

Chandrawat
& Partners

Legal Aid and Pro Bono



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OVERVIEW

Since India gained independence, there has been a consistent increase in the percentage of people who can afford a comfortable lifestyle, accompanied by a significant decrease in the percentage of people living below the poverty line. This positive change can be attributed to the government's policies aimed at uplifting the poor. However, despite these efforts, many individuals still do not benefit from these policies and continue to face economic challenges. Consequently, the gap between the rich and the poor has widened, leading to social injustices and marginalization of the poorer sections of society.

Additionally, even the literate and affluent sections tend to avoid legal proceedings due to their complexity. In such a scenario, it is difficult to expect rural and disadvantaged populations to view the court system as a means of attaining justice. Nevertheless, our Constitution and legislation offer a solution by providing free legal assistance, known as legal aid, to those who cannot afford legal services.

Legal Aid- Legal assistance is the provision of free legal services to people who are economically or socially disadvantaged and cannot afford legal counsel. In India, the notion of legal assistance is essentially founded on Article 39A of the Indian Constitution, which provides that the state should guarantee that the operation of the legal system promotes justice on an equal opportunity basis. Legal aid services are provided to qualifying persons by the government as well as numerous organisations and institutions.

The National Legal Services Authority ("NALSA"), created under the Legal Services Authorities Act of 1987, is the major organisation responsible for legal assistance in India. NALSA oversees and monitors legal assistance efforts around the nation. To offer legal aid services at various levels, it partners with State Legal Services Authorities ("SLSAs") and District Legal Services Authorities ("DLSAs").

Legal aid services include a wide variety of help, such as legal advice, court representation, legal document creation and filing, and legal awareness programmes. Lawyers, legal experts, and paralegals affiliated with legal aid organisations provide these services.

THE CURRENT STATE OF PRO BONO CASES

While pro bono work is supported under Indian law, it is not without challenges. To begin with, India's expanding need for commercial solicitors stifles the development of the pro bono industry. Furthermore, India's enormous diversity, liberal laws and jurisprudence concerning legal services for the underprivileged, large population living in poverty, history and current status as a secular, democratic, republic, and recent economic growth, as well as the expectations raised by that growth, all combine to create a unique and challenging environment in which the pro bono legal services sector is developing.

Public complaints against the official legal system include corruption, judicial inefficiency, and a lack of public trust in the judiciary, all of which contribute to informal dispute resolution. One of the most important concerns plaguing India's judicial system has been incarceration. Lawyers, activists, and even Supreme Court justices have focused on this subject, which is crucial to understanding not just how legal services are offered and controlled in India, but also the genuine possibilities and problems that lawyers interested in offering pro bono face.



Legislative, structural, and jurisprudential developments in India over the last three decades have laid the framework for the disadvantaged to get free legal services. In practise, however, only a few institutions deliver these services effectively, relying on India's unique PIL procedure for legal help. It should also be mentioned that under current Indian legislation, foreign-qualified solicitors are not permitted to represent pro bono clients.

Foreign-qualified solicitors, on the other hand, can actively contribute to pro bono legal services by providing research and writing skills in specific cases, as well as indirectly by collaborating with Indian organisations to create capacity.

In India, the demand for pro Bono legal services much outnumbers the supply; consequently, determined, organised efforts by legal professionals would go a long way towards guaranteeing legal aid to the destitute and access to justice for everyone, as provided by the Constitution.



RULES AND REGULATION

The Constitution of India by virtue of Article 39 A directs the State to provide free legal aid to the poor and weaker sections of the society, to promote justice on the basis of equal opportunity. Article 14 guarantees equality before law and equal protection of laws. Equality before law necessarily involves the concept that all the parties to a legal proceeding must have an equal opportunity of access to the court and of presenting their cases to the court.

Article 21 of the Constitution guarantees the right to life and personal liberty. The Supreme Court of India has interpreted Article 21 expansively to include various facets of a dignified life, including the right to legal aid, as access to justice is considered an inherent part of the right to life.

Article 22(1) of the Constitution safeguards the rights of arrested persons, including the right to consult and be defended by a legal practitioner of their choice. Legal aid plays a crucial role in ensuring that individuals who cannot afford legal representation are provided with the necessary assistance during criminal proceedings. Based on these constitutional provisions, the Legal Services Authorities Act, 1987, was enacted to provide a statutory framework for the implementation of legal aid and assistance programs in India.

Similar rules on free legal assistance can also be found in the Code of Criminal Procedure, 1973 and the Code of Civil Procedure, 1908. According to Section 304 of the Criminal Procedure Code, the state is obligated to offer legal aid to anybody accused of an offence that is to be tried in the Court of Sessions. Moreover, Order 33 of the Civil Procedure Code discharges a person from the liability of paying court fees if he/she does not have the required means to seek justice.

The Legal Services Authority Act, 1987 (LSA) was also enacted which took effect on November 9, 1995. The Act specifies the scope of legal assistance available for the economically weak, backward section and the disabled people. 'No one must be denied access to justice because of economic or other limitations,' is the vision of this Act.

In the case of *Hussainara Khaton v. Home Secretary, State of Bihar* (1979), the Supreme Court held that the right to a speedy trial is a fundamental right guaranteed under Article 21 of the Constitution. Furthermore, according to Article 22(1) of the Constitution, the accused in a case, has the right to be represented by any legal practitioner of his choice. Further the Supreme Court, in the case of *State of Maharashtra v. Manubhai Pragaji Vashi and Ors.* (1995), held that failing to give free legal help to an accused at the expense of the state unless the accused himself refuses for the same, would jeopardize the whole trial. Further, Justice Krishna Iyer stated in the case of *M.H Hoskot v. State Of Maharashtra* (1978) that providing free legal assistance is the state's responsibility and not the government's charity.

Under the Act, individuals who meet the eligibility criteria are entitled to free legal services, including representation by a lawyer in court, advice, and assistance in legal matters. The eligibility criteria encompass categories such as scheduled castes and tribes, women, children, persons with disabilities, victims of trafficking, and individuals with an annual income below a specified threshold.



LICENSES AND REGISTRATION

Registration of lawyers: Lawyers who wish to engage in pro bono or legal aid work can register themselves with the relevant legal services authority. This registration enables them to participate in legal aid programs and represent clients who qualify for free legal assistance.

Empanelment with legal services authorities: Lawyers who wish to offer pro bono or legal aid services can register or empanel themselves with the State Legal Services Authorities (“SLSA”) or District Legal Services Authorities (“DLSA”). Each authority may have its own empanelment process, which typically involves submitting an application and meeting certain eligibility criteria.

Eligibility criteria: Legal aid is primarily provided to individuals who fall within the defined categories of disadvantaged sections of society, such as the economically weaker sections, women, children, Scheduled Castes, Scheduled Tribes, and persons with disabilities. The means and merits of the case are considered when determining eligibility.

Law firm pro bono programs: Some law firms in India have their own pro bono programs, through which they offer free legal services. These programs may have their own internal procedures and guidelines for lawyers who want to participate.

Bar council registration: Lawyers who are interested in engaging in pro bono or legal aid work generally need to be registered with the respective State Bar Council or Bar Council of India, depending on the jurisdiction. This registration is a general requirement for practicing law in India and is not specific to pro bono or legal aid services.

DISPUTE RESOLUTION

In India, if there is any dispute which arises from pro bono and legal aid services, there are various mechanisms and remedies available for which a person can go for the resolution of disputes. Some are written below

Internal grievance redressal: Many organizations and institutions providing pro bono or legal aid services have their own internal grievance redressal mechanisms. This can include designated personnel or committees responsible for addressing disputes or complaints raised by clients or beneficiaries of the services. The organization's policies and procedures outline the steps for lodging a complaint and seeking resolution.

Legal services authority's grievance cell: Legal services authorities, such as the State Legal Services Authorities ("SLSA") and District Legal Services Authorities ("DLSA") established under the Legal Services Authorities Act, may have their own grievance redressal cells or committees. Clients dissatisfied with the pro bono or legal aid services received can approach these authorities to file a complaint and seek resolution.

Mediation and conciliation: Mediation and conciliation are alternative dispute resolution methods used to facilitate negotiation and settlement between parties. In pro bono and legal aid cases, if a dispute arises, the involved parties can opt for mediation or conciliation. Trained mediators or conciliators assist the parties in engaging in constructive dialogue, identifying common ground, and reaching a mutually agreeable resolution. This process helps avoid the need for formal litigation and encourages cooperation and compromise.

Ombudsman or review committees: In certain legal aid programs or organizations, there may be the establishment of ombudsman or review committees to specifically address disputes arising from pro bono or legal aid services. These committees operate independently and impartially, and their purpose is to examine and resolve complaints or conflicts related to the delivery of free legal assistance.

GOVERNMENT EFFORTS TO PROVIDE FREE LEGAL AID

The government has introduced three legal empowerment initiatives, i.e., Tele-law, Pro Bono legal services, and Nyaya Mitra. Tele-law project was started in 1800 Gram Panchayats in 11 states of the nation to provide free legal assistance to marginalized individuals under Section 12 of the Legal Services Authorities Act, 1987.

Other people can get legal advice for 30 rupees only. Lawyers on the panel are available by video conferencing or telephone conversation at Common Service Centres ("CSCs"). In February 2019, Tele-law released a mobile application and a dashboard to facilitate last-mile connectivity.

Free legal assistance, including legal representation, is offered to marginalized individuals via the Pro Bono legal services program also, which is governed by Section 12 of the Legal Services Authorities Act, 1987. Five hundred and thirty-three attorneys have signed up to offer pro bono legal services under the scheme.

Nyaya Bandhu, a mobile app was launched in February 2019, to connect registered pro bono advocates with registered applicants. Additionally, through the legal services clinics established in jails, NALSA provides free and competent legal assistance to under-trial prisoners and convicts.

On regular intervals in jails, awareness camps/programs are organised on a regular basis to enlighten convicts about free legal aid and their legal rights, especially the right to bail. Officials from the legal services authority visit jails on a regular basis to identify detainees who want legal aid and counselling. Aside from these processes, each district has formed a district judge-led under trial assess committee to assess the cases of all under-trials who have served half of the maximum term authorized for the offences they are charged with.

HOW WE CAN HELP?

Personal ethical conduct: We can commit to upholding high ethical standards in our own professional conduct, demonstrating integrity, honesty, and accountability in our actions and decision-making processes. When faced with ethical dilemmas, we can analyze the situation from multiple perspectives, consider the potential consequences of our choices, and make decisions that prioritize ethical principles and the well-being of stakeholders;

Continuous learning and professional development: We can stay informed about ethical and legal best practices in our respective fields. Engaging in continuous learning and professional development helps us stay updated on new laws and regulations, industry standards, and ethical frameworks;

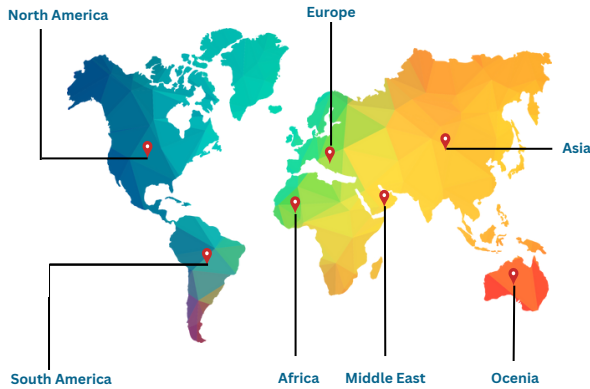
Advocacy and influence: We can use our voice and influence to advocate for ethical business practices and contribute to discussions on ethical and legal issues within our professional networks, industry associations, and communities;

Responsible consumption: Our firm can support businesses that demonstrate ethical behavior and responsible practices. By making informed purchasing decisions and supporting companies with strong ethical values, we can encourage positive change within the business sector;

Engaging in social responsibility: We can actively participate in corporate social responsibility initiatives, volunteer programs, or community engagement activities organized by businesses. By contributing our time and resources, we can help businesses address social and environmental challenges;

Collaboration and partnerships: Businesses, professionals, government bodies, and civil society organizations can collaborate and form partnerships to address ethical and legal challenges collectively. By working together, we can share best practices, develop industry standards, and advocate for regulatory reforms that promote ethical conduct.

SERVING CLIENTS WORLDWIDE



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