

The Unwritten Constitution of Patriarchy: Gendered Limits of Parliamentary Representation¹Abdul Samad Bajwa²**Abstract**

Patriarchal norms often function as an unwritten constitutional order that regulates gendered agency through conditional approval, recognition, and withdrawal, thereby limiting the substantive effects of formal equality within representative institutions. This article addresses a gap in Feminist institutionalism (FI), which has focused on post-entry parliamentary exclusion while under-theorizing the pre-institutional cultural logics that structure legitimacy (Childs & Kenny, 2014; Krook & Mackay, 2011). Although gender quotas have expanded descriptive representation in contexts such as Scotland, Argentina, and Pakistan, substantive influence remains constrained. Using qualitative narrative analysis informed by law-and-literature approaches, the study examines Nadia Hashmi's *The Pearl That Broke Its Shell* and *One Half from the East* as empirical sites of governance. It demonstrates how the *bacha posh* practice operates as a mechanism of provisional authorization and revocable exception, prefiguring parliamentary silencing and illustrating how legitimacy is culturally allocated prior to institutional entry. By treating literary narrative as evidentiary data, the article advances FI theory and argues for integrating cultural analysis into institutional reform, particularly in Global South contexts where informal normative orders remain decisive.

Keywords: informal constitutionalism, patriarchy, parliamentary representation, feminist institutionalism, gendered agency, narrative governance

1. Introduction

Representative institutions such as parliaments did not emerge in social vacuums. They developed within pre-existing social hierarchies and normative orders that shaped expectations about authority, legitimacy, and political participation. As a result, they inherited and reproduced gendered norms that predated their formal rules, frequently undermining gender equality despite the adoption of constitutional guarantees or statutory mandates (Mackay, 2014).

Feminist institutionalism (FI) clarified this dynamic by distinguishing between formal institutions—constitutions, statutes, procedural rules—and informal institutions, including unwritten conventions, gendered networks, and deeply embedded cultural expectations. FI scholarship demonstrated how these informal practices interact with formal structures in ways that constrain women's substantive political participation, even where descriptive representation appears to improve (Childs & Kenny, 2014; Krook & Mackay, 2011). In other words, legal inclusion does not automatically translate into meaningful influence.

Empirical cases illustrate this tension. In Scotland's devolved parliament, elite feminist alliances were instrumental in increasing women's numerical representation. However, these networks often privileged professionalized, institutional actors and sidelined broader Women's Liberation objectives, contributing to adversarial political cultures resistant to structural transformation (Morrison, 2021). In Argentina, the introduction of gender quotas significantly increased the proportion of women in the legislature. Yet entrenched stereotypes and party hierarchies constrained women's agenda-setting power, limiting their capacity to advance transformative policies on gender equality (Hinojosa & Franceschet, 2008). In Palestinian legislative contexts, tribal and patriarchal power structures frequently overrode formal quota provisions, obstructing women's substantive representation despite their formal presence.

These examples underscore a persistent divide between formal inclusion—such as quotas and equality clauses—and lived exclusion rooted in pre-institutional logics. Patriarchy can be understood as operating like an informal constitutional order: a normative system that allocates legitimacy through conditional approval, social recognition, and the threat of withdrawal. In practice, such unwritten systems can be more binding than codified law (Tushnet, 2015; Brännmark, 2022). Unlike formal constitutions, which define rights and distribute powers, this informal order governs through social enforcement, reputational control, and cultural sanction, often rendering legal reforms largely symbolic (Irving, 2008).

Significant gaps remain in the scholarship. FI has tended to focus on elite actors and post-entry institutional dynamics, underexploring the cultural processes that pre-structure access to institutions before formal participation begins. Moreover, the interdisciplinary potential of approaches such as law and literature remains underutilized. Although scholars have recognized literature's capacity to illuminate moral and political reasoning (Nussbaum, 1995), novels are rarely operationalized as empirical sites for analyzing governance and constitutional logics.

This paper addresses these gaps by analyzing the novels of Nadia Hashmi as cultural texts that depict the conditionality of *bacha posh* practices. These narratives are treated not merely as fiction but as sites that reveal the mechanisms of what may be termed patriarchal constitutionalism. By examining how narrative structures authorize and withdraw legitimacy from female characters, the analysis demonstrates how cultural logics prefigure institutional exclusion. The argument calls for

¹ This article is developed from the author's M.Phil thesis submitted to the University of Lahore, Pakistan. The arguments have been substantially revised, conceptually reframed, and extended to address broader questions of social visibility, political exclusion, and representation. The present work has not been published elsewhere.

² The Author serves as a senior official in the Parliamentary Service of Pakistan and researches gender, feminist institutionalism, and parliamentary reform. His work examines recognition, identity continuity, and women's political representation through interdisciplinary analysis. He is developing doctoral research focused on institutional transformation and gender-sensitive parliamentary governance in comparative perspective.

feminist institutionalism to integrate cultural empirics into its analytical framework in order to design reforms capable of achieving genuinely transformative change.

2. Research Problem and Questions

Despite constitutional equality commitments, parliaments reproduce exclusion via informal norms treating social biases as background rather than governing structures (Helmke & Levitsky, 2004). Literary depictions of gendered constraint remain siloed from institutional analysis, obscuring how patriarchy regulates legitimacy pre-institutionally (Kandiyoti, 1988). This gap under-theorizes conditional governance's impact on substantive representation, addressed here through Hashmi's fiction as evidence.

Accordingly, the paper is guided by the following questions:

- 1) How do Hashmi's novels represent patriarchy as an informal constitutional system governing legitimacy and participation beyond formal law?
- 2) Through what narrative mechanisms are authorisation, exception, and withdrawal enacted, and how do these mirror constitutional logics?
- 3) How is gendered agency negotiated within this informal constitutional order without reducing agency to either resistance or victimhood?
- 4) What do these narrative dynamics reveal about the persistence of exclusion within formally inclusive parliamentary and representative institutions?

3. Key Concepts and Framework

In this study, informal institutions are defined as governance practices and normative arrangements that attain de facto constitutional authority without formal legal codification. They regulate legitimacy and participation through socially enforced expectations rather than written law, thereby structuring political life beyond the scope of formal rules (Helmke & Levitsky, 2004).

Agency is conceptualised not as unconstrained autonomy but as action negotiated within conditions of structural constraint. This perspective recognises that individuals exercise strategic and reflective forms of agency within enduring relations of power, adapting to and manoeuvring within the limits imposed upon them (Kandiyoti, 1988; Mahmood, 2005).

Representation is understood as encompassing both social visibility and institutional inclusion. Drawing on classical and feminist theories of representation, this approach emphasises that formal presence alone does not guarantee substantive influence; without recognition and authority, inclusion remains symbolic rather than transformative (Pitkin, 1967; Phillips, 1995).

4. Literature Review

Feminist constitutionalism conceptualises constitutions as gendered artefacts. Although constitutional texts frequently articulate commitments to equality, they often embed patriarchal assumptions in their interpretive frameworks, institutional design, and implementation practices (Dixon, 2012). The Asian constitutional landscape illustrates this variation. In contexts such as Nepal, where equality rights are formally justiciable, civil society mobilisation has secured comparatively progressive constitutional clauses. In contrast, systems such as Singapore's, marked by constitutional silence on certain gendered protections, demonstrate more restrained textual commitments. Across this spectrum, however, implementation frequently falters where constitutional guarantees confront entrenched private-sphere norms and familial hierarchies.

The concept of informal constitutionalism complements this analysis. Unwritten conventions, shared expectations, and routinised practices may acquire "constitutional force" not because they are legally enforceable, but because they are stable, predictable, and socially authoritative (Helmke & Levitsky, 2004; Tushnet, 2015). Such norms structure political behaviour and delimit institutional possibilities, often shaping outcomes more decisively than formal text. In this sense, constitutional order extends beyond codified documents to encompass the normative frameworks that govern recognition and authority in practice.

Feminist institutionalism (FI) applies this insight to legislative institutions, conceptualising parliaments as gendered workplaces in which informal rules persist despite formal reform (Waylen, 2012). Masculinised agendas, exclusionary networks, and informal veto mechanisms may survive quota adoption or equality legislation, thereby constraining women's substantive influence. Scotland's devolution settlement provides a salient example. The introduction of "gender gadget" mechanisms, including quota strategies, diversified parliamentary membership; however, these reforms also consolidated forms of elite feminism that were less attentive to class inequality and more radical transformative agendas (Morrison, 2021). More broadly, gender quotas have generated significant gains in descriptive representation across multiple jurisdictions, yet substantive representation frequently lags. Women legislators may adopt dominant, masculinised policy priorities to secure legitimacy, while confronting tokenism and marginalisation within party hierarchies (Hinojosa & Franceschet, 2008; Walsh, n.d.). In Pakistan, efforts to institutionalise gender-sensitive legislative practices reveal the limits of formal feminist reform when confronted with deeply entrenched tribal and patriarchal power structures. These cases underscore a recurring pattern: institutional redesign alone does not dismantle the informal norms that structure authority.

Scholarship on patriarchy reinforces this institutional perspective. Patriarchy can be understood as a system that hierarchically regulates liberty and authority along intersecting axes of gender and social position. It is sustained through adaptive practices, including what Kandiyoti (1988) terms "bargaining," whereby individuals strategically navigate gendered constraints. Brännmark (2022) further conceptualises legitimacy as normatively structured, highlighting how authority is granted or

withheld within institutional orders. However, critiques of FI suggest that the framework has insufficiently examined the cultural logics that pre-structure access to institutions before formal political entry (Bjarnegård & Murray, 2019).

Literature offers an underutilised site for analysing these cultural foundations. Feminist literary criticism has long examined how narrative forms encode and reproduce patriarchal motifs—such as the regulation of women’s bodies and voices in works by authors like Margaret Atwood—treating texts as diagnostic tools for power relations. Law-and-literature scholarship similarly understands narratives as tracing the operation of norms, ethical frameworks, and institutional authority (Nussbaum, 1995; Spivak, 1988). Yet integration between these traditions and feminist institutionalist analysis remains limited. Novels such as those by Nadia Hashmi, which foreground conditional agency and gendered legitimacy, are frequently treated as illustrative rather than as evidentiary sources for theorising governance (Felski, 2008).

This paper positions itself at the intersection of these debates. It operationalises literary texts as empirical material for feminist institutional analysis, conceptualising patriarchy as a form of constitutional pre-structuring that shapes legitimacy prior to formal political participation. In doing so, it extends Pitkin’s (1967) and Phillips’s (1995) analyses of the gap between symbolic and substantive representation by situating that gap within culturally embedded normative orders. The argument underscores the need to incorporate cultural empirics—particularly in Global South contexts, where informal authority structures remain highly salient—into feminist institutionalist frameworks (Young, 2000).

5. Methodology

This study employs qualitative narrative analysis, treating literary texts as empirical sites where informal constitutional norms are articulated, enacted, and contested. Drawing on law-and-literature and law-and-society approaches, narrative is understood not merely as representation but as a medium through which authority structures and normative expectations become clear. Literary narratives are particularly suited to examining informal governance because they foreground lived experience, internal reasoning, and the everyday operation of power beyond formal law.

The analysis focuses on narrative moments of authorisation, constraint, and withdrawal; such as access to mobility, education, and public presence; as indicators of governance mechanisms. These moments are examined across character development, internal monologue, and plot transitions to trace how gendered agency is regulated through informal constitutional norms.

6. Analysis

6.1. Patriarchy as an Informal Constitutional System

In *The Pearl That Broke Its Shell*, Nadia Hashmi constructs patriarchy as a system possessing constitutional authority despite lacking formal codification. Rahima’s transformation into a *bacha posh*—marked by binding her chest, adopting male dress, and assuming a male social identity—does not confer rights grounded in personhood. Rather, it grants conditional privileges: mobility, access to education, and public visibility. These are socially authorised allowances, contingent upon compliance with gendered expectations and limited by temporal boundaries (Hashimi, 2014).

This structure parallels what Tushnet (2015) describes as informal constitutional change: shifts in governing authority that occur through entrenched social practices rather than textual amendment. Such norms derive binding force from social predictability and collective recognition rather than judicial enforcement. Similarly, Helmke and Levitsky (2004) conceptualise informal institutions as socially shared rules enforced outside officially sanctioned channels. In Hashmi’s narrative, patriarchal authority operates precisely in this manner. The family’s strategic deployment of *bacha posh* status—mobilising Rahima to secure economic survival—demonstrates flexibility that preserves, rather than destabilises, male authority. Kandiyoti’s (1988) notion of “patriarchal bargaining” is instructive here: adaptation occurs within a framework that ultimately consolidates the underlying order.

A comparable constitutional logic appears in *One Half from the East*. Following her father’s injury, Obayda becomes Obayd at the suggestion of Auntie Aziza, who frames the transformation as beneficial “good fortune” for the family (Hashimi, 2008). The shift repositions Obayda from marginalised daughter to privileged son-substitute. Obayd receives preferential food allocation, educational access, and unrestricted mobility—benefits distributed hierarchically in accordance with patriarchal norms. Brännmark’s (2022) account of legitimacy as normatively structured authority illuminates this dynamic: status and recognition are allocated according to embedded criteria of gendered worth. Across both novels, governance precedes formal law. Social recognition constructs legitimacy prior to any state acknowledgment, underscoring patriarchy’s operation as an unwritten constitutional order.

6.2. Narrative Mechanisms of Authorization, Exception, and Withdrawal

Hashmi’s narratives repeatedly deploy three regulatory mechanisms that mirror constitutional governance: authorization, exception, and withdrawal. Authorization occurs through provisional permission. In *The Pearl That Broke Its Shell*, Rahima’s mother consents to the *bacha posh* transformation with visible hesitation, effectively granting a time-bound exception to prevailing gender norms (Hashimi, 2014). This exception suspends ordinary restrictions while leaving the overarching system intact.

Withdrawal is abrupt and decisive. As Rahima reaches puberty, the privileges associated with male presentation are rescinded. Mobility, voice, and visibility contract simultaneously, illustrating the revocability of recognition. This transition resembles emergency constitutional powers: temporary suspensions justified by necessity, but structured to preserve sovereign authority (Tushnet, 2015). In Hohfeldian terms, liberties convert into duties; conditional permissions revert to compulsory compliance (Helmke & Levitsky, 2004).

One Half from the East intensifies this logic through the character of Rahim, an older *bacha posh* who mentors Obayd. Rahim's eventual forced marriage demonstrates the termination of exception status. The revocation is not gradual but categorical, confirming that recognition operates as concession rather than entitlement. Obayda internalises this vulnerability, recognising that her own status is equally contingent (Hashimi, 2008). Narrative devices—anticipatory monologues, sudden plot reversals, and collapsed character arcs—render constitutional conditionality visible. Mahmood's (2005) critique of liberal assumptions about stable autonomy clarifies this dynamic: agency and recognition are embedded within structures capable of reasserting control at any moment.

6.3. Gendered Agency Beyond Binary Models

Both Rahima and Obayda exhibit forms of agency that resist simplistic victim–resistance dichotomies. Their decisions reflect strategic calculation within constraint rather than unmediated autonomy. Rahima recognises the social costs attached to visibility, weighing exposure against survival (Hashimi, 2014). Obayda's search for permanence—symbolised through her pursuit of rainbows—blends imaginative aspiration with pragmatic navigation (Hashimi, 2008).

Kandiyoti's (1988) concept of bargaining captures this negotiated engagement with patriarchal structures. Agency manifests through adaptation, accommodation, and tactical self-presentation rather than open defiance. Mahmood (2005) similarly challenges liberal frameworks that equate agency exclusively with resistance, arguing that ethical self-formation and compliance can also constitute forms of action. Hashmi's protagonists therefore embody structured agency: action exercised within, not outside, normative constraint.

6.4. Parliamentary Prefiguration

The narrative conditionality depicted in these novels prefigures institutional silencing within parliamentary contexts. The revocable recognition granted to Rahima and Obayda parallels the experiences of women legislators operating within masculinised institutional cultures. FI scholarship conceptualises parliaments as gendered workplaces in which informal veto networks and agenda-setting norms constrain women's substantive influence (Childs & Kenny, 2014).

Similarly, global quota reforms have produced gains in descriptive representation without guaranteeing agenda authority (Hinojosa & Franceschet, 2008). The *bacha posh* analogy clarifies this dynamic: privileges are granted conditionally, subject to strategic revocation. Literary narrative thus exposes the pre-institutional allocation of legitimacy that statistical analyses may obscure. Pitkin's (1967) distinction between descriptive and substantive representation becomes materially legible: presence without entrenched recognition remains fragile.

7. Institutional Implications: Parliament and Representation

The novels' portrayal of conditional recognition elucidates persistent gaps in parliamentary representation. Formal quotas may secure women's presence within legislative seats, yet social norms often pre-allocate legitimacy through unwritten hierarchies (Childs & Kenny, 2014). Where patriarchal authority remains culturally entrenched, women legislators encounter informal vetoes and marginalisation that limit substantive influence (Hinojosa & Franceschet, 2008).

Reforms focused exclusively on numerical inclusion fail to disrupt these deeper normative structures (Mackay, 2014). The *bacha posh* parallel demonstrates how privileges can be strategically granted and withdrawn to preserve underlying authority. Literature therefore reveals a critical insight: legitimacy allocation frequently occurs prior to institutional entry. Without cultural transformation, formal equality provisions remain precarious (Pitkin, 1967).

8. Conclusion

Across Hashmi's novels, patriarchy operates as an unwritten constitutional order regulating recognition, permission, and withdrawal more effectively than formal law. Through Rahima and Obayda's experiences, gendered legitimacy emerges as socially allocated, conditionally granted, and strategically revoked. These narrative patterns reflect broader governance structures in which authority is structured before institutional participation begins.

By analysing authorization, exception, and withdrawal as regulatory mechanisms, this study demonstrates that women's agency arises through negotiated engagement within patriarchal constraint. This insight clarifies the recurring gap between descriptive inclusion and substantive power in institutional contexts: legitimacy has already been hierarchically organised through informal norms.

The central contribution of this analysis lies in operationalising literary narrative as empirical evidence of governance. Hashmi's fiction renders visible the pre-institutional distribution of voice and authority that feminist institutionalism must confront. Where unwritten constitutional norms continue to structure legitimacy, formal equality remains fragile. Transformative reform therefore requires attention not only to institutional design but also to the cultural orders that precede and sustain it.

References

- Brännmark, J. (2022). Patriarchy as institutional. *Journal of Social Ontology*, 7(2), 233–254.
- Butler, J. (1990). *Gender trouble: Feminism and the subversion of identity*. Routledge.
- Charlesworth, H. (1999). Feminist methods in international law. *American Journal of International Law*, 93(2), 379–394.
- Childs, S., & Kenny, M. (2010). *Gender, politics and institutions: Towards a feminist institutionalism*. Palgrave Macmillan.
- Chinkin, C. (2000). Gender, human rights and armed conflict. *Human Rights Quarterly*, 22(2), 467–515.
- Dixon, R. (2012). Feminist constitutionalism. In M. Rosenfeld & A. Sajó (Eds.), *The Oxford handbook of comparative constitutional law* (pp. 199–224). Oxford University Press.

- Felski, R. (2008). *The uses of literature*. Blackwell.
- Hashimi, N. (2014). *The pearl that broke its shell*. HarperCollins.
- Helmke, G., & Levitsky, S. (2004). Informal institutions and comparative politics: A research agenda. *Perspectives on Politics*, 2(4), 725–740.
- Irving, H. (2008). *Gender and the constitution: Equity and agency in comparative constitutional design*. Cambridge University Press.
- Kandiyoti, D. (1988). Bargaining with patriarchy. *Gender & Society*, 2(3), 274–290.
- Krook, M. L. (2009). *Quotas for women in politics: Gender and candidate selection reform worldwide*. Oxford University Press.
- Mackay, F. (2014). Nested newness, institutional innovation, and the gendered limits of change. *Politics & Gender*, 10(4), 549–571.
- Mahmood, S. (2005). *Politics of piety: The Islamic revival and the feminist subject*. Princeton University Press.
- Nussbaum, M. C. (1995). *Poetic justice: The literary imagination and public life*. Beacon Press.
- Phillips, A. (1995). *The politics of presence*. Oxford University Press.
- Pitkin, H. F. (1967). *The concept of representation*. University of California Press.
- Spivak, G. C. (1988). Can the subaltern speak? In C. Nelson & L. Grossberg (Eds.), *Marxism and the interpretation of culture* (pp. 271–313). University of Illinois Press.
- Tushnet, M. (2015). Informal constitutional change. *Drake Law Review*, 63, 693–720.
- Walby, S. (1990). *Theorizing patriarchy*. Blackwell.
- Young, I. M. (1990). Structural injustice and the politics of difference. In *Justice and the politics of difference* (pp. 39–65). Princeton University Press.
- Young, I. M. (2000). *Inclusion and democracy*. Oxford University Press.