



Pro Bono Practices and Opportunities in India¹

INTRODUCTION

India has an expansive history of legal aid, backed by several decades of legislation, jurisprudential interpretation, and numerous state-funded programs. However, its pro bono culture is still very much a work in progress. While certain pro bono services are organized and provided by a number of individual advocates, law firms, non-governmental organizations (“NGOs”), law schools and bar associations across the country, the demand for such services far exceeds the supply.

OVERVIEW OF THE LEGAL SYSTEM

Constitution and Governing Laws

The Indian Constitution (the “**Constitution**”) declares India to be a sovereign, socialist, secular, democratic republic. It prescribes a parliamentary system of government and is federalist in nature. The Constitution has typical characteristics of a federal system, including the supremacy of the Constitution, division of power between the Union and State governments, bicameralism and the existence of an independent judiciary. The three divisions of government (executive, legislature and judiciary) function within separate domains. The Constitution also guarantees certain fundamental rights and prescribes certain directive principles and fundamental duties.

The Constitution is known for its broad delineation of fundamental rights for all citizens, which include but are not limited to the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights and the right to constitutional remedies. These rights are guaranteed and justiciable. Accordingly, any infringement of such rights may be challenged in court.

The Constitution also prescribes directive principles of state policy, which are guidelines provided to the State to be incorporated or taken into account in the framing of legislations and policies. Finally, the Constitution also prescribes fundamental duties for every Indian citizen. Unlike fundamental rights, however, the directive principles and fundamental duties are non-justiciable.

The Courts

The highest court in the Indian judiciary is the Supreme Court of India (the “**Supreme Court**”), which exercises original, writ and appellate jurisdiction. Next in the hierarchy are the high courts, which again exercise original, writ and appellate jurisdiction, and are the highest judicial forums at the state or union territory level.² There are a total of 24 high courts in India³ representing 29 states and seven union territories, since certain high courts have jurisdiction over more than one state and/or union territory.⁴ Below high courts in the hierarchy are lower or subordinate courts. There are around 675 administrative

¹ This chapter was drafted with the support of Luthra & Luthra Law Offices.

² See Arun Prabhudesai, Doing Business in India – The Legal Environment – Part 1 (Feb. 12, 2008), <http://trak.in/tags/business/2008/02/12/doing-business-in-india-legal-environment-part1/> (last visited on September 4, 2015); see also INDIAN COURTS, <http://indiancourts.nic.in/> (last visited on September 4, 2015); see also Society of Indian Law Firms, Indian Justice System, <http://www.silf.org.in/16/indian-judicial-system.htm> (last visited on September 4, 2015).

³ Indian Dep’t of Justice, Judges of the High Courts, [http://doj.gov.in/sites/default/files/userfiles/HCs\(1.7.2015\).pdf](http://doj.gov.in/sites/default/files/userfiles/HCs(1.7.2015).pdf) (last visited on September 4, 2015).

⁴ See Prabhudesai, *supra* note 2; see also GOVERNMENT OF INDIA, National Portal of India, available at <http://india.gov.in/india-glance/profile> (last updated May 21, 2015) (last visited on September 4, 2015).



districts in India distributed among states and union territories, most of which have a district court.⁵ In addition to the district courts, there are several judicial tribunals that are set up to address distinct areas of law.⁶ Though they are typically supervised by the High Courts, appeals from some of these tribunals lie directly with the Supreme Court.⁷

A unique feature of the Indian judicial system is that although there are central and state laws with distinct (and sometimes overlapping) jurisdictions, the court system is integrated, implying that courts generally administer both central and state laws.⁸ Judges of the Supreme Court and the high courts are presently selected for appointment by a collegium of other judges, including the Chief Justice of India.⁹ However, with the passing and notification of the National Judicial Appointments Commission Act, 2014 (the “**NJAC Act**”) by the Parliament, the existing system for the appointment of judges to the Supreme Court and the high courts has been changed. Judges will now be selected by the National Judicial Appointments Commission (the “**NJAC**”), which consist of the Chief Justice of India, the two most senior judges of the Supreme Court, the Union Minister of Law and Justice and two eminent persons nominated by a committee composed of the Prime Minister of India, the Chief Justice of India, and the Leader of the Opposition in the Lok Sabha.¹⁰ The NJAC Act has been challenged before the Supreme Court and the matter is still pending. Accordingly, all higher judicial appointments have been put on hold for the time being.¹¹

The Practice of Law

Education

Legal education in India is regulated by the Bar Council of India, as set up by the Advocates Act of 1961 (the “**Advocates Act**”).¹² Students may pursue two different paths to obtain a law degree: (i) a three-year specialized course after obtaining an undergraduate degree, or (ii) a five-year integrated course after high school.¹³ India currently does not have continuing legal education requirements. There are also no

⁵ Government of India, GOI Web Directory, <http://goirectory.nic.in/district.php> (last visited on September 4, 2015); India Law Justice, <http://www.indialawjustice.com/district-courts-in-india.php> (last visited on September 4, 2015).

⁶ Some examples of these tribunals include the Company Law Board, the Competition Commission of India, the National Green Tribunal, the Securities Appellate Tribunal, the Consumer Protection Forum and the Tax Tribunal. See Prabhudesai, *supra* note 2.

⁷ *Id.*

⁸ See Navoneel Dayanand, Overview of Legal Systems in the Asia-Pacific Region: India (Apr. 10, 2004), available at http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1001&context=lps_lsapr (last visited on September 4, 2015).

⁹ R. Balaji, How Judges Are Appointed and How Rakya Sabha Wants Them Appointed (Sept. 6, 2013), available at http://www.telegraphindia.com/1130906/jsp/nation/story_17318049.jsp (last visited on September 4, 2015).

¹⁰ See Press Release, Government of India, National Judicial Appointments Commission Act Notified (Apr. 13, 2015), available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=118224> (last visited on September 4, 2015).

¹¹ Utkarsh Anand, Government Won't Appoint Judges Till Supreme Court Resolves NJAC Issue (Apr. 24, 2015), available at <http://indianexpress.com/article/india/india-others/njac-shall-not-make-fresh-appointment-of-judges-govt-to-sc/> (last visited on September 4, 2015).

¹² Advocates Act, No. 25 of 1961, INDIA CODE, available at <http://www.barcouncilofindia.org/wp-content/uploads/2010/05/Advocates-Act1961.pdf> (last visited on September 4, 2015) (hereinafter, “**Advocates Act**”).

¹³ Rakesh Kumar Srivastava, A Guide to India's Legal Research and Legal System (Oct. 2008), available at http://www.nyulawglobal.org/globalex/India_Legal_Research.htm#8_LEGAL_EDUCATION (last visited on September 4, 2015).



minimum pro bono requirements to obtain a law degree or for continued licensure.¹⁴ However, many law schools in India such as the National Law Schools in Bangalore, Hyderabad, Kolkata and Bhopal, among others, offer clinics and student activities focused on providing legal advice, offering dispute resolution services, and promoting legal awareness among disadvantaged communities.¹⁵

Licensure

A graduate from a recognized law school is required to enroll as an advocate with any State Bar Council.¹⁶ Following such enrollment, the law graduate is required to pass the All India Bar Examination, which is conducted by the Bar Council of India (this requirement was instituted in 2010), in order to become a qualified lawyer in India.¹⁷ Persons enrolled as advocates with any State Bar Council are entitled to practice law throughout the country in any state, including the high courts and the Supreme Court.¹⁸ However, to be able file matters in the Supreme Court, lawyers are required to qualify as Advocates-on-record by clearing the AoR examination.

Demographics

It is estimated that there are more than 1.3 million registered lawyers in India, with about 60,000 to 70,000 new lawyers joining the profession every year.¹⁹ While this is similar to the absolute number of lawyers in the U.S., the per capita number of lawyers in India is around 10.2 for every 10,000 residents compared to around 38.5 lawyers per 10,000 residents in the U.S.²⁰ Most Indian lawyers work in litigation-related fields, with likely only around 5,000 to 10,000 corporate or transactional lawyers in India, including in-house lawyers.²¹ More than 2,000 lawyers work for the seven biggest national law firms, with an estimated additional 1,000-1,500 lawyers working in mid-size firms, each consisting of 20 or more

¹⁴ ET Bureau, Law Companies Now Joining in Pro-Bono Activities, Legal Eagles Offering Free Services to Needy, Economic Times, Aug. 24, 2013, http://articles.economictimes.indiatimes.com/2013-08-24/news/41443991_1_parliament-attack-case-ram-jethmalani-sar-geelani; (last visited on September 4, 2015) Interview with Kaustubh Verma, Luthra & Luthra Law Offices (July 13, 2015).

¹⁵ Jane Schukoske & Roopali Adlakha, Enhancing Good Governance in India: Law Schools and Community-University Engagement, J. Indian L. & Soc'y 206 Vol. 3 (2012), <http://www.smsfoundation.org/wp-content/uploads/2015/01/ENHANCING-GOOD-GOVERNANCE-IN-INDIA-LAW-SCHOOLS.pdf> (last visited on September 4, 2015).

¹⁶ Int'l Ass'n of Lawyers, Overview of the Legal Profession in India, <http://www.uianet.org/en/content/overview-legal-profession-india> (last visited on September 4, 2015); Amit Bansal, Int'l Bar Ass'n, How to Qualify as a Lawyer in India, http://www.ibanet.org/PPID/Constituent/Student_Committee/qualify_lawyer_india.aspx (last visited on September 4, 2015).

¹⁷ Id.

¹⁸ Id.

¹⁹ See Bar Council of India, Vision Statement 2011-2013, <http://www.barcouncilofindia.org/about/about-the-bar-council-of-india/vision-statement-2011-13/> (last visited on September 4, 2015); Kian Ganz, RTI Reveals: 1.3M Advocates; 1 in 300 Delhi-ites a Lawyer; Maharashtra Lawyers 'Richest'; Jharkand, Assam, J&K Fastest, Legally India (Feb. 18, 2013), <http://www.legallyindia.com/201302183448/Bar-Bench-Litigation/rti-reveals-number-of-lawyers-india> (last visited on September 4, 2015).

²⁰ See Am. Bar Ass'n, Lawyer Demographics (2011), available at http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2011_authcheckdam.pdf (last visited on September 4, 2015); see Matt Leichter, Lawyers Per Capita by State, <http://lawschooltuitionbubble.wordpress.com/original-research-updated/lawyers-per-capita-by-state/> (last visited on September 4, 2015). Assuming populations of 311,591,917 per the U.S. Census Bureau in July of 2011 and 1,170,938,000 per the World Bank for India in 2010.

²¹ See India Watch: The Forbidden Land of "Approximately" 1.2 Million Lawyers, The Lawyer (Oct. 20, 2011), http://www.thelawyer.com/india-watch-the-forbidden-land-of-%E2%80%98approximately%E2%80%99-12-million-lawyers/1009874_article (last visited on September 4, 2015).



lawyers.²² The remaining lawyers work at sole proprietorships and as attorneys employed by smaller law firms.

Legal Regulation of Lawyers

The legal profession in India is primarily self-regulating and governed by the relevant State Bar Councils and the Bar Council of India set up under the Advocates Act.²³ The stated purpose of the Advocates Act was to “consolidate the law relating to legal practitioners and to provide for the constitution of the Bar Councils and an All-India Bar.”²⁴ The Advocates Act set up bar councils for each state composed of member-attorneys elected by enrolled attorneys.²⁵ The functions of bar councils include admitting attorneys to the bar, preparing and maintaining the register of attorneys, hearing cases of misconduct against admitted attorneys and “organiz[ing] legal aid to the poor,” including by constituting legal aid committees.²⁶ The Bar Council of India has been tasked with establishing the rules and standards of professional conduct for attorneys and disciplinary procedures.²⁷ These rules and standards, which are set out in detail on the website of the Bar Council of India, prescribe a lawyer’s duties towards the court, clients, opponents and colleagues.²⁸

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

India’s Constitution, national legislation and Supreme Court jurisprudence together articulate the importance of broadly accessible legal aid.²⁹ Article 39A of the Constitution provides:

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.

Further, Article 22(1) of the Constitution requires that any person who is detained be given the right to “consult, and to be defended by, a legal practitioner of [their] choice.”³⁰ The Supreme Court has interpreted the Constitution broadly with respect to rights of the underprivileged. For example, the Court has held that the right to free legal aid falls within the ambit of the right to life set out in Article 21 of the Constitution.³¹

²² Id.

²³ Advocates Act, supra note 12.

²⁴ Id.

²⁵ See id. § 3.

²⁶ See id. §§ 6, 6(eee), 9A.

²⁷ See id. § 7.

²⁸ See Bar Council of India, Rules on Professional Standards (2012), available at <http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/> (last visited on September 4, 2015).

²⁹ See, e.g., INDIA CONST. art. 39A; Legal Services Authorities Act of 1987, S.P. Gupta v. Union of India, INDIA CODE (as amended by the Legal Services Authorities (Amendment) Act, 2002, No. 37, INDIA CODE), (1982) 2 SCR 365.

³⁰ INDIA CONST. art. 22(1).

³¹ Hussainara Khatoon (III) v. Home Sec’y, AIR 1979 SC 1377. This case pertained to the illegal detention of thousands of prisoners in jail in the State of Bihar awaiting trial for periods substantially longer than the period they would have served in jail had they been tried, convicted and given the maximum sentence. Reading a right



The Legal Services Authorities Act, as amended by the Legal Services Authorities (Amendment) Act, 2002 (the “**LSA Act**”) describes a hierarchy of state, district and taluk³² legal services authorities intended to give effect to the Constitution’s promise of equal access to justice. The LSA Act was originally enacted by India’s Parliament in 1987 and adopted by various Indian states during the mid-1990s. Sections 15, 16 and 17 of the LSA Act establish National, State and District Legal Aid Funds respectively, which collect government funding, grants and donations to finance legal services and legal literacy activities.³³

State-Subsidized Legal Aid

Section 12 of the LSA Act lays out the criteria for eligibility for legal services under the LSA Act. According to its provisions, every person who has to file or defend a case is entitled to legal services if they are: (a) from a low caste according to the historical caste system in India; (b) a victim of human trafficking or a beggar; (c) a woman or child; (d) a mentally ill or disabled person; (e) a victim of a natural disaster or man-made disaster or conflict, such as ethnic violence; (f) an industrial workman; (g) in custody, including with the legal authorities and with a mental health institution; or (h) earning an income below the poverty ceiling amended from time to time in accordance with the LSA Act.³⁴ However, as the bulk of legal services are provided by organizations established outside of the national network of legal aid, these eligibility guidelines are not determinative of whether legal services are actually available to marginalized groups. As a result, the expansive entitlement provided in the LSA Act remains an unfulfilled promise.³⁵

Public Interest Litigation

The Public Interest Litigation (“**PIL**”) mechanism has liberalized access to the courts and perhaps has had the greatest impact on legal services in India. Article 32 of the Constitution gives the Indian Supreme Court jurisdiction over PIL actions. In *S.P. Gupta v. Union of India*, the Court articulated a broad rule of *locus standi*: if a petitioner were “by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public” might petition on their behalf against the government of India to enforce a fundamental constitutional right.³⁶ In the *S.P. Gupta* case, the apex court further held that it would “respond even to a letter addressed by such individual acting pro bono publico” and treat it as a writ petition for a PIL case.³⁷

PIL cases are intended to be cooperative and collaborative, rather than adversarial in nature. They allow judges to involve *amici curiae* and expert advisors to provide information and help structure orders such that they are easily implemented. PILs place the court in the role of an active fashioner of remedies and ongoing monitor, eliciting forward-looking injunctive remedies rather than focusing entirely on monetary damages.³⁸ As a result, PILs are often more flexible, with courts often taking on an active and

to speedy trial as also a right to free legal aid implicit in the fundamental right to life and liberty guaranteed in Article 21 of the Constitution, the Indian Supreme Court directed the release of over 40,000 prisoners on personal or no bond.

³² A taluk is a subdivision of a district much like a municipality in western countries.

³³ See Legal Services Authorities Act as amended, *supra* note 29.

³⁴ *Id.* § 12.

³⁵ See Email from Swagata Raha, Law Faculty, Christ College, Bangalore to author (Dec. 6, 2007, as confirmed on Oct. 1, 2010) (on file with author).

³⁶ *S.P. Gupta*, 2 S.C.R. 365 ¶¶ 1-11.

³⁷ *Id.* ¶ 17.

³⁸ Avani Mehta Sood, *CTR. FOR REPRODUCTIVE RIGHTS, Litigating Reproductive Rights: Using Public Interest Litigation and International Law to Promote Gender Justice in India* 24-30 (2006); Ranjan K. Agarwal, *The Barefoot Lawyers: Prosecuting Child Labour in the Supreme Court of India*, 21 *ARIZ. J. INT’L & COMP. L.* 663, 689-90, 693 (2004). See Jamie Cassels, *Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?*, 37 *AM. J. COMP. L.* 495, 498 (1989).



inquisitional role and sometimes granting immediate and interim remedial relief once a prima facie case is made. In PIL proceedings courts are also more likely to relax adherence to procedural rules and laws, such as the principles of *res judicata*, laches, and standing, to permit greater protection of the rights of the disadvantaged sections of society.³⁹

Critics argue that this reliance on outside experts grants amici too much influence over judicial outcomes, that the judicial activism of the PIL mechanism violates the separation of powers in the Indian polity, and that the PIL mechanism has invited a flood of frivolous cases that abuse the increased access to the courts provided by PIL.⁴⁰ Its critics notwithstanding, PIL has led to court rulings issuing guidelines for compensating and rehabilitating rape victims, ordering the release of bonded laborers, banning smoking in public places, and defining sexual harassment in the workplace.⁴¹ The potential for effective PIL cases is strengthened by the relative independence of India's judiciary. PIL provides a unique opportunity for public legal services providers in India, and is central to the work of legal services organizations such as the Lawyers Collective, Human Rights Law Network, and the Alternative Law Forum.

Assignment of Lawyers to Legal Aid Matters

Mandatory assignments

Generally speaking, matters are assigned by a court under the legal aid scheme to those lawyers who are empanelled on the Legal Services Committee constituted by the relevant state's Legal Services Authority. The fee for legal services payable to such empanelled lawyers is typically determined in accordance with a prescribed schedule. Private attorneys who are not empanelled on such committee or any other committee constituted by the legal services authority for legal aid are not required to accept pro bono matters assigned to them. Acceptance of a pro bono matter by such private attorneys is, therefore, voluntary. Typically, such private attorneys accepting pro bono matters voluntarily charge no fee or a minimal fee for such matters. However, if such attorneys were to be empanelled on the above committee, they would be entitled to a legal fee in accordance with the schedule prescribed.⁴²

Unmet Needs and Access.

Despite robust support in the letter of the law, the national network of legal services providers is unable to meet the needs of India's disadvantaged populations, and NGOs providing legal services face significant resource constraints.⁴³

³⁹ For a detailed discussion on the evolution, development, nature and norms of PIL, see Clark D. Cunningham, *The World's Most Powerful Court: Finding the Roots of India's Public Interest Litigation Revolution*, in *THE HUSSAINARA KHATOON PRISONERS CASE, LIBERTY, EQUALITY AND JUSTICE: STRUGGLES FOR A NEW SOCIAL ORDER* (S.P. Sathe ed., 2003); Aman Hingorani, *Indian Public Interest Litigation: Locating Justice in State Law*, XVII DLR 159 (1995); Upendra Baxi, *Supreme Court under Trial: Undertrials and the Supreme Court* 35 S.C.C. (1980); C.D. Cunningham, *Public Interest Litigation in the Indian Supreme Court: A Study in Light of the American Experience*, 29 J. OF THE INDIAN L. INST. 494 (1987); and Parmanand Singh, *Protecting the Rights of the Disadvantaged Groups through Public Interest Litigation*, in *HUMAN RIGHTS AND BASIC NEEDS: THEORY AND PRACTICE* (M.P. Singh et al. eds. 2008).

⁴⁰ Sood, *supra* note 38, at 28-30; Agarwal, *supra* note 38, at 696, 700; see also V.S. Vadivel, *Public Interest Litigation (PIL) A Boon or Bane?*, available at <http://www.legalserviceindia.com/articles/pil.htm> (last visited on September 4, 2015).

⁴¹ Jasper Vikas George, *Social Change and Public Interest Litigation in India* (Mar. 8, 2005), http://www.ssvk.org/social_change_public_interest_litigation_in_india.pdf (last visited on September 4, 2015) (the author is an Advocate in the Delhi High Court).

⁴² Interview with Kaustubh Verma, *supra* note 14.

⁴³ Telephone Interview with Linda McGill, Partner, Bernstein Shur (Dec. 6, 2007, as confirmed Oct. 4, 2010); See E-mail from Swagata Raha, *supra* note 35.



Alternative Dispute Resolution

The LSA Act frames the work of the Lok Adalats.⁴⁴ Lok Adalats are local “people’s court” settlement and mediation bodies, intended to promote equal access to justice to those economically or otherwise less privileged in the formal court system. Though criticized for their informality, Lok Adalats provide final settlements to disputes quickly as compared to the traditional court system. Disputes may be presented before a Lok Adalat if the parties agree to its jurisdiction or if a court refers a matter to a Lok Adalat for settlement.⁴⁵ Importantly, Section 21(2) of the LSA Act provides that Lok Adalat awards are final and binding on the parties to the dispute. Lok Adalats charge no court fee, do not follow procedural rules, and allow disputants to interact with the judge directly to explain their cases. In practice, for example, in the southern state of Tamil Nadu, by the end of 2001, 4,871 separate Lok Adalats had been organized, and such Lok Adalats had decided 91,178 cases.⁴⁶ Lok Adalats usually address money claims, matrimonial and land acquisition matters. They are not intended to be a forum for large scale public interest litigation and do not offer the procedural safeguards characteristic of traditional courts.

PRO BONO ASSISTANCE

Pro bono Opportunities

Private attorneys are not mandated to do or report pro bono work.⁴⁷ Most law firms in India do not have mandatory pro bono programs or pro bono requirements for their associates.⁴⁸ However, some law firms do work on a pro bono basis with poverty alleviation and other NGOs, and some allow their associates to count their pro bono hours as billable hours.⁴⁹ While individual advocates may contribute their time to public service activities, the work tends to be ad hoc and consequently difficult to organize or measure.

The major NGOs that provide pro bono services in India are the Lawyers Collective (the “**LC**”), the Human Rights Law Network (the “**HRLN**”), the Alternative Law Forum (the “**ALF**”) and Majlis.⁵⁰ The LC comprises lawyers, law students and human rights activist members and consists of a women’s rights initiative as well as a focus on domestic violence, sexual harassment, HIV, access to medicine and vulnerable community issues.⁵¹ HRLN is a not-for-profit NGO with 25 offices across India that advocates for civil, political, economic, social, cultural and environmental rights. HRLN works on a variety of issues including criminal justice, housing rights and human trafficking. It has organized a network of Indian advocates who take on pro bono cases in addition to their individual legal practices.⁵² ALF provides legal support to groups and people marginalized on the basis of class, caste, disability, gender or sexuality.⁵³ Majlis is an all-female organization consisting of lawyers and social activists whose primary agenda is social change

⁴⁴ Legal Services Authorities Act as amended, supra note 29, at ch. 6.

⁴⁵ See *Afcons Infrastructure Ltd. & Anr. v. Cherian Varkey Construction Co. (P) Ltd. & Ors.*, (2010) 8 S.C.R. 1053.

⁴⁶ S. Arunajatesan & S. Subramanian, Lok Adalat for Speedy Justice, *THE HINDU*, Dec. 18, 2001, at Open Page, available at <http://www.hindu.com/thehindu/op/2001/12/18/stories/2001121800060100.htm> (last visited on September 4, 2015).

⁴⁷ Interview with Kaustubh Verma, supra note 14.

⁴⁸ Email from Mohit Abraham to author (Nov. 26, 2007) (on file with author).

⁴⁹ ET Bureau, supra note 14.

⁵⁰ Email from Swagata Raha, supra note 35; Bella Jaisinghani, ‘Once Victim Overcomes Fear, Half the Battle’s Won’, *Times of India*, June 20, 2011, available at <http://timesofindia.indiatimes.com/city/mumbai/Once-victim-overcomes-fear-half-the-battles-won/articleshow/8920548.cms> (last visited on September 4, 2015).

⁵¹ LAWYERS COLLECTIVE, <http://www.lawyerscollective.org> (last visited on September 4, 2015).

⁵² HUMAN RIGHTS LAW NETWORK, <http://www.hrln.org> (last visited on September 4, 2015).

⁵³ ALTERNATIVE LAW FORUM, <http://www.altlawforum.org> (last visited on September 4, 2015).



through quality legal representation for needy women across the country and bringing about a change in beliefs through advocacy and training.

Other legal services organizations providing pro bono services in India include: in New Delhi, the Public Interest Legal Support and Research Center, which works on environmental, refugee, religious freedom and representative governance issues;⁵⁴ in Kolkata, *Swayam* focuses on women's rights,⁵⁵ and *Manabadhikar Suraksha Mancha* focuses on civil and political rights;⁵⁶ in Bangalore, human rights organization SICHREM⁵⁷ and the National Law School's Legal Services Clinic;⁵⁸ in Mumbai, the Society for Service to Voluntary Agencies, supporting non-profits;⁵⁹ in Uttaranchal, Rural Litigation and Entitlement Kendra, an NGO serving indigenous populations and women and children;⁶⁰ with offices across Tamil Nadu, People's Watch Tamil Nadu, which focuses on human rights litigation;⁶¹ and in Orissa, the Committee for Legal Aid to Poor, an NGO which works for the promotion, enforcement and protection of human rights and dignity in association with civil society organisations and governance systems through, inter alia, provision of legal aid.⁶²

Further, numerous Indian NGOs engage in law-related advocacy work. For example, the Centre for Civil Society advocates the right to education and the rights of street entrepreneurs.⁶³ Women's rights organizations include the Centre for Social Research,⁶⁴ SAKSHI and WomenPowerConnect. All states have their respective state legal services authority, each of which have been constituted to give effect to the principles enshrined in the Constitution for provision of legal aid to all persons in need of it. For example, the Delhi High Court Legal Services Committee and the Bombay High Court Legal Services Committee are statutory bodies constituted by the state legal services authorities in Delhi and Maharashtra respectively, under the LSA Act, which provide free legal services to eligible persons within their respective states.⁶⁵

Historic Development and Current State of Pro bono

While pro bono work is supported in Indian law, the provision of pro bono services faces a number of challenges. First, the rising demand for commercial lawyers in India may deter growth in the pro bono sector. In addition, India's tremendous diversity; its liberal laws and jurisprudence in relation to legal

⁵⁴ PILSARC, <http://www.unhcr.org/48fdeca72.html> (last visited on September 4, 2015).

⁵⁵ SWAYAM, <http://www.swayam.info> (last visited on September 4, 2015).

⁵⁶ BANGLAR MANABADHIKAR SURAKSHA MANCHA (MASUM), <http://www.masum.org.in/> (last visited on September 4, 2015).

⁵⁷ SOUTH INDIA CELL FOR HUMAN RIGHTS EDUCATION AND MONITORING ("SICHREM"), <http://www.sichrem.org> (last visited on September 4, 2015). SICHREM seeks to empower disempowered groups in India to "protect their individual and collective rights for a dignified life, through education, monitoring and mobilising civil society for concerted action." *Id.*

⁵⁸ NATIONAL LAW SCHOOL OF INDIA UNIVERSITY—LEGAL SERVICES CLINIC, <http://www.nls-lsc.org/> (last visited on September 4, 2015). The Legal Services Clinic provides free legal services to economically backward members of Indian society, promotes alternate methods of dispute resolution and undertakes research projects at the request of other organizations. See *id.*

⁵⁹ SOCIETY FOR SERVICE TO VOLUNTARY AGENCIES, <http://www.sosva.org/> (last visited on September 4, 2015).

⁶⁰ RURAL LITIGATION AND ENTITLEMENT KENDRA, <http://www.rlek.org> (last visited on September 4, 2015).

⁶¹ PEOPLE'S WATCH, <http://pwtn.org> (last visited on September 4, 2015).

⁶² COMMITTEE FOR LEGAL AID TO POOR, <http://www.clapindia.org/intro.htm> (last visited on September 4, 2015).

⁶³ CENTRE FOR CIVIL SOCIETY, <http://www.ccsindia.org> (last visited on September 4, 2015).

⁶⁴ CENTRE FOR SOCIAL RESEARCH, <http://www.csrindia.org> (last visited on September 4, 2015).

⁶⁵ DELHI HIGH COURT LEGAL SERVICES COMMITTEE, <http://www.dhclsc.org/> (last visited on September 4, 2015); <https://legalservices.maharashtra.gov.in/1035/Home> (last visited on September 4, 2015).



services for the underprivileged; its large population living in poverty; its history and present status as a secular, democratic republic; and its recent economic growth along with the expectations that growth has raised, together make it a unique and challenging environment in which to develop pro bono legal services.

Laws and Regulations Impacting Pro bono

India does not have a “loser pays” statute, but courts are given discretion in awarding legal fees to parties.⁶⁶ Contingency fees are not allowed, so disadvantaged litigants must either secure pro bono representation or obtain legal aid. Professional indemnity legal insurance is available for attorneys, and does appear on the surface to cover pro bono activities.⁶⁷

Restrictions on Foreign-Qualified Lawyers

To qualify as an “advocate” under the Advocates Act, a lawyer must be admitted to the rolls of an Indian Bar.⁶⁸ The Advocates Act further specifies that only advocates, as defined under that Act, are entitled to practice law in India,⁶⁹ and only advocates may practice in any Indian court or before any Indian authority.⁷⁰ The language of the Advocates Act draws no distinction between fee-paying and pro bono work. According to this legislation, foreign-qualified lawyers cannot make any legal filings or appear in court on pro bono matters. Further, the Indian government does not routinely grant work visas to legal interns or lawyers.⁷¹ Recently, the Government of India has begun consultations on a gradual opening up of the legal services sector to foreign lawyers with the safeguard that litigation will remain the exclusive domain of Indian lawyers.⁷² The Bar Council of India and the Society of Indian Law Firms have agreed “in principle” with the government’s proposal to gradually open up the legal sector to foreign players but have insisted that that this be done on a reciprocal basis.⁷³

As the restriction on foreign-qualified lawyers practicing law extends to both fee-paying and non-fee-paying work, foreign-qualified lawyers are not permitted to take on pro bono cases in India. They also may not participate in a joint venture with local lawyers to undertake pro bono work. Foreign law firms therefore cannot develop their own pro bono practices in India. However, they can partner with local organizations in a variety of supporting, advisory and capacity-building roles. Lawyers are not required to charge value-added tax on legal services, nor are there any regulations that require lawyers to charge minimum tariffs for their services.⁷⁴

Provided that foreign-qualified lawyers do not file any documents under their names or seek to represent their pro bono clients in court, these lawyers can assist in a multitude of ways. For example, they can

⁶⁶ Law Commission Report, 240th Report On Costs In Civil Litigation (May 2012), available at <http://indiankanoon.org/doc/185277830/> (last visited on September 4, 2015); Interview with Kaustubh Verma, supra note 14.

⁶⁷ New India Assurance Co., Professional Indemnity Policy, <http://www.newindia.co.in/Content.aspx?pageid=49#a2> (last visited on September 4, 2015). Interview with Kaustubh Verma, supra note 14.

⁶⁸ Legal Services Authorities Act as amended, supra note 29, § 2, cl. 1(a).

⁶⁹ Id. § 29.

⁷⁰ Id. § 33.

⁷¹ Email from Swagata Raha, supra note 35.

⁷² Foreign Lawyers May Get Toehold, but Won’t Be Allowed to Fight Cases, TIMES OF INDIA, June 30, 2011, available at <http://timesofindia.indiatimes.com/india/Foreign-lawyers-may-get-toehold-but-wont-be-allowed-to-fight-cases/articleshow/47873203.cms> (last visited on September 4, 2015).

⁷³ Amit Anand Choudhary, Bar Council Okay With Foreign Lawyers’ Entry, TIMES OF INDIA, July 5, 2015, <http://timesofindia.indiatimes.com/india/Bar-council-okay-with-foreign-lawyers-entry/articleshow/47942641.cms> (last visited on September 4, 2015).

⁷⁴ Email from Arvind Kamath, Partner, ALMT Legal, Advocates & Solicitors to author (June 14, 2012); Shweta Hingorani, Partner, Luthra & Luthra Law offices to author (Jun. 22, 2012) (on file with author).



identify issues, research domestic and foreign precedents, interview parties, assist in drafting documents, and review and rehearse arguments for pro bono cases. They can also provide strategic advice in particular cases or in relation to models and structures for delivering pro bono services in coordination with Indian NGOs and law firms among others. They can aid generally in legal literacy, policy and advocacy efforts.⁷⁵

Foreign-qualified lawyers can also assist with reviews of the implementation of specific laws and research on pendency problems in the judicial system. For example, the Right to Information Act passed in 2005 was aimed at increasing transparency and reducing corruption, in part by establishing commissions to help ensure that Indian citizens are able to access public records. However, the commissions are often in need of further legal resources to read and categorize cases and reduce pendency. In addition to assisting legal services and quasi-judicial organizations in these ways, foreign-qualified lawyers might also volunteer their time to develop legal clinics in coordination with Indian law schools, and to help professionalize pro bono work in India more broadly.

Socio-Cultural Barriers to Pro bono or Participation in the Formal Legal System

There are also plenty of public concerns about the formal legal system, including corruption, judicial efficiency and lack of public trust in the judiciary which leads to informal dispute resolution. One of the biggest problems plaguing the Indian judicial system has been pendency. It is estimated that, as of April, 2015, there were nearly 30 million cases pending in Indian courts.⁷⁶ Further, there are more than 345 vacancies just at the High Court level for judges pending confirmation and appointment, which compounds the problem. For instance, the Allahabad High Court, India's largest high court by the number of judges, has a sanctioned strength of 160 judges but presently has only about 80 sitting judges.⁷⁷ Lawyers, activists and even Supreme Court judges have focused on this issue, which is central to an understanding of not just how legal services are provided and regulated in India, but also the real opportunities and obstacles facing lawyers interested in providing pro bono services in India.⁷⁸

Pro bono Resources

Below is a non-exhaustive list of organizations that provide pro bono services in India through which foreign-qualified lawyers may seek opportunities to participate:

- Lawyers Collective (<http://www.lawyerscollective.org/> (last visited on September 4, 2015))
- Human Rights Law Network (<http://www.hrln.org/hrln/> (last visited on September 4, 2015))
- Alternative Law Forum (<http://www.altlawforum.org/> (last visited on September 4, 2015))
- i-Probono (<http://www.i-probono.com/> (last visited on September 4, 2015))
- Majlis (<http://www.majlislaw.com/> (last visited on September 4, 2015))
- National Campaign for the People's Right to Information (<http://righttoinformation.info/> (last visited on September 4, 2015))
- Public Interest Legal Support and Research Center (<http://www.unhcr.org/48fdeca72.html>)
- Swayam (<http://www.swayam.info/> (last visited on September 4, 2015))
- Manabadhikar Suraksha Mancha (<http://www.masum.org.in/> (last visited on September 4, 2015))

⁷⁵ Telephone interview with Linda McGill, supra note 43.

⁷⁶ Press Trust of India, Nearly Three Crore Cases Pending, CJI Says Trial to End Within five Years, Indian Express, Apr. 5, 2015, available at <http://indianexpress.com/article/india/india-others/nearly-three-crore-cases-pending-cji-says-trial-to-end-within-5-years/> (last visited on September 4, 2015); See Dhananjay Mahapatra, Supreme Court Chides Itself, Govt for Judicial Backlog, TIMES OF INDIA, Jan. 12, 2012, http://articles.timesofindia.indiatimes.com/2012-01-12/india/30619133_1_hc-judges-trial-courts-ad-hoc-judges (last visited on September 4, 2015).

⁷⁷ Apoorva Mandhani, High Courts of the Country Enter 2015 With 35% Vacancies; Allahabad HC Functioning with 50% of Approved Strength Judges (Jan. 7, 2015), <http://www.livelaw.in/high-courts-country-enter-2015-35-vacancies-allahabad-hc-functioning-50-approved-strength-judges/> (last visited on September 4, 2015).

⁷⁸ See, e.g., id.



- Mahila Sarvangeen Utkarsh Mandal (<http://www.escri-net.org/docs/i/838915> (last visited on September 4, 2015))
- SICHREM (<http://www.sichrem.org/> (last visited on September 4, 2015))
- Committee for Legal Aid to Poor (<http://www.clapindia.org/> (last visited on September 4, 2015))
- National Law School's Legal Services Clinic (<http://www.nls-lsc.org/> (last visited on September 4, 2015))
- National Legal Services Authority (<http://nalsa.gov.in/legalservices.html> (last visited on September 4, 2015))
- Rural Litigation and Entitlement Kendra (<http://www.rlek.org/> (last visited on September 4, 2015))
- People's Watch (<http://www.peopleswatch.org/index.php> (last visited on September 4, 2015))
- Centre for Civil Society (<http://ccsindia.org/> (last visited on September 4, 2015).)
- Centre for Social Research (<http://www.csrindia.org/> (last visited on September 4, 2015))
- SAKSHI (<http://www.sakshingo.org/> (last visited on September 4, 2015))
- WomenPowerConnect (<http://www.womenpowerconnect.org/> (last visited on September 4, 2015))
- Indian Institute of Legal and Professional Development (no website available)

CONCLUSION

In the last three decades, legislative, institutional and jurisprudential developments in India have laid the foundation for the provision of free legal services to the poor. In practice, however, only a handful of organizations deliver these services effectively, often relying on India's unique PIL mechanism to provide legal aid. At present, domestic law restricts foreign-qualified lawyers from representing pro bono clients. However, foreign-qualified lawyers can contribute to pro bono legal services directly, for example, by providing research and writing skills in individual cases, as well as indirectly through capacity-building efforts alongside Indian organizations. The demand for pro bono legal services in India far exceeds the supply, and a concerted, organized effort by the legal profession would go a long way towards ensuring the provision of quality pro bono legal services to the needy as enshrined in the Constitution.

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Pro Bono Practices and Opportunities in India

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