

MEDIA BRIEF

FREE LEGAL AID AND MEDIA IN PAKISTAN

FEBRUARY 2016



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PIL AT

Pakistan Institute of
Legislative Development
And Transparency

PILDAT is an independent, non-partisan and not-for-profit indigenous research and training institution with the mission to strengthen democracy and democratic institutions in Pakistan.

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Abbreviations and Acronyms

DLEC	District Legal Empowerment Committees
Cr. P. C	Code of Criminal Procedure

Foreword

PILDAT has initiated a national and provincial level legislative and policy advocacy effort to bring reforms in the area of Police, Prosecution and Free Legal Aid in Pakistan.

This media brief is a compilation of proposed reforms originating from PILDAT's Consultative Sessions held at the Federal and Provincial level on strengths and weaknesses in the provision of Free Legal Aid services in the target areas. These sessions were held with key stakeholders including heads of relevant Bar Councils, prominent lawyers and legal experts, and members of Free Legal Aid Committees in Islamabad, Punjab and Sindh, who proposed policy alternatives for the consideration of the relevant legislatures.

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Disclaimer

The reform proposals contained in this brief do not necessarily represent the views of the Development Alternates Inc. (DAI).

Islamabad
February 2016

Free Legal Aid as a Universal Human Right

The term 'legal aid' refers to various **forms of legal assistance and support services provided to indigent litigants for accessing the mainstream legal system. Legal aid is provided free of cost by a lawyer** either in an individual or organisational capacity through a legal aid firm, department, or Non-Governmental Organisation (NGO).

Under International Law, the International Covenant on Civil and Political Rights (ICCPR) all States to provide free legal aid to the public. **Legal aid is recognised as a basic human right in the ICCPR's provisions on minimum guarantees in the determination of criminal charges against individuals.** These minimum guarantees include: 1) a person's right to defend oneself through legal assistance of one's own choosing; and 2) to have legal assistance assigned to a person in any case as required by the interests of justice and without payment if the person does not have sufficient means to pay for it (Article 14).

The international human rights standards unequivocally regard inexpensive and speedy justice and right to fair trial, as essential elements for human development. The right to fair trial has, in its content, the right to equal protection before law and the right of defence before a legal forum. The United Nations' General Comment No. 28 on the ICCPR -- which addresses equality between men and women -- holds that State parties should take measures to ensure that **women have equal access to legal aid, and in family matters in particular.** Provision of free legal assistance is also directed or recommended in other UN Conventions, general comments, and general recommendations **in particular areas such as children's rights, racial discrimination, migrant worker rights, and housing rights.** The UN Basic Principles on the Role of Lawyers state:

"Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organisation and provision of services, facilities and other resources." (Principle 3.3)

Legal Aid Framework in Pakistan

The Constitution of the Islamic Republic of Pakistan 1973 endows the State with responsibility for provision of inexpensive and expeditious justice, without any discrimination. It is the responsibility of the State to ensure easy, accessible, efficient, speedy and inexpensive justice to all its inhabitants without any discrimination. However, the importance of the right to fair trial and legal aid necessitates comprehensive and concerted efforts for provisions of legal aid.

In Pakistan, a large section of the population is unable to access the formal legal system mainly for want of financial resources and general lack of awareness of the law and legal rights. There is no comprehensive and uniform framework for legal aid.

However, accessing the formal legal system is still an unaffordable luxury for majority of people in Pakistan.

Pakistan is signatory of and has ratified a number of International Covenants and Conventions that obligate the State and governments to ensure access to justice via legal aid to needy persons, both citizens and non-citizens. Article 37 (d) of Chapter 2 – Principles of Policy of the Constitution requires the State to provide 'inexpensive and expeditious justice'. **Article 10(a) of the Constitution guarantees the 'Right to Fair Trial' as a fundamental right. 'Equality before the law' is another fundamental right guaranteed by Article 25 of the Constitution.**

Section 13(1-a) of the Legal Practitioners and Bar Council Act 1973 deals with the provision of legal aid. This section came into operation when in 1999 Pakistan Bar Council notified the Free Legal Aid Committees Rules, 1999. **The Free Legal Aid Committees Rules, 1999 provide for legal aid committees at the centre, provinces and districts.** Each legal aid committee maintains two lists of lawyers' panels -- lawyers who offer services on pro bono basis, and those who offer services on low bono basis. The Free Legal Aid Committees Rules, 1999 require each member of Pakistan Bar Council and Provincial Bar Councils to conduct at least one case each year assigned to the member by the Legal Aid Committee.

The Public Defenders & Free Legal Aid Ordinance, 2009 was a progressive step towards a sustainable legal aid system in the country. The Ordinance provided for setting up a Public Defender's System. The Chief Public Defender was heading this office at the Provincial level and ran legal aid work through the offices of District Public Defenders and Defenders for Legal Aid Committees. However, this Ordinance could not evolve into a law.

The District Legal Empowerment Committees (Constitution & Functions) Rules, 2011 is another source, which provides for establishment of the District Legal Empowerment Committees to provide legal aid. Under the rules, District Legal Empowerment Committee exists at the district level under the chair of District and Session Judge (*Zilla Qazi*) who acts as the Chairperson of the Committee. Other members are Deputy Commissioner (Political Agent), Superintendent Jail and a representative of the Civil Society (as co-opted member).

The Civil and Criminal Procedure Codes also contain provisions dealing with legal aid. Order 33 of Code of

Civil Procedure, 1908 (CPC) makes a provision on 'Paupers' in case the plaintiff establishes that he is unable to pay court fee. Section 340 of Code of Criminal Procedure, 1898 (CrPC) provides for counsel at State expense.

The Destitute Litigant Fund Rules, 1974 provides for legal assistance in constitutional matters to destitute litigants. The rules define a destitute person as 'one who has no means to pay the court fee or other charges in respect of a writ petition'.

Challenges in Service Delivery of Free Legal Aid

Legal aid remains a neglected area in Pakistan. There are laws/rules but when they are passed through the practicability, efficiency and efficacy tests, they suffer from serious deficiencies. These legal instruments -- designed with the objective to ensure poor and vulnerable segments' access to the formal justice system -- have the following in-built problems, which slow down and sometimes stop their smooth operation:

- i. Insufficient Funding
- ii. Lack of Delivery Mechanisms
- iii. Over-Reliance on Voluntary Lawyers
- iv. Weak Supply Side
- v. Lack of Coordination/Cooperation between Providers
- vi. Absence of Monitoring, Reporting and Referral Systems
- vii. Limited Awareness in Public and Lawyers
- viii. Non-Uniformity in Definitions and Criteria
- ix. Lack of Indigent Litigants Screening and Applications System

Policy Recommendations and Way Forward

Access to justice in Pakistan has deteriorated to the extent that justice has ultimately failed to reach the doorsteps of the underprivileged segments of society resulting from lack of awareness of free legal aid services and their faulty provision at the grassroots level. Within the last several years' steadily more effective prosecution services are functioning in the Provinces. These need to be balanced and supplemented by equally effective defender services. To ensure access to inexpensive and speedy justice -- specifically to vulnerable communities -- urgent reforms in free legal aid system in Pakistan are necessary and must factor in the following policy commendations:

- i. The Federal Government should **re-enact Public Defender Legal Aid Office Ordinance 2009 as an Act of Parliament**;
- ii. All Provinces should enact this law with the

There should be an efficient legal aid regulatory system with a permanent committee at Central and sub-committees at the grassroots level. There should also be a body established to review the performance of legal aid lawyers

amendment that free legal aid is made available not only in proceedings before a court of law but also at any stage of the investigation before the police;

- iii. **A Free Legal Aid Authority should be established both at the Federal and Provincial levels** to monitor and supervise the work of public defender services;
- iv. Monitoring and assessment of services should be done to ensure accountability and transparency through involving the DLECs and Bar Council Committees;
- v. Bar councils should engage senior lawyers for the training of young lawyers to sensitise them on pro bono services;
- vi. Public Defender Services (through the passage of Public Defenders Ordinance 2009) should be established to change 'Thana' culture and perceptions of police amongst the public;
- vii. Capacity of organisations providing legal aid services must be enhanced in terms of scale, scope and quality;
- viii. Strong coordination mechanisms must be developed between Bar Associations, the Bench and Civil Society Organisations;
- ix. Legal Aid Centres and Legal Aid Desks must be established at every Bar Association level and be properly publicised for creating public awareness on law, legal rights and access to justice;
- x. Proper reporting and record keeping systems must be developed;
- xi. Clinical Legal Education programmes, both 'street law' and 'legal clinic' models at local or nearby law colleges, could compliment both legal aid services and public awareness efforts;
- xii. Compulsory continuing legal education may be introduced throughout the country aimed at the training and development of young lawyers;
- xiii. There should be an efficient legal aid regulatory system with a permanent committee at Central and sub-committees at the grassroots level. There

- should also be a body established to review the performance of legal aid lawyers;
- xiv. There should be a proper mechanism of preparation and listing of legal aid lawyers;
- xv. Eligibility criteria of beneficiaries should be well thought out. A beneficiary of legal aid must be a person who lives below the poverty line and cannot afford to pay the expenses of litigation, and who must provide proof of his financial position such as a declaration of disposal income;
- xvi. The Law Division of the Federation and the Law Departments of the Provincial Governments should ensure adequate funding in next year's budgets in consultation with the concerned High Courts, Bar Councils and Committees;
- xvii. The Pakistan Bar Council may consider on a priority basis the revision of the Free Legal Aid Rules 1999 to provide for setting up of legal desks and legal aid centers in the District Courts and for more active involvement of CSOs in the process of identifying and facilitating the needy litigants, and to create public awareness;
- xviii. Current definition of legal aid should be amended to encompass pre- and post-trial access to free legal aid.
- policy responses;
- viii. **Build capacity of journalists covering access to justice issues** so that they can perform their watchdog, agenda setter and gatekeeper roles vis-a-vis legal aid provision more effectively. CSOs can facilitate the media in building capacity of journalists to cover access to justice issues and providing support in research, raising awareness and campaigning for specific cases and interventions;
- ix. **Train and encourage journalists to use the Right to Information law** frequently and persistently and play the watchdog role effectively.

What Can the Media Do?

- i. As a watchdog, **investigate and report** executive and judicial/legal community's institutional organizational ineffectiveness to deliver free legal aid and access to justice;
- ii. As an agenda-setter, **raise public awareness to inform needy litigants** about free legal aid services available at various levels. In areas of low literacy, television and radio are more effective means to educate people about how they can avail free legal aid services and get access to justice;
- iii. As an agenda-setter, **increase demand for reforms** in order to make the political executive, judicial/legal community and other relevant authorities responsive to their roles regarding free legal aid delivery and access to justice;
- iv. **Mobilise pressure** on Parliament, Provincial Assemblies, and the respective Federal and Provincial Governments **to provide adequate funding, support and oversight** to the existing fora, to take steps for **establishing public defender services**, and **to undertake necessary legislative reforms**;
- v. **Highlight contributions of hard-working, honest lawyers and community service workers** who are working with commitment to provide access to justice and free legal aid services to the people;
- vi. **Balance reporting of criminal cases with analysis** of social causes, hindrance in provision of justice and possible legal responses;
- vii. **Highlight social needs of access to justice** and link policymakers with public to help improve

Recommended Reading

1. Position Paper on Free Legal Aid System in Pakistan
Online in English at:
http://www.pildat.org/Publications/publication/ROLR/FreeLegalAidinPakistan_PILDATPositionPaper.pdf
In Urdu at:
http://www.pildat.org/Publications/publication/ROLR/FreeLegalAidinPakistan_PILDATPositionPaper_Urdu.pdf
In Sindhi at:
http://www.pildat.org/Publications/publication/ROLR/FreeLegalAidinPakistan_PILDATPositionPaper_Sindhi.pdf
2. Policy Brief: Policy Recommendations for Reforms in Free Legal Aid System of Pakistan
Online in English at:
<http://www.pildat.org/Publications/publication/ROLR/PolicyRecommendationsForReformsInFreeLegalAidSystemOfPakistan.pdf>
In Urdu at:
http://www.pildat.org/Publications/publication/ROLR/PolicyRecommendationsForReformsInFreeLegalAidSystemOfPakistan_Urdu.pdf

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