



THE ETHICAL OBLIGATION OF PRIVATE PRACTITIONERS TO PROVIDE FREE LEGAL SERVICES

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ABSTRACT

Access to justice in India remains structurally unequal despite constitutional guarantees. This article contends that private practitioners bear an ethical obligation to provide pro bono legal services, not as an act of charity but as an inherent feature of professional identity. It locates this duty in three sources: the Bar Council of India Rules on professional conduct, the constitutional mandates under Article 39A, and the Supreme Court's expansion of Article 21 to include free legal aid. The article examines the indispensable role of private lawyers in bridging the gap left by state legal aid institutions, acknowledges the economic and practical limits of the duty, and proposes institutional reforms including voluntary reporting, recognition, and better referral mechanisms to foster a sustainable pro bono culture in India.

Keywords: Pro Bono, Free Legal Aid, Article 39A, Professional Ethics, Access to Justice.

INTRODUCTION

In India, going to court is expensive. The expense is not limited to the advocate's fee. It includes the cost of documentation, photocopying, court fees where applicable, travel to the district court, and perhaps most significantly, the loss of daily wage for every date of hearing. For a daily-wage worker in Varanasi, a construction labourer in Lucknow, or a widow seeking maintenance in a family court, these cumulative costs are often sufficient to extinguish the claim before it is filed.

The Indian Constitution promises justice- social, economic and political- to all citizens. Yet the promise encounters a hard economic reality at the gates of the courthouse. Legal aid institutions under the Legal Services Authorities Act, 1987 exist to mitigate this, but their reach is limited.

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For the vast majority of Indians, the first and often only lawyer they encounter is a private practitioner practising in the district or taluka court.

The question this article addresses is direct: when a person genuinely unable to pay approaches a private lawyer, is there an obligation to help? This article argues that the answer is yes- not as a matter of benevolence, but as a matter of professional ethics rooted in the very nature of advocacy in India.

THE MEANING AND SCOPE OF PRO BONO

The phrase pro bono publico- for the public good- has entered Indian legal discourse to describe legal work undertaken without charge or at a substantially reduced fee for those unable to afford representation. Its scope is wide. It includes pre- litigation advice, drafting of pleadings and applications, representation in courts and tribunals, assistance in mediation and Lok Adalats, and legal literacy work.

It is important to distinguish pro bono from state- sponsored legal aid. Legal aid under the 1987 Act is administered through National, State and District Legal Authorities with empanelled advocates paid a fixed honorarium. Pro bono, by contrast, is voluntary service rendered by private practitioners outside that framework, without expectation of state remuneration.

The Bar Council of India has given this concept normative weight. The standards of Professional Conduct provide that an advocate shall bear in mind that a litigant genuinely in need is entitled to legal assistance even if he cannot pay in full, and that free legal assistance to the indigent and oppressed is one of the highest obligations an advocate owes to society. The choice of words- “highest obligations”- elevates pro bono from optional virtue to core professional duty.¹

ETHICAL FOUNDATIONS OF THE DUTY

The Indian legal profession has historically resisted classification as a mere business or trade. The Supreme Court has repeatedly emphasised that advocacy is a noble profession with a public character. An advocate is described as an officer of the court, a designation that implies duties not only to the client who pays the fee but to the administration of justice itself.

¹ Bar Council of India, standards of Professional conduct and etiquette, ch, II, § I, R. 6.

This public character has three ethical implications. First, the monopoly argument: the state grants advocates the exclusive privilege to practice law and appear in courts. With that monopoly comes a correlative responsibility to ensure that legal services are not wholly captured by market forces.

Second, the access argument: courts are formally open to all, but effective participation requires professional skill. Procedural law- limitations, pleadings, evidence, cross-examination- is complex and unforgiving. Without representation, the right to approach a court is often illusory. A profession that controls the keys to that system cannot ethically ignore those locked out.

Third, the trust argument: society reposes special trust in lawyers. Clients disclose intimate details; liberty and property depend on counsel's diligence. That trust is sustained only if the profession is seen to serve justice, not merely those who can purchase it.

Pro bono, therefore, is not external to ethics. It is how the profession justifies its privileged position.

CONSTITUTIONAL MANDATE: ARTICLE 39A AND ARTICLE 21

The constitutional basis for free legal services is explicit. Article 39A, inserted by the Constitution (Forty-Second Amendment) Act, 1976, provides that 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 to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.²

Though placed among the Directive Principles, Article 39A has been given substantive life through Article 21. In *Hussainara Khatoon v. State of Bihar*, the Supreme Court, confronted with thousands of undertrial prisoners detained for years without trial, underscored the State's obligation to provide legal assistance as part of a fair and just procedure. In *M.H. Hoskot v. State of Maharashtra*, Justice V.R. Krishna Iyer declared that free legal aid is an essential ingredient of reasonable, fair and just procedure, and the right to legal aid is implicit in Article 21.³⁴

² INDIA CONST. art 39A.

³ *Hussainara Khatoon v. State of Bihar*, (1980) 1 S.C.C. 81 (India).

⁴ *M.H. Hoskot v. State of Maharashtra*, (1978) 3 S.C.C. 544 (India).

Subsequent decisions, including *Sukh Das v. Union Territory of Arunachal Pradesh* and *Khatri v. State of Bihar*, have reinforced that the State's failure to provide legal aid vitiates the trial itself. The jurisprudence leaves no doubt: free legal representation in criminal matters is a fundamental right, and in civil matters concerning basic livelihood, dignity and liberty, it is a constitutional aspiration of the highest order.⁵⁶

WHY PRIVATE PRACTITIONERS ARE INDISPENSABLE

If the constitutional mandate is clear, the institutional machinery remains inadequate. The Legal Services Authorities Act created a three-tier structure, but studies and field reports consistently point to underfunding, low honoraria for panel lawyers, heavy pendency, and limited awareness among beneficiaries, particularly in rural areas.⁷

Private practitioners fill this gap in ways the state system cannot easily replicate. First, accessibility. A private lawyer in the district court is often the first contact. No application form, no income certificate, no bureaucratic delay is required. A poor litigant can walk into the chamber and seek advice immediately.

Second, local knowledge. Private practitioners understand local procedure, speak the vernacular, and navigate the practical realities of a particular court- which clerk to approach, how a particular judge prefers pleadings structured, what a Lok Adalat expects. This tacit knowledge is invaluable for vulnerable clients.

Third, quality and continuity. Legal aid panels are often criticised for routine, low-effort representation due to meagre remuneration. A private advocate who voluntarily accepts a pro bono matter typically extends the same diligence as to a paid brief, ensuring better preparation and follow-through.

Illustrations are commonplace: a bail application argued pro bono securing release of an undertrial who had spent months in custody; a carefully drafted objection preventing an illegal demolition; a maintenance petition under Section 125 CrPC ensuring subsistence for a deserted wife. Each represents Article 39A made real through private initiative.

⁵ *Sukh Das v. Union Territory of Arunachal Pradesh*, (1986) 2 S.C.C. 401 (India).

⁶ *Khatri v. State of Bihar*, (1981) 1 S.C.C. 627 (India).

⁷ The Legal Services Authorities Act, No. 39 of 1987, INDIA CODE (1987).

LIMITS, CONSTRAINTS AND MISGIVINGS

Recognising an ethical obligation does not mean imposing an unlimited burden. The duty must be understood with realism. A young advocate in the initial years of practice faces significant economic pressure- chamber rent, travel costs, family responsibilities. To demand extensive unpaid work from such a lawyer would be both unfair and counterproductive. The Bar Council's formulation must therefore be read as requiring a reasonable contribution within one's capacity, not self-sacrifice.

Practical concerns raised by practitioners are legitimate. In India, unlike some jurisdictions with mandatory pro bono hours, pro bono by private lawyers is encouraged but not formally mandated, tracked, or uniformly rewarded. Lawyers reasonably worry about distinguishing genuine indigence from opportunism, about creating open-ended expectations of free service, and about the absence of institutional support if a pro bono matter becomes protracted.⁸

There is also the risk of tokenism- occasional, highly publicised free cases that serve reputation rather than need. An ethical framework must guard against this by emphasising sustained, quiet commitment over symbolic gestures. These are not arguments against the duty. They are arguments for designing better structures to support it.

TOWARDS A SUSTAINABLE PRO BONO CULTURE

Moral exhortation alone will not create a robust pro bono tradition. Institutional design is necessary. Good intentions fade quickly unless they are supported by systems that make doing good practical, visible, and sustainable for busy professionals.

First, integration with legal education. Law schools should embed pro bono not as an extracurricular activity but as part of clinical legal education, with private practitioners serving as mentors in legal aid clinics. Early exposure shapes professional identity. When a young student sits across from a daily-wage worker fighting an illegal eviction, or helps a widow draft her first legal notice, law stops being an abstract subject. It becomes a human relationship. That memory stays with a lawyer far longer than any lecture on ethics.

Second, referral and screening mechanisms. District Bar Associations, in collaboration with DLSAs, can create credible referral lists of verified indigent clients. This would address

⁸ Latham & Watkins LLP, Pro Bono in India (2023).

lawyers' legitimate concern about identifying genuine beneficiaries and prevent misuse. Many advocates genuinely want to help but hesitate, unsure where to begin or afraid their goodwill might be exploited. A trusted bridge between those who need help and those willing to give it would remove that quiet hesitation.

Third, recognition and incentives. State Bar Councils could introduce voluntary annual disclosure of pro bono hours. Continuing Legal Education credits, formal commendations, and consideration in empanelment decisions could provide tangible acknowledgement without converting a moral duty into a bureaucratic quota. After all, appreciation does not dilute idealism; it sustains it.

Fourth, senior leadership. When senior advocates visibly undertake pro bono matters- particularly in constitutional, environmental, and human rights litigation- it sets a professional norm that juniors are likely to follow. Young lawyers watch their seniors closely. A single senior arguing passionately for an undertrial who cannot afford counsel teaches more than a hundred seminars on professional responsibility.

The objective is modest but transformative: to make pro bono visible, viable, and valued within the profession. Not as charity, but as a quiet reaffirmation of why law was chosen in the first place- to stand beside those who cannot stand alone.

CONCLUSION

The measure of a legal profession is not only its success in high-stakes corporate litigation or its eminence in appellate advocacy. It is also, and perhaps more fundamentally, its willingness to stand for those who cannot pay.

For the undertrial awaiting bail, the labourer denied wages, the woman seeking protection from domestic violence, a single pro bono brief can mean the difference between being heard and being ignored. In each such case, the private practitioner becomes the living link between the constitutional promise of Article 39A and its realisation.

Pro bono in India, therefore, should not be viewed as peripheral charity. It is central to what it means to be an advocate- an officer of the court committed to justice, not merely to clients who can afford it.

Ultimately, a profession that ignores the poor risks losing its moral authority, no matter how brilliant its arguments. When lawyers give their time freely, they remind society that law is not a commodity but a common shield. That quiet act of service keeps faith in courts alive, and keeps the idea of equal justice truly meaningful.