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# Pro Bono: A Reality or an Allegory

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## ABSTRACT

*This Article scrutinizes the transformation of the legal profession from lawyers as public citizens to lawyers who serve mostly private interests over the defunct decade that they have to come to operate reluctant to the increasing need of pro bono work and even if the firms entertained such cases, they were frequently handled on ad hoc basis putting burden on the individual involved in the case. Immediate and increasing demand of pro bono in India has not been supplied by its supply, and a coordinated, sorted out exertion by the lawful calling would go far towards guaranteeing the arrangement of value star bono legal services to the poor as enshrined in the Constitution and conclude that pro bono being a need of the hour as the concept of access to justice has merely become a notion rather than the reality for those in need and has remained an allegory for them.*

## I. INTRODUCTION

*“If money decides the access to justice, the law will be a despot”*

**-Dr. Mohammad Abad Alrazak**

India has a broad history of lawful guide, upheld by quite a few years of enactment, jurisprudential understanding and various state-financed programs. While certain expert bono administrations are composed and given by various individual advocates, law offices, NGOs, law institutes and bar associations throughout the nation, leads to the surpassing of the interests vested in administration by the availability of these services.

The Latin term, *pro bono*<sup>3</sup>, means “for the public good and for the welfare of the whole and to give uncompensated legal services” The *pro bono* work extended from lawful administrations gave totally for nothing out of pocket or at an altogether diminished expense, non-legitimate work and support for network extends in cash or cash's worth. Indeed, the term has become associated with the term voluntary service especially in the field of law due to the unpaid work that the lawyers and advocate do. However, in the recent times the scope of the term is not precise and unclear.

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<sup>3</sup>BLACK'S LAW DICTIONARY 3806 (8<sup>th</sup> ed., 2004).

According to the CBA's 1998 resolution, *Promoting a Pro Bono Culture in the Legal Profession*<sup>4</sup>, the lawyers and advocates who primarily engage in the pro bono work, are reinforced by various motives and they contribute by not charging or at a nominal charge for the purpose of preserving the rights of the disadvantaged classes by providing them with the legal services and assisting the organizations for the betterment of the society and legal regime at last

The meaning of *pro bono* has critical ramifications, not only for the solidarity of the bar's vision, however for poor people, the working poor and for the white collar class. Legal counselors' charges can be costly and it isn't only poor people who once in a while get themselves unfit to pay for legal advice.

The challenges of accessing justice are expanding day by day. People tend to appear in the court without an advocate being his representative, because of their incapacity to afford one due their economic conditions and status. The gap between poor and the rich has widened, leading to unavailability of the legal aid for and being an outcome of complexity of the law in the contemporary era. The dares of implement in practicality the concept of equal access to justice are inalienable and uncertain.

Over the defunct decade, the individuals and firms have to come to operate reluctant to the increasing need of pro bono work and even if the firms entertained such cases, they were frequently handled on ad hoc basis putting burden on the individual involved in the case.

As William D. Gladstone said "Justice Denied Is Justice Delayed" which resembles that no one should be denied with justice because of poverty or degrading economic condition. Having a right of the citizens to have reasonable access to justice, it is consequently duty of state to provide the same and is its primary responsibility in a modern democracy.

Though the opportunity of international pro bono work are increasing, but the law firms are hindered by outdated policies that limit engagement in meaningful pro bono work. Pro bono policies should expressly include human rights work. This will expand the availability of resources for global human rights work and provide the lawyers to serve their professional obligations.

## II. LAWYER'S UNDERSTANDING ABOUT PRO BONO WORK

*Pro bono* has endured a profound transformation from an informal action to complex

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<sup>4</sup>STANDING COMMITTEE ON PRO BONO, CBA Resolution 98-01-A, <http://www.cba.org/CBA/groups/probono/> (Last visited on November 3, 2018.)

professional institution.<sup>5</sup> The involvement of the lawyers in the global development is very imperative and significant. The stigma in the mind of the individuals of contributing for a developmental cause enables them in solving a wide range of problems helping in progression of the community altogether. Those in legal profession generally have a moral responsibility and obligation for preserving the interest vested of the clients in a particular methods by using the appropriate methods in doing so. Beyond this, there is an overriding moral premise that lawyers, having benefited greatly from the gift of a legal education, and having been well equipped with useful skills, have an obligation to help those who are less fortunate in the society.

To generate a sense of great adulation, the people in the legal profession need to get involved in providing their services and expertise to those who are unable to pay. The foremost compassion of a lawyer should lie in uplifting the deprived and bringing the notion of justice in reality. Moreover, lawyers who are already involved in providing *pro bono* services can help and motivate the others reinforcing their interest in the same. Their testimonies are deemed to be very useful in reformative relationships with the client, whose life changes on the better side.

It is pertinent note here that *pro bono* work is a beneficial piece of work for young lawyers who may not at first instance get the opportunity to handle cases all alone by the virtue of the complexity of law in the contemporary legal regime throughout the nations. Not only does it feel good and give a sense of satisfaction, it also gives experience and creates an avenue for exercising and developing skills and techniques that would later be put to use in matters of greater substance. So, it is conclusive that *pro bono* work not only provides a sense of satisfaction but it enables them to gain experience in the field, further developing their expertise and acting as a career strategy for them.<sup>6</sup>

Furthermore for the senior lawyers, there may come a time in their legal career when they start to feel unsatisfied, uninspired and bored. When they have tackled and conquered the legal world and amassed a huge fortune for themselves. The question 'what then?' begins to resonate in their minds. This is the time when they wonder if what they have been doing was really what they wanted to do. It takes a lot more to feel a sense of satisfaction and personal pride, than material enrichment. These lawyers in their memoirs can recollect he cases of the

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<sup>5</sup>Paul J. DiMaggio & Walter W. Powell, Introduction to THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS 1

<sup>6</sup>BUKOLA HELEN OLUSALADE, *What Every Lawyer Should Know about Pro Bono Work*, available at [https://www.academia.edu/37028267/What\\_Every\\_Lawyer\\_Should\\_Know\\_about\\_Pro\\_Bono\\_Work](https://www.academia.edu/37028267/What_Every_Lawyer_Should_Know_about_Pro_Bono_Work) (Last visited on December 05, 2019).

lawsuits they fought without any payment of a fee as it generally witnessed that during lifetime of a lawyer and his legal career that something exceptional is always remembered and all the others are just business transactions and not *pro bono* work which is deemed to be very helpful for those in need.<sup>7</sup>

### III. CLIENT CRITERIA FOR PRO BONO WORK

For most of the times, it is generally beheld that most law practices and schemes for pro bono services take into account that there is availability of any other sort of assistance available to the client, for example, legal aid. Thus, a right criteria for the legal professionals in providing pro bono services may refer to those in need or disadvantaged people who cannot afford to pay to them at the prevailing market rates.<sup>8</sup>

It is quiet impossible that legal professionals may set off a particular criteria on the basis of their income or over certain level of assets or any notional value and it is indeed undesirable to provide such services in the sake of charity by denoting any kind of criteria for the clients. But the problem here also lies with the fact that people have assets in reality but are poor in terms of the income and accordingly the idea of the criteria will stand irrelevant.

In addition, *pro bono* services arguably extend and are available to a particular set or class of people i.e. the 'sandwich class', those are basically people falling outside the purview of legal aid due to non fulfilment of eligibility criteria but also are unable to afford and pay to the legal professionals for consultation of their cases. The general means test which has been adopted by the legal professionals is not expressed in terms of money but is taken into consideration on the basis of inquiry of the clients and their capacity of paying for legal assistance. In some law practices, capacity to pay might be considered a less relevant consideration in public interest and test cases for the public benefit.

Some law practices' criteria give priority to particular client groups, such as people with disabilities, people from Non-English speaking backgrounds or clients with children. Many law practice pro bono clients are charities and other nonprofit organizations working for disadvantaged people. A 'capacity to pay' means test may also be applied to these organizational clients. For example, the American Bar Association's definition of pro bono includes work done for stated kinds of organizations 'where the payment of standard legal

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<sup>7</sup>*Id.*

<sup>8</sup>*Pro bono guide for Law Practices, The Law Society of Singapore*, <https://www.lawsocprobono.org/Documents/Pro%20Bono%20Guide%20Lawpractices.pdf> (Last visited on November 30, 2013).

fees would significantly deplete the organization's economic resources or would be otherwise inappropriate'.<sup>9</sup>

#### IV. INDIAN MISE-EN-SCENE OF PRO BONO PUBLICO

The Indian legal regime "washout pays" rule, but rather it is on the discretion of the courts to grant legitimate fees to the parties.<sup>10</sup> Contingency fees are prohibited, so the disadvantaged litigants must either opt for legal aid or secure pro bono representation from the courts. Proficient reimbursement legal protection is accessible for lawyers, and appears at first glance to cover pro bono exercises.<sup>11</sup>

India's social difficulties would be encountered with a multitude of not-for-profits perseveringly finding social issues. *Pro bono* is a ground-breaking arrangement and presents a huge chance to satisfy this fantasy. On the off chance that completely acknowledged, it can help the working viability, working and manufacture limit of not-for-profits so they can assume their improvement jobs to their maximum capacity.

The Guardians of the Constitution of India has also been an instrument for playing an active role in the interpretation of the provisions regarding the free legal aid to the disadvantaged section or class of the society. Justice P. N. Bhagwati and Justice V. R. Krishna Iyer, were the principal judges to yield PILs in court. Documenting a PIL isn't as massive as a standard legitimate case as sometimes certain events have led to a situation where the letters are also considered as PIL by the courts.

The Constitution of India by virtue of Art. 39 A<sup>12</sup> directs the state to create opportunity for the weaker sections of the society by providing them free legal aid. Moreover, Art. 14<sup>13</sup> and 22(2)<sup>14</sup> ensure equality before law and meanwhile access to justice for the detained ones.

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<sup>9</sup>*Pro Bono Publico*, [https://www.americanbar.org/groups/legal\\_education/resources/pro\\_bono/](https://www.americanbar.org/groups/legal_education/resources/pro_bono/) (Last visited on December 07, 2019).

<sup>10</sup> Law Commission Report, *Report on Costs In Civil Litigation* Report No. 240 (May 2012).

<sup>11</sup>*New India Assurance Co., Professional Indemnity Policy* available at <http://www.newindia.co.in/Content.aspx> (Last visited on November 5, 2018).

<sup>12</sup> The Constitution of India, 1950, Art. 39A. :

"Equal justice and free legal aid: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

<sup>13</sup>*Id.*, Art. 14:

"Equality before law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth."

<sup>14</sup>*Id* Art. 22(2):

"Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without

Moreover, the United Nations Sustainable Development – Goal 16 the obligation of States ‘to ensure equal access to justice for all’.

Considering the obligations and with a view to encourage *pro bono* legal services and abstain the denial of justice in a single line, the Department of Justice of Government of India intends to create a database of lawyers willing to provide their services to litigants identified under Section 12<sup>15</sup> of The Legal Services Authority Act of 1987, translating the ideals of professionalism into concrete institutional forms.

A qualified lawyer having a *bonafied* interest in providing services to those in need on the related matters has been entitled under to the act. The aforesaid database acts as a supplementary tool for the authorities to asses to these services provided by the people having legal expertise, i.e. the lawyers and advocates. The Department of Justice further invites applications from the lawyers and legal professional services to provide information regarding their expertise and practice.<sup>16</sup>

The objective of providing such platform is to encourage lawyers and legal professionals to provide aforesaid services, recognize such *pro bono* work and create a database capturing the vital information of lawyers for appropriate positions in the relevant field.

*Pro Bono Publico* as a notion has not clinched much momentum in a developing nation like India and remains merely an ad hoc individualized practice which lacks an institutional structure and voluntary participation of the legal practitioners.

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the authority of a magistrate.”

<sup>15</sup> Legal Services Act, 1987, §12 :

“Criteria for giving legal services.—Every person who has to file or defend a case shall be entitled to legal services under this Act if that person, is—

(a) a member of a Scheduled Caste or Scheduled Tribe;

(b) a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;

(c) a women or a child; 1[(d) a person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);] 1[(d) a person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);]"

(e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or

(f) an industrial workman; or

(g) in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956) or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986 (53 of 1986) or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987); or 2[(h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.”

<sup>16</sup>Encouraging Pro Bono Legal Services, Department of Justice, Government of India, <https://doj.gov.in/sites/default/files/pro%20bono%20legal%20services.pdf> (Last visited on December 7, 2019)

## V. CONCLUSION

It is conclusive from the aforementioned facts that, in the past three decades the scenario in India from the jurisprudential, authoritative and institutional progression had established the framework for the arrangement of free legal aid and services to the weaker and poor sections. Practically speaking, in any case, just a bunch of associations convey these administrations adequately, frequently depending on India's one of a kind PIL instrument to give legal aid.

Sometimes economic recessions act as a hindrance and further reveal new opportunities for the legal professional services to the clients. The present scenario stands as no exception to this notion. Although its long-term implications are by no means clear, the recession has highlighted both the fragility and flexibility of large-firm *pro bono* programs. On the one hand, it has reinforced the lesson that a system based on private charity is liable to suffer during times of economic hardship and on the other, it has shown that those firms with the deepest investments in *pro bono* programs may avoid the worst of the crisis and even seize the opportunity to increase *pro bono* participation and support for nonprofit organizations in times of greatest need. The challenge now is to build upon current structures to protect recent gains, respond to economic constraints, and enhance the effectiveness and accountability of representation.

At present, local law confines remote qualified legal counselors from speaking to *genius bono* customers. Be that as it may, outside qualified attorneys can add to *ace bono* lawful administrations specifically, for instance, by giving exploration and composing abilities in individual cases, and by implication through limit building endeavors close by Indian associations. The immediate and increasing demand of *pro bono* in India has not been supplied by its supply, and a coordinated, sorted out exertion by the lawful calling would go far towards guaranteeing the arrangement of value star *bono* legal services to the poor as enshrined in the Constitution. Moreover, *pro bono* being a need of the hour as the concept of access to justice has merely become a notion rather than the reality for those in need and has remained an allegory for them.

***As Goriely states:***

*“It is inherent to the notion of professionalism that the service provided is of universal importance - which suggests that even the poor may, on occasion, require legal services. To*



