

# ***Pro Bono Practices and Opportunities in India***

## ***Excerpt from: A Survey of Pro Bono Practices and Opportunities in Selected Jurisdictions***

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Prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**

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This chapter describes the current legal services market in India, including the laws and jurisprudence relating to *pro bono* work, major *pro bono* service providers in India, and opportunities for foreign-qualified attorneys to participate.

## **I. *Legal Services and the Legal Profession in India***

### **A. Indian Law: Defining the Shape of Legal Services**

India's laws strongly support the provision of *pro bono* legal services. The Constitution of India, national legislation, and its Supreme Court jurisprudence together articulate an aspiration for broadly accessible legal aid.<sup>1</sup> 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 non-governmental organizations (NGOs) providing legal services face significant resource constraints.<sup>2</sup>

First, the Constitution of India (hereinafter "Constitution") itself guarantees access to legal services. Specifically, 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."<sup>3</sup> The Indian 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.<sup>4</sup>

Second, the Legal Services Authorities Act, as amended by the Legal Services Authorities (Amendment) Bill, 2002 (hereinafter "the Act") describes a hierarchy of state, district and taluk<sup>5</sup> legal services authorities intended to give effect to the Constitutional promise of equal access to justice. The 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 Act respectively, establish National, State and District Legal Aid Funds which collect government funding, grants and donations to finance legal services and legal literacy activities.<sup>6</sup> The work of this hierarchy of

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<sup>1</sup> See, e.g., India Const. art. 39A; The Legal Services Authorities Act, No. 39 of 1987, as amended by The Legal Services Authorities (Amendment) Act, 2002, No. 37 of 2002; India Code, *S. P. Gupta v. Union of India*, (1982) 2 S.C.R. 365.

<sup>2</sup> Telephone Interview with Linda McGill, Partner, Bernstein Shur (Dec. 6, 2007, as confirmed Oct. 4, 2010); E-mail from Swagata Raha, Law Faculty, Christ College, Bangalore to author (Dec. 6, 2007, as confirmed Oct. 1, 2010) (on file with author).

<sup>3</sup> India Const. art. 22(1).

<sup>4</sup> *Hussainara Khatoon (III) v. Home Sec'y, State of Bihar*, A.I.R. 1979 S.C. 1377.

<sup>5</sup> A taluk is a subdivision of a district much like a municipality in Western countries.

<sup>6</sup> The Legal Services Authorities Act as amended, *supra* note 192.

nationally organized legal services organizations has, however, fallen far short of the demand for public legal services.<sup>7</sup>

The Act also frames the work of the *Lok Adalats*.<sup>8</sup> *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* do provide final settlements to disputes quickly as compared to the traditional court system. Disputes are presented before a *Lok Adalat* if the parties agree to its jurisdiction. Importantly, Section 22(2) of the 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.<sup>9</sup> The Act provides for permanent *Lok Adalats* as a compulsory pre-litigation mechanism to settle public utilities cases for amounts up to INR 1 million.<sup>10</sup> *Lok Adalats* usually decide money claims, and matrimonial and land acquisition matters. However, they are not a forum for large scale public interest litigation and do not offer the procedural safeguards characteristic of traditional courts.

Third, and perhaps with greatest impact on legal services in India, the Public Interest Litigation (the “PIL”) mechanism has liberalized access to the courts. 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.<sup>11</sup> The *S.P. Gupta* 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 the PIL case.<sup>12</sup>

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.<sup>13</sup> Critics argue that this reliance on outside experts grants *amici* too much influence over judicial outcomes, that the judicial activism that the PIL mechanism encourages violates the separation of powers in Indian government, and that the PIL has invited a flood of frivolous cases which abuse the increased access to the courts provided

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<sup>7</sup> E-mail from Swagata Raha, *supra* note 193.

<sup>8</sup> The Legal Services Authorities Act as amended, *supra* note 192, ch. 6.

<sup>9</sup> S. Arunajatesan and S. Subramanian, “Lok Adalat for Speedy Justice,” *The Hindu*, Dec. 18, 2001, at Open Page, available at: <http://www.hinduonnet.com/thehindu/op/2001/12/18/stories/2001121800060100.htm>.

<sup>10</sup> The Legal Services Authorities (Amendment) Act, 2002, *supra* note 192, Section 22C.

<sup>11</sup> *S. P. Gupta*, 2 S.C.R. 365 at paras. 1-11.

<sup>12</sup> *Id.* at para. 17.

<sup>13</sup> 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, 689-690, 693 (2004). See Jamie Cassels, *Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?* *Am J. Comp. L.* 495, 498 (1989).

by PIL.<sup>14</sup> Its critics notwithstanding, PIL litigation 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.<sup>15</sup> The potential for effective PIL cases is strengthened by the relative independence of India's judiciary. The 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.

## B. Eligibility for Legal Services

Section 12 of the Legal Services Authorities Act lays out the criteria for eligibility for legal services under the 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 according to the Act.<sup>16</sup> 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 available to marginalized groups.<sup>17</sup> At the same time, the expansive entitlement provided in the Act remains an unfulfilled promise.<sup>18</sup>

## II. *Pro Bono Opportunities in India*

The major organizations which provide pro bono services in India are the Lawyers Collective (LC), the Human Rights Law Network (HRLN), and the Alternative Law Forum (ALF).<sup>19</sup> The LC comprises lawyers, law students and human rights activist members. Its fee-paying work subsidizes its public interest work, and the LC also runs funded centers addressing HIV/AIDS discrimination and women's rights.<sup>20</sup> 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.<sup>21</sup> Finally, ALF provides legal support to groups and people marginalized on the basis of class, caste, disability, gender or sexuality.<sup>22</sup>

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<sup>14</sup> Sood, *supra* note 202, at 28-30; Agarwal, *supra* note 11, at 696, 700; *see also* V.S. Vadivel, *Public Interest Litigation (PIL) A Boon or Bane?*, <http://www.legalserviceindia.com/articles/pil.htmhtm> (last visited Oct. 1, 2010).

<sup>15</sup> 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](http://www.ssvk.org/social_change_public_interest_litigation_in_india.pdf) (the author is an Advocate in the Delhi High Court).

<sup>16</sup> The Legal Services Authorities Act as amended, *supra* note 191, at §12.

<sup>17</sup> *See infra* text accompanying notes 17-30.

<sup>18</sup> *See supra* note 192.

<sup>19</sup> E-mail from Swagata Raha, *supra* note 192.

<sup>20</sup> Lawyers Collective, <http://www.lawyerscollective.org> (last visited Oct. 2, 2010).

<sup>21</sup> Human Rights Law Network, <http://www.hrln.org> (last visited Oct. 3, 2010).

<sup>22</sup> Alternative Law Forum, <http://www.altlawforum.org> (last visited Oct. 3, 2010).

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;<sup>23</sup> in *Kolkata*, *Swayam* focuses on women's rights,<sup>24</sup> and *Manabadhikar Suraksha Mancha* (MASUM) focuses on civil and political rights;<sup>25</sup> in *Bangalore*, human rights organization SICHREM<sup>26</sup> and the National Law School's Legal Services Clinic;<sup>27</sup> in *Mumbai*, *Majlis*, defending women's rights;<sup>28</sup> in *Uttaranchal*, Rural Litigation and Entitlement Kendra, an NGO serving indigenous populations and women and children;<sup>29</sup> and with offices across *Tamil Nadu*, People's Watch *Tamil Nadu*, which focuses on human rights litigation.<sup>30</sup>

Further, numerous Indian NGOs engage in law-related advocacy work. For example, the Center for Civil Society advocates for the right to education and the rights of street entrepreneurs.<sup>31</sup> Womens' rights organizations include the Center for Social Research,<sup>32</sup> SAKSHI and WomenPowerConnect.

In general, Indian law firms do not have organized *pro bono* practices.<sup>33</sup> However, when invited, major firms such as *Amarchand Mangalda* and *Trilegal* have contributed some attorney hours to certain structured *pro bono* efforts. While several individual advocates may contribute their time to public service activities, the work is ad hoc and consequently difficult to organize or measure.

While *pro bono* work is supported in Indian law, the provision of *pro bono* services is unlikely to increase for a variety of reasons. First, the rising demand for commercial lawyers in India deters growth in the *pro bono* sector. In addition, India's tremendous diversity; its liberal laws and jurisprudence in relation to legal 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 rising expectations that growth has prompted, together make it a unique and challenging environment in which to develop *pro bono* legal services.

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<sup>23</sup> PILSARC, <http://www.pilsarc.org> (last visited Oct. 3, 2010).

<sup>24</sup> Swayam, <http://www.swayam.info> (last visited Oct. 5, 2010).

<sup>25</sup> *Manabadhikar Suraksha Mancha*, <http://www.masum.org.in/about.htm> (last visited Oct. 5, 2010).

<sup>26</sup> South India Cell for Human Rights Education and Monitoring, <http://www.sichrem.org> (last visited Oct. 6, 2010).

<sup>27</sup> National Law School of India University Legal Services Clinic, <http://www.nls-lsc.org/blog/> (last visited Oct. 6, 2010).

<sup>28</sup> Majlis, [http://www.majlisbombay.org/legal\\_01.htm](http://www.majlisbombay.org/legal_01.htm) (last visited Oct. 4, 2010).

<sup>29</sup> Rural Litigation and Entitlement Kendra, <http://www.rlek.org> (last visited Oct. 5, 2010).

<sup>30</sup> People's Watch, <http://pwn.org> (last visited Oct. 5, 2010).

<sup>31</sup> Center for Civil Society, <http://www.ccsindia.org> (last visited Oct. 7, 2010).

<sup>32</sup> Center for Social Research, <http://www.csrindia.org> (last visited Oct. 7, 2010).

<sup>33</sup> E-mail from Mohit Abraham to author (Nov. 26, 2007) (on file with author).

### III. *Foreign-Qualified Lawyers*

Although Indian law prevents foreign-qualified lawyers from directly representing *pro bono* clients,<sup>34</sup> the opportunity for such lawyers to contribute to the legal services market in India more broadly is immense.

#### A. General Restrictions on Foreign-Qualified Lawyers

To qualify as an “advocate” under the 1961 Advocates Act, a lawyer must be admitted to the rolls of an Indian Bar.<sup>35</sup> The Advocates Act further specifies that only advocates, as defined under that Act, are entitled to practice law in India,<sup>36</sup> and only advocates may practice in any Indian court or before any Indian authority.<sup>37</sup> 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.<sup>38</sup> Litigation is currently ongoing in relation to the entry of foreign-qualified lawyers into practice in India.<sup>39</sup>

#### B. What Role Can Foreign-Qualified Lawyers Play in *Pro Bono* Work?

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 can not develop their own *pro bono* practices in India. However, they can partner with local organizations in a variety of support, advisory and capacity-building roles. 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 identify issues, research domestic and foreign precedents, interview parties, assist in drafting documents, and review and rehearse arguments for *pro bono* cases. They can 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 legal literacy, policy, and advocacy efforts.<sup>40</sup> In addition to assisting legal services 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.

### IV. *Conclusion*

In the last three decades, legislative, institutional, and jurisprudential developments in India have laid the foundation for the provision of myriad free legal services to the poor. In practice, however, only a handful of organizations effectively deliver these services. Such

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<sup>34</sup> The Advocates Act, No. 25 of 1961; India Code

<sup>35</sup> *Id.* at §2, Clause 1(a).

<sup>36</sup> The Advocates Act, *supra* note 224, at §29.

<sup>37</sup> The Advocates Act, *supra* note 224, at §33.

<sup>38</sup> E-mail from Swagata Raha, *supra* note 192.

<sup>39</sup> *Malathi Nayak, Bar Council of India resolution opposes entry of foreign firms*, Livemint, Nov. 19, 2007, <http://www.livemint.com/2007/11/19225307/Bar-Council-of-India-resolutio.html> (last visited Oct.8, 2010).

<sup>40</sup> Telephone Interview with Linda McGill, *supra* note 192.

organizations rely on India's unique Public Interest Litigation 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.