

# LEGAL AID SERVICE AND ACCESS TO JUSTICE WITH SPECIAL REFERENCE TO PRO BONO CULTURE MODEL: A NEW DIMENSION OF LEGAL EDUCATION IN INDIA

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## Abstract

*Pro-bono is a Latin term which refers 'for the public good' and synonymous to the concept of free legal aid. Legal services are provided to those who are downtrodden and needy in the society through pro bono being considered as 'Dharma' as it accelerates the concept of 'access to justice'. There is rational nexus between pro bono and access to justice as the first is a 'means' and second is treated as 'means to an end'. Article 39A of Constitution of India directly highlights the free legal aid and promotes the concept of equal justice. Here the State is bestowed upon to secure the same with equal opportunities on one hand and free legal aid is also a crucial part of right to life enshrined under Art. 21 of the Constitution of India on the other. Legal aid service with pro bono culture model is a positive and bold step towards access to justice from the ground level as it will reduce huge burden of courts relating to pending cases.*

*Though pro bono legal service has not reached in height in India but it has been conducted in slow speed after removing many obstacles such as institutional structure etc. Keeping this in mind, the primary aim of this research paper is to examine that pro bono work is treated as facilitator to access to grass root level justice, however, it is facing several issues and challenges for sound implementation of Pro Bono cultures in different law schools. Therefore, it is mandatory that the pro bono ethos should be able to guide law students so that they can realise the responsibility towards community at large by understanding and practicing pro bono legal services for the unassisted and disadvantaged people in the society.*

**Keywords:** Pro Bono, Dharma, Free Legal Aid, Access to Justice and Right to life, Law Institutions

## INTRODUCTION

Etymologically, the access to justice for all is treated as 'Dharma' in the nation's justice administration system. Access to justice is one of the key factors for a 'welfare State' through which the nation is elevated into the concept of 'civilized country'. 'Access to justice' is an integral part of the concept of 'Equality before Law' which is also part and parcel of the doctrine of 'rule of law'. According to Martin Luther King Jr., "Injustice anywhere is a threat to justice everywhere", therefore, legal aid service is sine qua non towards access to justice. Constitution of India under Part III contains the provision of 'right to equality' in Article 14 to 18 which ensures equal justice to all. Moreover, it also provides that justice is not only be done rather justice should undoubtedly and manifestly seen to be done. By virtue of the doctrine of 'Natural Justice' each and every person should be given equal right to be heard and equal right to be presented by an advocate in the court on his behalf.

The term legal services are meant to provide free legal aid to weaker and downtrodden people. Legal service also includes legal awareness through legal awareness camps, print media, digital media as well as organising Lok Adalat. The very object of the legal services which will facilitate the beneficiaries for receiving their entitlements fall under the several government schemes, legislations and policies.

Free legal services or aid is the means and access to justice is the means to an end. Free legal aid is for the poor and marginalised those who cannot afford the lawyers' fee for continuing legal proceeding in the Court, Tribunal or adjudicating authorities.

Article 39A of Indian Constitution states 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, 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."

Free legal services are permitted by the several social welfare legislations and rules framed by the Central or State Government for the benefits of the poor to access to justice through which they can protect their Human rights. The Legal Service Authorities Act, 1987 is a significant statute under which the poor or marginalised people can access to the justice through achieving their entitlements. Under this legislation, Section 2(c) the

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term 'legal services' is defined "any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter".

Article 39A of the Constitution of India has been interpreted in well manner by the Justice P.N. Bhagwati in the case **Hussainara Khatoon & Ors Vs. State of Bihar**,<sup>3</sup> for complete understanding of access to justice, " Article 39A emphasizes that free legal service is an inalienable element of 'reasonable, fair and just' procedure ; for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal services is, therefore, clearly an essential ingredient of 'reasonable, fair and just' procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21."<sup>4</sup>

In Common Parlence the concept of 'Pro Bono' is an art through which professional (legal) services are provided to people of low income. Pro bono is also an effort through which access to legal advice and assistance can be expanded to the marginalised people of entire country. Practically, the term pro bono relates to give voluntary legal advice to those who are not in a position to afford the cost of lawyering or cannot access to legal service. So, this challenge makes a huge gap in between the haves and have nots. Basically, it makes possible to provide justice to them through the initiatives taken by Department of Justice under the Ministry Law and Justice, Government of India. The Department permits with keen interest for pro bono services where interested practising lawyers can register themselves by way of user id to login a profile for pro bono. This platform will facilitate to reach legal aid those who requires on the basis of prior database made accordingly.

Government of India has also through Ministry of Law and Justice started to play a pivotal role to ensure justice to the marginalised people on the basis 'pro bono club' programme organised by law students of different Institution of legal education. More specifically it is all about 69 colleges including all national law universities and IIT Kharagpur have formed this model to reach the grass root level. Legal education has to fulfil twofold objectives, first it should prepare legal personnel or law students to serve major part of public in the society and secondly, it should develop quality legal services to the depressed section of the society. In this respect, clinical legal education has significant part to follow up the fundamental training of legal aid services for the students from their institution to society at large.

## CONCEPT OF LEGAL-AID SERVICES AND ACCESS TO JUSTICE

Legal education has a significant role to constitute a law abiding society where the doctrine of rule of law prevails. Rule of law is the path finder to the concept justice-social, political and economic. In the case of *State of Maharastra Vs. Manubhai Pragaji Vashi*<sup>5</sup> the very purpose of legal education is to fulfil the demands of the society and to simplify the complexities which are arising out under several circumstances. Being a welfare state, India needs to strengthen the four ideas, such as, social services, social welfare, social security and social work for all-round development of people in the society. Rule of law is also an integral part of welfare state and is recognizing the concept that courts should be easily accessible. Universal declaration of human rights, 1948 has strongly declares that human rights should be protected and secured by the rule of law against discrimination and oppression. Therefore, access to justice has wider concept for remedies.

It is also to be admitted that now legal aid is a part of every civilised jurisprudence and legal aid has also been recognised by internationally. Under Article 6(3)(c) of European Convention for the protection of Human Rights, 1953, provides that right to free legal aid services is guaranteed.<sup>6</sup> Free legal aid services in criminal cases have been approved by the United Nations Conference on the Prevention of Crime and Treatment of Offenders, 1965 as a tool for social justice. Article 14 (3) (d) allows legal aid services in criminal cases. It provides "To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it."

<sup>3</sup> AIR 1979 SC 1369

<sup>4</sup> ibid

<sup>5</sup> AIR 1996 SC1

<sup>6</sup> Article 6 (3) (c) of European Convention for the Protection of Human Rights, 1953. Article 6 provides right to fair trial - (1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. (2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. (3) Everyone charged with a criminal offence has the following minimum rights : a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him ; (b) to have adequate time and facilities for the preparation of his defence ; (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require ; (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in the court.

In India, it is the process where formal and informal institutions are ready to meet justice on the basis of human rights standards. In India, the concept of access to justice is reached by the role and contribution of Supreme Court, High Courts, Legal services Authorities, power of judicial review and Public Interest Litigation etc. Basically, access to justice must be coupled with the concept of fair trial through which justice to poor and marginalised section is reached with equality. Legal aid services for the poor have been recognised by the Justice V.R Krishna Iyer in his report 'Professionals Justice to the poor'.<sup>7</sup> The report specified the poor persons who need legal aid to access to justice, are:

- a) Those persons belonging to Scheduled Castes or Scheduled Tribes, i.e those who are both economically as well as socially exploited,
- b) Those persons who either by reason of being inhabitants of backward areas or who are so geographically placed that their voice cannot reach the courts of justice,
- c) The workman and the peasantry class who are deprived,
- d) Women and children who are deprived social justice on grounds of biological infirmity etc.<sup>8</sup>

Justice P.N. Bhagwati has also stated in a report regarding 'free legal aid' which has been highlighted "even while retaining the adversary system, some changes may be effected whereby the judge is given greater participatory role in the trial so as to place poor, as far as possible, on a footing of equality with the rich in the administration of justice."<sup>9</sup>

The very concept of legal aid has been given a statutory base through the Legal Services Authorities Act, 1987 with the object to provide free and competent legal services to the depressed section. It ensures the social justice by providing equal opportunities without any discrimination or deprivation on the ground of financial or other disabilities. This Act also organises the Lok Adalat which is also an effort to secure justice with maintaining the principle of equality. This Act is also considered as potent weapon to provide to justice to all. Poor persons are recognised under this Act those who are:

- i) Any person who is the member of Scheduled Caste/Tribe.
- ii) A victim of trafficking in human being or other
- iii) A woman or child
- iv) A mentally ill or otherwise disabled person
- v) An industrial workman
- vi) A person under circumstances of undeserved want such as; being a victim of mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster.
- vii) Facing a charge which might result in punishment.<sup>10</sup>

The Legal Services Authorities Act, 1987 itself is a welfare legislation by which legal services are provided under different legal services authorities such as National, State and District levels. The very term legal services has been explained under section 2(1) (e) of the Legal Services Authorities Act, 1987 that 'legal service' refers that service is rendered in any case or other legal proceeding conducted before any Court, tribunal or other authority. Legal service also includes advice is given on any legal issues.<sup>11</sup> State is duty bound to provide standard legal aid to needy persons and the lawyer is engaged by the State on behalf of poor and needy persons should be competent and efficient to meet the justice adequately and speedily.

In contemporary period it has also been developed in the liberal democracy that access to justice is reached with the help of four institutions which are to fulfil the obligation of State and lawyers. The four institutions are : public defenders' offices, court appointed counsel, legal clinics and pro bono work. State is under duty to provide free legal services to people of low income. But pro bono work is one of the fruitful ways where legal clinics regulated by Law Colleges and Universities permit law students to represent or advise poor people under the guidance of Professors. Now legal clinics are created under different Law Colleges and Universities on mandatory basis where students are engaged for social service as well as practical experience. Pro bono work is an ideal as it provides free legal services to the people those who are from low socioeconomic strata.<sup>12</sup>

### ACCESS TO LEGAL AID IN INDIA THROUGH PRO-BONO MODEL

The concept of legal aid service has got a new height at that time when clinical legal education has been introduced. There was high demand of legal education reform which will be more socially relevant. The very idea of clinical legal education is synthesis of the concept of providing legal aid service which could be started from the students of law colleges and universities. Legal aid services include free legal aid, creating legal awareness, providing Advocate in legal proceedings, giving of advice on any legal matter etc. amongst the

<sup>7</sup> Shukla Ayush, Access to Justice for Marginalised people in India, 2020

<sup>8</sup> ibid

<sup>9</sup> Justice Bhagwati's Report, 1971

<sup>10</sup> Section 12 of LSA ACT, 1987

<sup>11</sup> Rao Mamta, 'Public Interest Litigation legal Aid and Lok Adalats' 369-370; ( EBC Publication), 5<sup>th</sup> Edition, 2018.

<sup>12</sup> Colin Crawford and Daniel Bonilla Maldonado, Access to justice : Theory and Practice from a Comparative Perspective, 2020 ( Link( <https://digitalcommons.law.ggu.edu/pubs/906/> )

downtrodden people in the society. Justice P.N Bhagwati rightly explained that “legal aid means providing an arrangement in the society which makes the machinery of administration of justice easily accessible and in reach of those who have to resort to it for enforcement of rights given to them by law.” The main and foremost object of clinical legal education is to develop the minds of future lawyers so that the seed of social service can be sown. Clinical legal education is a way by which mission of social justice is accelerated. Therefore, clinical legal education has developed more to legal aid movement of 1960s in India where law schools have a significant contribution in the dispensation of legal services.<sup>13</sup> Establishment of legal aid clinic in the law colleges and universities is really a positive step to uphold clinical legal education which paves the way pro bono work conducted by the students. Therefore, pro bono work has a great role on access to justice which makes possible to fulfil the gap between legal aid service to social justice. In **Indira Jaisingh Vs. Supreme Court of India**<sup>14</sup>, the Court has opined that pro bono work is considered a prerequisite for lawyers to make them senior advocates. Similarly, Department of Justice has kept a criterion that pro bono work is compulsory for an advocate to be a judge. Pro bono is very much synonymous to the concept of free legal aid. From that sense, it is also a yardstick for the young lawyers to enhance efficiency which makes possible to gain lot of exposure as well as experience. It is also very relevant to mention that American Bar Association has recommended fifty hours pro bono service and minimum 24 hours of free legal aid of Africa’s Cape Law Society are compulsory.<sup>15</sup> Pro bono work has also received international recognition through Article 14(3)(d) of International Covenant on Civil and Political Rights<sup>16</sup> and Sustainable Development Goal 16 of United Nations Development Programme.<sup>17</sup>

Department of Justice has played a crucial role for pro bono legal services by making two platforms are Tele Law and Nyaya Bandhu. These platforms are contributing lot by way of pre-litigation legal advice mechanism, Android and UMANG platform to create awareness towards society on legal aid services. An advocate can engage himself through registration in the Lawyered and Freelegalaid platforms for starting pro bono model individually for the purpose of access to justice to downtrodden people.<sup>18</sup>

There is a pivotal role of Bar Council of India to uplift the concept of pro bono legal service where it provides instruction to keep a cell of legal aid clinic for free legal aid. Under Rule 46 of the Standards of Professional Conduct and Etiquette provides “Every advocate shall in the practice of the profession of law bear in mind that any one genuinely in need of a lawyer is entitled to legal assistance even though he cannot pay for it,..... free legal assistance to the indigent and oppressed is one of the highest obligations an advocate owes to society.”<sup>19</sup>

Regarding Free Legal Aid, the Constitution of India under Article 21 includes through several landmark judgements that it is an integral part of right to life. In case of **Khatris & Ors. V. State of Bihar & Ors.**<sup>20</sup>, the court said that it is duty of state to provide free legal aid not only at the stage of trial but also at every stage, which includes the stage when the person under consideration is brought before the magistrate or remanded from time to time.

Legal aid has also been permitted by the provision of Section 304 of the Criminal Procedure Code, 1973, in certain cases as under Stated :

(1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the State Government, make rules providing for—

(a) the mode of selecting pleaders for defence under sub-section (1);

(b) the facilities to be allowed to such pleaders by the Courts;

(c) the fees payable to such pleaders by the Government, and generally, for carrying out the purposes of sub-section (1).

(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before Courts of Session.<sup>21</sup>

Under Order 33 of the Civil Procedure Code, 1908, paying court fees is also waived when a person is not able to seek justice due to financial constraints.<sup>22</sup>

<sup>13</sup>Sarkar ShuvroProsun, Chakraborty Anirban and Chatterjee Shounak, Integrated Clinical Legal Education, 53, Universal Law Publishing Co. Pvt.Ltd. ; New Delhi, 2014.

<sup>14</sup> 2017

<sup>15</sup><https://www.lawyered.in/legal-disrupt/articles/pro-bono-legal-services-india/>

<sup>16</sup> Art 14 (3) (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

<sup>17</sup>Goal 16 is about promoting peaceful and inclusive societies, providing access to justice for all and building effective, accountable and inclusive institutions at all levels.

<sup>18</sup><https://www.lawyered.in/legal-disrupt/articles/pro-bono-legal-services-india/>

<sup>19</sup><https://www.barandbench.com/columns/a-case-for-pro-bono-lawyering-in-india>

<sup>20</sup>(1981) 1 SCC 627

<sup>21</sup>Section 304 of the Criminal Procedure Code, 1973

<sup>22</sup> Order 33 of the Civil Procedure Code, 1908

The concept of Pro Bono Legal services programme has been launched in April 2017 which has encouraged vehemently amongst efficient solicitors and students to facilitate those in need. In the process of free legal aid pro bono work should be initiated actively and it is need of the hour for providing social justice. According to Janet Reno,<sup>23</sup> "I think lawyers who engage in pro bono service to protect those who cannot help themselves are truly the heroes and the heroines of the legal profession."

### PRO-BONO WORK THROUGH DIFFERENT LAW SCHOOL AND SOCIAL JUSTICE

Article 39A emphasizes that free legal service is an inviolable element of 'reasonable, fair, and just' procedure for without it, a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal services is, therefore clearly a vital ingredient of 'reasonable, fair and just' procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 of the Indian Constitution<sup>24</sup>.

Legal aid cells are an excellent means of teaching professional responsibility. The cell provides an ideal platform for students to learn practical skills. These facilities can be achieved by involving law colleges that improves the value and reputation of legal profession. As we believe there is no substitute for learning by doing. Law students can extend legal aid to remote villages where they can provide legal aid services and advice at a much lower cost. If the practice is properly channelled, law colleges can meet the demands of modern society and reach desirable goals.

#### Institutionalizing Legal Aid in Law Colleges

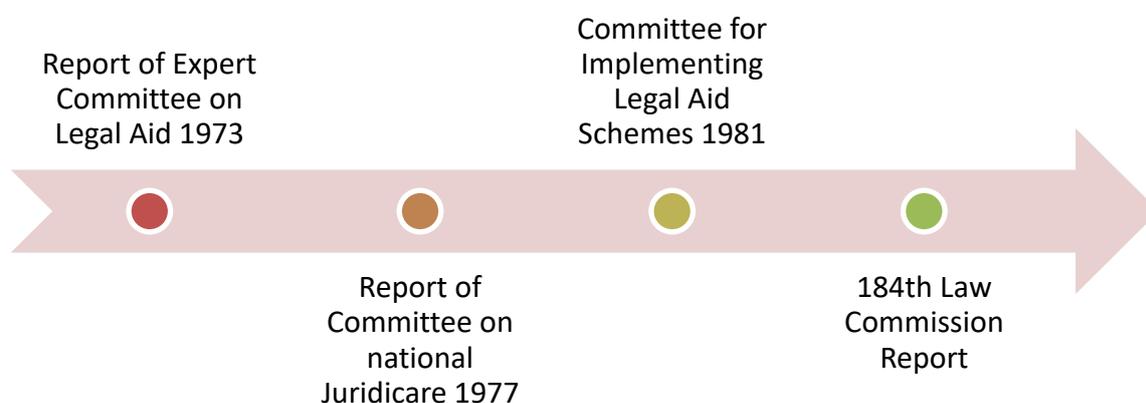


Fig:1

**Report of the Expert Committee on Legal Aid 1973** this report is also called the Export Committee Report whose primary objective was to examine and make recommendations on the provision of legal aid services in England and Wales. The report was produced by a committee established by the Lord Chancellor's Department, and its purpose was to assess the current state of legal aid and make recommendations for its improvement. The report looked at a range of issues, including funding, eligibility criteria, the scope of legal aid services and the quality of the advice and representation provided. The overall aim of the report was to ensure that the legal aid system was accessible for all citizens. Who needed it.

**Report of Committee on National Juridicare 1977** the objective of the Report of the Committee on National Juridicare 1977 also known as the national Juridicare Report was to recommend a comprehensive and integrated approach to the provision of legal services in India. The report was produced by a committee established by the Indian government and its purpose was to assess the current legal services in India and make recommendations for its improvement.

The report looked at a range of issues, including access to justice, the quality of legal representation, the role of legal aid, and the development of alternative dispute resolution mechanisms. The overall aim of the report was to ensure that all citizens had access to quality legal services, regardless of their income or social status. The report recommended the creation of National legal Services Authority to co-ordinate and oversees the provision of legal services throughout the country.

The recommendations made in the National Juridicare report have had a significant impact on the development of legal services in India and continue to shape the country's approach to access to justice today.

<sup>23</sup>Janet Reno, the first Woman Attorney General of the United States.

<sup>24</sup>Justice P.N Bhagwati in the case of Hussainara Khatoon v.s State of Bihar (1979)

**Committee for Implementing Legal Aid Schemes 1981** it was a committee established by the Indian government to oversee the implementation of legal aid schemes in India. The committee was created in response to the recommendations made in the National Juridicare Report 1977, which had called for a comprehensive and integrated approach to the provision of legal services in the country.

The main objective of the committee for implementing Legal Aid Schemes was to ensure that the recommendations of the National Juridicare Report were put into action and that legal aid services were made available to all citizens who needed them. The committee was responsible for coordinating the implementation of legal aid schemes at the national, state, and local levels and for ensuring that these schemes were accessible, affordable, and of a high standard.

The work of the committee for implementing Legal Aid schemes has been instrumental in ensuring that legal aid services are widely available in India, and has helped to improve access to justice for many citizens who would otherwise not have been able to afford legal representation. The committee's legacy continues to shape the development of legal services in India today.

**184th Report of the Law Commission of India** is a comprehensive report on the Indian legal system. The Law Commission of India is an independent statutory body established by the Indian government to review and recommend reforms to the country's laws. Law Commission of India is an independent statutory body established by the Indian government to review and recommend reforms to the country's laws. The 184<sup>th</sup> Report was published in 2003 and focuses on several key issues related to the Indian legal system.

The main objective of the 184<sup>th</sup> Report was to provide recommendations for improving the efficiency, accessibility, and fairness of the Indian legal system. The report covers a wide range of topics, including the structure and functioning of the judiciary, alternative dispute resolution mechanisms, legal aid, and the admission of justice.

The 184<sup>th</sup> Report of the Law Commission of India is considered to be a seminal report that has had a significant impact on the development of the Indian legal system. Its recommendations have been widely cited and many of them have been implemented in one form or another. The report continues to be an important reference for anyone interested in the Indian legal system and ongoing efforts to improve it.

### **Is Legal Aid Compulsory in Law Schools?**

With keeping view of the above reports on the development of legal aid services. In India we have ample of law schools where we can start engaging the young minds to engage in legal services activities. The reason for them to make active is they are intellectually challenging, professionally competent and socially relevant. Institutionalizing legal aid in law colleges and involving law students can extend legal aid to remote villages and students can provide legal aid and advice at much lower cost. In 1977 that the Bar Council of India made Legal Aid a compulsory practical paper to be taught in law colleges all over the country.

### **Rules of Legal education-2008- Rule 11 Legal Aid Centre**

Each institution shall establish and run a Legal Aid Clinic under the supervision of a senior faculty member who may administer the Clinic run by the final year students of the Institution in cooperation with the Legal Aid Authorities with list of voluntary lawyers and other Non-Government Organizations engaged in this regard in the locality generally from which the student community of the Institution, hail from.

In India, pro bono work refers to legal services by lawyers to clients free of charge or at a reduced fee. This concept is gaining recognition as a way for lawyers to give back to their communities and provide access to justice to those who might otherwise be unable to afford it. Law students play crucial role in legal aid and awareness initiatives, being engaged with legal service committee /legal aid cell set up in law colleges/universities. Students volunteer for activities to be carried out under these committees/cells. There are handful colleges/universities in India which are having compulsory requirement of Pro Bono legal aid work as part of academic curriculum. On 30<sup>th</sup> November 2022 69 law schools across the country have constituted "Pro Bono Clubs" under the Nyaya Bandhu Programme to instill a culture towards pro bono lawyering among the law students.<sup>25</sup> To name a few GNLU, NLSIU, NALSAR, NLUJ, Symbiosis law school, Jamia Milai Islamia central University, ICFAL, and Tripura is one of such institution which is active and requires certain hours of pro Bono legal aid work in an academic year<sup>26</sup>.

In addition to the pro bono clinics, some law schools are encouraging students to participate in legal aid camps, where they can provide legal advice and assistance to people who cannot afford a lawyer. This not only provides students with practical experience, but also helps to promote the principle of access to justice for all. Also, recently Ministry of Law and Justice has realized a success rate of pro bono work conducted by Department of justice which was published on 01<sup>st</sup> March , 2023, where 5954 advocates have directly registered across 24 State Bar Councils, 69 Law School from 30 States/UTs across India have joined the Pro

<sup>25</sup> Department of Justice, List of law schools associated with Pro Bono Club Scheme, Nyaya Bandhu programme Department of Justice posted on 01/12/2023. Available at <https://www.probono-doj.in/list-of-law-schools.html> accessed 10 March 2023.

<sup>26</sup> <https://dij.gov.in> , accessed on 10 March 2023

Bono Club Scheme, 21 High Courts constituted Pro Bono Panels in which 1247 advocates have enrolled and lastly 21 SLSA constituted Pro Bono Panels at DLSA in which 2950 advocates have enrolled.<sup>27</sup>

The pro bono movement in India is still in its early stages. But it is growing rapidly. The government and legal community are taking steps to promote and support pro bono work, and law schools are playing a key role in this effort. By participating in pro bono work, law students can develop their legal skills, gain practical experience and contribute to the betterment of their communities.

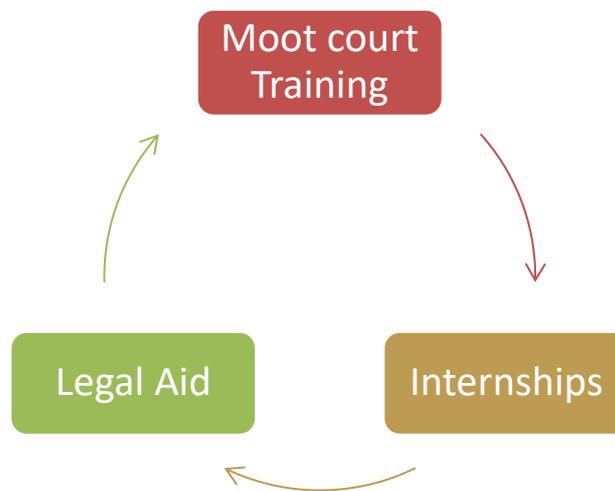
### BRIDGING THE ACCESS TO JUSTICE GAP WITH PRO-BONO MODEL

Millions of people in India struggle daily with legal issues that negatively impact their basic needs to as a human being. In criminal cases, defendants generally have a right to counsel if they cannot afford it. Same is not in the case of Civil cases, where there is no right to counsel, even when they involve life changing issues ranging from eviction, foreclosure, job termination, discrimination and denial of health care to domestic violence, child custody and divorce.

Access to justice describes the ability of any person to use the legal system to advocate for themselves and their interest. However, the legal system is extremely complex and can be difficult to navigate. For those unable to afford an attorney, access to court system and the justice it can provide are limited. The access to justice gap is a significant issue around the world, where many individuals and communities cannot access legal services due to financial, social, or geographical barriers. One way to address this gap is through the pro bono model, where legal professionals provide free legal services to those who cannot afford them.

We all deserve access to justice but sadly legal systems can be complex and hard to navigate for people who cannot afford to litigate. Therefore, Pro bono Model is a solution to the problem and helps those in need. Law schools across the land are taking a stand by offering free legal services and lending a helping hand. Pro bono services can bridge the access to justice gap by providing legal assistance to underserved communities, including low-income individuals, marginalized groups and nonprofits. Pro bono work can range from providing legal advice to full representation in court, and it can cover a wide range of legal issues, such as immigration, housing, employment, and criminal defense.

Pro bono is one of the clinical legal education in law schools and forms part of the curriculum of a law student. The advantage of this has been dealt in length by Prof. Madhav Menon.<sup>28</sup> It can thus be said that legal education is incomplete without the aspect of clinical legal education. Clinical education therefore includes three facets-



**Fig: 2**

There are several benefits of the pro bono model in bridging the access to justice gap. First, it can help to increase the capacity of legal aid organizations and pro bono programs to serve more people in need. Second, it can provide a way for legal professionals to give back to their communities and engage in meaningful work that aligns with their values. Third, it can promote greater access to justice and reduce inequalities in the legal system.

However, there are also some challenges associated with the pro bono model. One challenge is ensuring that pro bono work is of high quality and meets the needs of the clients. This can be addressed through proper training and supervision of pro bono lawyers. Another challenge is ensuring that pro bono work does not perpetuate existing power imbalances in the legal system. This can be addressed through a client-centered approach that empowers clients and respects their rights and dignity. As it is evident from the figure 2 of the

<sup>27</sup> <https://lawmin.gov.in> , accessed on 14 March 2023

<sup>28</sup> N.R madhav Menon, *Clinical Legal Education* (Eastern Book Company 2008)

above mentioned diagram that 3 facets i.e. moot court training, internships and legal made makes the whole clinical legal education in any law schools but in majority of the institutions there is a gross lack in matters of clinical legal education especially the on the part of legal aid. Even the Working Group of the National Knowledge Commission on legal education has stressed upon the need of internships, moot court and legal aids.<sup>29</sup>

In India we have 1,721 law schools<sup>30</sup>, imparting legal education in different parts of the country, sadly only 69 law schools from 30 States /UTs across India have joined the Pro Bono Club Scheme in India<sup>31</sup> which becomes tenacious for delivering the justice to the less privileged and marginalised sections of the society living in different corner of the country. Out the above mentioned law colleges, the list is mostly from national law Schools, IIT Kharagpur, Private law colleges and handful of state aides college and State and Central Universities. There is no data on why there is a absence of pro bono model in the traditional law colleges and universities. Government has already taken an initiative for delivering the access to justice through establishment of pro-bono model in colleges and universities. It is on the part of the concerned in the law institutions to take an initiative and activate the pro bono model engaging law students so that the maximum benefit of the government can reach to the marginalised group in the society.

### LEGAL AID IN INDIA: CONTRIBUTION OF INDIAN JUDICIARY

Legal aid is an essential component of access to justice and a fundamental right guaranteed by the Constitution of India. The Indian judiciary has played a significant role in promoting and ensuring access to justice through various legal aid initiatives. One of the most significant contributions of the Indian judiciary in the area of legal aid has been the interpretation of the right to legal aid as a fundamental right under Article 21 of the Constitution. There have been several landmark cases in India that have dealt with the issue of legal aid and access to justice. Some of the landmark cases are discussed below-

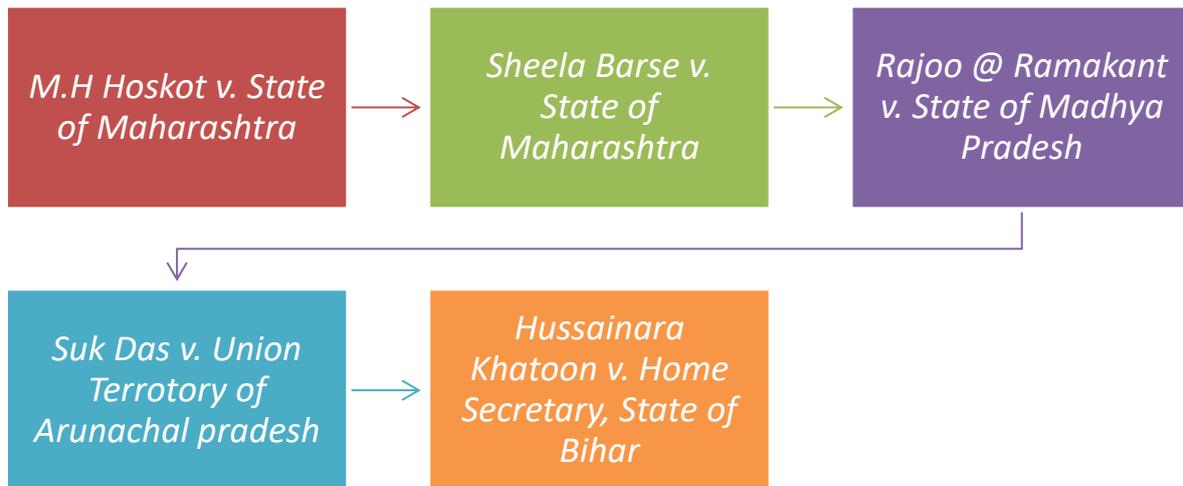


Figure:-3

*M.H Hoskot v. State of Maharashtra*<sup>32</sup>, is a landmark case in Indian legal history that dealt with the constitutional validity of preventive detention laws in India. The case was heard by Constitution Bench of the Supreme Court of India in 1978 and the judgment was delivered by Justice PN Bhagwati. The case had significant implications for the right to legal aid in India. In this case, the Supreme Court recognized the importance of legal aid as a fundamental right under Article 21 of the Constitution of India<sup>33</sup>.

<sup>29</sup> Law Commission of India, 184<sup>th</sup> Report on The Legal Education & Professional Training and Proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956 (2002)

<sup>30</sup> Bar and Bench <https://www.barandbench.com>

<sup>31</sup> Department of justice, <https://doj.gov.in>

<sup>32</sup> AIR 1978 SCC 1548, (1978) 3 SCC 544

<sup>33</sup> Article 21 of Indian Constitution states "No Person shall be deprived of his life or personal liberty except according to procedure established by law"

The court held that the preventive detention is a serious invasion of personal liberty and, therefore, the detenu must be provided with adequate safeguards against its misuse. The court emphasized the importance of providing legal aid to the detenu to ensure that he has a fair opportunity to defend himself.

The court held the right to legal aid is an essential ingredient of the right to fair trial and is implicit in the guarantee of Article 21. The court stated that “the right to legal aid is a constitutional right and flows from the mandate of Article 21”. The court further held that it is the duty of the state to provide free legal aid to a person who is unable to engage a lawyer due to poverty, indigence, or other disabilities. The court stated that the state cannot plead financial constraints as an excuse for denying legal aid to a person who is unable to afford legal representation.

The judgment in the instant case was a significant step towards ensuring access to justice for all. It recognized the right to legal aid as a fundamental right and placed a duty on the state to provide free legal aid to those who cannot afford it. The guidelines laid down by the court in this case continue to be followed by the courts in India in cases involving preventive detention, ensuring that the detenu has a fair opportunity to defend himself with the assistance of legal aid.

*Sheela Barse v. State of Maharashtra*,<sup>34</sup> the petition relates specifically to the safety and security of women prisoners in public lock ups and their protection against torture and ill treatment and generally to the legal entitlements and right of prisoners. The question of the law before the court was that the court addressed, owing to the relevance made in both the letter and the report was concerning the life and personal liberty guaranteed in the Indian Constitution and including those who have been priced out of the legal system as convicts or under trial prisoners.

The court, holding that deprivation of access to law to prisoners would jeopardize the Right to Equality as enshrined in Article 14 and the Right to Life and Personal Liberty as protected or mentioned in Article 21. Also, it not only addressed the facts of the petition but also took up the larger cause of extending legal aid to prisoners, both men and women, and issued guidelines applicable to the entire State of Maharashtra. The court recognized that this petition threw light on the urgent need of setting up a machinery for providing legal assistance to prisoners in jail and gave the following guidelines to the Maharashtra State Board of Legal Aid and the Inspector General of prisoners-

1. Data Upkeep
2. Facilitation to Lawyers
3. Legal Awareness for prisoners

*Rajoo @ Ramakant v. State of Madhya Pradesh*<sup>35</sup>, the case pertains to the right to legal aid as enshrined under Article 39A of the Indian Constitution. The instant case highlights the importance of providing legal aid to an accused person who is unable to afford legal representation.

In this case, the accused, Rajoo @ ramakant, was charged with a serious offense of murder. However, he could not afford a lawyer to defend himself in court. The court took cognizance of his financial incapacity and directed the District Legal Services Authority to provide him with legal aid.

The District Legal Services Authority appointed a lawyer to defend Rajoo @ Ramakant, who argued his case in court. The lawyer argued that there was no direct evidence against rajoo@ Ramakant and that the prosecution had failed to establish its case beyond reasonable doubt. The court considered the arguments of the defense counsel and ultimately acquitted rajoo @ Ramakant of all charges. This case highlights the crucial role of legal aid in ensuring access to justice for all. The Constitution of India guaranteed the right to legal aid to every accused person, regardless of their financial situation. The provision of legal aid ensures that an accused person is not deprived of their right to fair trial due to their inability to afford lawyer.

This case also underscores the need for the proper implementation of legal aid programs. In this case, the court's intervention was necessary to ensure that Rajkumar @ Ramakant received legal aid. It is the responsibility of the government and the legal aid system to ensure that legal aid is provided to all who need it, without any discrimination or delay.

*Suk Das v. Union Territory of Arunachal Pradesh*<sup>36</sup>, is a another landmark case in India that highlights the importance of legal aid in ensuring access to justice for all. This case dealt with the question of whether the right to legal aid extends to all stages of a criminal proceeding, including the stage of investigation.

Suk Das was arrested by the police in Arunachal Pradesh on charge of theft and was remanded to judicial custody. He applied for bail, but his application was rejected by the court due to lack of evidence. He then filed a writ petition in the Guwahati High Court challenging his detention and seeking bail. The High Court allowed his bail application, but during the pendency of the case, Suk Das alleged that he was subjected to custodial violence by the police.

The High Court took cognizance of the allegation of custodial violence and directed the Legal Services Authority to provide legal aid to Suk Das during the investigation stage. The legal services Authority appointed a lawyer to represent Suk Das who filed a complaint with the National Human Rights Commission regarding the alleged

<sup>34</sup> 1983 AIR 378 1983 SCR (2) 337 1983 SCC (2) 96 1983

<sup>35</sup> Criminal Appeal No. 140 of 2008

<sup>36</sup> 1986 AIR 991 1986 SCR (1) 590 1986 SCC (2) 401 1986 SCALE (1) 368

custodial violence. The NHRC conducted an inquiry and found that Suk Das was indeed subjected to custodial police.

The case of Suk Das v. Union Territory of Arunachal Pradesh highlights the significance of legal aid at all stages of a criminal proceeding. The court recognized that the right to legal aid extends not only to the trial but also to the investigation stage of a criminal case. This is crucial as the investigation stage is often the most critical stage of a criminal proceeding, where the rights of the accused are most vulnerable.

Furthermore, this case underscores the importance of providing legal aid to vulnerable and marginalized groups, such as those who are subjected to custodial violence. Legal aid ensures that the rights of the accused are protected, and justice is delivered in a fair and impartial manner.

In conclusion, the case of Suk Dasv. Union Territory of Arunachal Pradesh highlights the importance of legal aid ensuring access to justice for all, particularly at the investigation stage of a criminal proceeding. It also underscores the need to provide legal aid to vulnerable and marginalized groups to ensure that their rights are protected.

In the landmark case of *Hussainara Khatoon v. State of Bihar*<sup>37</sup>, the question of the law in the present case was on the fundamental rights of the accused and the duty of the state as expressed in Article 39A of the Constitution concerning free legal services to the poor and the denial of which in a delayed trial system would mean the denial of an individual's life and personal liberty as enshrined in Article 21 of the Indian Constitution. The Supreme Court of India held that the right to legal aid is implicit in the right to a fair trial and invoking Article 39A of the Constitution, the court stated " *it is the constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of the reasons such as poverty, indigence and incommunicado situation and the state is under a mandate to provide a lawyer to an accused person if the circumstance of the case and the needs of justice so required, provided of course the accused person does not object to the provision of such lawyer*"<sup>38</sup>.

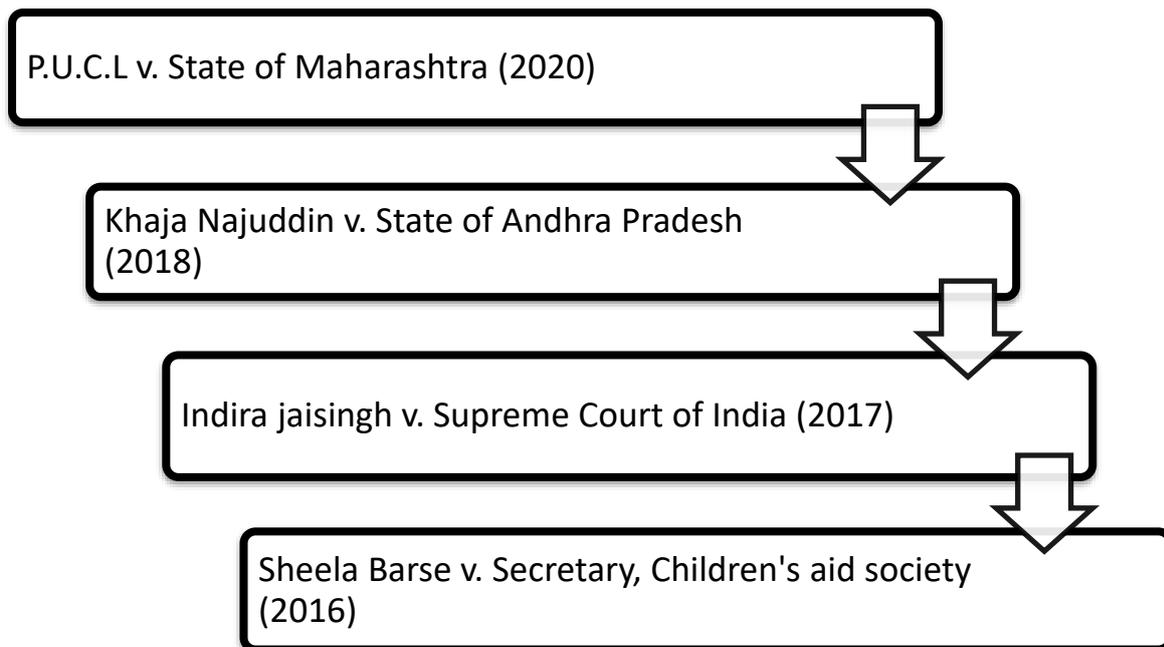


Fig:- 4

The recent case laws highlight the importance of legal aid in ensuring access to justice for all citizens, particularly the poor and marginalized sections of society. The courts have recognized legal aid as a fundamental right and have directed the state to take proactive measures to ensure that legal aid is readily available to those who need it.

The judiciary has also set up various legal aid mechanism to ensure that legal services are available to all sections of society, particularly to the marginalized and vulnerable sections. The National Legal services Authority (NALSA) was established in 1987 to provide free legal aid and services to the weaker sections of society. The Supreme Court and High Courts have also set up Legal Services Committees to facilitate legal aid and assistance to those in need.

The judiciary has also been proactive in promoting legal literacy and awareness among the people. The Supreme Court has emphasized the need for legal literacy and has directed the State to take steps to promote

<sup>37</sup> 1979 AIR 1369 1979 SCR (3) 532 1980 SCC (1) 89

<sup>38</sup> Ibid

legal awareness and education. The judiciary has also recognized the role of non-governmental organizations in providing legal aid and has encouraged their participation in legal aid programs.

In addition to these initiatives, the Indian judiciary has also taken steps to streamline and strengthen the legal aid system. The Legal services Authorities Act, 1987 was enacted to provide a statutory framework for legal aid and to establish legal service authorities at the national, state and district levels. The act also provides for the constitution of Lok Adalats for the speedy and inexpensive resolution of disputes.

## CONCLUSION

Legal aid and access to justice are essential for ensuring that individuals have equal and fair representation in legal proceedings. However, not everyone has the financial resources to hire a lawyer. Pro bono work, which involves lawyers providing free legal services to those who cannot afford it, can bridge this gap.

The pro bono model has several benefits. It allows lawyers to give back to their communities and helps those in need of legal assistance. Pro bono work also provides valuable experience for lawyers, particularly those who are just starting their careers or transitioning to a new practice area. Additionally, pro bono work can help reduce the burden on already overburdened legal aid organizations.

However, relying solely on pro bono work is not a sustainable solution to the access to justice crisis. There is a limit to the amount of pro bono work that can be done, and many individuals may still fall through the cracks. Moreover, relying on pro bono work can reinforce the notion that legal services are a luxury rather than a necessary.

Therefore, while pro bono work can be a helpful tool in providing access to justice, it should not be the sole solution. Government and legal organizations must work together to create a system that ensures everyone has access to legal representation regardless of their financial situation. This may involve funding legal aid organizations, creating incentives for lawyers to take on pro bono cases, and increasing awareness of the importance of access to justice.

Government has already taken an initiative for delivering the access to justice through establishment of pro-bono model in colleges and universities. It is on the part of the concerned in the law institutions to take an initiative and activate the pro bono model engaging law students so that the maximum benefit of the government can reach to the marginalised group in the society. There should be a proper implementation of pro bono model in all the law institutions to meet the success rate of the same so that we can deliver the access to justice to the vulnerable and marginalised groups in the society.

## SUGGESTION

1. **Fixing Time Limit:** Pro Bono work is to be included in the legal education course which should be framed for specific duration like 100 hours to final year students for accelerating social justice to poor.
2. **Adequacy of Fund:** Adequate fund should be arranged for the purpose of conducting pro bono work in the law colleges and universities.
3. **Increasing Resources:** Resources should be enhanced for legal aid to poor and downtrodden people.
4. **Creation and Use of Apps:** Specific Apps should be made for spreading digital pro bono work through the students of legal institution to reach social justices at large.
5. **Curriculum Reform:** Curriculum should be based on socially relevant so that a balance can be maintained between Teaching and Community Service.
6. **More Pro Bono Model-** There should be more Pro Bono Models in the Government aided law Institutions.
7. **Sound Implementation-** There should be proper implementation of existing Pro-bono Models
8. **Social Responsibility-** the responsibility lies in the shoulder of law students, faculties, institutions and concerned departments to meet and deliver the justice to the marginalized groups in the society.
9. **Way Forward-** there is a lot of scope for law students undertaking pro bono matters in future and its aggressive promotion may help in enlarging the sphere of Pro Bono work in India.

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