

## **Sociolinguistic Construction of Women's Identity by Solicitors in Murder Trial Arbitration**

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### **Abstract**

This study examines the sociolinguistic construction of women's identity by solicitors in five murder trial arbitration at the magistrate courts located in Lahore, Rawalpindi and Multan of Punjab, Pakistan murder trials. Ryan's (2004) narrative inquiry and Shi-xu's (2005) Socio cultural Communication Approach (SCA) were taken as theoretical lens to interpret how far the narratives of solicitors are motivated by cultural dynamics. The study reveals that the solicitors constructed the socio legal identity of women such as weak and submissive, caregivers and respectable. Furthermore, they constructed socio cultural tethered narratives, which in many ways tend to empower women in the legal discourses. The study has attempted to unfold the socio cultural dynamics which are used to exploit the judicial discourses in the favor of women as victims or victimized in the murder trial cases.

**Keywords:** Sociolinguistic construction of gender, Murder trial discourses, Women identity in courtroom

### **Introduction**

The legal narratives characterize coherent stories to recount criminal events such as murder trials in the courtroom. The murder trials are holistically viewed as narratives of struggle and challenge, which aim to save innocents, achieve justice and maintain peace, law and order situation in the society. The solicitors are mandated to construct narratives in the courtroom to resolve disputes. These narratives are centred on the interplay of institutional discourse as well as everyday accounts of witnesses who take stand in the courtroom (Catoto, 2017). Further, these narratives form the underlying subsystem of legal language to structure human behaviours and bring pattern to their criminal activities thereby resolve criminal issues (Baude & Sachs, 2017).

The solicitors' cultural-gendered narratives (such as position of woman in patriarchal discourses, woman as socially dependent creature, woman is bound to live in combined family system and so) are embedded in normative rational

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packaging thereby restoring moral order and justice in the courtroom arbitration (Scott & Lyman, 1968). In fact, these narratives become essential linguistic practices for blame attribution and blame avoidance. The solicitors support gendered narratives to refer to alternative discourses, which are developed in favor of a specific gender; either male or female (Gathings & Parrotta, 2013). These narratives portray essential views about the gender and patriarchal norms (Miller, Carbone-Lopez & Gunderman, 2015). Gendered norms define gender identity or expression as “good woman” or “good man”. Shi-xu (2016) and many others (e.g., Rafi, 2017; Carbaugh, 2007; Lee, 1992; Fowler et al., 1979) believe that socio cultural grounding of gender is crucial to interpret the criminal cases. According to Nobles and Schiff (2001), the auto poietic theory sees legal communication as cognitively open and normatively closed system due to its reception to outside influence within which alternative social discourses get translated into the discourse of law through language. Shenhav (2015) explains that meaning-making is rooted in the interpretation of social narratives intertwined with culture. Bakhtin (1981) also views discourse as a social joint activity of meaning-making ranging from surrounding texts and cultural nuances.

The above-mentioned studies provide us an analytical lens to understand solicitors’ narratives concerning how they negotiate gender and criminal identities through the cultural context to influence the court decision. Their lexical choices are predisposed by the cultural shades if not determine gender-based text production. The cultural-contextual meaning is imposed on and using the linguistic narratives (lexical, semantic and pragmatic choices) on the criminals or events they represent and manipulate perceptions. So, gendered narratives are indispensable to law in two ways. First, the existence of socio legal norms is not possible without its description in and through language. Second, narratives serve as an instrument for carrying out legal procedures as well as governing and maintaining its legitimization upon the socio legal actors (lawyers, witnesses, magistrates, clients etc.).

The past research regarding gender influence on the criminal processing outcomes is mainly confined to English-speaking countries (c.f. Fitri, Artawa, Satywati and Sawirman, 2019; Krapivkina, Druzhinina, and Sinyova, 2018; Vartiainen, 2017; Olsson & Luchjenbroers, 2014; Marmor, 2014; Solum, 2013; Hart, 2012; Bond & Jeffries, 2011 & 2010; Deering & Mellor, 2009; Soams, 2008). According to Curry (2014), there is a dire need to identify the gendered patterns of crime in the patriarchal discourses where gender operates and differs substantially from those found in the west. This study explores how women offenders are portrayed in the criminal proceedings in the magistrate courts of Punjab, Pakistan.

## **Methods and Materials**

### **Data Collection**

The data was based on five murder trial proceedings, which were typed over 700 pages of A4 sheets. The data comprised the solicitors' (prosecution and defense) interactions with witnesses, defendants, victims, opposing solicitors and judges. The murder trial proceedings covered detailed narratives: (a) ascertaining and notifying the parties about the judicial proceedings, (b) examining or/and interrogating the defendant and victim, (c) presenting of material and circumstantial evidence as well as identification procedures, (d) focusing on the deliberation in the form of argument and self-defense, and (e) stating the judge's verdict about sentencing and punishment. The narrative patterns included the contextual, interactional and propositional elements involved in resolving murder crime mystery throughout these stages (a-d) of the judicial proceedings. So, the solicitor's narratives in the form of opening arguments, testimony and closing arguments (e.g., orientation to murder event, the core narrative and the point) were taken from these verbatim transcripts of them under trial arbitration held at lower courts in Lahore, Rawalpindi and Multan between 1996&2007, and 2014 & 2017. The intervening period is marked by the moratorium on executions since 2008 till 2014 (see also Amjad & Rafi, 2017; Sim, 2015). The meaning of solicitor's narratives can be unpacked through interpretation and evaluation of the culture and context-specific structure of Pakistani courtrooms. These narratives construct gendered criminal identities as victim or victimizer and the corresponding network of multiplex cultural roles. They were recorded in the English language by court stenographers under the supervision of District and Sessions judge or Additional Sessional judge presiding over the matter thereby ensuring technical accuracy and authenticity providing a window into the socio-cultural functioning of linguistic processes in Pakistan's courtroom.

In Trial Case I "the woman named XX and the accused YY were found to be involved in Qatl-e-Amd (homicide) of ZZ. The wife was fallen prey to husband's violence a number of times. Having said that she also had illicit relations with the accused and with their connivance committed the murder of ZZ during the commission of robbery as they wanted to marry and usurp the property of the deceased husband". Trial Case II depicted "the brother's wife AA along with the support of husband's younger brother BB entangled in the attempted murder of DD. The wife had profit-motivated thoughts to get rich and marry a beautiful man as AA was her ex-love with wealthy future prospects. During summer vacations, they drove to hill station on separate vehicles and she refused to travel with her husband and instead chose to sit with his brother. Their plans to

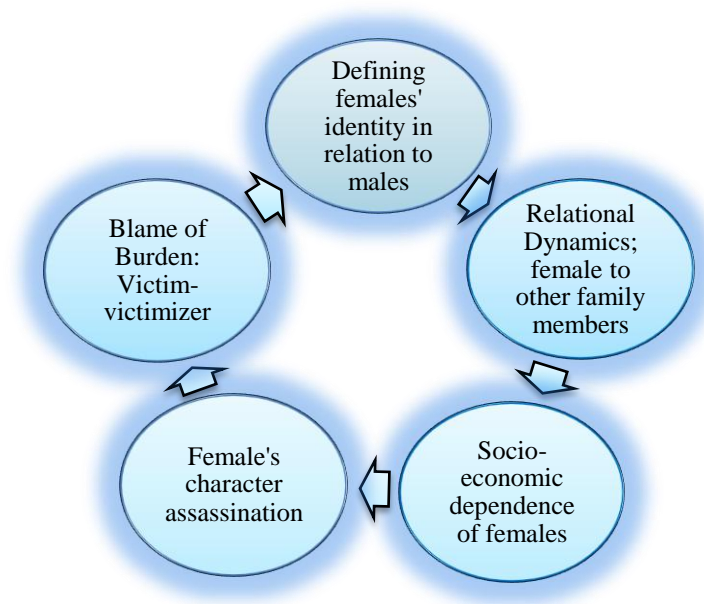
disfunction car brakes proved fatal for DD's life." In Trial Case III, "the woman had a medical history of schizophrenia who had no children. Her husband's ignorance forced her into an affair with the man in her neighbourhood. Continuous praise of the man next door compelled her into a dream world where happiness, success and money flaunted. Consequently, the man's charms bound her to give poison to her husband without knowing the results, that was murder of her soul-mate." Trial Case IV documented yet another homicide case where "a woman trapped her sister's husband by her physical charms in the sister's absence. Consequently, the ambition of achieving love ended in her own sister's murder. Trial Case V resolved the murder mystery of the second wife at the hands of a family comprising, husband, first wife and the son.

### **Ethical Considerations**

The British Society of Criminology's (BSC) Statement of Ethics (2015) was used as a frame of reference to follow legal ethics while collecting and handling the data. To avoid breach of national legal ethics, access to documents (judicial records and information) was granted under the Punjab Transparency and Rights to Information Ordinance 2013. Accordingly, "rights to information" included inspection of certified extracts of legal documents (c.f. The Due Process of Law Foundation, 2007; USAID's Analytical Research Report, n.d). The data consisted of duplicate copies of the original cases. To avoid unforeseen complications, the names and personal demographic details of death sentenced prisoners as well as those who evaded death sentencing was masked. The data would not be subject to subpoena because it was limited to those cases where the final verdict had been announced. Since the individuals were not under any kind of penal supervision, the data did not involve a risk of causing harm to those who were involved in the cases. Hence, the findings of this study do not support espionage, torture or spying that violate human rights in Pakistan.

### **Analysis**

The data was analyzed by describing, interpreting and critically explaining the solicitors' narratives. Figure 1 shows commonly emerging themes in the narratives of solicitors, which reveal about the influence of sociocultural dynamics in criminal justice system. These themes are elaborated by drawing illustrations from the sampled cases.



**Figure 1:** Emerging Themes for the Murder Trial Discourse of Punjab

### 1. Defining female's identity in relation to males

The solicitors placed shift of emphasis on the societal roles in their particular presentation of legal events. The defensive solicitor used linguistic expressions such as “the wife of deceased and *bhabhi* (sister-in-law) of complainant was being made scapegoat”, “the daughter of complainant and wife of accused”, “the telephone SIM was registered in the name of the husband of the lady”, “Mst. of accused started crying that her husband had been killed” “Mst. Of accused was pregnant” and “so had she been guilty, she should have run away along with her alleged paramour in order to save her skin as well as clutches of the police”. In all the expressions, woman was considered in relation to a man; husband, male relative, father or brother (complainant) and the accused. In this regard, Curry, Lee & Rodriguez (2006) maintained that victim's sex was an important determining factor in explaining sentencing disparity (see also Spohn & Beichner, 2000). On the other hand, the prosecution solicitor used the word “co-accused” and “offenders” instead of “lady” or “women”. His treatment showing lack of emotions and empathy with the women was an outward gesture of legal transparency presenting the other side of reality, that is protecting the husband or any other person thereby gaining favour for the client.

### 2. Relational Dynamics

The defense counsel narratives configured around the “husband and wife’s relationship based on trust” and “the children who became orphan” as a result of murder. The lexical choices marked the construction of gendered narratives by the defensive solicitors more than the prosecution ones. For example, the shift of topic from wife to husband and the innocent children in relational dynamics was used as a strategy to grant leniency towards women who are actually caregivers and have to look after the children. This point is also validated by the advocates of familial paternalism and solicitors presented each of the women entitled for leniency as parents (Daly, 1989 & 1987). Another prosecutor’s narratives marked a similar story where the first woman played an active role in the killing of the second woman as she wanted her son to be the “legal heir of the property”. These discursive strategies were used to gain sympathy in favour of their respective clients.

### **3. Blame of Burden: Victim-victimizer**

The legal narrative production of the solicitors takes input from the sociolinguistic and cultural normative influences. In this respect, narrative auto poiesis legitimizes the solicitors’ legal-linguistic discourse. The word choice “fallen prey” treats woman as the object, and such lexical construction implicate her action as a reaction to the violence done to her. The woman is automatically removed from the agentic role and identified as a victim to her husband. The solicitors use discursive constructions in which the husband becomes the agent so as to defend their female client. The use of lexical items “husband’s violence” offers a cultural explanation which justified her reaction that is her killing despite negating female mandate or gender stereotype. This viewpoint is further validated by Stevens (2012), Kilday (2007) and Walker (2003) whose findings revealed that women were lawfully subordinated to their husbands, and on marital oppression grounds, they were less likely to be convicted of the crimes. But the annoyance of the accused woman in trial case IV at her husband’s solemnization of second marriage that took place a year and half prior to the occurrence of second wife’s murder justified her abetment to commit such crime. The concept of another marriage without the consent of the first one has strong effect on the husband to the point of changing his mind to return back to his first wife and son. In this case, one woman becomes the victim and the other woman along with her family members become the victimizer included the husband of the victim. The words of the solicitor clearly pointed out the obnoxious act of the offenders as “the woman was murdered with sharp edged weapon in bed room of the house of her ‘inlaws’ whose throat and both palms were found cut and her body semi-burnt. The solicitor further confirmed the evidence with the remarks that “the step son raped

the deceased even before committing the murder as proved by the DNA profiling obtained from his sperm fraction. Even the swabs found on the handle of *chhuri* (bracelet) matched the husband, second wife and the step son.” So, the intensity of the oppression was doubled when the solicitor pointed out the double murder, that is, the second wife and the foetus through Punjab Forensic Science Agency’s report as “the deceased was pregnant and organs of generation a single male foetus in uterus organs developed head circumference 17 cm, CRL 14 cm, CHL 21 cm and adequate liquor was found”. The auto poietic narratives in the present cases revolve around the macro-narratives of social discourses occurring as norms of the Punjab’s community.

#### **4. Females’ character assassination**

The prosecution solicitor’s narratives revolved around negative elements regarding the female’s character. Her character was shown as “bad” and having an extra-marital affair. For instance, “the woman urges the accused to run away from the place of occurrence and found the deceased was a sexually decayed man” clearly highlighted her bad character. At another occasion, the defendant even used this negative quality as a sympathy card for the justification for her behaviour as a natural outcome. For example, phrases such as female as ‘weaker sex’ for crime committal (e.g., the wife opened the door of the house to let the accused in) and mismatch marriage (e.g., sleeping with the children in a separate room from the deceased and the wife was quite unhappy with an old-age husband as it was his second marriage) were used to gain favour for her. The female’s sociolinguistic narrative identity and the corresponding agency denial underpin pejorative gender typecasts constructing them as compulsive, fragile and passive members of society (see also we are, 2013). In a similar fashion, the husband involved in the murder of his wife would be happy upon the murder as “the father of accused had a suspicion on the character of deceased”. The element of doubt on the female’s character is vivid from the narratives of the accused solicitor. In this regard, the exponents of chivalry hypothesis entitled women with systematic discretion evolving through the solicitor’s idea that bad character women ought to be mollicoddled and protected (see Franklin & Fearn, 2008; Bishop & Frazier, 1984)

#### **5. Socio-economic female dependence**

The solicitors’ narratives were replete with social meanings and socio-cultural functions were realized through the linguistic structures. In Pakistan, the women are dependent and treated as objects to male members. They are subservient beings reliant on men. The solicitor’s employed discursive strategy highlighting the contextual issue of possessions and belongings of the deceased which

explicitly encoded men's power and authority over women. In legal discourse, they are objects instead of subjects and in this way, their identities are easily negotiated through gendered narratives. For example, deprivation of property inheritance (e.g., the complainant planted against my client because her husband was a man of means and valuable property) and ownerships custody (e.g., the telephonic data is doubtful since the SIM was not registered in lady's name) clarified the positioning of the female clients as socio-economically dependent members of the family unit. In addition, since dependence upon males is fundamental right of females in Pakistan, the accused was overheard by a witness saying that "he would be happy to see her dead in order to save property". In this way, inherited wealth became an important factor behind the murder of the deceased lady.

### **Limitations of the Study**

This study is based on front stage courtroom transcripts and the researchers are not aware of the backstage interactions between defense counsels and the clients. There was also no information pertaining to how far the clients were coached to present witness and testimony in front of other solicitors and judges and the amount of information (which the clients disclosed about themselves) that the solicitors chose not to share with the court personnel. No data is found about the time solicitors spent with the clients and how they interviewed them. In this way, differences in the depth and details of the questions that were posed to probe defendant's responses may potentially affect any information obtained from them thereby leaving the solicitors better or less prepared for doing strategic communication in the courtroom on their behalf.

### **Policy Implications and Recommendations**

Murder cases are considered within the parameters that are supposedly defined by law of course mostly but not always beyond sociolinguistic dynamics. The solicitors however tend to manipulate these socio cultural aspects that in many ways favour or penalize either men or women to influence the decision of the judge. The study suggests reviewing the legal system about how far legalese can be interpreted within the socio cultural framework that may not influence the verdict in favour or against men or women. Hence, the study recommends the discipline of legal linguistics that provides insights about gendered discourse within the specialized discipline of law.

### **Conclusion**

This study is rife with linguistic narrative instances of patronizing and gendered judicial behaviour through gendered lens and sexual rationality in



patriarchal societies. The solicitor's intended to employ gendered narratives (e.g., socio-economic dependence, unequivocal inequality, marital oppression, emotional empathy for females etc.) during the criminal proceedings of murder trial discourse. Kalunta-Crumpton (2000) asserts that solicitors in courts customarily use gendered narratives mirroring the socio-cultural features through various linguistic innovations in the Criminal Act Laws. So, courtroom becomes a place of social constructions reflective of the societal narratives. Within these narratives, people are tied up in multifarious social activities such as culture, law and courts which serve to enforce gendered linguistic choices. In the courtroom context, a sundry of linguistic resources is used by the solicitors to defend their clients and can be exploited as an indicator of sociolinguistic practices, for example, religion, the family system, archetypal images, socially constructed gendered roles, mental illness, dysfunctional parenting and socio-economic factors which demonstrate negotiated criminal identities. Narratives, women identity and law are intertwined in courtrooms and Edwards (2009) very aptly defines identity as an amalgam of linguistic narratives, gender, culture, ethnicity, religion and race. Hence, courtroom narratives in Pakistan is observed to be principally a sociolinguistic performance contributing to the field of forensic linguistics.

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