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## Provision of Low-Cost Legal Services in Pakistan

*Ayesha Jamil\*, Saif Ur Rehman\*\*, Yumna Akhtar\*\*\**

Facilitating access to justice is crucial for ensuring equitable and efficient civil and criminal justice systems, as it empowers individuals to safeguard and exercise their legal rights effectively. However, the exorbitant costs associated with hiring legal representation pose a significant barrier, particularly for marginalized communities. In response, it becomes the government's obligation to provide legal aid services, contingent upon their reasonable capacity to deliver them. Presently, Pakistan grapples with a pervasive lack of access to justice, disproportionately affecting the marginalized populace. The absence of financial resources and legal counsel erodes the fundamental constitutional guarantee of affordable and expeditious justice. Despite its imperative role, the existing legal aid system falls short, marred by inadequate awareness regarding legal entitlements, insufficient funding, and an over-reliance on voluntary legal services. This inadequacy is exemplified by the mere fraction of underprivileged households benefiting from free legal aid, emphasizing the pressing need for comprehensive reform. While private law firms, pro bono initiatives, and legal clinics contribute to delivering low-cost legal services, ensuring universal access to justice still remains a formidable challenge within Pakistani society.

**Keywords:** Human Rights, Justice, Legal Aid, Legal Services, Pro Bono

### I. Introduction

Equal justice is a right, not a privilege and the government of the day is duly bound to protect the rights of all citizens, regardless of society's diversity. Echoing this principle, Joseph Raz delves into the concept of open and attainable justice in the context of the rule of law. He asserts that 'the courts should be accessible.'<sup>1</sup> The effectiveness of justice hinges on the clarity, stability, and accessibility of laws for all members of society. This perspective finds reinforcement through the initiation of low-cost legal services, which provide enough room for each individual to stand up for their rights.<sup>2</sup>

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\* Fourth Year Law Undergraduate at Quaid-i-Azam University in Islamabad, Pakistan and can be reached at [jamilayesha2002@gmail.com](mailto:jamilayesha2002@gmail.com)

\*\* Fourth Year Law Undergraduate at Quaid-i-Azam University in Islamabad, Pakistan and can be reached at [safurrehman.office@gmail.com](mailto:safurrehman.office@gmail.com)

\*\*\* Fourth Year Law Undergraduate at Quaid-i-Azam University in Islamabad, Pakistan

<sup>1</sup> Joseph Raz, '*The Authority of Law: Essays on Law and Morality*' (Oxford University Press 1983) p.215.

<sup>2</sup> 'Know Your Legal Rights: A Comprehensive Guide for Low-Income Individuals – Expert Tips and FAQs' (Lonestar Legal Aid, 13 April 2023) <<https://www.lonestarlegal.org/news/2023/04/know-your-legal-rights-a-comprehensive-guide-for-low-income-individuals-expert-tips-and-faqs/>> accessed 20 October 2023.

Low-cost legal services bridge the gap between the need for legal help and the ability to afford it. This, however, is not the case in Pakistan. The limitations concerning access to legal aid in Pakistan are highlighted in recent research by Insaf Network Pakistan, titled "Voices of the Unheard: Legal Empowerment of the Poor in Pakistan." Out of the poor households surveyed, according to the research, the percentage that had received free legal aid in each area was: 3% in Punjab, 4% in Gilgit-Baltistan, 5% in Khyber-Pakhtunkhwa, 16% in Balochistan, and 25% in Sindh.<sup>3</sup> In another report titled "Understanding the Informal Justice System: Opportunities and Possibilities for Legal Pluralism in Pakistan (2015)," 98.2 percent of respondents in a survey opined that the poor and lower classes do not have access to justice in the formal justice system. In the same survey, 42.8 percent felt that women and 25.2 percent felt that landless peasants and agricultural laborers similarly lack access to justice.<sup>4</sup>

The above situation in Pakistan is further compounded by a low awareness of legal rights and procedures, a lack of tools for monitoring and reporting, a lack of coordination and collaboration between providers, problems with adequate and ongoing funding, and the reliance placed on lawyers' voluntary services. The poor and vulnerable thus find themselves disconnected from the justice system, resulting in a lack of trust.

## II. Low-Cost Legal Services and Their Types in Pakistan

Low-cost legal services refer to legal assistance and representation that is provided to individuals at a reduced or affordable cost, making them more accessible to a broader range of people, particularly those with limited financial means. The notion of low-cost legal services initially originated as the right to legal aid, the concept of which was first popularized in 1851 when an enactment was passed in France to provide legal assistance to the indigent. In Britain, in 1944, Lord Chancellor Viscount Simon appointed the Rushcliffe Committee to investigate the resources available in England and Wales to give lawful guidance to people and to provide counsel to people on a need-by-need basis. The Committee concluded that legal aid is a right that the state is obligated to promote and defend, not a charity. However, in the 20th century,

<sup>3</sup> The study was conducted by INP-UNDP in 2012; it included a random survey of 10,322 poor households across all 4 provinces and GB, 92 Focus Group Discussions with 1,120 participants, 5 workshops with supply side stakeholders and 3 Case Studies on Urban Slums and 5 Consultative workshops with supply side stakeholders. Iqra Farooq, 'Legal Aid System in Pakistan' (22 April 2017) LEAP Pakistan <<https://leappakistan.com/legal-aid-system-pakistan/>> accessed 28 August 2023.

<sup>4</sup> Naveed Ahmed Shinwari, 'Understanding the Informal Justice System: Opportunities and Possibilities for Legal Pluralism in Pakistan' (Islamabad: CAMP 2015).

the concept of legal aid advanced alongside progressive values, with many members of the legal profession feeling a moral obligation to provide assistance to those with limited incomes.<sup>5</sup>

## 01. Legal Aid

According to the definition provided in the Black's Law Dictionary, legal aid is a 'free or inexpensive legal service provided to those who cannot afford to pay full price.'<sup>6</sup> Legal aid is extended through public legal aid offices, private firms, and nonprofit organizations registered with public legal aid departments, pro bono work, and legal clinics. Private firms provide similar services as government legal aid programs, but with greater efficiency due to their enhanced resources and better remuneration for employees compared to legal aid lawyers listed in court rolls. Each firm or agency sets its own eligibility criteria and rules for individuals to qualify for assistance. This presents a limitation when people seek help from a firm, as legal aid is income-tested and only accessible to those with low incomes or inadequate resources. The inaugural legal aid firm in Pakistan, the Asma Jahangir Legal Aid Cell (AGHS Legal Aid Cell), established by the eminent Human Rights activist Ms. Asma Jahangir, has been aiding marginalized classes since 1980, with a focus on the rights of women, children, and minorities in Pakistan. Other notable legal aid firms operating in Pakistan include the Insaf Network Pakistan (INP), Legal Aid Society (LAS), Lawyers for Human Rights and Legal Aid (LHRLA)Pk-Legal and Associates.

In the fiscal year 2022–23, the Sindh Legal Aid Call Center (SLACC), operated by the Legal Aid Society (LAS), received a total of 34,729 queries. Among these, 16,381 were new callers, and 6,058 were returning callers, with the SLACC delivering free legal advice and information to them.<sup>7</sup> In a case handled by the LAS, a couple's son had been unlawfully held by a landlord on the premises, coercing him into forced labor under hazardous conditions, thereby jeopardizing his life. The LAS legal team effectively filed a Habeas Corpus application in court, resulting in the safe rescue and reunion of the individual with his family.<sup>8</sup>

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<sup>5</sup> African Librarian, 'Legal Aid' (Wikipedia, 27 September 2023) <[https://en.wikipedia.org/wiki/Legal\\_aid#Recent\\_times](https://en.wikipedia.org/wiki/Legal_aid#Recent_times)> accessed 22 October 2023.

<sup>6</sup> Bryan A Garner, *Black's Law Dictionary* (9th edn, West Publishing Company 2009) 975.

<sup>7</sup> Admin Publications, 'SLACC Annual Report June 2022 – June 2023 part 3' (Legal Aid Society, September 2023) <<https://las.org.pk/wp-content/uploads/2023/09/SLACC-Annual-Report-2022-2023-R.pdf>> accessed 22 October 2023.

<sup>8</sup> Admin Publications, 'LAS Results Report 2020-22' (Legal Aid Society, January 2023) <<https://www.las.org.pk/wp-content/uploads/2023/01/LAS-Result-Report-R.pdf>> accessed 22 October 2023.

## 02. Pro Bono

Pro bono, defined in Black's Law Dictionary as 'involving uncompensated legal services performed especially for the public good,'<sup>9</sup> offers another low-cost legal service for the financially underprivileged. Lawyers and firms may take on pro bono cases, providing their services free of charge to individuals and various organizations in need of proficient legal representation. Pro bono work is not confined to specific income levels or legal issues and spans a wide range of cases, from assisting individuals with limited means to supporting nonprofit organizations and community initiatives. Lawyers engaging in pro bono work may select cases that align with their expertise or personal interests.

In Pakistan, the Human Rights Commission of Pakistan (HRCP) provides legal aid and assistance to victims of human rights abuses and engages in education, organizing, and advocacy work around the ratification and implementation by Pakistan of the Universal Declaration of Human Rights and of other related internationally adopted norms. Moreover, several NGOs provide legal and other support services to the estimated over 1.4 million refugees, asylum seekers, and internally displaced persons in Pakistan. These include Community Help Community (CHC), Norwegian Refugee Council Pakistan, Rights Now Pakistan, and the Society for Human Rights and Prisoners Aid (SHARP).<sup>10</sup>

## 03. Legal Clinics

To provide law students with practical experience, legal clinics are nonprofit organizations or educational institutions offering legal services to the community, often affiliated with law schools. They serve as a link between legal education and real-world legal practice and extend free or affordable legal aid to individuals who wouldn't otherwise afford conventional legal services. Under the guidance of experienced lawyers, law students offer clients legal counsel, conduct investigations, and provide representation.

In legal clinics, clients access legal assistance they might otherwise lack, while law students gain practical experience by working on actual cases. Legal clinics can focus on various legal subjects, prioritizing both client care and hands-on training for students. In Pakistan, several

<sup>9</sup> Bryan A Garner, *Black's Law Dictionary* (9th edn, West Publishing Company 2009) 1323.

<sup>10</sup> Syed Ali Bin Maaz and Zaid Rahim, 'Pro Bono Practices and Opportunities in Pakistan' (Latham & Watkins LLP, October 2019) <<https://www.lw.com/admin/upload/SiteAttachments/pro-bono-in-pakistan.pdf>> accessed 22 October 2023.

legal clinics, such as the Blackstone School of Law (BSOL) Law Clinic, the International College for Legal Studies Legal Clinic, and the Center for Human Rights (CFHR), provide clients with legal aid across a range of matters, including bail applications, property disputes, family cases, and human rights issues.

The Blackstone Law Clinic, under the guidance of Mr. Usama Malik, a renowned human rights lawyer in Pakistan, dedicated to extending justice to those who would otherwise have limited access to it. Recent cases handled by Blackstone Law Clinic include legal matters such as a mental health detention case, a bail application case, and a dishonored cheque case. These cases resulted in the release of the patient, who was subsequently placed under supervision, the resolution of bail cancellation issue through parties reaching a settlement, and the issuance of a legal notice, respectively.<sup>11</sup>

### **III. Equal Justice and the Provision of Legal Aid under Pakistani Laws**

#### **01. Constitutional Provisions for Equal Justice**

“Justice is expensive. That is why there is so little of it, and it is reserved for those few with enough money and influence to afford it.”<sup>12</sup> It is the state's responsibility to keep the doors of the courts open for those who do not have enough resources. Article 37(d) of the Constitution of the Islamic Republic of Pakistan, 1973, enjoins upon the state to ensure ‘inexpensive and expeditious justice.’ Article 10(A) discusses the right to a fair trial as a fundamental right; Article 9 guarantees the security of persons per the law as found in the doctrine of ‘due process of law’; and Article 25 concerns equality before the law. Access to justice is defined by Pakistani courts as ‘an integral part of the rule of law in constitutional democracies and a hallmark of civilized society.’<sup>13</sup>

In a case of *Hafiz Awais Zafar v Judge Family Court, Lahore (and 2 others)*, it was ordained that “Our courts have expanded the right to life over time and held that it includes the right to legal aid; the right to speedy trial; ... keeping in view the international human rights jurisprudence discussed in the earlier part of this judgment which considers the right to identity

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<sup>11</sup> Law Clinic Blackstone School of Law, ‘About Law Clinic’ (Blackstone School of Law, 6 April 2018) <<https://www.bsolk.org/about-law-clinic>> accessed 22 October 2023.

<sup>12</sup> Naomi Novik, *Black Powder War* (Del Rey 2006).

<sup>13</sup> *Ishtiaq Ahmed v Hon'ble Competent Authority* 2016 SCMR 943 Supreme-Court, 12.

as concomitant to the right to life, I hold that the said right is protected under Article 9 of our Constitution.”<sup>14</sup>

The aforementioned judgment, in reference to Article 9 of the Constitution of Pakistan, expands the interpretation of the right to life to encompass a broader set of rights and protections. It acknowledges that preserving the right to life goes beyond physical existence and encompasses all the privileges and entitlements that individuals in a free nation are legally and constitutionally entitled to experience with dignity, including access to legal aid, a speedy trial, and the right to identity as simultaneous elements of this fundamental right.

## 02. Mechanisms of Legal Aid

### (i) Pakistan Bar Council Free Legal Aid Committees Rules, 1999

The Pakistan Bar Council Free Legal Aid Committees Rules, 1999, were framed under the Legal Practitioners and Bar Council Act, 1973, Section 13(l-a) of which deals with the provision of ‘free legal aid to indigent litigants.’ The Free Legal Aid Committees are constituted at the central, provincial, and district levels.

Under the rules, a person desirous of legal aid is to apply to the respective committee by submitting an application form (Schedule I), which is then processed and examined. The funds are generated through allocation by the "Pakistan Bar Council," and a list of legal professionals is kept from which they are selected on a case-by-case basis and paid specific charges for their services.

For Supreme Court advocates, the fee allocated is Rs. 5,000, while those appearing in writ petitions before the High Courts are paid Rs. 3,000 for a writ petition and Rs. 2,000 for bail. For lower court matters such as bail before the Court of Sessions, the payable fee is Rs. 2,000. The district committee or the committee most involved in a given case approves these amounts and makes the necessary payments.<sup>15</sup>

<sup>14</sup> *Hafiz Awais Zafar v Judge Family Court Lahore* 2022 PLD 756 Lahore-High-Court-Lahore, 11.

<sup>15</sup> Yasser Latif Hamdani, ‘The Crisis of Legal Aid in Pakistan’ Academia.edu < [https://www.academia.edu/4671163/The\\_Crisis\\_of\\_Legal\\_Aid\\_in\\_Pakistan](https://www.academia.edu/4671163/The_Crisis_of_Legal_Aid_in_Pakistan) > accessed 29 August 2023.

**(ii) Public Defenders and Free Legal Aid Ordinance, 2009**

The Public Defenders and Free Legal Aid Ordinance of 2009 was another mechanism for free legal aid. The ordinance provided for setting up a public defender's system, but it could not become law and lapsed. The ordinance allowed individuals claiming to be indigent to submit their applications to the designated legal authorities. Even those in jail or below the age of eighteen were allowed to apply. An affidavit served as evidence of indigence with no further inquiry required, and the courts were permitted to request defenders to represent the indigent individuals. Public defenders were to report to higher authorities, with the chief public defender submitting an annual audit report to the government. Before this ordinance, the Public Defender Service Act, 2007, was enacted in Punjab; however, the legal mechanism stipulated was not set up and was repealed in 2011.

**(iii) District Legal Empowerment Committee Rules, 2011**

The District Legal Empowerment Committees (DLECs) were constructed under the District Legal Empowerment Committee Rules, 2011. These rules were framed under Section 09 of the Law and Justice Commission of Pakistan Ordinance, 1979. For the first time, legal aid was defined in any rules, though it was not a proper definition. DLECs assist deserving litigants in obtaining legal aid by utilizing the funds allocated from the Legal Empowerment Fund Window of Access to Justice Development Fund and other grants and donations by the federal, provincial, and local governments. Only those legal practitioners with a standing of five years or more are appointed by the DLEC for assistance, and the nominal fee is paid by the DLEC. These rules provide a detailed procedure for the allocation, maintenance, and distribution of funds.

**(iv) Destitute Litigant Fund Rules, 1974**

Legal assistance in constitutional matters to destitute litigants is provided under the 1974 Destitute Litigant Fund Rules. These 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. This assistance, however, is approved only if the inquiry officer determines the case *prima facie*, at which point financial aid is provided from the funds allocated by the provincial government for each high court.

### (v) Code of Civil Procedure, 1908

Order 33 of the Code of Civil Procedure, 1908, provides the procedure for appointment of counsel and fee waiver of the Court Fee for a litigant who is found to be a 'pauper'.<sup>16</sup> In other words, in a pauper suit, a poor person is adjudicated at the expense of the state; a poor litigant is allowed to bring a claim or defend themselves without having to pay costs. Order 44 of the same code deals with pauper appeals, and the civil court determines whether the litigant is a pauper or not.

In Pakistan, a person is considered a 'pauper' if he lacks the financial resources to pay the filing fee required by law or if he is not entitled to any property valued at more than Rs. 25,000, excluding his basic clothing, cooking equipment, and other furniture.

In the case of *AllahDino alias Baboo v State*, the High Court decided that if the defendant is not able to pay the court fee due to his low economic condition, he will be provided with a counselor at government expense. Thus, the high court could maintain a list of counselors who have been appointed by the chief justice during his tenure. A legal counselor was selected by the high court to help the poor accused defend himself. The presiding officer kept in view the nature of the case, the charges for producing documentation, and the time required by the counselor to do his fieldwork. To a public prosecutor in criminal matters, Rs. 2000 will be paid for every hearing, and to a government pleader in civil matters, Rs. 500 will be paid per hearing. In short, an economically backward citizen was given access to justice with the help of free legal aid by the government.<sup>17</sup>

### (vi) Code of Criminal Procedure, 1898

Under Section 340 of the Code of Criminal Procedure (Cr. PC), 1898, the accused has a statutory right to counsel at State expense. Vol. V, Ch. 4-E of the High Court Rules and Orders also provides for legal assistance at State expense for an accused person charged with a capital offense.<sup>18</sup>

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<sup>16</sup> Dr Suhail Shahzad, 'Free Legal Aid in Pakistan' (October 2015) Pakistan Institute of Legislative Development And Transparency (PILDAT) <[http://www.millat.com/wp-content/uploads/pdf/democracy/FreeLegalAidinPakistan\\_PILDATPositionPaper.pdf](http://www.millat.com/wp-content/uploads/pdf/democracy/FreeLegalAidinPakistan_PILDATPositionPaper.pdf)> accessed 27 August 2023.

<sup>17</sup> *AllahDino alias Baboo v The State* 2019 PCrLJN 161 Karachi-High-Court-Sindh, 4.

<sup>18</sup> Dr Suhail Shahzad, 'Free Legal Aid in Pakistan' (October 2015) Pakistan Institute of Legislative Development And Transparency (PILDAT) <[http://www.millat.com/wp-content/uploads/pdf/democracy/FreeLegalAidinPakistan\\_PILDATPositionPaper.pdf](http://www.millat.com/wp-content/uploads/pdf/democracy/FreeLegalAidinPakistan_PILDATPositionPaper.pdf)> accessed 27 August 2023

The Karachi High Court Sindh ruled in *Nazir Ahmed v The State* that “the object and purpose of providing competent legal aid to undefended and unrepresented accused persons are to see that the accused gets a free and fair, just and reasonable trial of charge in a criminal case.”<sup>19</sup>

#### (vii) Legal Aid and Justice Authority Act, 2020

The Legal Aid and Justice Authority (LAJA) is an independent statutory body established under the Legal Aid and Justice Authority Act, 2020, and is responsible for administering, managing, and overseeing legal aid services. The LAJA is tasked with developing and implementing strategies to ensure the availability of competent legal representation for deserving litigants. The act outlines provisions for funding the legal aid system by establishing a dedicated fund that receives contributions from the government, private donations, etc. The role of technology is further recognized in improving access to justice, mandating the Legal Aid and Justice Authority to explore and adopt technological advancements, such as online portals, digital case management systems, and virtual hearings, to enhance efficiency, reduce costs, and increase access to legal aid services.

### IV. Significance of Low-Cost Legal Services

Engaging with the challenges faced by underprivileged individuals represents one of the most rewarding experiences within the legal profession. Pro bono programs serve as a mutually beneficial avenue for both legal practitioners and marginalized segments of society. When executed effectively, a pro bono initiative becomes a bridge between the most vulnerable members of our community and the attainment of equitable justice. It also offers young lawyers a unique opportunity to refine their skills and expand their professional networks through active participation in pro bono work.

Furthermore, a well-established pro bono program sets a law firm apart from its competitors, underscoring its dedication to societal welfare. The involvement in a proficient pro bono setup has the potential to boost morale within the firm, fostering a sense of pride and loyalty among its members. Additionally, collaborative efforts on cross-jurisdictional pro bono projects contribute to the cultivation of an ethically sound environment within transnational law firms.

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<sup>19</sup> *Nazir Ahmed v The State* 2022 YLRN 41 Karachi-High-Court-Sindh, 18.

## V. Conclusion

In antiquity, legal protection favored the powerful, while the weak were left unprotected. Subsequently, even as society progressed, the cost barrier to justice persisted, preventing marginalized individuals from accessing crucial legal aid. This led to the need for affordable legal services, aligning with Article 7 of the Universal Declaration of Human Rights, which upholds the principle of equal protection under the law without discrimination.

In developed countries, firms engaged in pro bono work receive incentives from the government, enhancing their credibility. Conversely, in developing nations, public litigants participating in pro bono programs are compensated minimally, making such endeavors less viable. Private firms offering cost-effective legal services surpass their public counterparts, benefiting both the populace and the legal professionals under their employ. Interestingly, junior lawyers, driven by the pursuit of experience, often display greater enthusiasm for pro bono initiatives compared to their senior counterparts. However, this tendency slightly hampers the efficient handling of cases. Consequently, marginalized communities find it challenging to attain a respectable standing in society.

The primary remaining obstacle to achieving absolute justice lies in the lack of awareness about the existence of low-cost legal services among lower socioeconomic classes, coupled with the absence of financial incentives for legal professionals engaged in such services. Although individuals possess legal rights, these rights are often inaccessible due to the aforementioned factors. To ensure genuine accessibility to the justice system, it is imperative to devise a system that is not just accessible but also equitable. Only through such a system can we establish a justice framework that truly upholds the rights of all.

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