

Access to Justice in India

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ABSTRACT:

Justice is imperative as being able to stand up against injustice is important in maintaining our human dignity and strengthening the belief that our legal system isn't stacked in favour of the rich and powerful. In India, the vast majority of population find it difficult to get access to courts and in turn, to justice. The Constitution of India has provided for Constitutional articles (Article 39A, Article 14, and Article 21) that guarantee the citizens the right to access to justice. However, in practice, injustice is unbridled across the country and the marginalized sectors of the society find it impossible to seek justice. This paper, essentially investigates the reasons due to which access to justice is not being delivered to many. Popular reasons include the country's low level of awareness about the functioning of the legal system, high costs quoted by lawyers and delays in passing judgements that make it heavily inaccessible. The paper also seeks to find a methodological relation between the Constitutional provisions and the practical application of these provisions. The paper further discusses a few landmark judgements that have upheld the right to access to justice and precedents which have emphasized on the need for legal aid and the State's undeniable obligation to provide all its citizens with the right to free trial. To conclude, the researchers have tried to unpack strategic cornerstones which when implemented can ensure high quality, affordable legal aid to ensure that individuals have a strong chance at a fair trial.

I. INTRODUCTION

India Post independence, India emerged as the State with the longest Constitution in the world, promising individual rights and liberties. Despite such a promise, there is large population of India that finds it incredibly hard to access courts to exercise their rights. This is because of the average lawyer rates that cost thousands and lakhs of rupees an hour. Hypothetically, if you have a broken arm, you would probably head to the hospital to get immediate help. If you have a persistent cough, you would go to a medical clinic. But what if you have a legal problem? Hypothetically, what if your landlord sent you an eviction notice or someone at work sued you? Your response would be to get legal help to solve the above scenarios. But the real question is whether or not you would be able to afford the legal services you need.

Sadly, in India, for many people the answer is a 'NO'. Dealing with a legal problem on your own, can lead to poor health, stress, worse legal outcomes or simply giving up and accepting injustice. The people who are most severely affected by this are those who are at near margins of the society. They are the ones that have the fewest resources with which to oppose injustice. Recall the words of Martin Luther King Jr., "Injustice anywhere is a threat to justice everywhere." Failing to provide easy, cheap and quick justice shakes the belief of our society in the legal system. Being able to stand up against injustice is important in maintaining our human dignity and strengthening the belief that our legal system isn't stacked in favor of the rich and powerful. This is a cornerstone of our society and our democracy.

This papers eeks to unpack the following components:

- Analyzing landmark judgements where the court has dealt with the problems surrounding access to courts.
- Analyzing the court's definitions on "access to courts".

II. CONSTITUTIONAL PROVISIONS ON ACCESS TO JUSTICE

The Constitution of India through Article 32 and Article 226 promises to provide an effective mechanism and secure the fundamental right of every person to get access to courts in India. These Articles are a speed track mechanism and provide quick remedies. A person has the right to directly approach the Supreme Court through Article 32 without having to go through the hassle of approaching lower courts.¹ The Constitution is thus the protector and assurer of our fundamental right to get access to courts. Similarly, the High Courts have a power through Article 226 of the Constitution that ensures that a person can approach the High Court for a fundamental right violation or any other matter². In this regard, Article 32 is restrictive as compared to Article 226, as a person can apply Article 32 only in cases of fundamental right violations. But through Article 226, the High Courts can be approached for any matter (matters that do not necessarily revolve around fundamental right violations).

Legal aid is a fundamental facilitator to ensure access to courts. The Supreme Court, time and again has taken progressive measures to promote access to justice and has upheld the Constitution that guarantees this as a fundamental right. It has done so by applying a twin strategy of loosening the traditional rules of locus standi and relaxing procedural rules in such cases.³ In many cases, the courts have taken up the initiative of appointing commissioners and expert bodies to treat pro bono cases or cases where the party needs representation. Essentially, the courts use the procedure of Public Interest Litigation to address grievances of the poor and weaker sections of the society. It is a tool that is used to ventilate public grievances where the society as a whole, rather than an individual feels aggrieved.⁴

Apart from the above, there are several sections of the Constitution that are interpreted and read along with Article 32 and Article 226. These include: Article 13 which deals with laws inconsistent with or in derogation of the fundamental rights⁵, Article 14 which deals with equal treatment and equality before the law⁶ and Article 21 which refers to the protection of life and personal liberty⁷ which directly extends to the right of access to courts and judicial redress in all matters.

¹INDIA CONST. art 32.

²INDIA CONST. art. 226.

³Access To Courts, HRCR ORG. (Nov, 11, 2018, 10:10 AM), http://www.hrcr.org/safrica/access_courts/India/India.html.

⁴Access To Courts, HRCR ORG. (Nov, 11, 2018, 10:10 AM), http://www.hrcr.org/safrica/access_courts/India/India.html.

⁵INDIA CONST. art. 13.

⁶INDIA CONST. art. 14.

⁷INDIA CONST. art. 21.

III. LANDMARK JUDGEMENTS

The case of **Hussainara Khatoon v. Home Secretary, State of Bihar**⁸ is a case popularly known for the court's interpretation of right to speedy trial read into Article 21. The court in this case introduced a legal aid service program- providing free legal aid to under trials.⁹ The case discussed the rights that the prisoners are entitled to with respect to habeas corpus petitions. It was discovered that a frightening state of affairs prevailed in the justice system in Bihar. Many men, women and children were locked up behind prison bars for several years awaiting trial in courts of law.¹⁰ It was disclosed that many of these prisoners were locked up for offences that were trivial in nature, yet they remained locked up behind prison bars for a period ranging up to ten years or so because of the trial not being commenced. The court in this case, demanded for immediate release of these prisoners who were locked up without a trial taking place or sometimes, even without a charge.

It was held in this case that providing free legal help and services to the poor, underprivileged and those in need is an imperative element under the meaning of 'reasonable, fair and just' procedure.¹¹ Whether a prisoner is guilty of a crime or is innocent, he/she should be given the opportunity of representation and should be able to avail legal services that the Constitution guarantees to all its citizens.

Another important feature of our Constitution is Article 39A which also emphasizes on free legal services. Article 39A essentially states that providing free legal service is an inalienable element of the definition of 'reasonable, fair and just' procedure. A person who has economic problems and other disabilities would be deprived of an opportunity of securing justice if there is no provision of legal aid. Thus, free legal aid is an important ingredient that can be evoked from Article 21 of the Constitution as a fundamental right. It is a right that is promised to every citizen who is accused of an offence and is unable to pay for the services of a lawyer due to various reasons that include: poverty, indigence or incommunicado situation.¹² The State has the responsibility to provide legal help to a person when the circumstances show that the person is unable to afford the help.

There is an urgent need to introduce a vital, strong and comprehensive legal aid and legal services program that is impressed upon the Government of India as well as the State governments, to ensure that every person has the provision of getting access to courts. The State cannot get away and not comply with its obligation that the Constitution sets on it to provide services to the ones who need it by providing financial and legal help. It is also the obligation of the Court as a guardian of fundamental rights as a sentinel on the qui-vive, to enforce the

⁸HussainaraKhatoon v Home Secretary, State of Bihar, (1979) A.I.R 1369 (India).

⁹HussainaraKhatoon v Home Secretary, State of Bihar, (1979) A.I.R 1369 (India).

¹⁰id.

¹¹id.

¹²*The HussainaraKhatoon Case 1979*, LAWGIC (Nov. 21, 2018, 12:10 PM), <https://lawgic.info/the-hussainara-khatoon-case/>.

fundamental right of the accused to speedy trial by issuing directions to the States.¹³ This can be done by taking actions like strengthening the machinery that is used to investigate cases, setting up of new courts at various locations as well as building new courtrooms, so as to ensure that everyone has access to courts, appointing new additional judges and other measures to ensure that justice is delivered to all and that everyone has the provision of getting access to courts.

Justice Bhagwati in para 107 of the judgement also heavily emphasized on the State's duty to ensure that every citizen's constitutional right of a speedy trial is provided and that the State cannot use the defense of not having enough financial resources to meet the necessary expenditure needed for improving administrative and judicial apparatus with a view to improving speedy trial.¹⁴

Another case that stands out in the discussion about access to courts, is the case of **Khatri v. State of Bihar II**¹⁵ also known as the Bhagalpur blinding case. The case started off by several petitioners who had filed writ petitions at the Supreme Court using Article 32 for the enforcement of their fundamental rights under Article 21 of the Constitution. They complained about the fact that the police had blinded them at the police station while they were held under custody. The case emphasized on the constitutional obligation of providing legal services to the poor and accused.

The court emphasized on the State governments obligation that the Constitution mandates to provide free legal services to the ones who cannot afford it. A trial held without offering legal aid to an indigent accused at state cost will be vitiated and conviction will be set aside.¹⁶ Also, free legal services to the needy and poor should be delivered as they form an essential part of 'reasonable, fair and just procedure'. Legal aid is a fundamental part of providing access to courts. The moment the accused is produced before a magistrate, this right of indigent arises. The accused then gets the opportunity to make an application for bail and thereby obtain a release which is then followed by seeking legal assistance and representation. The accused has the right to claim free legal aid in a situation that he is sentenced by the court and wishes to appeal against this decision. The magistrate and judge also have the legal obligation, according to the court to inform an accused about the provision of seeking legal services and engaging a lawyer if it is evident that the accused is not in a position to afford legal services on account of his economic conditions, poverty or indigence. The State is under the responsibility to provide this help. The Court took the view that the right to free legal services would be illusory for the indigent accused unless the trial judge informs him of such right.¹⁷ The Court also went on another tangent and urged that, it is a

¹³The Hussainara Khatoon Case 1979, LAWGIC (Nov. 21, 2018, 12:10 PM), <https://lawgic.info/the-hussainara-khatoon-case/>.

¹⁴Access To Courts, HRCR ORG. (Nov, 11, 2018, 10:10 AM), http://www.hrcr.org/safrica/access_courts/India/India.html.

¹⁵Khatri V. State of Bihar II, (1981) SCC (1) 627 (India).

¹⁶Access To Courts, *supra* note 14.

¹⁷Khatri V. State of Bihar II, (1981) SCC (1) 627 (India).

requirement mandated by the Constitution to produce an arrested person before a judicial magistrate within 24 hours of being arrested and this condition is to be strictly and very carefully followed.

Another interesting case that defined the true meaning of “access to courts”, is the case of **Cotton Corporation of India v. United Industrial Bank**¹⁸. Here, the court started off by saying that everyone without any contradiction has a right that is legally protected to seek relief from a court of law. The person has an unhindered, uninterrupted access to law courts.¹⁹ The court then stated that the word ‘law courts’ here is used in a general and wide sense to bring under its umbrella and comprehend every forum where relief can be obtained in accordance to the law of the land. Access to justice and Access to courts shouldn’t be obstructed at any cost and must not be hampered even in the hands of the judiciary.

Access to courts by a person in search of justice in accordance to the law is the right of a person and another court of law cannot take away this right and cannot impede access to justice. This principle is present and functioning in the Constitution that essentially seeks to set up a society that is governed by law.²⁰ The legislature sets out the rule that ordinarily the judiciary shouldn’t come in the way of impeding access to justice through courts. This is an important and equitable principle set out in our Constitution that keeps the path to access to courts and access to justice unobstructed.

The court in another landmark judgement: **Sukh Das v. Union Territory of Arunachal Pradesh**²¹ emphasized heavily on providing free legal assistance. In this case, the appellant was charged for threatening his assistant engineer for cancelling his transfer orders. The appellant did not find legal representation because of his economical background. There was no cross examination conducted in this. The Supreme court thereby set aside the conviction against the appellant due to lack of legal representation. It then stated that providing free legal assistance at State cost is a fundamental right of a person who is accused of an offence and which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21.²²

Thus, the court in this case, upheld the right to free legal assistance and stated that it would indeed be a mockery of free legal aid if it were left to a poor, ignorant to ask for free legal aid²³. It would merely become a paper promise and its purpose would fail. An accused being unrepresented in the court proceedings is totally in violation of his fundamental rights.²⁴

¹⁸Cotton Corporation Of India V. United Industrial Bank, 1983 A.I.R 1272 (India).

¹⁹:id.

²⁰:id.

²¹Sukh Das V Union Territory Of Arunachal Pradesh, 1986 A.I.R 991 (India).

²²Sukh Das V Union Territory Of Arunachal Pradesh, 1986 A.I.R 991 (India).

²³:id.

²⁴:id.

IV. ACCESS TO COURTS ACCORDING TO INDIAN JUDICIARY

In India, the Judiciary has a very vital role to play. It operates independently without the interference from the Legislature and the Executive. It is the assurer and protector of our fundamental rights. While, all of this holds true, the sad reality in our country is that the vast majority of population in India find it difficult to get access to courts and in turn, to justice.

Chief Justice of India in the year 2017, P. Sathasivam urged the need of the judiciary to ensure that common people have easy access to courts as well as “early finality of dispensation of justice” to uphold its credibility.²⁵ He also emphasized that the judiciary is the country’s most respectable institution and it should be cherished and the high faith that the common people have in the judiciary should stay unaffected. The Constitution Bench of the Supreme Court, in its judgement of *Ajay Kumar Pandey vs State of Jammu and Kashmir*²⁶ also held that access to justice is a fundamental right that is guaranteed to all its citizens by Article 14 and Article 21 of the Constitution of India.²⁷ The Bench in this case stated that life doesn’t imply the physical body but with it come a bundle of rights which make one’s life, worth living and denying a person his access to courts and access to justice, will deeply affect the quality of his human life.

V. MEANING OF ACCESS TO COURTS

It essentially constitutes the access to justice. After interpreting what access to courts means, with the interpretation of the courts, these are some points that I have traced:

- **Adjudicatory mechanism:** To ensure access to courts and thereby access to justice, a fundamental requirement would be to have mechanisms that enforce the same. These could be Courts, Tribunals, Commissions, Authorities etc. where a citizen may go to report a dispute or problem which may have been caused by another individual/the State or any of its instrumentalities. This mechanism must prove to be effective, fair, reasonable and speedy. It should ensure justice and recognize the principles of natural justice.
- **Courts should be accessible by all (distance):** Courts and other forums that resolve disputes should be reasonably accessible to all. This means that in rural areas, there should be provisions of mechanisms that solve disputes. Resolving disputes depends a lot on the ability of the litigant to travel to the court/competent authority.

²⁵Business Line, *Common Man Should Be Assured Of Easy Access To Courts, Speedy Justice*, BUSINESSLINE (Nov. 21, 2018, 1:30 AM), <https://www.thehindubusinessline.com/news/‘Common-man-should-be-assured-of-easy-access-to-courts-speedy-justice’/article20649859.ece>.

²⁶ *Ajay Kumar Pandey V. State of Jammu and Kashmir*. (2012) C.P No. 5597 of 2012 (India).

- **The process of resolving disputes should be speedy:** Getting access to courts and to justice will be nothing but a mere illusion and a mere waste if the process isn't speedy. If the process is time consuming, laborious and frustrating, it will dissuade more and more people to step back from the process. In the case of *SheelaBarse vs Union of India*²⁸, the Court explicitly held out and emphasized on the importance of having speedy trial that will act as a facet to the right to life. Access to justice would have value and significance and utility only if the delivery system is speedy. Accessibility has been achieved long ago in India, as there are civil judges, sessions judge, in every taluka (village/district) but the process seems slow, time consuming and the courts are understaffed.
- **Affordable to the disputants:** One of the biggest reasons as to why people prefer not approaching the courts when they have a legal dispute is because of the high costs that are quoted for legal services. Legal services should be made accessible and affordable to all. If this is not done, then the system will be nothing but a mere illusion.

VI. CONCLUSION

Access to courts and access to justice definitely has a strong backing that is given to us by the Constitution of India. Right to legal aid is also now firmly entrenched in various acts including the Legal Services Authorities Act, the Supreme Court Legal Services Committee, National Legal Services Authority (NALSA) and various LokAdalats being set up in district and remote villages in India to provide legal help to the ones who cannot afford it.

Too often, people see the legal system and the law as inaccessible and out of reach. They presume it to be like a castle with high walls and doors. Anybody who is not an insider and who doesn't have the resources, cannot reach inside the castle. This needs to change. Everybody should know where to turn to when they have a legal problem and they shouldn't be afraid to do so. The State has an obligation to make sure that the public believes that the justice system is fair and we can help achieve this by demystifying the law, by broadening who provides legal services and by making those services more affordable. As, a modern welfare State cannot with any justification sell the dispensation of justice at a price.²⁹

²⁸*SheelaBarse vs Union of India*, (1986) 3 SCC 632.

²⁹Justice M. Jagannadha Rao, *189Th Report On Revision Of Court Fee*, INDIAN KANOON ORG (Nov. 21, 2018, 10:04 AM), <https://indiankanoon.org/docfragment/58259708/?formInput=access%20to%20courts>.