sexual torture (Khan, 2003, 77). In fact, about 80% of these female prisoners are raped at some point during their time in prison (Ali & Shah, 2011, 59).

On November 15, 2006, Pakistan's parliament passed the Women's Protection Bill, which tries cases based on the civil penal code. This is a step forward for the penal code allows the use of forensic and other circumstantial evidence in making a judicial decision ("Pakistan Recognizes Women's Rights," 2006, 1938). However, the situation remains grim in cases of false accusation (Ali & Shah, 2011, 59). Moreover, the descriptions of women who have been most severely affected by these laws include: poor and illiterate women who cannot afford lawyers (Khan, 2003, 77). Women who are affected by such laws are not aware of their rights and often times do not know under what charges they are being prosecuted. As the following case studies show, illiteracy and unawareness of laws serves as a major obstacle in getting a fair trial.

From Discriminatory Views to Unjust Legislation

The man at the forefront of judicial practices that discriminated against women was Abul Ala Maududi. He was the founder of Jama'at-i-Islami (a religious political party created in 1941) and who died in 1979, sums up his discriminatory views on women as follows (Pal, 1990, 453):

1. It is the man's responsibility to earn a living for the family, while the woman must make domestic life a paradise of peace and joy – she must therefore receive the best possible education and training in order to perform her duties.
2. Women are inferior than men: 'You cannot produce a single woman of the caliber of Ibn Sina, a Kant, a Hegel, an Umar Kayyam, a Shakespeare, an Alexander, a Napoleon, a Salahuddin, a Nizam ul Mulk or a Bismarck.'
3. Women are unable to perform most of the outdoor work, not just the heavy physical activity, but also the economic, political, and administrative duties. She is a tragic being, with all those bodily and reproductive functions to

perform; the domestic role is ordained for her nature. ‘Biology, Anatomy, Physiology, Psychology and all branches of Sociology prescribe this division [of labor].’”

It is important to note that Maududi’s prejudiced ideologies such as women are inferior, and that they shouldn’t have economic independence or the right to vote were publicly known and not something concealed. His book *Purdah and the Status of Women in Pakistan* clearly lays out his views regarding women.

Politically, Maududi was not very successful or popular in the Indian sub-continent, but in 1977, he got a chance (Mumtaz & Shaheed, 1987, 16). Perhaps that is why despite opposing the Pakistani movement, he still moved to Pakistan. He believed that religion transcends national boundaries and that there was no need for two nations, one for Muslims and one for Hindus. However, in 1947, when Pakistan and India partitioned, he moved to Pakistan with the hope to advance his political party and create a legacy. In 1977, when General Zia-ul-Haq took over the country through martial law, he justified his political move by forming an alliance with the major opposition party of that time, which was run by Maududi. The irony of Zia’s martial law was that it was not legitimate democratically or religiously. In secular view, he took over the state without elections. In religious view, he didn’t come to power with the consent of a religious counsel. In any case, this was the first time that Maududi gained political power and could incorporate his religious ideologies to the country that was still developing. Together, Zia and Maududi, advocated for Islamization period, which was supposed to bring the country back to its Islamic roots, but it was truly to justify their political involvement.

Case Study 1: Before The Repeal

Mukhtar Mai is a Pakistani from a village named Meerwala in southern Punjab. In June 2002, she was gang-raped by four men because her younger brother was falsely accused of illicit sex. She reported her perpetrators to the police and, surprisingly, they were arrested. (Then-president of Pakistan, Musharraf, awarded her \$8,300, which Mukhtar used for building her own school. When money started to channel in for her school (\$430,000) through contributions from Times readers, Musharraf became uneasy about the “embarrassment” she was garnering for Pakistan from the international community. He put her on the “exit control list,” preventing her from leaving the country, kidnapped her, seized her passport, and stationed intelligence agents to spy on her. All this was done to prevent the outside world from knowing the circumstances women like Mukhtar face. Mukhtar opened her aid group, called the Mukhtar Mai Women’s Welfare Organization, which offers a 24/7 hotline, free clinic, public library, and a shelter.)

In her book titled *In the Name of Honor: A Memoir*, Mukhtar Mai chronicles all the events that led up to and followed after the gang rape that was approved by her village’s *jirga*. (Here, the word *jirga* means a village council, which makes decisions based on Sharia law.) The first reason why her story circulated around was due to the local imam, who publicly denounced the horrific crime in Friday prayers. This act held significance on two accounts: first, it was announced to the entire community and for those people who stayed away from controversial news, the imam’s public announcement rendered them to discuss the issue openly; second, when a leader (even if he/she is locally known by a small number of people) took a stand, it influenced people’s opinion. Also, because media took such a strong interest in Mai’s rape, it gained international attention. Furthermore, she recognized that her trial could benefit from media

coverage as she puts forth, “I sense[d] instinctively that I must take advantage of the presence of these journalists.”

In the Name of Honor: A Memoir called attention to class differences. Mai repeatedly mentioned that since she belonged to the Gujar clan and the accused men were from Mastoi clan (rich people who owned a lot of land in the village), the police were not cooperative and sided with the Mastoi. In fact, she stated that the police and all the justice system is controlled by upper class people such as the Mastoi. To illustrate this point, she narrated her experience at the police station where she was asked to dictate her case. The policemen asked her to thumbprint the end of a few blank pages. Later, she learnt that they wrote her statement inaccurately. While this shows that justice is reserved as a privilege for the rich and educated, it also exemplifies what an average peasant, who has never been to school and who cannot read and write, is denied her right to justice.

The *jirga*, which consisted of many Mastoi men, punished a peasant woman from Gujar class not because she had committed a crime, but because they sought revenge. The unfortunate part is that such revenge was justified by the *jirga* because they claimed to make decisions consistent with Sharia law. However, it is important to understand that the village council did not have any legal authority to impose Sharia (Khouri, 2007). This is because local tribunals are not part of the federal state law or the penal code (see Appendix A for three interpretative frameworks).

Case Study 2: After The Repeal

Outlawed in Pakistan is a documentary narrating the gang-rape of a 13-year old girl named Kainat Soomro. She accused four men of abducting her on her way to home from school and raping her while she was drugged. After missing for three days, she finally escaped and got

home. The elders of the village had ordered to kill Kainat and when her family did not comply with this, they fled to Karachi, Sindh's largest metropolitan area, for safety. Since this rape occurred in 2007, that is, after the repeal of Hudood Ordinances, the outcome of the legal proceedings should have been dealt with more just scrutiny. However, women still experience the same prejudice that they faced in earlier times. The responsibility of proving/disproving the crime solely falls upon the rape victim and presenting evidence becomes an almost impossible situation considering how many police investigators make little effort to collect data. Faisal Siddiqi, Kainat's attorney stated that the investigation began with a suspicion toward her. Police doubted her "character". This is concerning because if investigators are themselves biased and do not make a genuine attempt to collect as much relevant information as possible, then the case is already to a grim start. Like many cases, Kainat's investigation report did not include sperm or DNA evidence. In fact, sperm evidence is often not collected because facilities required to gather such information are not available everywhere in Pakistan (Nosheen & Schellmann, 2013).

A common defense used by perpetrators is to produce a marriage certificate of the rape victim and rapist. This allows the accused rapist to dodge death sentence – the usual punishment for rape – when it is proven that the rape actually happened. Even though it is a common defense pattern, the courts/legal system has not taken notice of it and made it necessary to present this sort of evidence from the beginning of trial. Marriage certificates appear in the scene when the accused is/are found to be guilty. This is precisely what happened in Soomro's case (Nosheen & Schellmann, 2013).

It takes between 5 to 10 years to receive a final verdict for rape cases, even if victims have the best lawyers in the country. War Against Rape (WAR), a non-profit organization based in Karachi, helped Kainat with legal support. Despite the fact that she had a high-profile lawyer

and her story was extensively covered on media, she lost her case and is going through lengthy appeals (Nosheen & Schellmann, 2013).

Schism In Women's Legal Rights And Unawareness

Even though Islam is the single most important aspect common to an overwhelming majority of women in Pakistan, resistance to government's Islamization program has not been a unified struggle for all women in Pakistan (Hakim and Aziz, 1999; Mumtaz, 1994). A sharp divide exists between women who Mumtaz calls "fundamentalists" and women's right activists. The difference in their perspectives arises from factors such as class differences and exposure to type of education (Western education or Islamic education). Although the concerns of the two groups are the same: they call for a ban on polygamy, demand fair divorce procedures, etc., the bifurcation in their ideas emerge regarding the concept of gender equality, women's role, legal rights etc. (Mumtaz, 1994).

Women's Action Forum (WAF), which was created in response to Zia's Islamization program, has been at the forefront questioning patriarchal structures and the use of misinterpreted Islam to justify restrictive legal laws. While women's rights activists challenge strictly defined gender roles and the notion of women being nurturers and reproducers of society, "fundamentalist" women embrace these ideas. They opt for complete gender segregation. So which organizations or political party are "fundamentalist" women affiliated with? Mumtaz identifies that most "fundamentalist" women are either supported by Jama'at-i-Islami or they belong to its student wing called Jama'at-i-Talebat. Also, the party has a strong influence in urban areas that have gone through industrialization. Other religious-based political parties include Jamiat-Ulema-e-Pakistan (JUP), Jamiat-Ulema-e-Islam (JUI), Anjuman Sipah-e-Sahaba, but none of these parties have a women's wing or women members in their higher ranks.

In the debate on Hudood Laws, “fundamentalist” women in Pakistan would not consider the Hudood Laws to be restrictive and downright discriminatory towards women. They argue that women should not interact with men and therefore should not pursue careers in politics, but these “fundamentalist” women –although small in percentage when compared to the party’s total members – hold positions in their party and parliament themselves.

As mentioned earlier, only 58.7% females aged 15 and over can read and write. This is reflected by a study conducted by Ali and Shah at Youth Offenders and Special Prison for Women, a jail founded in 1993 in Peer Ilahi Bakhsh Colony, Jamshed Town (2011). After surveying 200 women prisoners under the jail staff’s supervision, they concluded the following: 50% were not aware of their legal rights; 24% were somewhat aware of their legal rights; and only 26% were aware of their legal rights (see Appendix B to see this finding in a pie chart).

Conclusion: Recommendations for Improvement

Even though Mukhtar Mai’s gang rape occurred before the repeal of Hudood Laws, her rapists were arrested and punished. One reason for such an outcome was that the local village council, which did not have any legal authority, had approved her rape. Her case did not only outrage the local media, but it also caught international attention. On the other hand, despite having occurred after the repeal of Hudood Ordinances and having had extensive media coverage, Kainat Soomro’s gang rape did not yield a just legal proceeding. Her perpetrators had figured a loophole to seek escape. There isn’t a common denominator of receiving a fair trial and having rapist(s) punished, but being poor, illiterate, and unaware of the legislation poses enormous obstacles.

Although many committees such as Commission on Marriage and Family Laws (1955), Women’s Rights Committee (1976), Commission of Inquiry for Women (1977), and Pakistan

Commission on the Status of Women (1985), have been founded to address gender imbalance, Raza notes that the government's initiative to tackle this problem by increasing reserved parliament seats for women provides a temporary solution (2007, 100). In 2001, Pakistan's government reserved 33% of seats in local bodies and 17% of seats in national and provincial assemblies for women (Raza, 2007, 101). With less than 10% of women working, the rationale for increasing the number of reserved seats was clear: (1) to deter underemployment of women in government offices and (2) to increase their participation in political decision-making, including policies concerning rape. However, as Raza emphasizes, this is a short-term solution.

Because collecting empirical evidence is not mandatory and widespread bias against women for raising false accusation is still prevalent, women face tremendous difficulty in providing thorough and substantial evidence. In the documentary *Outlawed in Pakistan*, police investigations were shown to carry a prejudiced attitude towards women. My proposed solution is twofold: (1) Police investigation for rape cases should have mandatory component of forensic evidence. This would mean that the government properly equip police stations and train investigators. (2) There should be more judges in the Shariah Courts, that directly deal with cases of rape, who are willing to set discriminatory laws aside and apply fair and egalitarian laws. Ali and Shah note that only 10% of the judges in the country are female (2011). They argue that people (including judges) carry the cultural prejudices of their society. Having predominantly male judges reflects the patriarchal norms that work against women. The lack of representation of women in the judicial system is evident by the fact the first female judge of the Federal Shariah Court was appointed in 2013 (Pakistan Appoints First Female Judge to Sharia Court, 2013) (see Appendix C to understand the judicial hierarchy and specifically see where the Federal Shariah Courts are placed with respect to other branches). Since Pakistan is a signatory of the

Universal Declaration of Human Rights, it shouldn't be a problem for the judges to uphold equal laws for all, regardless of one's sex.

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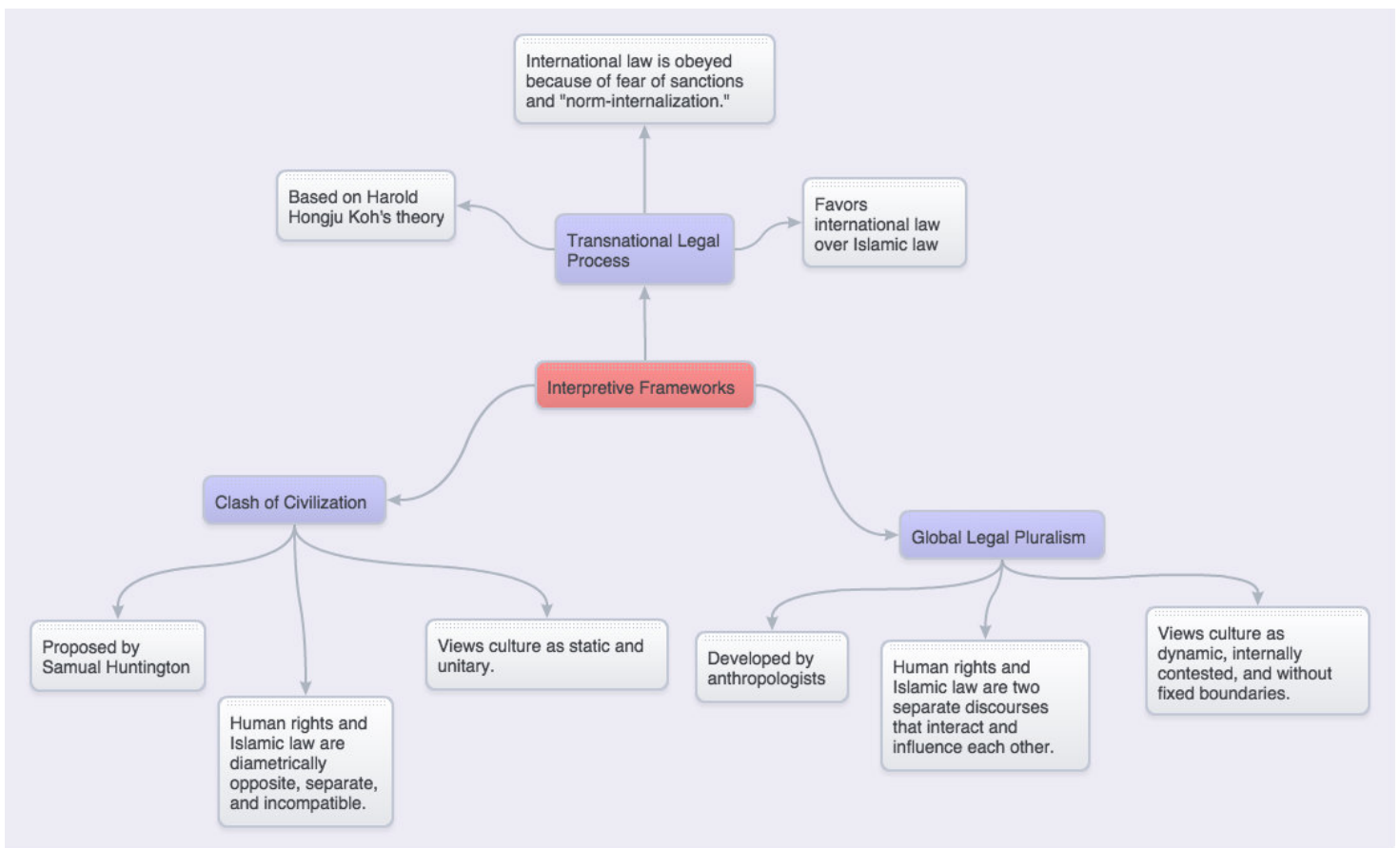
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Appendix A

The following information has been obtained from an article titled, “Human Rights and Islam: Lessons from Amina Lawal and Mukhtar Mai,” by N. Khouri.

Khouri explains three accounts/interpretative frameworks that are used to draw relationships between human rights and Islamic law. There are named as Clash of Civilizations, Global Legal Pluralism, and Transnational Legal Process. The following mind map briefly outlines the important components associated with each:



In 2002, Mai was gang raped on orders of her *panchayat* (village council) in retribution for alleged *zina* committed by her younger brother. Khouri explains this case in view of the three frameworks.

1. Clash of Civilization

International media adopted this interpretative framework to state that Mai's human rights had been violated as a result of Sharia law. However, this framework ignores the fact that the village council did not have any legal authority to impose Sharia. Local tribunals are not part of the federal state law or the penal code. The clash is between traditional tribal law and official state law, not human rights and Islamic law.

2. Global Legal Pluralism

Because global legal pluralism recognizes human rights and Islamic law as separate and interacting entities, it takes local political structures into account. This framework explains that while the village council did not have legal authority, it was the village imam who spoke against the sexual violence. It also considers the class differences of perpetrator and victim. Mai's perpetrators were from Mastoi tribe and because most members of the village council were from that tribe, they issued such a horrific act of violence against Mai, who was from the socially low Gujar tribe.

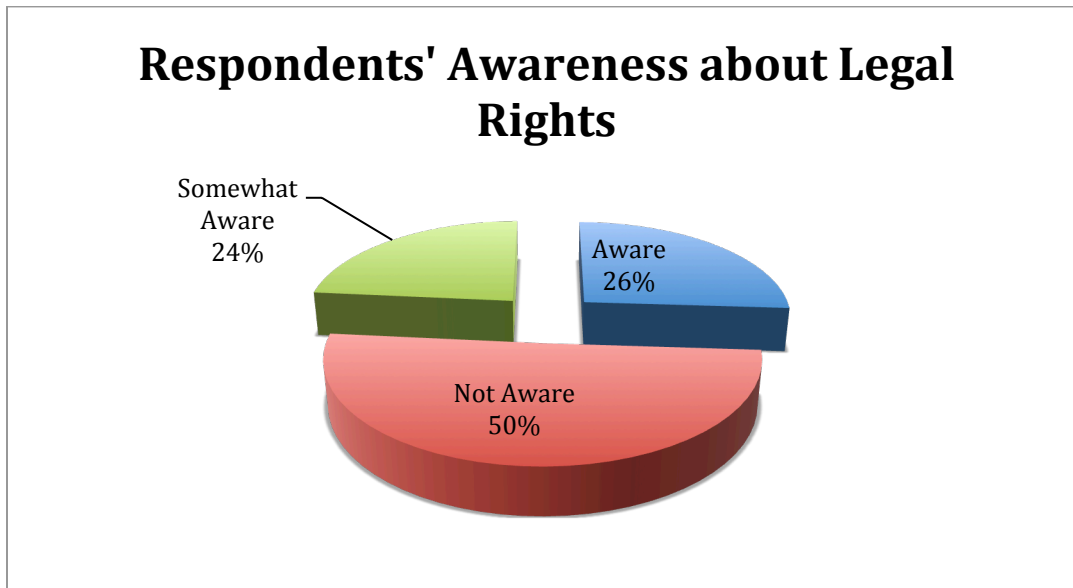
3. Transnational Legal Process

This interpretative framework emphasizes the concept of norm internalization. In Mai's case, government condemned rape, compensated her and provided her legal costs. This could be partly attributed to international pressure, which emphasizes human rights norms.

Each interpretative framework provides a unique analysis, but because the global legal pluralism accepts alternative models, it is neutral and more tolerant. Of course, the relationship between human rights and Islamic law is more complex than it is portrayed in these frameworks.

Appendix B

In “Women Prisoners In Pakistan: Changing Practices To Enforce Laws & Rights,” Ali and Shah summarize their findings from surveying 200 female prisoners as follows:



Appendix C

In the following mind map, created from information obtained from *The Judicial System of Pakistan* by Faqir Hussain, I have structured the courts into a judicial hierarchy with the Supreme Court at the top and subordinate courts (civil and criminal courts) at the bottom. This gives one a rough idea of where the Federal Shariah Courts are placed with respect to other branches.

