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## Relevance of Pro Bono Services in India's battle for Justice and Equality

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*This paper examines India's need for free legal assistance to achieve its goal of justice for all & the upliftment of the downtrodden in society. It also discusses the legal standpoint for pro bono legal aid in our country. This paper also involves the comparison between India & the other nations from which we derive our constitution and how pro bono legal services are conducted in these nations. It also explains why attorneys in India should conduct pro bono work and why it is so vital. The paper also examines the various initiatives led by the Indian government to empower its citizens, such as the Nyay Bandh, a pro bono legal service program. The paper also recommends a way forward on how the government can fulfill its constitutional duty toward the citizens. Although pro bono services in our country are just budding, it is a great start, and the culture of pro bono can flourish in our nation as in other nations.*

**Keywords:** *pro bono, legal assistance, underprivileged, justice.*

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## INTRODUCTION

According to global multidimensional poverty index (MPI) reports 2019 & 2020, the number of people below the poverty line in India is pegged at 269.8 million<sup>1</sup>. India's financial situation makes providing good professional representation challenging since many people live in poverty. It is absurd to expect a significant percentage of the population to pay for legal costs when they struggle to secure even the basics of existence. It is also unethical for lawyers to demand fees that are not commensurate with their client's financial conditions. Thus, the concept of pro bono comes into the picture. Pro bono means "for the public good." Expert services that are rendered for no cost or at a low cost are referred to by this term.<sup>2</sup> Pro bono services are provided to non-profit groups by specialists from a spectrum of areas. In the practice of law, the word "pro bono" is most typically encountered. Non-profit attorneys help the public by furnishing no-cost aid to the needy. Such professional works for the collective good rather than for monetary gain. Free legal aid, as an idea, has not acquired much traction in the nation and "remains more of an ad hoc, personalized approach lacking an institutional basis." In Plato's writings, justice was described as the supreme virtue. Peace, harmony, and brilliance are all fruits of justice. According to political philosopher Montesquieu, "Every individual in society is born equal, but society takes away that equality, and the law restores it." Poverty and illiteracy, according to Justice P.N Bhagwati, must not be permitted to become impediments to justice. Every one of these great men's ideas testifies to the absolute necessity of legal assistance in ensuring justice in society. Understanding how pro gratis facilities are provided in various societies (an international perspective), the legal context of free legal aid in India, as well as other significant aspects, is crucial to understanding how important free legal assistance holds significant importance for the upliftment of the underprivileged in society.

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<sup>1</sup> Dipankar Dey, 'Delusional Deduction' (*Millennium Post*, 23 April 2022)

<<http://www.millenniumpost.in/sundaypost/inland/delusional-deduction-475360#:~:text=According%20to%20Global%20MPI%20reports,was%20pegged%20at%20269.8%20million>> accessed 11 July 2022

<sup>2</sup> Carla Tardi, 'What Does Pro Bono Really Mean?' (*Investopedia*, 30 June 2022)

<<https://www.investopedia.com/ask/answers/08/pro-bono.asp>> accessed 11 July 2022

## LEGAL STANDPOINT FOR PRO BONO WORK IN INDIA

Access to free lawful representation is provided via Article 39 (A) of the Constitution of India (1950). The 42nd Amendment Act of 1976's Directive Principle of State Policy was adopted, which provides that the State is in charge of ensuring that the justice system accords coequal justice to everyone. The administration shall provide lawful representation to anyone who lacks access to justice because of monetary limitations. In addition, an individual who has been indicted is entitled to legal counsel assistance under Article 22(1) of the Constitution by any practitioner of his discretion. In the case of *Manglu Singh v State of UP (2018)*, Justice Prashant Kumar said that “the state has a constitutional responsibility to offer free legal assistance to an accused individual who is unable to get legal services due to indigenious, and the state must do everything which is required for his purpose.” The state may have financial limits and spending priorities, but as the district court of New York stated in *Rhem v Malcolm*<sup>3</sup>, “the law does not empower any Government to deprive its citizens of fundamental rights based on poverty.” The constitutional requirement to offer free legal assistance to an impoverished accused arises when the trial begins and when the accused is brought before the magistrate for the first time.<sup>4</sup> Failing to do so unless the accused himself refuses would jeopardize the entire trial. The 1908 Code of Civil Procedure (CPC) and the 1973 Code of Criminal Procedure (CrPC) have specific rules on legal representation for pro gratis. Anyone charged with a crime who will be tried in the Magistrate Courts must get legal representation from the state under Section 304 of CrPc. Furthermore, if an individual cannot pursue due process, Order 33 of CPC absolves that party from incurring legal expenses. A trial held in the absence of adequate legal representation for the economically disadvantaged stands vitiated.<sup>5</sup> In situations like these, the Legal Services Authorities Act of 1987 established the National Legal Services Authority (NALSA), which provides free legal aid to impoverished sections of the community and establishes Lok Adalat for amicable conflict settlement. Similarly, the United Nations Sustainable Development Goal 16 emphasizes the state's obligation to “provide equal access to justice for everyone.” India is a party to the International Covenant on Civil and

<sup>3</sup> *Rhem v Malcolm* [1974] 377 F. Supp. 995

<sup>4</sup> *Khatri v The State of Bihar* (1981) SCC (1) 627 (SC)

<sup>5</sup> *Suk Das v Union Territory of Arunachal Pradesh* (1986), AIR 991

Political Rights (ICCPR), which states in Article 14(3)(d) that anybody accused of a crime has the right to select a lawyer who must provide adequate defence in court.

## INTERNATIONAL FRAMEWORK

- **United States of America (USA):** In the US, free legal aid is commonplace. Several groups either provide their free legal services or make referrals to solicitors who do. The American Bar Association (ABA) recently assumed the initiative in the drive to enhance the free legal services provided to the most disadvantaged members of society. Every lawyer is required to provide at least fifty hours of free legal assistance, following the ABA Model Rules of Professional Conduct. Additionally, free legal practice is taught in law departments at American institutions.<sup>6</sup>
- **South Africa:** Since the Cape Legal Society made nonprofit service obligatory for its affiliates in 2003, legal practitioners in South Africa mainly conducted it sporadically. Attorneys are required by the Bar Council of South Africa to provide at least twenty - four hours of free legal advice annually. In addition to these initiatives, South African law firms and individual solicitors assist on a voluntary and informal basis.
- **Australia:** Australia is proud to be a global pioneer in providing free legal assistance. Despite not being as widespread as in the US, there is a more purposeful effort for the expansion of nonprofit services, and there are comprehensive pro bono referral processes in place. Yet, there are still no explicit pro bono requirements mandating litigators and practitioners to put in a specific amount of pro bono work to sustain their practice licenses.
- **United Kingdom:** Attorneys and barristers are not obliged to provide free legal services in the United Kingdom as they are in other parts of the world. Even so, a lot of law firms with US counterparts likewise give pro gratis services. Clients can receive free legal

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<sup>6</sup> American Bar Association, 'ABA Model Rule 6.1' (*American Bar Association*)

<[https://www.americanbar.org/groups/probono\\_public\\_service/policy/aba\\_model\\_rule\\_6\\_1/](https://www.americanbar.org/groups/probono_public_service/policy/aba_model_rule_6_1/)> accessed 12 July 2022

representation from a variety of charitable groups. Great Britain has a very well and reputable legal support structure.

### **WHY SHOULD LAWYERS IN INDIA DO PRO BONO WORK?**

Even if we consider that the majority of our country does not live below the poverty line, they are chronically impoverished and mistreated and also do not have access to basic human rights and justice. Every day, we encounter news that the country is dealing with a plethora of severe problems such as communalism, violence, corruption, and climate change. These are just a few of the issues that disproportionately impact the poor and marginalized population. There appears to be no better moment for privileged individuals to do more than what is strictly expected of them daily. Lawyers are primarily silent witnesses to the debilitating impediments to justice that the impoverished and disenfranchised encounter. Individuals cannot access justice for a variety of reasons, including illiteracy, cultural hurdles, institutional barriers (i.e., there are not enough judges, courts, or court procedures are not quick), and, last but not least, people cannot access justice because they cannot receive legal aid. With 120 million attorneys in the country and 20 elite law schools, it is disheartening that we have just scratched the surface of this chronic problem. There is a general perception that attorneys conduct pro bono work because they have particular responsibilities and duties. This concept of duty and responsibility stems from law schools, where students are continually pushed to think in terms of rights and obligations. Because the motivation for doing pro bono work is so personal, it is difficult to offer a general response. However, there is a pattern that explains why successful lawyers choose to conduct pro bono work. They spend hours, weeks, months, and even years when they can be making millions. It is not like they receive glory from these cases; sometimes, it is just one hearing. The first of three considerations that encourage attorneys to conduct pro bono work is that they see it as an expression of empathy, which is one of the most valuable skills that a lawyer can nurture. Empathy in the context of law refers to the capacity to recognize and appreciate your client's predicament. Second, they recognize the importance of interconnectedness since attorneys have a limited canvas to paint upon in a case. The canvas broadens when working on a pro bono matter, particularly a social justice

case. The third component is simply the pursuit of happiness, and here is a territory where attorneys favour reasoning over feelings. Yet the rationale for pro bono work by lawyers is that it makes them happy. The New York Times research published in 2015 found no association between the traditional indicators of success, such as high-paying employment, the partner track, pleasure, and well-being. On the other hand, they discovered that people who work in public defenders' offices, people who work in low-paying occupations but find them significant, had a positive link with their feeling of well-being. These motivating elements inspire attorneys to participate in pro bono work, as well as studies that support these considerations.

## **CONCLUSION & WAY FORWARD**

The first thing that has to change is the dialogue in law schools. When discussing pro bono work, the focus should be on empathy rather than on the downsides. Second, the legal system must be reformed in such a way that impoverished people's cases are not deemed charity. Finally, the judicial process has to change in terms of empathy; perhaps we might consider the courts' locations. The court buildings are inaccessible by nature; they are frigid spaces into which people are apprehensive about stepping, especially if they are uneducated or underprivileged because the environment itself is daunting. Surely, the government has taken steps towards ensuring legal assistance to the disadvantaged and fulfilling the constitutional duty, which consists of the Nyaya Bandhu (Pro-bono Legal Services) program, which has compiled a list of lawyers who provide and are willing to provide pro bono services. It also links those who are eligible for free legal help under the Legal Services Authority Act (LSA), 1987, with pro-bono practitioners. The program has enrolled 4354 pro bono attorneys (Male: 3789, Female: 563 & Transgender: 2), and the beneficiaries have registered 1771 cases.

The Tele-law, another government initiative, has spoken to more than 1.3 million individuals thus far. Through the Common Service Centers (CSCs) in Panchayats, a different government-run initiative called "Reaching the Unreached" offers legal counsel to the general public,

including those eligible to free legal aid under Section 12<sup>7</sup> of the LSA Act, 1987, at the pre-litigation stage. Under the Court's Decision in *Indira Jai Singh v Supreme Court of India*<sup>8</sup>, the criteria to be classified as a Senior Advocate involves free legal services activity. There is an emerging need to encourage free legal assistance rather than imposing a structure that mandates such activities, which has downsides. This will vastly improve the legal industry's adoption of pro bono work. It will drastically improve the incorporation of pro bono services into the legal industry. A stable combination of pro bono services and legal aid would go a long way toward assisting our democracy in attaining the commendable idea of access to justice for all. Pro bono culture can thrive in our country as it has in many advanced countries, even though there is still plenty of progress to be made on the part of the authorities and the legal community.

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<sup>7</sup> Legal Service Authority Act, 1987, s 12

<sup>8</sup> *Indira Jaising v Supreme Court of India* (2017) Writ Petition (Civil) No. 454/2014