

# Case Study: “Legal Aid Office an initiative by Justice Nasir Aslam Zahid”

- Zainab Qaiserani, INP

## The Rationale for a Legal Aid Office



In Pakistan, approximately 2.5 million cases are pending in our courts, and our legal and judicial systems suffer from chronic delays in the disposal of cases as well as the problem of access to justice to the poor. Article 37(d) of the Constitution of Pakistan makes ensuring inexpensive and expeditious justice a principle of policy for the state. Yet precious little has been done in this regard, primarily because principles of policy are subject to availability of resources. In 1999 the Pakistan Bar Council amended its Free Legal Aid Scheme of 1988 to include a newly devised set of rules, namely the Pakistan Bar Council Free Legal Aid Rules of 1999 (the “Rules”) The Rules envisage the existence

of a system multi-tiered legal aid committees, on a central, provincial and district level, which can call upon members of the bar to take on one case per year free of cost. Under the Rules, to avail free legal aid, a litigant is required to make an application to the district committee and illustrate the need for free legal aid. The schedule to the Rules provides the requisite application form required to be filled out. In 2007, a Supreme Court judgment laid down on the touchstone of Article 4 and Article 9 of the Constitution laid down that it was the responsibility of the government to provide effective representation. This judgment is reported as PLD 2007 SC 544.

Attempts by civil society actors have also been thwarted from time to time. In this case study we see how one such attempt was sabotaged. Amongst the worst hit by this crisis of legal aid are women, minorities and under aged offenders. Women and underage offenders would languish in jails for long periods with no assistance from the government or otherwise. In response to these issues, Justice Nasir Aslam Zahid took the initiative of establishing a legal aid office (LAO) inside jail premises back in 2003. It was set up in view of the mandate of the Constitution enshrined in Article 37 (d) which requires the state to ensure inexpensive and expeditious justice.

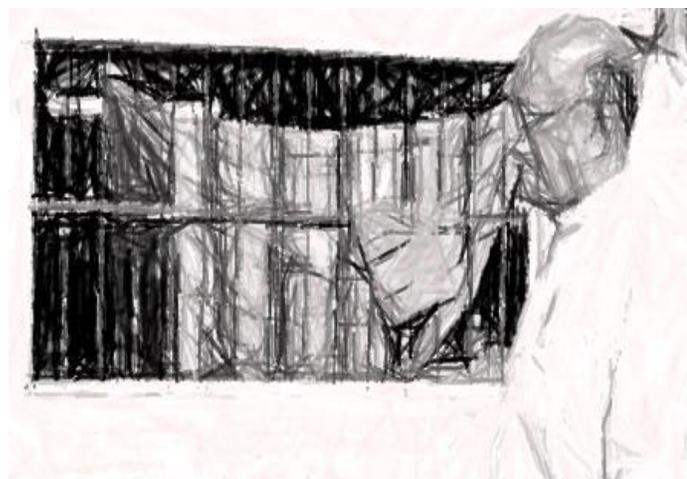
## When was it set up?

In December 2002, Justice Zahid was invited by the Association of Pakistani Physicians of North America (APPNA) to give a lecture on women

issues at Nishtar Medical College. Nishtar Medical College was celebrating its golden jubilee (50 years of the Institution). At the end, Justice Zahid was asked by the office bearers of APPNA to suggest projects through which APPNA could help the cause of women in Pakistan. He suggested several areas in which work would be done, and also referred to certain specific projects which could be undertaken through the assistance of APPNA and other organisations. Ultimately it was suggested by APPNA that he should start a pilot project for providing legal aid to the female under-trial prisoners and convicts confined at the Special Prison for Women in Karachi. He agreed to start the work from March, 2003.

This was a pilot project that hoped to provide the required legal help to incarcerated women, to help curtail the delay in justice delivery, and it was hoped that once successful, similar projects may be started in other jails. This project would be the first of its kind in the history of Pakistan.

Justice Zahid and his wife Dr. Farhat started visiting the Special Prison in Karachi regularly from March 2003. They used the services of Mr. Abdul Waheed Kanjoo Advocate for an initial period of 3 months. This work was done on an ad hoc basis as it was found that there was no effective legal aid organization in Karachi (or for that matter anywhere in Pakistan) which could render legal advice and represent poor prisoners in Courts on a regular basis.



As a retired Judge of the Supreme Court of Pakistan, Justice Zahid cannot appear before any authority or court in Pakistan. Therefore it was not possible for him to go to the courts and supervise the work of any advocate or advocates.

Based on this initial experience period of three months, Justice Zahid concluded that for appropriate provision of full legal cover for the confined women in the Special Prison in Karachi they would need full time advocates under their service. A legal aid office would be needed, within the premises of the jail, to avoid difficulty for the advocates in taking instructions from the confined women and also interviewing them from time to time as the need arose; this would be the most convenient and effective method of providing legal aid to them. After a long and arduous process, Justice Zahid was able to convince the Governor of Sindh that the proposed project would prove effective in providing legal help and representation to all the confined women by opening an office on jail premises in Karachi for the Special Prison for Women (“Women’s Prison”) and the Youthful Offenders Industrial School (“YOIS”).

As a result, the Government of Sindh (on the instructions of the Governor) issued a Notification constituting a Committee for the Welfare of Women Prisoners (CWWP), for the initial funding of the project, and for jail reforms. Justice Zahid was named Chairperson, and the other two members were the Advocate General Sindh and a Deputy Secretary of the Home Department as secretary. It was clarified in the terms of reference of the Committee, that though they aimed to address multifarious issues, the initial focus will be on providing legal aid to confined women, and on the opening of an office within the outer jail premises. The Inspector General Police was asked by the Home Department to provide such an office space, and after several months, a premises was handed over. The premises were quite spacious and shared a wall with the female prison.

After a lecture by Justice Zahid on women issues, upon invitation from the Rotary Club of Karachi Millennium, he together with some concerned members of the Club formed the Karachi ‘Women Prisoners Welfare Society’ (WPWS), to assist and collaborate with The Committee for Welfare of Female Prisoners (the legal aid project). The WPWS was an eight member team, with a specific mandate to ensure the welfare of women and juvenile prisoners, and to this end they provided the extra funds needed to hire legal counsel and set up the Legal Aid Office. They also worked hard to reconstruct the premises provided by the Sindh Government. The office space provided was in a gross state of disrepair; it was redone and furnished under the majority supervision of Ms Ingrid Eckert, and with voluntary help provided by architect Mr.Faiz.

All the required information regarding the inmates was collected through a questionnaire prepared and used by a team of students from the Hamdard School of Law, comprising Fatima, Samina, Nouman, Gul-e-Hafsa, FarhanaShereen, Munawer-ul-Haq and others.

An amount of Rs 1.2 million had been sanctioned by the Government of Sindh but it could not be utilised. It was hoped that the amount would be made available again and that it would be made into a regular grant.

At the time of the launch of the Legal Aid Office in July/August 2004, there were 237 females and 497 juveniles present in the Women’s Prison and YOIS respectively. Of the 734 total prisoners, 114 were already convicted, and 135 were foreigners, most of who were confined for drug offences. In addition to the inmates, there were 37 children living with their mothers in the Women’s Prison.

## Process/model

Once the LAO began functioning in August 2004, the inmates started receiving defence counsel and their cases progressed rapidly, and the success was

such that by the end of the first five years, four more offices were opened across Sindh (Sukkur, Hyderabad, Larkana, and Dadu).

The placement of the Legal Aid Office inside jail premises gave the confined persons the unique opportunity for free and easily accessible justice that was required. Till these premises were shut down, the LAO always had staff members walking in and out of the prisons, and these staff members were always up to date with information on the new inmates. This ease of access was possible for a number of reasons;

- the prison authorities trusted the LAO staff members and went to them with all sorts of issues, administrative as well as legal;
- Along with providing legal aid, LAO also distributed basic necessities like milk, sugar, oil etc. on a weekly basis;
- LAO had also staffed teachers, vocational trainers and psychologists, with a focus on rehabilitation;
- they had young Pakistani students coming in for internships all year round;
- they provided a 24 hour ambulance service to the prison;
- a team of lawyers was required to visit the prisons everyday so as to keep up-to-date with the progress of on-going cases, whether the production orders had come in on time, and any other problems that were being faced by them;
- Justice Zahid would himself visit the prison every second day to hear any and all complaints and also to let the inmates speak to their family members on his cell phone as he was allowed to take it inside.
- The LAO’s advantageous location made it possible/easier for family members of the inmates as well as other persons with all kinds of problems to constantly queue up outside the office, seeking help and advice from Justice Zahid.

## Some Broad Data

The total number of cases involving women (both Pakistani and foreign) disposed off by the LAO since it began working in Karachi is 1,132. As of October 30, 2010, a total of 652 juvenile offenders have had their cases resolved by the LAO. Four years into the LAO's existence, (by October 2008) the number of inmates had reduced drastically despite the continued influx of prisoners; the YOIS housed only 205 juveniles, whereas the Women's Prison held 108 prisoners. The total number of convicts was 31, of which 2 were juveniles. At this point in time, there were 40 foreigners in both the jails. From 2008 to 2010, the LAO has assisted 62 more women by helping them achieve a final disposal of their case. It has also filed 12 appeals to the High Court against sentences awarded in the District Courts. From December 2009 to October 30, 2010, a total of 217 juveniles have had their cases completed by lawyers from the LAO.

The population of the Women's Prison in Karachi as of October 30, 2010 stood at 74 women, of which 17 had been convicted while the rest were under trial; there were 141 juveniles confined in the YOIS; of these, 5 were convicts and 136 were then being tried for their offences.

In addition to representing the prisoners in Court, the LAO also arranges for the surety amounts when these prisoners are released on bail. In 2008, over 150 women and 100 juveniles had been released on bail on surety that had been arranged for by the LAO. This is because most inmates who are detained in the Women's Prison and the YOIS are unable to afford even the most trivial surety amount. The LAO has also arranged for repatriation of the foreigners whose cases have been concluded. By 2010, over 150 women had been repatriated to their home countries across the world thus far. They were nationals of countries across the globe spanning from the Philippines, Nepal, Malaysia, to Zambia

and Kenya. A majority of the foreign women were nationals of African countries.

The LAO has expanded its operations across the province of Sindh. This expansion began with the establishment of its Hyderabad office for women and juveniles in 2005. By the year 2008, the LAO had achieved final disposal of 40 cases involving women. In October 2008, the LAO was representing 13 of the 28 women confined in the women's jail, Hyderabad. Prior to 2008, it also represented and disposed off 110 juvenile cases and in October 2008, it was providing legal aid to 29 of the 129 juveniles incarcerated in the juvenile section of the Hyderabad jail. The LAO then opened new offices in Sukkur and Larkana in 2008 and 2009 respectively.

The number of Advocates [currently] employed by the LAO are as follows: in Karachi, 2 in the Women's prison, 6 in the YOIS, 15 in the Central Prison (male) and 7 in Malir prison; 6 in Hyderabad, 2 in Sukkur, 2 in Larkana, 1 in Dadu and 2 in Khairpur.



## A Success story

### The Legal Aid Call Centre (LACC)

The Legal Aid Office dealt purely with criminal cases. Thus, in an effort to do more, a Legal Aid Call Centre was also opened, formally launched on 3rd August 2009, under the chairpersonship of Justice Zahid, in collaboration with the All Pakistan Women's Association (APWA). This centre is the only one of its kind in Pakistan. It provides free legal advice to all callers and aggrieved persons (especially women and children and others from the vulnerable and deprived sections of our society) on all matters, be they civil, criminal or family law related. As a next step it also connects underprivileged callers with good lawyers at affordable rates, or a human rights organization, for appropriate legal representation, guidance, and/or support. The centre is located in a premises owned and provided free of cost by APWA.

The hotline is manned by 12 young aspiring advocates (both male and female), trained for several months to handle calls in Urdu, Sindhi and English. These young advocates were supervised by 3 senior advocates. As such, a senior advocate of the High Court is on call during the operational hours of the service.

The full capital cost of this endeavor (including training), approximately Rs. 4 million, was covered by private donations. Funds for the day to day management and operation of the LACC for the next three years were sanctioned by the Sindh Government, by approval of the same, under the Public-Private Community Development Programme. An advocate's compensation per month is Rs.7,500 for their services, and the rest of the expenses are for the smooth running and maintenance of the calling facility and the premises. The LACC runs a state of the art Relationship Management System. This system records every call received by the LACC. Each call is awarded a unique serial number as well as a tracking number, including the client details and call back numbers,

so that each query can be tracked with ease. The queries are then further categorized into two types, i.e. follow-up and original query and status of the questions asked as having been answered (closed) or awaiting advice (open). The name of the advocate is also listed. When a phone call is received by an advocate sitting at the LACC, the advocate is to record the query and the immediate response, if the reply is known to him/her, or is to note the number and shut the phone. Thereafter the advocate is to discuss the issue with available senior counsel and when a legal solution is found, he or she is to call back and convey the appropriate advice to the client. A backup CD is made of all the above mentioned information every two weeks.

With the availability of 12 advocates and senior counsel present, LACC has the capacity to attend 100 to 150 calls daily, but in reality it functions at a much lower level. Possible reasons for this are:

- Marketing and publicity is expensive, resulting in limitations; the common litigants still remain unaware of this Legal Aid service;
- The Legal Aid Call Centre remains a highly unconventional professional legal service, and despite its many benefits, many litigants are perhaps apprehensive about trusting it over a more orthodox face to face advocate-litigant consultation. This can be countered over time by focused and aggressive marketing.

---

## Challenges + Protests and Eviction of Legal Aid Offices

In February 2011, the Sindh Government approached Justice Zahid and asked him to open Legal Aid Offices across Sindh for ALL prisoners, including male adults. The Sindh Government wanted to fund the project, and thus Legal Aid Offices were soon opened on the outer premises of every jail in Sindh.

The percentage of prisoners being represented by LAO advocates was relatively low. These advocates

had been directed by Justice Zahid to ensure that they would provide free legal representation only to those prisoners who were deserving of it. There was no test employed for this, instead a simple estimation from observation. Additionally, they were also specifically directed to immediately withdraw their 'vakalatnamas' when a client hired another lawyer. Essentially, they functioned as a public defender's office.

## **The Point of View of an LAO Advocate:**

The Karachi Bar Association visibly took notice of the LAO after the Sindh Government sanctioned Legal Aid Offices to be opened for ALL prisoners, including adult male prisoners. Since the biggest prison population is in the Central Prison (for men), the KBA began to view the LAO as a threat. They felt that this would unjustly affect the business of their lawyers.

The lawyers under the KBA were unhappy with the ease of access enjoyed by the LAO advocates at the prisons, and thus allegedly began to 'manhandle' the LAO lawyers in court. They went on indefinite strikes that resulted in several courts being boarded shut, with cases not being able to progress, while the prisoners continued to suffer in confinement. The lawyers under KBA then resorted to abuse; for example, they burnt some material with Justice Zahid's picture on it, and threatened to withdraw the licenses of all lawyers who worked for the LAO.

The issue was finally taken to the High Court, where in an interim order, the Legal Aid Offices were directed to move out of the prison premises.

## **The Press Conference**

The Karachi Bar Association, together with the Malir Bar Association and the Sindh Bar Council, held a press conference on 16<sup>th</sup> July 2011, at the Shuhada-e-Punjab Hall, KBA Building, in order to

clarify their stance on the issue of the Legal Aid Offices.

KBA President, Muhammad Aqil addressed majority of the press conference. He stated that, even though the KBA did not step in before when Justice Zahid began working with orphans and foreign women, the fact that he did not go through the KBA was wrong then, and remains so today. He went on to say that, LAO provide free legal aid to the most heinous of criminals, and that this is not permitted by law; according to the Legal Practitioners and Bar Councils Act in the 1973 Constitution, providing legal aid to habitual criminals is illegal.

It was stated that Justice Zahid started this organization for the benefit of 'his own people', and to make money for himself.

Certain sections of the Legal Practitioners and Bar Councils Act 1973 were discussed, such as sections 3, 9 and 57. From The Rules, specifically rules number 7, 9 and 174 were discussed. The Pakistan Bar Council Free Legal Aid Act 1999 was also mentioned but not discussed in detail.

It was argued that legally only the Sindh Bar Council is authorized to receive grants from the government, and though Justice Zahid insists that the presence of the Advocate-General in his Committee is what authorises his use of the grant money, they stated that the AG is simply a political post and he does not represent them.

They said they did not approve of a government funded organization set up without KBA approval.

They claimed that the fact that the LAO's official 'vakalatnama' mentions in one section that it is a LAO 'vakalatnama', shows that the legal officer filing it a representative of Justice Zahid and thus this automatically gives him more respect, and other advantages such as easy victories in cases, and lower bail amounts etc; even within the jail premises, lawyers face discrimination, as the LAO staff are

more respected. It was stated that this is a conspiracy against their poor lawyers.

They clarified that they weren't against the provision of free legal aid, but that they were specifically against these particular Offices as their practice was 'illegal'.

It was stated that there was a conspiracy to 'disturb' the legal fraternity, which is why 'dollars' were being 'rained' at the LAO. They claimed that this is why certain advocates were being paid \$5,000 in each case, so that other lawyers would lose power.

They criticized the air-conditioned offices of the LAO, and went on to mention that they supported organizations such as those run by Ansar Burney and Zia Awan, because they with run using personal funds. They mentioned that like in the army, where retired officers are given certain lucrative positions, here certain prominent retired Justices are trying to establish similar unfairly advantageous holdings.

In conclusion it was said (not by Mr.Aqil, President of the KBA) that the membership of those lawyers who work for such NGOs will be suspended. The Malir Bar president however said that such lawyers will not be allowed to enter the Malir Bar. They insisted that they were on an indefinite strike till the Legal Aid offices shut down.

## **Justice Zahid's response to the Press Conference**



Soon after the KBA press conference, Justice Zahid also held a press conference, clarifying the nature of his personal involvement with the Legal Aid Project, as well as responding to the various allegations raised against him by the Karachi Bar Association. The following is Justice Zahid's response, in his own words:

"During the last few days, the issue relating to the legality and propriety of extending free legal aid to poor prisoners has been the subject of much discussion and debate amongst the legal community. My work in the field of free legal aid has been criticized by certain quarters. A press conference was also held on 16-7-2011 by representatives of the Karachi Bar Association. In the present scenario, I consider it appropriate to issue a statement, briefly giving an account of my involvement in this and other human rights work, and also, to comment on the various points raised against me in the Karachi Bar Press Conference.

After serving in the judiciary for nearly 20 years (1980 to 2000), I was retired on 26-1-2000(alongwith 5 other judges of the Supreme Court), for not taking the oath prescribed by General Musharraf under the PCO. Since October 2000, I am working as the Dean, Faculty of Legal Studies, and in that capacity, set up the only full-time Law College in Sindh- Hamdard School of Law.

In 2004, the Government of Sindh, by notification, formed a Committee known as the Committee for the Welfare of Women Prisoners, with myself as its Chairperson and two other members, the Advocate-General Sindh and Deputy Secretary(Jails), Home Department, Government of Sindh(Member-Secretary). Teams of Reference of the Committee included Jail Reforms and legal aid to women prisoners (later extended to Juveniles). Two years back, the Government of Sindh enlarged the jurisdiction to include male prisoners as well. The name of the Committee has also been re-notified as the Committee for the Welfare of Prisoners (dropping the word, "women").

All funds provided by the Government are credited in a bank account which is operated under joint signature of the Sindh Advocate-General and myself. The accounts are duly audited and all payments are made through cheques.

I have been working in an honorary capacity. I do not take even a single rupee from the Project's account as salary, or allowance, or can for any other expense whatsoever.

I am also in charge of a legal helpline set up by me in 2009. It is known as "APWA Legal Aid Call Centre" (LACC). This legal helpline is located in premises of APWA, opposite Metropole Hotel, Karachi, given to the Project free of cost for a period of 5 years. I am heading the Government Committee for Welfare of Prisoners. Young lawyers are associated on retainer basis to represent very poor prisoners. These lawyers have their own private cases as well and some lawyers also have their private offices.

It is the Constitutional responsibility of the Government to arrange for advocates to represent the poor accused who cannot afford to pay lawyers' profession fees- reference Articles 4 and 9 of the Constitution and the clear verdict of the Supreme Court of Pakistan in the case of Faisal vs. State (PLD 2007 S.C.544).

- I work on an honorary basis and do not take any amount as salary or allowance. Adverse allegations that I make money from this project are absurd, false and mischievous. Everyone knows that I work on an honorary basis, not only for this project, but also for other human rights projects,
- Accounts of the project are audited. All payments are made by cheques. The bank account is operated jointly under the signatures of Sindh Advocate-General and myself. Allegation about Rs. 22 Crores having been paid to me or to the Committee is false.

- Under the law, Karachi Bar Association's approval is not required for setting up this Committee and for the Government to provide funds for this project.
- Except for female advocates, all the advocates are young lawyers. They work for the Project for one to two years, and on getting sufficient exposure, experience and training, they set up their offices or join good legal firms.
- Neither do these advocates try to obtain any advantage from the Judges, nor do the Judges give them any special treatment.
- The allegation that there is discrimination against other lawyers is false and absurd.
- Reference to U.S. dollars being "rained," and payment of U.S.\$5000/- for each case to advocates is on its face, false, absurd and preposterous.
- The present main office next to the Juvenile Jail was set up with funds collected by me from private donors, like Mr. Cowasjee, Mr. Halim Siddiqui, Mr. A. Karim Dhedhi, Mr. Paracha (from London), Mr. Liaqat Hussain, Dr. Nadira Panjwani etc. I was able to collect about Rs. 4 million as private donations and this is reflected in the audited accounts of the Project.
- I also have praises from Mr. Ansar Burney and Mr. Zia Awan.
- There is no scheme for fixing retired judges in lucrative jobs. The allegation is false and baseless.
- Retired judges of the Supreme Court and High Courts, get good pensions and benefits. We do not need any other salary or incomes from other sources, and are expected to do for free all the work assigned to them by the Government.
- I may again assent that our Committee is not an NGO. It is a Government Committee and discharging functions under Articles 4 and 9 of the Constitution. (PLD 2007 S.C.544)
- Advocates belong to a very noble profession and apart from representing clients on payment of fees; they are also required to do

pro bono work. Advocates are an indispensable component of the judicial system and are required to play their role in the dispensation of justice.

- I belong to the legal community. I have no intention to take any step which may in any way prejudice or adversely affect the lawyers. If there is any misunderstanding, I am always ready for a dialogue. Perhaps a joint meeting with the Honorable Chief Justice can be very fruitful. Any decision or direction by the Chief Justice will be respected and implemented by me.”

## INSAF NETWORK PAKISTAN

House 21 – B, Street 55, Sector F – 7/4, Islamabad.

Phone: +92 92 51 265 4711-3

Fax: +92 51 265 4714

Email: [info@inp.org.pk](mailto:info@inp.org.pk)

Website: [www.inp.org.pk](http://www.inp.org.pk)

Twitter: <https://twitter.com/InsafNetwork>

Facebook:

<https://www.facebook.com/insafnetworkpakistan>

## What is being done now

After having been removed from the jail premises, the new office of the LAO is located behind NBP on Kalapul. This location is far from the prison, and its limits the number of visits of the LAO staff to each prison to one per week. Upon this visit, the prison authorities call upon all new inmates to come and speak with an LAO advocate; however, the events leading up to the original offices being shut down, and the sluggish movement of cases while LAO lawyers were forced to stay out of the courts, has managed to ‘tarnish the reputation’ of the LAO somewhat. They claim that they are not receiving as many new clients as before, and prisoners are being forced to look into private lawyers that they can’t afford.

They are still managing to provide basic necessities to the prisons; however, the ever watchful eye of Justice Zahid, on the conditions of the prisons and their occupants, is no longer there. This would result in the maltreatment and mistreatment of prisoners at the hands of the matrons.