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Deterrence, Law, and Democratic Legitimacy: India's Counterterrorism Response in a Comparative International Perspective

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Does required pro bono advocacy improve access to justice, or does it unfairly burden lawyers under ethical obligations? This study explores the ethical responsibilities inherent in pro bono legal representation in India and highlights the difficulties faced by young lawyers. It analyses pro bono mandates with respect to policy goals, societal advantages, and ethical obligations. Pro-bono requirements are balanced with support structures, and the recommendations urge making the mandated service beneficial to both the public and those who engage in pro bono. It critically analyses constitutional provisions such as Articles 21 and 39A, statutory frameworks including the Legal Services Authority Act, 1987, and professional mandates under the Bar Council of India (BCI) Rules that collectively establish Pro-bono services as a crucial mechanism to enhance equitable access to justice. The study highlights the disproportionate burden borne by junior advocates, who face financial instability, intense workloads, and limited institutional support while fulfilling mandatory pro bono requirements. It underscores the ethical imperative for advocates to provide competent, diligent, and professional legal assistance to marginalised populations, ensuring that justice is not compromised by economic disparities. The research further explores the role of digital initiatives like the Nyaya Bandhu App in facilitating Pro-bono connectivity and the impact of key judicial precedents that reinforce the right to legal aid. Recognising the tension between public benefit and individual lawyer welfare, the study advocates for comprehensive support mechanisms, including structured mentorship

programs, financial incentives such as student loan forgiveness and tax benefits, and flexible Pro-bono obligations calibrated to lawyers' experience and financial capacity. These recommendations aim to foster sustainable pro bono engagement that balances societal needs with the professional development and well-being of young lawyers. Ultimately, the inquiry calls for a progressive, standardised framework that integrates ethical duties with practical support, ensuring that pro bono legal services remain a meaningful, effective, and enduring component of India's justice system.

Keywords: *pro-bono legal representation, ethical obligations, access to justice, young lawyers.*

INTRODUCTION

Despite the long-standing tradition of Pro-bono publico and its designation as a professional obligation, the precise scope and enforceability of ethical obligations for Pro-bono legal representation in India remain underexplored, particularly concerning the gap between aspirational guidelines and concrete mandates for advocates. The phrase "pro bono," derived from the Latin "pro bono publico," translates to "for the public good." It is predominantly used in the legal field to describe the offering of free legal services to people and organisations that cannot afford to hire a lawyer or obtain legal aid. Consequently, those who truly need legal help receive representation from lawyers either at no cost or for a nominal fee, allowing them to effectively tackle their legal challenges. Through the Pro-bono program, attorneys recognise their duty to promote societal welfare and selflessly assist those in need. This program provides lawyers with a significant opportunity for both professional and personal development by boosting their credentials and broadening their connections across different sectors.¹

Pro-bono work is a fundamental aspect of the legal aid system, embodying the selfless nature of the legal profession. This term describes the voluntary offering of legal services without charge. It is rooted in a strong dedication to ensuring that justice is accessible to everyone, regardless of their financial status. Lawyers who volunteer their time and expertise often address the gaps left by public legal aid systems. They offer crucial support to individuals facing urgent issues, such as securing housing, navigating immigration, resolving family law conflicts, and defending against criminal charges. The significance of pro bono lawyers is immense. They generously contribute their skills, knowledge, and time without expecting payment, but they gain

¹ 'ABOUT PRO BONO' (Nyaya Bandhu) <<https://probono-doj.in/static/about-probono.php>> accessed 22 March 2026

satisfaction from easing the burden on underfunded legal aid programs. Their participation guarantees that vulnerable groups receive the necessary support during legal crises, reinforcing the fundamental belief that justice should be a universal right, not a privilege. Pro-bono services encompass courtroom representation, legal advice, investigative work, and the preparation of detailed litigation documents. This comprehensive support system provides individuals facing legal challenges with the resources needed to successfully navigate the complexities of the legal system.²

Numerous cases demonstrate the profound impact of pro bono services on society. For example, pro bono lawyers have been instrumental in protecting the rights of asylum-seeking refugees from further persecution. Similarly, they have aided domestic violence survivors by providing essential legal support to ensure their safety and assert their rights. Furthermore, such advocacy efforts often lead to necessary reforms within prison systems, addressing systemic injustices that disproportionately affect certain communities. Additionally, a thriving Pro-bono practice can enhance a lawyer's reputation and generate positive publicity for their firm.³

While Article 39A of the Constitution and the BCI Rules establish a foundational 'paramount obligation' for pro bono service, the practical implications and specific ethical duties arising from this framework, especially concerning consistency and quality of service across diverse economic conditions of lawyers, present a critical area requiring doctrinal clarification. Furthermore, Article 14 and Article 22(2) of the Indian Constitution ensure equality before the law. In addition, the United Nations Sustainable Development Goal 12 underscores the obligation of States to ensure equal access to justice for all.” To encourage pro bono legal services, the Department of Justice (DoJ) intends to create a database of lawyers willing to provide their services to litigants identified under Section 12 of the Legal Services Authority Act of 1987. The DoJ has already written to all bar councils and bar associations across the country to provide information on lawyers who are engaged in providing pro bono legal services to the poor and those who cannot otherwise afford legal representation. This doctrinal inquiry, therefore, aims to provide a systematic and comprehensive analysis of these ethical obligations, arguing that while the current framework emphasises voluntary professional duties, a clearer articulation and potential

² Bhawana and Dr. Abhishek Bishnoi, 'Advocates of Change: The Dynamic Influence of NGOs and Pro Bono Lawyers in Shaping Legal Aid' (2024) 44(3) Library Progress International 10677, 10678
<<https://doi.org/10.48165/bapas.2024.44.2.1>> accessed 22 March 2026

³ *Ibid*

standardisation of these obligations are critical for ensuring equitable access to justice and maintaining the integrity of the legal profession.⁴

IMPORTANT ETHICAL DUTIES OF PRO-BONO LAWYERS ACCORDING TO THE BCI RULES

Pro-bono advocates must provide the same level of competence, diligence, and professionalism as they would for a paying client. As court officials are committed to justice, integrity, and societal service, ethics serve as a moral compass guiding advocates to look beyond monetary interests. Consequently, offering legal assistance is the most practical and meaningful way to fulfil this ethical duty, ensuring that even the most disadvantaged individuals have access to competent legal representation and a fair trial. These concepts are intertwined, as only an advocate of professional ethics can provide legal aid to those in need.⁵ It is not solely constitutional provisions or regulations that are necessary to offer legal aid to those truly in need, but also advocates who are willing to provide free legal assistance to those unable to afford it. The Legal Aid provision not only enables marginalised communities to effectively address their concerns but also helps diminish the inequalities and discrimination faced by vulnerable groups. In April 2022, during a lecture in Karnataka, former Chief Justice of India, Uday Umesh Lalit, remarked, “Legal aid to the poor does not mean poor legal aid. There has to be a better standard, better quality and better level of legal aid.”⁶

Advocates must avoid conflicts of interest to ensure that their loyalty to a pro bono client is not compromised. The relationship between conflict of interest and professional conduct is significant, as strict adherence to the Bar Council of India standards enables advocates to steer clear of potential conflicts and maintain their integrity. These standards were crafted with the recognition that an advocate, serving as an “officer of the court”, holds obligations to both the court and their client in the quest for justice.⁷ If advocates neglect to follow the Bar Council of

⁴ ABOUT PRO BONO (n 1)

⁵ Adheena Pinto C, ‘DUTY IN ACTION: PROFESSIONAL ETHICS OF LAWYERS IN LEGAL AID’ (2025) 5(1) Journal of Legal Research and Juridical Sciences <<https://jlrjs.com/wp-content/uploads/2025/11/27.-Adheena-Printo-C.pdf>> accessed 22 March 2026

⁶ Anshika, ‘Legal Aid As A Fundamental Right: Bridging The Socio-Economic Divide’ (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-19329-legal-aid-as-a-fundamental-right-bridging-the-socio-economic-divide.html>> accessed 22 March 2026

⁷ Apoorva Chandra and Sweta Bhattacharya, ‘From Instructing (An Advocate) To Return All The Briefs To Conflict Of Interest: Where Are We Headed?’ (*Live Law*, 22 September 2023)

India's prescribed conduct, it could lead to a failure in delivering justice, threatening the very foundation of our society and rendering the law as nothing more than words on a page. Professional privilege and the duty to maintain confidentiality apply identically to pro bono cases. Once a pro bono brief is accepted, a lawyer should not withdraw without valid reasons.

CONSTITUTIONAL AND STATUTORY DIMENSIONS OF PRO-BONO LEGAL SERVICES IN INDIA

Article 39A (Constitution of India) directs the state to secure a legal system that promotes justice based on equal opportunity and specifically directs free legal aid. Article 21 ensures that legal aid is interpreted as part of the right to life and liberty, requiring courts to ensure representation. The Advocates Act, 1961 (Section 49) empowers the Bar Council of India to set professional standards, including those relating to legal aid. The Legal Services Authority Act, 1987, provides a statutory framework for legal services and creates mechanisms, such as Nyaya Bandhu, for pro bono connectivity.

REGULATORY AND POLICY CHANGES

The Department of Justice has introduced the Nyaya Bandhu App to promote a Pro-bono culture, enabling lawyers to register and connect with eligible individuals under Section 12 of the Legal Services Authority Act, 1987. This app facilitates the provision of free legal advice to underprivileged members of society by pro-bono legal advisors who voluntarily register with the app to offer assistance to those in need. The eligibility criteria for receiving free legal aid through the app align with Section 12 of the Legal Services Authority Act, 1987, encompassing women, children, victims of human trafficking, flood victims, and individuals from the scheduled castes, among others. Since November 2020, the list of services on the Umang app has included Nyaya Bandhu. To date, approximately 1,349 cases and 3,285 lawyers have been registered on the Nyaya Bandhu App. Various schemes and programs by the NLSA and SLISA are periodically launched to be implemented by the district's DLSA for this purpose. Additionally, efforts should be made to close the digital literacy and skills gap among rural citizens through digital literacy initiatives. To encourage young and dynamic lawyers to register under the Nyaya Bandhu App

<<https://www.livelaw.in/law-firms/law-firm-articles-/bci-rules-conflict-of-interest-238398>> accessed 22 March 2026

or the Tele-law scheme, a provision could be introduced to give their names preference when considering their elevation as judges or appointments to suitable positions.⁸

In the wake of the *Indira Jaisingh v Supreme Court of India (2017)* case, Pro-bono work has become an acknowledged criterion for assessing candidates for the title of Senior Advocate. The guidelines set for 2026 have incorporated a "Verification of Pro-bono work" requirement. The Secretariat examines cases where the lawyer was involved, and the Court either established a new legal precedent or made significant changes to an existing one. The scrutiny of Pro-bono work is now as rigorous as the evaluation based on the records of the Supreme Court Legal Services Committee (SCLSC).

KEY JUDICIAL PRECEDENTS HIGHLIGHTING THE IMPORTANCE OF PRO-BONO SERVICES

The case of *Anokhilal v State of Madhya Pradesh (2019 INSC 1399)* represents a pivotal moment in India's criminal justice system. It centres on the critical issues of sufficient legal representation and procedural fairness during the trial of a grave crime that could result in the death penalty. Anokhilal, the appellant, contested the final decision and sentence delivered by the High Court, which had affirmed his conviction and the imposition of the death penalty. This case highlighted the need for adequate legal representation, not just legal representation, to avoid miscarriage of justice in pro bono cases.⁹

The provision of free legal aid contained in Article 39A, inserted by the 42nd amendment introduced in the Indian constitution, is one of applaudable acclaim, but the inclusion of such a provision has come off and by what one might say, the expense and learnings of despicable injustices which have been committed in the decision in *Khatri & Ors. State of Bihar and Ors. (1981)*, which played a crucial role in addressing the absence of laws concerning free legal aid and compensation for victims of state abuse. Judicial activism is defined by the court's creative, forward-thinking, and legislative role, which embraces a progressive mindset rather than relying

⁸ Suman Tiwari, 'Whether Tele Law Scheme Is Panacea Of Free Legal Aid ?' (*Live Law*, 25 October 2021) <<https://www.livelaw.in/columns/ministry-of-electronic-and-information-technology-ministry-of-law-national-legal-service-authority-nlsa-tele-law-scheme-184262>> accessed 22 March 2026

⁹ 'Mandatory Adequate Opportunity for Legal Representation in Death Penalty Cases: Insights from *Anokhilal v State of Madhya Pradesh*' (*Case Mine*, 19 December 2019) <<https://www.casemine.com/commentary/in/mandatory-adequate-opportunity-for-legal-representation-in-death-penalty-cases:-insights-from-anokhilal-v.-state-of-madhya-pradesh/view>> accessed 22 March 2026

on outdated precedents and a rigid, traditional perspective. Before this ruling, there was no assurance that impoverished individuals would receive free legal support at every stage of their legal proceedings. Furthermore, the court expressed its intent to broaden the interpretation of Article 21 by granting compensation to those who suffered due to the misconduct of state officials. History fills everyone with pride as the Supreme Court, for the first time, awarded compensation to victims of the State's brutality in the final ruling of this case. These victims continue to receive a monthly pension. Additionally, the police officers responsible for the cruel acts were held accountable and punished. The Court also reaffirmed its previous intention to expand the interpretation of Article 21.¹⁰

The ruling in the case of *M.H. Hoskot v the State of Maharashtra* (1978) is frequently referenced and applied as a legal standard in various situations. This pivotal case in India was the first to affirm that prisoners have the right to free legal aid under Article 21's liberty clause of the Constitution. The legal framework concerning prisoners' rights is continually evolving. The judiciary has strived to safeguard the fundamental rights of convicts while acknowledging their inherent personhood. Being convicted of a crime does not strip an individual of their status as a person. Consequently, it has been confirmed that individuals sentenced to imprisonment are entitled to free legal assistance. Additionally, courts are obligated to provide the accused with a complimentary copy of the judgment upon sentencing, and prison officials must aid the accused in exercising their right to appeal. It recognised that the right to counsel and appeal is a necessary part of the "procedure established by law".¹¹

CHALLENGES AND ETHICAL DILEMMAS FACED BY YOUNG LAWYERS IN FULFILLING THE MANDATED PRO-BONO OBLIGATIONS

There is a concern that mandatory pro bono services place a disproportionate burden on young or junior advocates who are struggling financially. Financial instability, high workloads, and intense professional pressures are common among young lawyers in the early stages of their careers. The extra, unpaid requirements may exacerbate these challenges by increasing demands on their financial health and work-life balance when they are already mandated to provide pro

¹⁰ Aryan Raghav, 'KHATRI v STATE OF BIHAR' (2022) 1(4) Journal of Legal Research and Juridical Sciences 304- 307 <<https://jlrjs.com/wp-content/uploads/2022/05/43.-Aryan-Raghav.pdf>> accessed 22 March 2026

¹¹ Nieharika Sharma, 'Case Commentary on M.H. Hoskot v State of Maharashtra' (*Manupatra*, 20 September 2022) <<https://articles.manupatra.com/article-details/Case-Commentary-on-MH-Hoskot-vs-State-of-Maharashtra>> accessed 22 March 2026

bono services. Meanwhile, the demands of pro bono work can make time management impossible for young lawyers who are still managing client commitments and billable hours, as well as their career development. Some of the career-building skills and growth work for more experienced people are sacrificed for unpaid work if their schedule is overrun, and they can not find time to do this. Young lawyers often already struggle to balance work and life while managing student debt, and can feel overwhelmed by mandatory Pro-bono requirements that can result in financial and psychological strain. Unpaid pro bono work is tied to stress, and increased stress is linked to lawyer burnout. Young lawyers are unlikely to remain involved in public-interest work if they believe their unpaid pro bono work does not result in time savings or professional advancement.¹²

These challenges are acknowledged, offering support to the theoretical argument that pro Pro-bono panels should do everything possible to achieve voluntary engagement, particularly in early careers where financial stability might be lacking. These challenges are illustrated by insights from young lawyers. However, many say they have an issue with Pro-bono lawyers because it aligns with their values, while the commitment to compulsory hours can be exhausting, especially in high-pressure legal environments where billable hours are valued.

POSSIBLE RECOMMENDATIONS

Several strategies could be considered to enhance the involvement of young lawyers in pro Pro-bono services. Making pro bono work mandatory for young lawyers might be more feasible if they receive financial incentives, such as student loan forgiveness or tax breaks. Additionally, structured mentorship programs could help guide early-career lawyers towards pro bono work while ensuring that they continue to develop professionally. Implementing a flexible Pro-bono requirement, with options to opt out under specific conditions or a tiered system based on experience, could alleviate some of the pressure on newer members of the profession. These changes would likely increase participation from the more experienced segment of the bar, who have much to offer, while also supporting younger lawyers.

¹² Beradar Akash and Sreeman Surya Teja Rao, 'Duty or Burden? The Complex Reality of Mandatory Pro Bono for Young Lawyers' (2025) 8(3) International Journal of Law Management & Humanities 1137 - 1146
<<https://ijlmh.com/paper/duty-or-burden-the-complex-reality-of-mandatory-pro-bono-for-young-lawyers/>>
accessed 22 March 2026

Law schools should explore the idea of adapting Pro-bono panels to create sustainable partnerships with NGOs, law schools, and experienced mentors, aiming for long-term impact through training and support systems that allow new lawyers to contribute effectively without excessive stress. Tax incentives, student loan forgiveness, or collaborations with NGOs and government bodies could establish a more sustainable Pro-bono work. By implementing these suggestions, the burden on young lawyers can be reduced while maintaining strong community support. Furthermore, establishing structured mentorship programs within Pro-bono initiatives could allow senior lawyers to guide junior attorneys, thereby enhancing the quality and depth of legal services provided to underserved communities.¹³

CONCLUSION

The clear benefits of mandatory pro bono work include allowing access to justice for underserved communities and encouraging social responsibility in young lawyers. However, it also has obstacles, such as the financial burden placed on young lawyers and the stress of an additional time commitment that can lead to burnout. This requirement may impinge on professional autonomy and generate major stress for those already managing the pressures of building their careers. We need a balanced model to ensure that Pro-bono work is sustainable. Incentivized Pro-bono programs with subsidies or reduced billable hours, for example, or hybrids of these, would cushion the impact on young lawyers and support public service. In addition, providing adequate support and training will ensure that pro bono work is meaningfully integrated into their careers without necessarily harming their professional growth. Mandatory Pro-bono programs need more research to determine their effectiveness and find solutions to new lawyers' difficulties. Pro-bono work must be made sustainable, and a part of the legal profession's commitment to justice, and legal institutions and policymakers must work together to develop frameworks that allow this to happen.¹⁴

The accountability of a minor participant cannot be equated with that of a formidable entity, such as the Kraken. By instituting a progressive framework that mandates pro bono work, young attorneys are not held to the same benchmarks as their more experienced colleagues. A system in which the number of pro bono cases is aligned with a lawyer's income ensures that the already

¹³ *Ibid* 1144

¹⁴ *Ibid* 1145

challenging conditions for young legal professionals are not aggravated. While the concept of a pro bono requirement has its benefits, its implementation must be refined to ensure fair treatment for young lawyers. With the primary objective of enhancing access to justice, adopting a progressive model based on financial capability could help attract seasoned lawyers.¹⁵

¹⁵ Archit K P, 'Pro Bono or Just Unpaid? – Balancing the Rights of Young Lawyers with the Pro Bono Mandate' (Vidhi Centre for Legal Policy, 08 November 2024) <<https://vidhilegalpolicy.in/blog/pro-bono-or-just-unpaid-balancing-the-rights-of-young-lawyers-with-the-pro-bono-mandate/>> accessed 22 March 2026