

Equity vs. Obligation: an Examination of How Mandatory Pro Bono will Affect Young Lawyers and the Justice Gap

SK Noor Mahammad

Assistant Professor of Law College Durgapur

Abstract

The word justice simply signifies righteousness, reasonableness and just treatment. Access to justice means everyone is equally getting easily access to this justice system. Access to justice is the basis of rule of law without this no one can get access to justice even their rights are being hampered or an offence being committed against them. But in India there are lots of obstacles have on the path of this access to justice system i.e. Complex legal procedure, huge advocate fees, poverty, illiteracy, lack of infrastructure etc. And poverty among them is prevalent cause. India's maximum people have lower income and illiterate as well. Therefore they are not getting accessed to this justice system. Consequently many jurist or politicians suggesting to make pro bono legal services mandatory for lawyers to mitigate this issues. In this paper we will discuss the advantages and disadvantages of this thinking. And also will define the various term related to this.

Keywords: Justice, Access to Justice, Pro Bono Legal Service, Legal Aid, and Legal Provision.

1. Introduction

The Word Justice had taken from the French word “Jostice” which means uprightness, equity, vindication of right, and administration of law. Thus the meaning of justice is just treatment or we can say reasonableness, righteousness. Whereas access to justice means that everyone is getting easily access to court of law for the resolution of their issues. The Lawyers are acting as the officer of the court and help in justice delivery system. For that Roscoe Pound said very well about lawyers he said lawyers is like an engineer as the engineers make structure or blueprint to make their project perfect just like that lawyers acting like an engineer and make plan to resolve issues of society or reduce conflict of interest in the society. So we can assume that lawyers are playing a crucial role in justice dispensing or righteousness prevailing system. But India with world’s highest population suffering from various issues such as poverty, prevalent health issues, illiteracy and many more. Apart from these there are also lots of issues which is making Hindrance on path of access to justice i.e. overloaded judiciary, high cost of Advocate, remote area, and lack of proper infrastructure. The poverty is prevalent reason among them. Therefore to bear the cost of advocate is very tough for the poor people. Consequently the poor people struggling to get access to justice system. Though our constitution as well as various laws are trying to erase all these yet it is giving satisfying result. For that reason the jurist are thinking to make pro bono (for public benefit) legal services mandatory for the lawyers . But the question is that if we make it

mandatory for lawyers will it be beneficial for lawyers or not? In this paper we will discuss advantages, disadvantages and importance of mandatory pro-bono legal service for lawyers.

2. Importance of pro-bono legal services:

The word pro-bono derived from the Latin term “Pro Bono Publico” which means “for the public good” The actual meaning of prop-bono legal service is giving free legal aid to those who cannot afford the cost of this services. Therefore pro bono legal service playing a crucial in making justice accessible for all the section of society. The importance are:

2.1.Promoting Access to Justice: Access to justice is the most important principle of rule of law.

Without access to justice people will not be able to represent themselves in the court of law. Even though their rights are being violated or an offence being committed against them because of several reasons such as: huge advocate fees, complex procedure, illiteracy, poverty, etc. India is the highest populated country of the world. The statistic of World Bank shows that: About 60% of India's population nearly 1.3 billion people live on less than \$3.10 a day, the World Bank's median poverty line. And 21%, or more than 250 million people, survive on less than \$2 a day.¹The illiteracy rate of is approx 23% as on 2017-18.² And The Survey notes that 65 per cent (2021 data) of the country's population lives in the rural areas and 47 per cent of the population is dependent on agriculture for livelihood.³. But through pro bono legal services we can eradicate the causes of obstruction on the way of access to justice system. Eventually it will be promoting access to justice.

2.2.Protecting Natural Justice:Natural justice's most important principle is “AudiAlteramPartem”which means “right to be heard”. Every people of the society has right to defend themselves regardless of class, caste, colour or financial condition. The pro-bono legal service acts like a bridge between justice and those people who are not able to access to justice because of prevalent poverty or any other issues. Ultimately pro bono legal services protect their right to be heard.

2.3. Protecting Vulnerable Communities:There are various vulnerable communities are living in India. Because of several reasons they are not able to access to justice. The vulnerable communities are:

2.3.1. **ST&SC:** In India around 8% of the total population is ST and 17% is SC.the majority of STs and SCs continue to be vulnerable as reflected by their socio-economic characteristics such as low literacy, prevalence of poverty.

2.3.2. **Woman:** Women are approx. the half of the total population in India. Despite of being half of the population they are being victimised of most of the rape, sexual Harassment, domestic violence cases.In India 99% sexual assault cases against women go unreported.⁴ “In 2021 out of the six million crimes that police in India recorded between 1st January and 31st December last year, 428,278 cases involved crimes against women. It is a rise of

¹MoniBasu, Seeing the New India through an Invisible Woman, CNN India (Nov 02,2024, 8.30 PM), <https://edition.cnn.com/interactive/2017/10/world/i-on-india-income-gap/>.

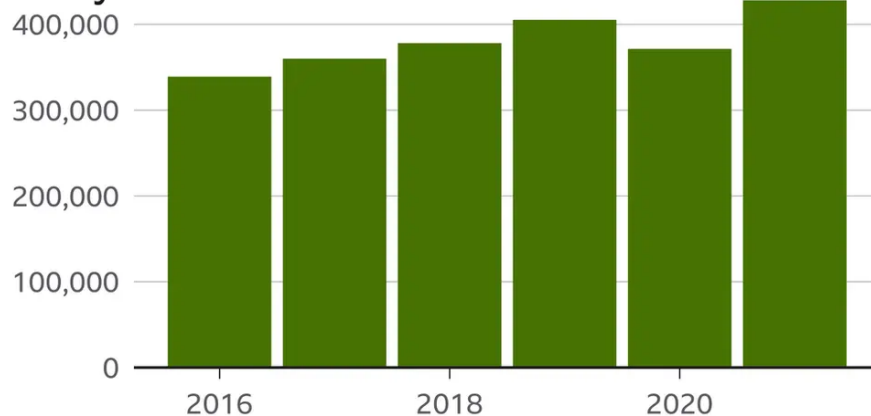
²Wikipedia, https://en.m.wikipedia.org/wiki/Literacy_in_India (Last Visited Nov. 04, 2024).

³PIB Delhi, Economic Survey Highlights Thrust On Rural Development, PIB India (Nov. 01, 2024, 6.30. PM), <https://pib.gov.in/PressReleasePage.aspx?PRID=1894901>.

⁴Pramit Bhattacharya, TadiKundu, 99 Cases Of Sexual Assaults Go Unreported, Govt Data Shows, Livemint(Nov 02, 2024, 8.30 PM),99% cases of sexual assaults go unreported, govt data shows (livemint.com).

26.35% over six years - from 338,954 cases in 2016. A majority of the cases in 2021, the report said, were of kidnappings and abduction, rapes, domestic violence, dowry deaths and assaults.”⁵ The woman afraid to access to court of law for justice. Because the patriarchal mind-set of the society always blame to the woman. Apart from this most of the women financially depend either on their parents or on their husband which is also creating financial hindrance on the path of justice.

Incidents of crimes against women highest in 6 years



Source: National Crime Records Bureau (2016-2021)

BBC

2.3.3. Child: Normally the children depend on their parents for their basic needs. The situation of the children in India is very intense. The various cases against child are: kidnapping, bagging, child prostitution, child labour, etc. The latest report released by the National Crime Records Bureau (NCRB) shows that 1,49,404 cases of crime against children were registered in 2021 of which 53,874 — 36.05 per cent — were under the Protection of Children from Sexual Offences Act (POCSO).⁶

Therefore The Mandatory pro bono legal services will protect the interest of these vulnerable society's people who don't have enough facilities to access to the justice whether it is for remote area, financial condition, Illiteracy or poor living condition.

2.4. Public Trust in the Legal System: Pro bono legal service promotes equal access to justice means every people of the society will afford justice through this service. Consequently it will increase the public trust on legal system. It is actually giving support to the people who are not getting easy access to justice for many reasons I. e. Financial, poverty, societal issues and many more. And highlights that the legal community is really thinks about them.

2.5. Professional Development: the lawyers who are engaged in pro bono legal services they are doing a good job for the common people but in return they are also developing their professional skills through applying those theoretical aspects in reality. They experience different kind of

⁵Geeta Pandey, Rising crimes against Indian women in five charts, BBC (Nov 02, 2024, 8.44 PM), Rising crimes against Indian women in five charts (bbc.com).

⁶Esha Roy, NCRB data | Crime against kids: a third still under POCSO, The Indian Express (Nov.05, 2024, 11.10.AM) NCRB data | Crime against kids: a third still under POCSO | India News - The Indian Express.

critical situations and learn how to handle this situation. Consequently they are building their own professional skills.

3. Legal provision:

- 3.1. **Preamble:** preamble which had taken from the objective resolution of Jawaharlal Nehru, 1946. And In **KeshavanandaBharati v. State of Kerala**⁷ Supreme Court said it is part of the Constitution. Thus the preamble promoting justice; social, economic and political and equality of status and opportunity. Hence the social justice signifies that every section of the society can afford justice thus the political and economic justice signify equal distribution of wealth and equal participation in politics. Equality of status and opportunity promoting that every people of India gets equal opportunity in every sector including justice.
- 3.2. **Art 20 and 21:** As per article 21 of the Indian Constitution no person shall deprive right to life and personal liberty except the procedure establish by law or due process of law.⁸ In **Maneka Gandhi v. Union of India**⁹ case the court had added the right to be heard is falling under this article and **HussainaraKhatoon&Ors v. Home Secretary, State Of Bihar**¹⁰ case Supreme Court said that legal aid is also falling under this article. So according to this if any person are not able to hire lawyers for financial reason the state will provide lawyers at free of cost to them.
- 3.3. **Art 39A:** Article 39A under directive principle of state policy which means though it is not applicable in court of law but the state can take it as a directive when they are making laws. Article 39A is talking about free legal to needy people. And sometimes the state can give more importance to dpsp than fundamental rights which is said by the judiciary in multiple cases i.e. **Re:Kerala education bill case**,¹¹ **Minerva Mills Ltd. &Orsvs Union Of India &Ors case**¹².
- 3.4. **Legal Services Authority act, 1987:** The legal service authority act, 1987 introduced by the central government for the purpose of free legal aid to those who cannot afford the cost of advocate. As per this act three tier mechanism introduced such as: National Legal Service Authority (NALSA), State Legal Service Authority (SLSA), and District Legal Service Authority (DLSA).
- 3.5. **Natural Justice:** The Word Natural justice taken from the Latin word “Jus Naturle” means the justice of the nature. In Natural justice there are two main principles one is NemoJudexInCausasua and another is Audi alterampartem. NemoJudex in causasua means No one can be judge of his own case. Audi alterampartem means everyone has right to be heard or to defend themselves. Therefore every people of India has right to be heard but because of few reasons such as: poverty, illiteracy, complex procedure of law, etc they are not able to afford justice. Hence it should be the duty of the state or legal experts to ensure that justice is easily accessible by the all section of the society.

⁷KeshavanandaBharati v. State of Kerala, AIR 1973 SC 1461.

⁸The Indian Constitution

⁹Maneka Gandhi v. Union of India, 1978 AIR 597.

¹⁰HussainaraKhatoon&Ors v. Home Secretary, State Of Bihar, 1979 AIR 1369.

¹¹Re: Kerala education bill case, 1959 1 SCR 995.

¹²Minerva Mills Ltd. &Orsvs Union Of India &Ors, AIR 1980 SC 1789.

4. Mandatory pro-bono legal service:

Making pro-bono legal service mandatory for the lawyers means that the all lawyers are bound to give pro-bono legal services to the people. Making this pro bono legal service can create burden on lawyers cause the maximum lawyers in India are overburdened by their own works but in contrary if it is not Mandatorily imposed on lawyers then people who is financially or educationally backward class will not able to afford justice. So here is the question that will it be advantageous or not for the society and mainly for the lawyers. Here we have discussed some advantages and disadvantages to understand it easily.

4.1. Advantages of mandatory pro bono legal services:

- 4.1.1 Enhanced Social Responsibility:** The pro bono legal services actually inculcate the social value into the lawyers. When they work with those back warded people of the society they will learn that they too have some responsibility towards the society like every other profession has and the back warded people of the society also look onto the legal expertsto get access to justice.
- 4.1.2. Enhanced Reputation of lawyers:** The lawyers and firm can build a strong reputation by providing pro - bono legal services to the needy people i.e. socially and economically weaker sections.
- 4.1.3. Network making Opportunities:** Lawyers and the firms have great opportunities to make network through this pro bono legal service. Which lawyers and firms engaged in providing pro bono legal services they meet several reputed members of the society as well as the people from the different section of the society which will adversely create a strong network which will help them to get more cases and also help in their own work.
- 4.1.4. Develop professional skills:** Lawyers and the firm's members can learn several theoretical aspects practically. In pro bono legal services the legal professionals handle several cases which in return develop their own skills and technique.
- 4.1.5. Liability to make access to justice easy:** The legal professionals have liability to make access to justice easy for all the people of the country. Because if they don't try to make it easy for those marginalized people then they will lose their faith from the legal services of the country so the liability is obviously on legal professionals to make justice easy and affordable for all the section of the society.
- 4.1.6. Work Versatility:** Every lawyer has their own specialized field of work i.e. taxation, criminal, civil and etc. but when they engaged in pro bono legal services they have to handle multiple cases from several different field. Hence they experienced multiple field's work consequently it will increase their skills in several field of law.

4.2. Disadvantages of mandatory pro bono legal services:

- 4.2.1. Limited Expertise:** The Lawyers have their own specialized field of work but if lawyers engaged in pro bono legal services they have to manage those cases which is beyond of their expertise as well. Subsequently it will fall bad impact in those cases which is not from their own field.
- 4.2.2. Increase mental and emotional pressure on lawyers:** The lawyers and firms our country already over loaded with cases. Even they don't have time to spend with their own families. The lawyers of our country already suffering from mental and emotional trauma. Further the maximum cases of pro bono are related to immigration, crime related

which need intense care and more time to handle. Consequently the workload will be increased further and will also increase the mental pressure of the lawyers.

- 4.2.3. **Lack of Quality work:** The lawyers as we already discussed above that they have some specialized field and maximum cases they are used to and expert to their particular field. Therefore if they handle those cases which are out of their specialized field then there will be quality issues in these cases. Furthermore maximum pro bono cases provided free of cost for that reason the lawyers will not be as committed as they were committed when they give paid services.
- 4.2.4. **The people lose faith from the legal system:** Every person of the society may not get the same quality of services as some kind of people is getting because of political influence or for any other reason for that reason some people may assume that this services are not for them or they are not getting as quality services as everyone is getting. Subsequently they lost faith from Justice System.
- 4.2.5. **Financial burden:** Maximum pro bono cases are free of cost. And it very tough for those young lawyers and small firms to give these services free of cost and maintain their firm and family. Consequently it will create financial burden on lawyers and the firms.
- 4.2.6. **Limited time:** As the lawyers has limited time within which they have to do their own work as well as have to give time to pro bono cases which will intensely fall impact into their personal and family life.

5. Conclusion:

Justice means just treatment or we reasonableness, righteousness, and equal treatment. Thus access to justice means the people have easy access to the court of law for justice. But there are a lot of issues on the path of this access to justice i.e. huge advocate fees, complex procedure, illiteracy, poverty, etc. Though the preamble of Indian Constitution have given justice of economic, social and political to the people of India and also tries to secure equal application of this provision. Furthermore the Constitution's various provision tries to give legal aid to marginalized people. Apart from Indian Constitution there are many provision which also tries to make this justice easily accessible for all the people of India. But apart from this intensive efforts India yet suffering to secure justice easily accessible by all section. Consequently some are suggesting to impose Mandatory pro bono legal services on lawyers that means lawyers will be bound to give legal service to the needy people either with minimum amount of money or without money. But the question is that if we forcefully made pro bono legal services mandatory on lawyers then what will be happened? So as we discussed above all the good and bad sides of this service we can say this service will increase the workload and mental pressure of lawyers and the disadvantages of mandatory pro bono services are prevalent over advantages for the lawyers though it will be helpful for the society. But instead of making this services mandatory for all the lawyers we can make it mandatory only for junior lawyers with a reasonable payment and it will help the junior lawyers as well to develop Professionalism and social value at their initial stage.

References

1. DepaliAswal, Vulnerability and Access to Justice, Pro Bono India (Oct. 29, 2024, 10.11 AM), Vulnerability and Access to Justice | ProBono India (probono-india.in).
2. MoniBasu, Seeing the New India through an Invisible Woman, CNN India (Nov 02, 2024, 8.30 PM), <https://edition.cnn.com/interactive/2017/10/world/i-on-india-income-gap/>.
3. Wikipedia, https://en.m.wikipedia.org/wiki/Literacy_in_India (Last Visited Nov. 04, 2024).
4. PIB Delhi, Economic Survey Highlights Thrust On Rural Development, PIB India (Nov. 01, 2024, 6.30. PM), <https://pib.gov.in/PressReleasePage.aspx?PRID=1894901>.
5. Pramit Bhattacharya, TadiT Kundu, 99 Cases Of Sexual Assaults Go Unreported, Govt Data Shows, Livemint (Nov 02, 2024, 8.30 PM), 99% cases of sexual assaults go unreported, govt data shows (livemint.com).
6. GeetaPandey, Rising crimes against Indian women in five charts, BBC (Nov 02, 2024, 8.44 PM), Rising crimes against Indian women in five charts (bbc.com).
7. Esha Roy, NCRB data | Crime against kids: a third still under POCSO, The Indian Express (Nov.05, 2024, 11.10.AM) NCRB data | Crime against kids: a third still under POCSO | India News - The Indian Express.

Case Laws:

1. KeshavanandaBharati v. State of Kerala, AIR 1973 SC 1461.
2. Maneka Gandhi v. Union of India, 1978 AIR 597.
3. HussainaraKhatoon&Ors v. Home Secretary, State Of Bihar, 1979 AIR 1369.
4. Re: Kerala education bill case, 1959 1 SCR 995.
5. Minerva Mills Ltd. &Orsvs Union Of India &Ors, AIR 1980 SC 1789.