
Legal Framework for Ensuring Equal Justice: An Analytical Study of Legal Aid

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Abstract

Legal aid evolved tremendously between antiquity and the present. People are now more conscious and have begun to sacrifice their interests for the sake of others.¹ Access to justice is greatly aided by legal assistance, especially for low-income and marginalized groups who would not otherwise have the means to deal with complicated legal systems. With an emphasis on their function in resolving inequities in legal representation, this essay examines the background, composition, and effects of Legal guidance projects. It examines key aspects of legal assistance schemes and highlights how they promote social justice. Along with assessing the challenges that legal support organizations confront, such as a shortage of financing, excessive demand, and institutional barriers—the research also suggests ways to improve their efficacy. By utilizing both statistical analysis and case studies, this research emphasizes the relevance of legal help in promoting an equitable as well as inclusive legal system and the necessity of ongoing funding and innovation for these vital services.

¹ Singh Akarshita, 'Legal Aid in India: current scenario and future challenges', <https://articles.manupatra.com/article-details/Legal-Aid-in-India-current-scenario-and-future-challenges> accessed 12 January 2025

Introduction

The origins of legal aid are deeply rooted in Indian history and can be recited from old scriptures. From the extensive journey of the legal system from the Vedic era to the present, a codified legal framework of legal aid has grown to the myriad importance in India².

Those in need and marginalized in society are given opportunities for legal services³. It is usually provided to individuals or groups who may not otherwise afford legal representation, with eligibility often based on income, type of legal issue, or special circumstances. These services typically target low-income individuals, vulnerable populations such as the elderly, disabled, and veterans, as well as victims of crime, domestic violence, or abuse. Immigrants, refugees, and those facing housing, employment, or criminal justice challenges also benefit. Assistance is offered through legal aid organizations, pro bono attorneys, law school clinics, and Public defenders provide access to justice for people in need. In particular, pro bono labour which is frequently done, is always viewed as "Dharma"⁴ as it expedites the idea of "access to justice."⁵ India has a long history of providing legal assistance, supported by several state-funded initiatives, decades of law, and jurisprudential interpretation. However, its pro gratis culture is still very much in its early stages. The ancient Latin term "pro bono," which means "societal helpful," translates as "free legal assistance." The notion of free legal assistance has not gained hold in the nation, and it is mostly a personal, ad hoc activity with no institutional structure.

² Khubalkar Ragini P., 'Contours of Legal Aid: Past, Present and Future' First published online June 5, 2024, <https://journals.sagepub.com/doi/10.1177/23220058241253394> accessed 18 January 2025

⁴ Dr. Karmakar Subhra Bakul and Dr Lama.Kavita, 'Legal aid service and access to justice with special reference to pro bono culture model: a new dimension of legal education in India' <https://www.gapinterdisciplinarity.org/res/articles/> accessed 19 January 2025

⁵ ibdi

Legal Aid and Access to Justice in India.: Evolution, Challenges, and Moving Forward

As pro bono is the "entails" of getting to legal assistance is the "means of the the conclusion," there is a natural relationship between the two; Legal Services Authorities Act of 1987. The article 39A of the constitution encourages the notion of legal justice and, especially, free legal help. Justice P.N. Bhagwati provided a detailed interpretation of Article 39A of the Indian Constitution the case of [AIR 1979 SC 1369] Hussainara Khatoon & Others v. State of Bihar..⁶ The right to free legal assistance is, therefore, plainly a fundamental part of the "reasonable, fair, and just procedure for a person accused of an offence," and it must be deemed inherent in the promise ⁷articles 21 and 14 has identified fundamental rights through the active participation of judiciary. Article 39A specifically states the state's duty towards providing legal aid. On the same line, there are provisions in civil and criminal law for providing free legal aid, so that access to justice can be achieved. In addition, ⁸the Legal Services Authorities Act, of 1987, also works towards this goal by providing National Legal Services Authorities (NLSA), District Legal Services Authorities (DLSA), and establishing Lok Adalats. The Ministry of Law and Justice has also come up with the scheme of Designing Innovative Solutions for Holistic Access to Justice ⁹(DISHA) to achieve this constitutional mandate through the pro bono culture. In this article, Introduction gives a brief introduction to legal aid and its changing importance. In the Development of the Concept of Legal Aid, historical development is traced to understand the need for legal aid in the early period. Analysis of Present Precise Legal Safeguard to Legal Aid focuses on the development of legal aid after the introduction of the Legal Aid Act and the efforts taken by the government and other PIL in India exhibit both sui generis traits acquired through its unique evolutionary path in India, as well as the more general characteristics of its global counterparts.

⁷ Justice Mehrotra R. B. '*Expanding horizons of fundamental rights and courts' obligation*', published in institute journal April -June 1995 <https://ijtr.nic.in/articles/art14> accessed 20 January 2025

⁸ '*The Legal Services Authorities Act*, 1987'https://www.indiacode.nic.in/bitstream/123456789/19023/1/legal_service_authorities_act%2C_1987, accessed 21 January 2025

⁹ '*Disha Scheme*' <https://www.drishtiias.com/daily-updates/daily-news-analysis/disha-scheme>, accessed 21 January 2025

The indigenous innovations include the dilution of procedural requirements like locus standi (due to the introduction of epistolary jurisdiction by the Supreme Court of India), making it easier for suits to be brought forth,¹ and the Indian government's belief that it is important to provide the needy with access to free legal aid. PIL in India has also been influenced by various socially inclined international law conventions and practices on issues of global concern, such as human rights (especially women's rights) and environmental protection; and references made by the Indian judiciary to foreign case law where the domestic law is insufficient, ambiguous or archaic. The public interest and social welfare causes in India are promoted through social action litigation ¹⁰(SAL) and non-litigation-based means, which essentially focus on providing access to justice to the underprivileged. To minimize social inequality and injustice, most of these laws have a two-pronged approach. First, they seek to create a level playing field by explicitly laying down provisions on equality. Second, by adopting affirmative action measures, they seek to address past injustices. Third, laws such as the ¹¹Right to Information (RTI) Act, 2005, which do not directly fall under the category of social legislation, have helped immensely to enforce numerous social legislations by requiring the state to provide information on the implementation and enforcement of these laws

The Role of International Law in Promoting Legal Aid and Access to Justice

Internationally Access to justice has been identified as a human right at the international level through Articles 8 and 10 of the ¹²United Nations Declaration on Human Rights. The General Assembly in 2012 adopted the 'UN Principles and Guidelines on Access to Legal Aid in Criminal Justice System', which is considered to be the first legal instrument for providing legal aid rights. , ¹³the United Nations Sustainable Development – Goal 12 underscores the

¹⁰ 'Basics of Public Interest Litigation (PIL) in India' [https://www.impriindia.com/insights/basics-of-pil-event-report/#:~:text=Public%20Interest%20Litigation%20\(PIL\)%20is,construction%20dangers%2C%20and%20so%20on](https://www.impriindia.com/insights/basics-of-pil-event-report/#:~:text=Public%20Interest%20Litigation%20(PIL)%20is,construction%20dangers%2C%20and%20so%20on) accessed 23 January 2025

¹¹ 'Important Section under Right to Information Act- 2005' https://dgrindia.gov.in/writereaddata/media/documents/important_section_of_rti_en.pdf , accessed 15 January 2025

¹² 'Universal Declaration of Human Right' <https://www.un.org/en/about-us/universal-declaration-of-human-rights> accessed 25 January 2025

¹³ 'United Nations Department of economic and social affairs Sustainable Development' <https://sdgs.un.org/goals> , accessed 26 January 2025

obligation of States ‘to ensure equal access to justice for all’’. Initiative for Commonwealth Human Rights (CHRI) ¹⁴ It is an independent, global, non-profit organization with its main office in India that advocates for human rights and associated concerns.¹⁵

Strengthening Free Legal Aid in India: The Need for a Structured Pro Bono Network

Keeping in line with these obligations and encouraging pro bono legal services the In accordance with Section 12 of the Legal Services Authority Act of 1987, the Department of Justice (DoJ) ¹⁶ plans to compile a database of attorneys who are prepared to provide their services to litigants. DoJ has previously issued letters to all of the nation's bar associations and councils, requesting information on attorneys who offer pro bono legal services to the underprivileged and those who would not otherwise be able to pay for legal counsel.¹⁷

Bridging the Justice Gap: The Role of Lawyers in Providing Free Legal Aid

Every lawyer has a responsibility to help those who cannot afford legal counsel, and being directly involved in the problems of the less fortunate may be one of the most rewarding experiences a lawyer can have. Pro bono expenditure orders are permitted in civil courts, tribunals, and settlement agreements under Section 194 of the Legal Services Act of 2007. They are similar to typical civil legal costs, except for one party that receives free legal representation during the proceedings. Pro bono fees are determined by comparing what a paying client would get to the monetary worth of the free legal help that was given. The expenses cover any time that free legal assistance was offered, even if just one attorney worked for free (regular fees for the fee-paid job might also be requested).

¹⁴ ‘Commonwealth Human Rights Initiative (CHRI)’ <https://thecommonwealth.org/organisations/commonwealth-human-rights-initiative-chri> accessed 26 January 2025

¹⁵ Saurav Sanjeev, ‘Role of legal aid to maintain access justice in Indian society’ <https://www.slideshare.net/sanjeevsaurav/free-legal-aid> accessed 27 January 2025

¹⁶ ‘Department of Justice’ <https://thecommonwealth.org/organisations/commonwealth-human-rights-initiative-chri> , accessed 28 January 2025

¹⁷ ‘Pro Bono Services by Advocates’ https://serviceonline.gov.in/serviceLinkHome.html?OWASP_CSRFTOKEN=ESSA-SXPC-97N5-NPRT-WTQU-LL8O-ORLS-ZIA3&serviceToken=GEnPsEv0YR546, accessed 30 January 2025

Is Pro Bono Work Truly Altruistic? A Philosophical and Ethical Inquiry

Is Probono is altruistic?¹⁸ There has long been discussion over the possibility of pure altruism. The rational choice school of economics and the egoistic branch of moral philosophy both often reject the idea that completely disinterested behavior is possible. These frameworks make the assumption that self-interest drives all rational behavior since, after all, why else would someone take action? According to this perspective, people engage in others' best interests because they gain some personal Pro Bono in principle. Complete Survey June 2003¹⁹ contentment from doing so. However, this method misses an important moral distinction and borders on tautology. An action performed because it will result in intrinsic benefits is ethically distinct from an action taken because it will result in extrinsic rewards, as other theorists point out. The moral relevance of less self-serving support of a poverty law program is not the same as that of unpaid legal services intended to garner positive publicity or to accommodate a paying client. Although both donations are philanthropic, only the latter appears to be really selfless. As the case illustrates and the debate that follows demonstrates, a large portion of pro bono legal labor is not entirely selfless.²⁰

The Ethical and Commercial Dimensions of Pro Bono Legal Work

As per Martin Luther King Jr. "injustice anywhere is a threat to justice everywhere"²¹ The main justification for pro gratis contributions is based on two tenets: first, that access to legal services is a basic human necessity, and second, that it is the duty of lawyers to assist in making such services available. Since the poor frequently rely on legal entitlements to satisfy their fundamental necessities, access to the judicial system is especially challenging for them. Additionally, equality before the law is the highest norm of law in a democratic society.²²

¹⁸Rhode Deborah L., 'Pro Bono in Principal and Practice' https://heinonline.org/HOL/Page?handle=hein.journals/jled53&div=36&g_sent=1&casa_token=&collection=scjournals, accessed 30 January 2025

¹⁹ ibdi

²⁰ 'Pro Bono in Principle and in Practice: Public Service and the Professions' <https://dokumen.pub/pro-bono-in-principle-and-in-practice-public-service-and-the-professions-9781503625075.html> accessed 31 January 2025

²¹ Sossin Lorne, 'The Public Interest, Professionalism, and Pro Bono Publico' <https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1209&context=ohlj> accessed 18 January 2025

²² ibdi

Access to justice cannot be denied when our legal system brazenly declares itself to be just. Because declarations of obligation have not prompted many legal professionals to take action, many who are associated with the pro bono movement and engage with the profession to try to boost pro bono involvement have attempted to disassociate the discussion from ethics or morality. Rather, they have worked to persuade the industry that pro bono is based on good business practices. This argument has a significant impact on professionals at all levels, particularly on those just starting out in their professions. Some young solicitors have the belief that they are being forced to engage on the pro bono load in cases for which their seniors have declined. According to the poll, young attorneys must believe that the proposal would help them or others if it is to be adopted by the young profession in the long run. Some said that their motivation sprang from a desire to uphold the pro bono legal labor heritage while serving the community. Others seem to react favorably to the chance for professional or personal growth, whether it is via exposure to a wider range of legal circumstances or more working with clients, or maybe both.

The Ethics of Legal Monopoly: Why Should Lawyers Provide Free Services?

According to some lawyers, society as a whole should pay the price if equal justice under the law is a societal value. Food and medical care are basic need for the impoverished, but lawyers do not need grocery doctors to volunteer their services to assist meet those requirements. Why should a lawyer have more responsibility? Essential services are exclusively provided by the legal profession. Attorneys enjoy unique benefits that come with unique responsibilities. Pro bono work offers advantages to attorneys both individually and collectively.

These advantages go beyond the inherent fulfillment that comes with providing public goods and services. This assertion has several issues, starting with the presumption that pro gratis work is "charity." Pro bono labour encompasses both professional and philanthropic endeavors. All societies have had to deal with the question of the morality of inequality (Wisman and Smith, 2011)²³.

²³Wisman Jon D., Smith James F., *'Legitimizing Inequality: Fooling Most of the People All of the Time'*

My argument here is that The moral, political, and organizational approach to addressing inequality within a particular historical context of increasing material disparity and economic development is known as philanthrocapitalism²⁴

Legal Education and Pro Bono: Preparing Future Lawyers for Public Service

The Department of Justice, which is part of the Ministry of Law and Justice, Government of India, has taken general actions. With a strong interest in pro bono services, the Department allows interested practicing attorneys to register and log in to a pro bono profile using a user ID. This platform will make it easier to get legal help to people who need it based on previous databases. The Bar Council of India requires all law schools and universities to set up legal aid units to Through a variety of initiatives, raise knowledge of fundamental laws and provide free legal assistance²⁵. Based on pro bono club initiatives initiated by several legal institutions, this organization began to play a crucial role in guaranteeing justice to underprivileged individuals. Specifically, nearly 69 colleges established this model to reach the grassroots level. The majority of legal education leaders concur that providing such services is a professional duty and that their institutions should equip aspiring solicitors to take on this responsibility. To help students develop their professional identities in the early stages of their careers, law school should instill in them a sense of duty to conduct pro bono work.,²⁶ Prospective solicitors must cultivate the abilities and principles that will uphold their dedication to public service. Students who want to become lawyers may often receive essential experience in interviewing, drafting, negotiating, solving issues, and working with individuals from all backgrounds through pro bono work. Legal aid may be provided to remote areas by establishing legal aid in law schools and recruiting law students, who can then provide legal advice and help at a significantly lower cost. In 1977, the Bar Council of India ordered all law schools in the country to teach legal assistance as a pragmatic examination.

, First published: 06 September 2011 <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1536-7150.2011.00795.x> accessed 19 January 2025

²⁴Thorup Mikkel, 'Pro Bono? On philanthrocapitalism as ideological answer to inequality,' <https://ephemerajournal.org/sites/default/files/2022-01/13-3thorup.pdf> accessed 19 January 2025

²⁵ Sarker Shuvro Prosun, 'Empowering the Underprivileged: The Social Justice Mission for Clinical Legal Education in India' https://link.springer.com/chapter/10.1057/9781137517531_10 , accessed 19 January 2025

²⁶ 'BCI should mandate every lawyer to take up at least one pro bono case, says parliamentary panel' <https://www.daijiworld.com/news/newsDisplay?newsID=1165633> , accessed 20 January 2025

Despite obstacles, pro bono legal services in India offer chances for creativity and cooperation. Action is prompted by a growing need for legal aid from marginalized populations and a growing awareness of social justice problems²⁷.

The Role of Virtual Legal Clinics in Enhancing Pro Bono Legal Aid

The. Advancements in technology and communication have also facilitated the delivery of pro bono services, enabling lawyers to reach underserved populations in remote areas. Online platforms and virtual legal clinics offer opportunities for pro bono lawyers to provide advice and assistance to clients regardless of geographical barriers²⁸.

the legal profession grapples with issues of access to justice and social inequality, pro bono legal aid emerges as a powerful tool for effecting positive change. By leveraging their skills, expertise, and resources, lawyers can play a pivotal role in addressing systemic injustices and advancing the cause of human rights and social justice.

Conclusion

India's legislative, institutional, and jurisprudential advancements over the past three decades have established the groundwork for the impoverished to get free legal services. When we discuss justice, we're talking about the idea of morality founded on equality, faith, fairness, reason, and ethics. When the law is administered properly and fairly, justice results. However, in reality, very few organizations successfully provide these services. A concentrated, coordinated effort by the legal profession would go a long way towards guaranteeing the provision of high-quality pro bono legal services to the underprivileged, as guaranteed by the Constitution, as the demand for pro In India, the number of pro bono legal services far outweighs the supply. Giving the underprivileged access to legal services is without a doubt a issue of general interest.

²⁷ Thomas Nandita, 'Advocating for justice: the vital role of pro bono legal aid'

26 April 2024, <https://lawbasic.in/articles/f/advocating-for-justice-the-vital-role-of-pro-bono-legal-aid> , accessed 24 January 2025

²⁸ *Ibid.*