

POLICY BRIEF | POLICY RECOMMENDATIONS FOR
**REFORMS IN FREE LEGAL AID
SYSTEM OF PAKISTAN**

JANUARY 2016



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Abbreviations and Acronyms

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

Preface

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 brief principally 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.

Acknowledgements

This Policy Brief on **Free Legal Aid Services in Pakistan** has been commissioned by PILDAT and is co-authored by **Mr. Shahid Hamid**, Senior Advocate, Supreme Court of Pakistan and **Dr. Suhail Shahzad**, Dean, Faculty of Law and Administrative Sciences, Hazara University, both of whom constitute the Committee of Experts facilitated by PILDAT to work on Free Legal Aid Services Reforms.

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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
January 2016

Executive Summary

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.

Hence, to ensure access to inexpensive and speedy justice, specifically to vulnerable communities, a set of policy recommendations to bring about necessary reforms in free legal aid system in Pakistan are proposed in this Policy Brief:

1. Amending relevant provisions of the free legal aid rules 1999 and redefining the free legal aid on priority basis to enable easier access for the general public to Free Legal Aid services;
2. Formation of a Free Legal Aid Authority, both at the Federal and Provincial levels to monitor and supervise the work of public defender services;
3. Efforts to increase public awareness to improve provision of Free Legal Aid to ensure inexpensive and expeditious justice by involving media;
4. Establishment of strict eligibility criteria for legal practitioners on provision of services whereas adequate funding for relevant departments to strengthen Committees established for streamlining the provision of Free Legal Aid;
5. Monitoring and assessment of services to ensure accountability and transparency through involving the DLECs and Bar Council Committees;
6. Bar councils need to play significant role while engaging senior lawyers for the training of young lawyers to sensitise them on pro bono services; and
7. Establishing Public Defender Services (through the passage of Public Defenders Ordinance 2009) to change 'Thana' culture and perceptions of police amongst the public.

Analysis of Challenges and Required Reforms

An analysis of the existing legal framework reveals the following weaknesses that can be addressed through proposed recommendations for reform:

Existing Legal Provisions

1. Free Legal Aid Rules 1999

The Pakistan Bar Council may consider on a priority basis revision of the Free Legal Aid Rules 1999 so as to better provide for setting up of legal desks and legal aid centers in the District Courts and for more active involvement of civil society organisations in the process of identifying and facilitating the needy litigants, as also to create public awareness in regard to the availability of free legal aid.

2. Definition of 'Free Legal Aid'

The present definition of free legal aid is limited in scope and does not include legal advice or representation before trial; according to international standards, counsel must be available to the accused or arrested person at or soon after his or her arrest. Therefore, it is recommended that the current definition be amended to encompass pre and post trial access to free legal aid.

Operational Capacity

1. Monitoring and Assessment

Monitoring and assessment procedures need to be put in place by the High Courts and the Bar Councils for improving the efficiency and effectiveness of services provided by DLECs and Bar Council Committees. It may pertinently be added here that the composition of the DLECs needs to be recast to make them functional.

2. Eligibility Criteria for Beneficiaries

The eligibility criteria for legal aid should be sorted out by the Law and Justice Commission, Bar Councils and the Federal and Provincial Governments,. It would need to be ensured that there is no overlap to the extent possible/desirable.

3. Establishment of Legal Aid Authority

The existing forums provided for under the present legal framework have not been able to fulfil the requirements for free legal aid as per the constitutional mandate. There is a need for Legal Aid Authorities both at the Federal and Provincial levels to monitor and supervise the work of public defender services.

Accessing the formal legal system is still an unaffordable luxury for majority of people in Pakistan. It is an undeniable fact that the State recognizes the need for legal aid and has allocated some nominal funds for this purpose; but the distribution of services is not systematic for the reason that its framework is scattered and defective

In 2009 the Federation enacted the Public Defender Legal Aid Office Ordinance 2009. This was allowed to lapse. The Ordinance provided for, amongst other things, establishment of a Public Defender Office headed by a Chief Public Defender for assisting indigent persons in criminal matters. Indigent persons were defined as persons who could not afford to engage an advocate to represent them at any stage of proceedings in a court or under investigation before police. The Federal Government should re-enact this law as an Act of Parliament.

In 2007 Punjab enacted the Public Defender Service Act. This Act envisaged the setting up of a Public Defender Service headed by a Chief Public Defender to provide free legal assistance to an indigent person including a convict or a person accused of an offence who could not afford to engage an advocate to represent him in a court. The Public Defender Service was not set up and the Act eventually repealed in 2011. It is recommended that all the provinces should enact such law with an 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. It is further recommended that the other three Provinces should enact laws similar to the Punjab law.

The State has a constitutional duty not only to effectively prosecute the guilty but also to ensure exoneration of the innocent. 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. Every person has a fundamental right to legal assistance from the time of his arrest regardless of whether he can afford it or not.

4. Training and Sensitisation of Young Lawyers

There is a need to ensure proper training of young lawyers in matters relating to free legal aid. The Bar Councils would need to involve senior lawyers to assist in such training. In this respect, senior and junior lawyers may be required, without exception, to take up at least one or two free cases each year.

5. Legal Representation of Arrested Persons

The establishment of defender services would assist legal representation of the accused from the time of his arrest and ensure that the person arrested does not eventually become a hardened criminal as a result of being subjected to current police interrogation techniques. It could be that the establishment of public defender services may change the Thana culture. If a lawyer is available to an accused as soon as he is arrested this will be an important safeguard against the current police techniques of investigation through manhandling and torture.

External Support

1. Adequate Funding

In Pakistan, the availability of free legal aid was wholly inadequate to the requirements for such aid. The main problem for existing institutions engaged in the provision of free legal aid was funding. It is the constitutional, legal and moral duty of the Federal and Provincial Governments to provide adequate funding for existing fora established under the laws and rules detailed herein above.

The Law Division of the Federation and Law Departments of Provincial Governments should ensure adequate funding in next year's budgets in consultation

with the concerned High Courts, Bar Councils and Committees.

2. Public Awareness

The general public specifically falls under lower income groups, who are in need of free legal aid whenever they get involved in litigation, whether criminal or civil, were largely unaware of even the existing fora providing such aid. In pursuance of the constitutional mandate to ensure inexpensive and expeditious justice it is the responsibility of the Federal and Provisional governments to launch an awareness campaign through print and electronic media to inform the needy litigants with regard to free legal aid services available at various levels. This campaign should be a continuing function of the proposed Legal Aid Authority as and when established.

The Pakistan and Provincial Bar Councils and Civil Society Organisations should be enlisted in support of such a campaign. The bar councils and civil society must also mobilise pressure on Parliament, Provincial Assemblies, and the respective Federal and Provincial Governments, to provide adequate funding to the existing fora and to take steps for establishing Public Defender Services.

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

Committee of Experts

Mr. Shahid Hamid



Mr. Shahid Hamid is former Governor Punjab, and Senior Advocate Supreme court of Pakistan. Mr. Hamid obtained his B.A. (Hons.) and M. A. Economics degrees from the University of Cambridge U. K and is a Barrister-at-Law of the Honourable Society of the Inner Temple London. He joined the Civil Service of Pakistan in 1964. During his service from 1964 to 1978, which included 2 years in East Pakistan, he held many posts in the district administration and provincial finance department and later served as Secretary to the Chief Minister Punjab and Director-General Lahore Development Authority. He has practiced as an Advocate of the High Court from 1978 onwards and is now a renowned Senior Advocate of the Supreme Court of Pakistan. He was the Federal Minister for Defence, Establishment & Law from November 1996 to February 1997 and Governor of Punjab from March 1997 to August 1999. As Governor he was the Chancellor of all the public universities in Punjab as well as Chairman of the Board of Governors of Aitchison College Lahore, Sadiq Public School Bahawalpur, Lawrence College Ghora Gali and Hassan Abdal Cadet College.

He has also previously served as a Director, Central Board of the State Bank and as a member of the Rules Committee of the Lahore High Court, Syndicate of the Punjab University and Board of Governors, Government College Lahore. He is currently President of the English Speaking Union Lahore, Chairman of the Board of Governors of Rashid Latif Medical College Lahore and Chairman of the Board of Trustees of Hamza Foundation Academy for Hearing Impaired Children, as well as Member of Board of Governors of SOS Children Village. He is also Chairman member of a number of think tanks and has delivered lectures at numerous public and private training institutions. Mr. Hamid has authored many articles that have been published by PILDAT.

Dr. Suhail Shahzad



Dr. Suhail Shahzad is currently serving as Dean, Faculty of Law and Administrative Sciences in Hazara University, Mansehra. He is serving as the Founding Director of School of Law, Hazara University from 2008 till date and has also served as Chairman of Department of Management Sciences (2007 – 2008) and as Vice-Chancellor from February 2014 – August 2015 at Hazara University, Mansehra. Dr. Shahzad holds LL.B and LL.M degrees from the Law College, University of Peshawar, Peshawar, and has obtained a degree in M.Sc in Criminal Justice and Policy from London School of Economics and Political Science (LSE), UK.

Dr. Shahzad has extensive knowledge and expertise on different aspects related to law. He has worked as Practitioner Lawyer at Peshawar Bar (1994 – 1997); Lecturer at Law College, University of Peshawar (1999 – 2006); and as Associate Professor, Department of Law, Hazara University (2006 – 2007).

He has also been actively working in various capacities at local and international organisations which include: National Technical Specialist, United Nations Development Programme (UNDP), Strengthening Rule of Law Programme in Malakand (SRLM: May-July 2015); Technical Advisor Correctional Services, Coffey, Department for International Development, United Kingdom (DFID), Pakistan (December 2014); and Training Specialist, Human Rights Commission of Pakistan (October 2013).

Other organisations Dr. Shahzad has worked with in different capacities are American Bar Association Rule of Law Initiative, Foundation Open Society Initiative, USA/Pakistan; International Committee of the Red Cross, Pakistan and Khyber Pakhtunkhwa Judicial Academy Pakistan.

Dr. Shahzad has authored many publications and has actively participated in numerous national and international conferences, workshops and seminars.



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