

# **LOCAL REPORT ON LEGAL AID IN PAKISTAN(Punjab)**

Today the legal world is busy in networking and conducting conferences which integrate and bring closer cooperation between International bodies. International donors like Asian Development Bank, World Bank, European Union have already funded various projects in Pakistan to provide guidance in implementation of Legal Aid Principles in Criminal & Civil Administration and Family Justice System. Funding was provided to those who are conducting research, revises the literature and write the reports.

## **NATIONAL LEGAL AID POLICY**

So far we do not have a formal Legal Aid Policy in black and white but its necessity is being felt in Pakistan. Such policy can, however, be drafted by involving, rather led by Ministry of Justice & Parliamentary Affairs, Ministers, State Ministers, Law Associations, Legal Institutions, Civil Society Organizations and Legal Aid Workers. However, the serious efforts are underway to further work in this area. But this does not mean that in Pakistan no work was done for the provision of legal aid to the needy people. Being a developing country of South Asia having population of over 200,000,000, Pakistan is doing whatever it can within its resources to ensure the

excess to justice for all. As already referred, the European Union and Asian Development Bank have provided technical assistance to collect data to prepare drafts in formulating a National Legal Aid Policy direly needed by the people of Pakistan. Legal Aid Policy, if formally announced, shall establish a comprehensive and forward-looking legal aid system and would surely widen the scope of legal aid services. Such policy will recognize the role of civil society organizations in providing legal aid through paralegals, law degree holders and additional contributions from university law clinics and *pro bono* legal aid practitioners. It would emphasise on effective mobilization to co-administer all legal aid service providers, including state and non-state functionaries. It is bound to increases awareness on the law and legal aid services among the population particularly poor and vulnerable people for access to justice by increasing their ability to seek and obtain remedy. It also recognises the duty and responsibility of the State to provide for legal aid and for strengthening legal aid institutional framework by emphasising on decentralization and sending out of legal aid to the gross root level. It enhances the scope of legal aid in legal education, legal information, legal advice, mechanism for alternate dispute resolution in addition to legal assistance and representation in the court.

Its aim should be to establish a mixed legal aid delivery system by complementary legal aid service delivery models through establishing legal desks at police station and correctional facilities in courts of law to provide legal aid;

jointly by State and civil society. This would not be possible without strengthening the role of the legal profession in the delivery of legal aid services therefor a comprehensive pro bono framework be made to inform persons on their right to legal aid.

By 1991, it has been recognized that legal aid is an essential element of access to justice which by itself is a universal human right. The U.N General Assembly Resolution no;67/187 on UN Principles and Guidelines on access to legal aid in criminal justice system (UN principles and guidelines on criminal legal aid) greatly emphasises on its importance. The resolution recognises that legal aid is an essential element of a fair, efficient criminal justice system that is based on the rule of law.

### **COST AND BENEFIT IN PROVIDING LEGAL AID SERVICES; A CONCEPTUAL FRAME WORK.**

Provision of legal aid service in criminal, civil & administrative matters may also include primary legal advice in the form of legal information, mediation and education, legal representation and assistance in preparing cases at local, national or international level, provision of psychological support and specialized assistance like legal advocacy, etc.

However, being intangible, it is difficult to quantify socio economic costs; such as pain, suffering trauma, fear, reduced quality of life, damaged reputation and dignity which results in the reduced investment, lower property

value, declined economic output and misused financial sources. The justice system also suffers in its cost in the form of over used resources and less efficiency. Based on the data available, the most common types of civil justice problems for which legal aid service is sought is Consumer rights (land and property disputes) Housing employment (eviction, utility issues, debts , etc) Government Loss (family problems, child custody visitation, maintenance, alimony division of family assets). Besides, pre-trial detention in criminal justice process in early stage for marginalised and poor people increases the avoidable over population in jails putting extra economic burden on governments. The tangible costs are in the form of the expenses for the cost of *pro bono* service providers by government and the Bar Association & Lawyers.

Proportionately, the tangible benefits of legal aid are those cost effective benefits received by the communities to avoid government shelters , and increase efficiency to the justice system in court process. The intangible benefits are the bi-product , not easy to quantify, e.g. social clout, funding, empowerment, increased trust in the government.

Here it would be important to note that the cost of unaddressed legal problems in terms of society response is immense. The individuals suffer through property damage, social service, lost wages, unemployment in week days, deteriorating mental & health care ,adverse legal affects, foregone govt. benefits due to limited resources, pain, suffering, low quality of life, insane mortality, etc.

Likewise the justice system also suffers because low professional standards in police, prolonged detentions, low performance of prosecution service, unattended incarceration, unnecessary court expenses, inefficiency of counsels due to self representational litigants damaging their perspective and perceptions.

Our society also suffers as a whole when it causes the increase in homelessness, burdens the departments, losses in collection of property tax, increases in crime rates and decline in economic opportunities. In short, 50% time and costs in courts can be reduced if effective legal aid service is provided in time .

### **THE PUNJAB LEGAL AID ACT, 2018**

Upon the persuasion based on the motivation drawn by undersigned at the last ILAG Conference at Johannesburg, South Africa, The Province of Punjab took the lead in pronouncing The Punjab Legal Aid Act, 2018. It aimed at the provision of legal aid (legal services provided to indigent person; a person involved in the commission of an offence or a female involved in a family dispute and does not have the financial capacity to engage an advocate on his or her own. All expression in Code of Criminal procedure, 1898 and Legal Practitioner & Bar Council Act, 1973 would be applicable. A Punjab Legal Aid Agency; comprising of Director General (and other

employees prescribed by the government) was constituted for a period for 3 years or more, with the following functions:-

- a. To evolve policies, principles, guidelines for providing legal aid.
- b. To design and establish an effective mechanism for provision of monetary and valuation of legal aid.
- c. To advise the government or any other agency in regard to the enforcement of the right to fair trial and due process.
- d. To undertake and promote research in the field of legal aid with reference to the need of the indigent person.
- e. To device the structure of legal fees for legal aid for the approval of the government.
- f. To perform other function as entrusted.
- g. To do all necessary to carry out purpose of this act.

However, the government would have a superintending control of the Agency. The powers of the Legal Aid Agency are to provide the legal aid to an indigent person, if he applied properly after determining his/her eligibility who would be responsible for giving a misstatement, upon which it can be recalled. If the application is rejected, the

appeal can be filed before the authority. However, such provision of legal aid will not effect any powers of the court under the law.

The Agency shall for each financial year, accredit a panel of lawyers/advisors in each district or tehsil who shall continue to serve until new panel is adopted. Such advocates shall be allocated cases for different classes of persons or for courts, or both. Agency shall monitor and evaluate the quality of legal aid provided by each accredit advocate, who would maintain its proper record.

Govt. upon recommendation by the agency, may prescribe a code of conduct of such accredit advocates. Payments shall be paid according to the approved schedule of rates. Furnishing of false information was made punishable for up to six months and the offence is made non-cognizable and only D.G. of the agency can file a complaint upon which the court shall take the cognizance.

#### **DISTRICT EMPOWERMENT COMMITTEES(DLEC)**

Another way of providing legal aid to the needy is by way of DLEC constituted in all 36 districts under the DLEC RULES,2011,drafted under section 9(1) of Law and Justice Commission of Pakistan Ordinance(XIV of 1979) under which a five member committee is constituted under the chairmanship of Distt. & Sessions Judge, with District Police Officer, Superintendent Jail, President Distt. Bar Association and a representative from the civil

society as its members. The functions of the committee are to extend funds for provision of the legal aid to the deserving litigants, in the form of professional fee, honorarium to lawyers, court fee, copying charges, process fee or any other area which the committee deems fit. Any deserving litigant, any prisoner recommended by the Jail Superintendent or any person referred by the court, may be entitled to such legal aid. However, a person who has already appointed an advocate, or if a government pleader has been provided to him, would not be eligible for such legal aid. The legal practitioners are appointed from the panel of advocates, having at least five years standing, selected in consultation with vice chairman of the provincial bar council, president of the distt. bar association, and approved by the chief justice of the High Court. A fee of not more than Rs;20,000/- would be determined by the committee which would be payable in two instalments, subject to the performance the legal aid advocate evaluated on annual basis. The DLEC shall maintain accounts of the funds transferred through the Commission or any other sources and shall submit half yearly and annual audited accounts to the commission through the High Court. Since 2013,a total amount of Rs;16,000,000/- was allocated to 36 districts of Punjab out of which Rs;8,488,966/- (53.06% )have been utilised for the decisions on 371 cases in the last one year (30-6-2018 to 20-5-2019) with 430 legal aid cases still pending at the district level. Details of the cases are also enclosed hereunder as schedule.



# **Schedule**

**1. UTILIZATION OF FUNDS**

**2. AND DETAIL OF CASES DECIDED/PENDING  
UNDER DLECs**

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**FOR THE PERIOD 30.06.2018  
TO 20.05.2019**

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