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ORDINANCE NO.XVIII OF 2019

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ORDINANCE

*to provide for the establishment of a Legal Aid and
Justice Authority*

WHEREAS, it is expedient to establish a legal aid and justice authority so as to provide legal, financial and added assistance for access to justice to the poor and vulnerable segments of the society in criminal cases and for matters ancillary thereto;

AND WHEREAS the Senate and the National Assembly are not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW THEREFORE, in exercise of powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make and promulgate the following ordinance:—

1. **Short title, extent and commencement.**—(1) This Ordinance may be called the Legal Aid and Justice Authority Ordinance, 2019.

(2) It extends to the whole of Pakistan.

(3) This Ordinance or any part thereof shall come into force on such date or dates as the Government may by notification in the official Gazette, appoint.

2. **Definitions.**—(1) In this Ordinance, unless there is anything repugnant in the subject or context.—

(a) “applicant” means any person who—

(i) makes an application for legal aid under this Ordinance or on whose behalf such an application is made; or

(ii) a person who is of unsound mind or lunatic or minor;

(b) “Authority” means the Legal Aid and Justice Authority established under section 3;

(c) “Board” means the Board of Governors constituted under section 4;

(d) “Chairperson” means Chairman of the Board and includes any person for the time being performing the functions of the Chairperson;

(e) “Court” means a court established under any law for the time being in force;

(f) “Director-General” means the Director-General of the Authority;

(g) “Free Representation Unit” means a special unit comprising advocates and volunteers to provide legal or other social services on *pro bono* basis either on case to case basis or in respect of a group or set or type of cases other than the panel;

(h) “Government” means the Federal Government;

(i) “legal aid” means the provision of assistance, to a person who is unable to afford legal assistance, representation and access to justice;

- (j) "Member" means a member of the Board;
- (k) "panel" means the list of advocates and volunteers prepared by the Authority under section 13;
- (l) "prescribed" means prescribed by rules or regulations under this Ordinance, as the case may be;
- (m) "rules" mean the rules made under this Ordinance;
- (n) "Secretary" means the Secretary of the Board; and
- (o) "Volunteer" means any person other than an Advocate who may provide legal or other services on *pro bono* or fee basis to the applicants.

(2) A word or expression used in the Ordinance and not defined shall have the same meaning as is assigned to it in the Code of Criminal Procedure, 1898 (V of 1898) or the Legal Practitioners and Bar Councils Act, 1973 (XXXV of 1973).

3. **Establishment of the Authority.**—(1) The Government, by notification in the official Gazette, shall establish a Legal Aid and Justice Authority to carry out the purposes of this Ordinance.

(2) The headquarters of the Authority shall be at Islamabad and it may, with the prior approval of the Government, set up as many offices all over the country as, when and where required.

4. **Management.**—(1) The general direction and administration of the Authority and its affairs shall vest in the Board, which shall exercise all powers and do all acts and things which may be exercised or done by the Authority.

(2) The Board shall, in the discharge of its functions, be guided on questions of policy by such directions as the Government may give from time to time.

(3) If any question arises as to whether any matter is a matter of policy or not, the decision of the Government in respect thereof shall be final.

5. **Composition of the Board.**—(1) The Board of Governors shall consist of the following members, namely:—

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| (i) Federal Minister for Human Rights | <i>Chairperson</i> |
| (ii) Attorney-General for Pakistan | <i>Member</i> |
| Advocate General of each Province and | |

(iii)	Islamabad Capital Territory	<i>Members</i>
(iv)	Secretary, Ministry of Human Rights	<i>Member</i>
(v)	Secretary, Ministry of Finance	<i>Member</i>
(vi)	Secretary, Ministry of Law and Justice	<i>Member</i>
(vii)	Vice-Chairman, Pakistan Bar Council	<i>Member</i>
(viii)	One Prominent Female Social Worker	<i>Member</i>
(ix)	Director-General, of the Authority	<i>Member/Secretary</i>

(2) The Chairperson shall preside at every meeting of the Board and in case of his absence for any reason, the Government may designate any other Minister as a Chairperson.

(3) The Authority may, with the prior approval of the Government, co-opt any other person as a member.

(4) No act or proceeding of the Board shall be invalid merely on the ground of the existence of any vacancy, or any defect, in the constitution of the Board.

(5) If an *ex-officio* Member is unable to attend a meeting of the Board, he may authorize a representative not below BPS-20 to attend the meeting.

6. Meetings of the Board.—(1) The Chairperson may convene such meetings of the Board at such times and places as he considers necessary for the efficient performance of the functions of the Board.

(2) At any meeting of the Board the quorum shall be seven Members.

(3) All issues arising at any meeting of the Board shall be decided by a majority of votes of the Members present and voting.

(4) Subject to the provisions of this Ordinance, the Chairperson may give directions regarding the procedure to be followed at or in connection with any meeting of the Board.

7. Director-General.—(1) There shall be a Director-General of the Authority who shall be appointed by the Government at such re-muneration and on such terms and conditions as it thinks-fit.

(2) No person shall be appointed as a Director-General unless he is qualified to be appointed as a judge of a High Court.

(3) The Director-General shall be responsible to the Authority for the day-to-day administration of the business of the Authority and shall discharge such duties and perform such functions as are assigned to him by the Board.

(4) In case the Director-General is absent or unable to act and no acting appointment has been made by the Authority, the Authority may authorize an officer of the Authority to perform temporarily the functions of the Director-General.

(5) Until the Board is duly constituted, the Director-General shall, subject to such directions as the Government may give from time to time, exercise the powers, and perform the functions of the Board.

(6) The officers of the Authority shall have such powers and shall perform such functions as may be assigned to them by the Director-General.

8. Powers and functions of the Authority.—(1) The Authority shall—

- (a) make policies, principles and guidelines for providing legal aid and financial or other assistance including the prescription of criteria for qualification to obtain legal aid and financial and other assistance;
- (b) design and establish an effective mechanism for provision, monitoring and evaluation of legal aid;
- (c) promote or cause to be promoted programmes designed to enhance public awareness of the legal aid system in Pakistan;
- (d) undertake and promote research in the field of legal aid with special reference to the need of such aid to the persons;
- (e) advise the Government or any other agency with regard to the enforcement of the right to fair trial and due process of law;
- (f) take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate poor and vulnerable sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures;
- (g) establish panels of advocates and volunteers in respect of each office in the prescribed manner and, subject to sub-section (2) of section 12, to add to or remove from that panel any advocate and volunteer where the Authority is satisfied that the advocate or volunteer has derelicted his duty or it is in the interest of justice to do so;
- (h) devise and prescribe structure of fees for legal aid to advocates and volunteers on panels;

- (i) encourage the settlement of disputes by way of negotiations, arbitration and conciliation;
- (j) manage and administer the resources of the Authority;
- (k) allocate funds, monitor the expenditure of funds at all offices and withhold funds from any office;
- (l) establish and monitor the implementation of standards and procedures for the operation of all offices;
- (m) undertake any enquiry or investigation which the Authority thinks necessary or desirable in relation to the discharge of its functions;
- (n) perform such other functions as may be assigned to it by the Government; and
- (o) do such other things as may be expedient or necessary for the proper performance of its functions under this Ordinance.

(2) In discharge of its functions under this Ordinance, the Authority shall, wherever appropriate, act in coordination and cooperation with other individuals, governmental and non-governmental agencies, departments, bodies, authorities, universities, engaged in the work of promoting the cause of legal services to the poor and vulnerable sections of the society.

9: Provision of legal aid, financial or other assistance in criminal matters.—(1) The Authority shall make appropriate arrangements for the provision of legal aid, financial or other assistance to an applicant who is charged with a criminal offence and is unable to afford legal, financial or other assistance, representation and access to justice, in such manner and to such extent as may be prescribed.

(2) The person seeking legal aid, financial or other assistance shall apply to the Authority, in the prescribed manner.

(3) The application for purposes of sub-section (2) shall be supported by an affidavit sworn by the applicant and such other documents as may be prescribed, except in case of minors or lunatics or persons of unsound mind, the requirement of an application and affidavit shall not be applicable.

(4) The eligibility of the applicant shall be assessed in the manner and according to the eligibility criteria as may be prescribed.

(5) In prescribing the criteria for and in extending the legal, financial or other assistance, preference shall be given to disadvantaged women and children, especially in relation to matters of sexual offences.

(6) For the purposes of assessing the means of the applicant, the Authority may in appropriate cases make such enquiries as it considers necessary into the means of the applicant and may direct any officer to enquire into and report thereon.

(7) A report to the Authority under sub-section (6) shall be made available to the applicant who shall be allowed, if he so desires, to make his observation on the report.

(8) The Authority shall decide the application of the applicant within seven days of receipt thereof.

10. **Revocation of legal aid.**—Where after the assessment for the purpose of grant of legal, financial or other assistance, or release thereof the Authority comes to the conclusion that the Applicant was not eligible to receive the same due to filing of applications, affidavits or documents in relation thereto which are found to contain false particulars, the Authority may revoke the legal, financial or other assistance and take steps for the recovery of any amount undeservedly released to the applicant.

11. **Panel of advocates and Volunteers.**—(1) The Authority shall approve panels of advocates and volunteers in the prescribed manner in each district or, if necessary, in any Tehsil for provision of legal, financial or other assistance either on *pro bono* or on fee basis.

Explanation: The panel of advocates and volunteers on *pro bono* basis shall include setting up of a Free Representation Unit.

(2) The Authority shall monitor, assess and evaluate the quality of legal and volunteer services provided by each advocate, volunteer and the Free Representation Unit.

(3) The panel of advocates, volunteers and the Free Representation Unit shall maintain a proper record of the cases entrusted to them and shall provide information to the Authority at such time and in such manner as may be prescribed.

12. **Code of Conduct.**—(1) The Government, on the recommendations of the Authority, may prescribe a Code of Conduct for panel advocates, volunteers and the Free Representation Unit.

(2) The Authority may suspend or, subject to hearing, remove the advocate and volunteer from the panel or from the Free Representation Unit if found guilty of breach of that Code, or dereliction of his duty.

13. **Payments.**—(1) The Authority shall promptly make payment of such professional fee and such travelling allowances and other out-of-pocket expenses, after deduction of the applicable taxes, to the advocate, volunteer and the Free Representation Unit whom a matter has been assigned in the manner that may be prescribed.

(2) Where costs are awarded in favour of the applicant in any matter in which the services of an advocate or volunteer of the panel or the Free Representation Unit were used, such costs shall be the property of and be paid to the Authority. The applicant shall be reimbursed out of such costs for the out-of-pocket expenses incurred by him in respect of such matter.

14. **Appointment of officers, staff, etc., by the Authority.**—The Authority may create posts and appoint such Directors, officers, staff, experts or consultants on such terms and conditions as may be prescribed.

15. **Staff and officers etc. to be public servants.**—The Director-General, Directors, officers, staff, experts and consultants of the Authority shall, when acting or purporting to act in pursuance of any of the provisions of this Ordinance, be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

16. **Delegation of powers to the Director-General etc.**—(1) The Authority may, by general or special order and subject to such conditions as it may think fit to impose, delegate to the Director-General, Directors or a member, or an officer of the Authority, all or any of its powers or functions under this Ordinance.

(2) The Government may, by notification in the official Gazette, delegate all or any of the Authority's powers under this Ordinance and the rules and regulations made thereunder to any other agency or department of the Government or to a provincial government with the consent of such government.

17. **Legal Aid and Justice Authority Fund.**—(1) There shall be created a fund to be known as the Legal Aid and Justice Authority Fund which shall vest in the Authority and shall be utilized by the Authority for the purpose of this Ordinance and to meet charges in connection with its functions under this Ordinance including the provision of legal, financial or other assistance, including payment to meet bail amounts, penalties or fines of the applicants, payment of fees to advocates or volunteers, salaries and other remuneration to the Director-General, Directors, members, officers, staff, experts and consultants of the Authority.

- (2) The Fund shall be financed from the following sources, namely—
- (a) grants from the Federal, Provincial and Local Governments;
 - (b) aid and assistance from local, provincial, national and international authorities or agencies;
 - (c) contributions from the statutory bodies, corporations, private organizations and individuals;
 - (d) income and earnings from the moveable and immovable properties acquired or leased by the Authority;
 - (e) any income from the investment of the amount credited to the Fund;
 - (f) all sums payable to the Authority may be recovered as arrears of land revenue.
- (3) The amount credited to the Fund shall not lapse at the end of a financial year and shall be available for utilization at any time.

18. **Budget.**—The Authority shall, in respect of each financial year, submit for approval of the Government, on such date as may be prescribed, a statement of the estimated receipts and expenditure, including requirements of foreign exchange for the next financial year.

19. **Audit and accounts.**—(1) The accounts of the Authority shall be audited every year by the Auditor General of Pakistan in such manner as may be prescribed.

(2) Copies of the audit reports shall be sent to the Government along-with the Comments of the Authority.

(3) The audit report shall be available for public inspection.

(4) The Government may issue directions to the Authority for rectification of any item objected to by the Auditor General of Pakistan and the Authority shall comply with such directions.

20. **Submission of yearly reports and returns.**—As soon as possible after the end of every financial year but before the last day of the month of December of that year, the Authority shall submit to the Government a report on the conduct of its affairs for that year.

21. **Protection of actions taken in good faith under this Ordinance.**—No suit, prosecution or other legal proceedings shall lie against the Government or the Authority or any officer or servant thereof or any person acting under the authority of the Government or the Authority for anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rule or regulation made thereunder.

22. **Tax Exemptions.**—The income of the Authority, donations and contribution received by the Authority for the purpose of this Ordinance shall be exempt from all taxes, duties, charges or imposts of any nature levied by Federal, Provincial, local governments or authorities or any institution.

23. **Power to make rules.**—The Government may, by notification in the official Gazette, make rules to carry out the purposes of this Ordinance.

24. **Ordinance to override other laws.**—The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force.

25. **Removal of difficulties.**—If any difficulty arises in giving effect to or applying the provisions of this Ordinance, the Government may, make such order, not inconsistent with this Ordinance or the rules, as may be necessary for the removal of such difficulty.

26. **Repeal and Savings.**—(1) The Women in Distress and Detention Fund Act, 1996 (XV of 1996), hereinafter called as the repealed Act, shall stand repealed.

(2) Notwithstanding the repeal under sub-section (1), all funds and accounts constituted and maintained under the repealed Act shall be deemed to be in continuation of the corresponding funds and accounts constituted or maintained under this Ordinance.

STATEMENT OF OBJECTS AND REASONS

It is a constitutional right of every citizen to consult and engage a lawyer to defend himself. Article 37(d) of the Constitution guarantees that the State shall ensure inexpensive and expeditious justice to its citizens. The object of this Bill is to establish a legal and institutional framework to promote access to justice by providing affordable, accessible and credible legal aid, financial or other services to the poor and vulnerable section of the society in criminal matters. This will also help to promote legal awareness, education and public awareness of the legal aid system. The legislation gives priority to disadvantaged women and children, especially in matters of sexual offences. Apart from the provision of legal aid, the legislation also facilitates the extension of financial facilities in matters relating to bails, fines and penalties.

2. The Bill is designed to achieve the aforesaid object.

Minister-In-Charge