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A WORD FROM THE TEAM

IJLRA: (ISSN: 2582-6433) is proud to complete its Volume I Issue II. The current issue consists of articles, short notes, case comments, legislative comments and book reviews, contributed by advocates, academicians, researchers & students from all parts of the country. Each contribution has been thoroughly examined by our editorial team to provide a filtered and quality read.

The fact that law as a subject is dynamic and ever evolving makes it imperative for lawyers, academicians, researchers, and students to stay abreast of recent developments. The same thought process has led us to develop a dedication towards providing all the contributors with a platform to express their original ideas on contemporary issues. With the same endeavour to present view on latest legal developments within and outside country we are successful in presenting diverse selection of stimulating articles.

We strive hard to stick to the core of the Journal's principles, which includes diversity and open discussion from all aspects of law while maintaining highest standards of professional integrity.

The Issue is a culmination of the efforts of several people who must be rightly acknowledged. We would like to place on record our sincere gratitude to all our contributors for their valuable work. We would also like to thank all the members of Editorial Board for their efforts in shortlisting and editing the papers to ensure that the ideas of authors are being expressed in the best possible manner; and finally the members of our technical support team for making this issue reach all our readers by way of an open access system.

We sincerely hope that the present issue will come to the expectations of its readers.

Team IJLRA
ACCESS OF JUSTICE BY MARGINALIZED PEOPLE OF INDIA

-Author: Aditya Mathur

Injustice anywhere is threat to justice everywhere- Martin King Luther Jr. Access to justice has different meaning in different societies. Even if defined differently, it always has inherent relationship with dispute resolution as the latter’s purpose is to do justice only. Hence access to justice is synonym with access to dispute resolution method provided by the state. This natural right didn’t require affirmative state action but with the emergence of welfare state it doesn’t mean only to litigate or settle the claim but also equal, affordable, quick access to the forums and enforcement of relief which is individually and socially just.

The Constitution provides substantive basis for this by guaranteeing certain fundamental rights such as, equal protection of laws, equality of status and opportunity, the right to life and personal liberty to all its citizens and on violation of these rights to approach the court. Even the Supreme Court has always tried to interpret the fundamental rights along with directive principles to make access to justice easier for the poor and underprivileged. However the real experiences show that access to justice has become inaccessible. The cases pending before the courts, high costs, complicated procedure, paucity of awareness etc. have paralyzed the legal system.

INTRODUCTION

With a population of 1.2 billion people, India is a multi-cultural, multi-linguistic, multi-religious and multi-ethnic secular country. India is also the most representative democracy which elects approximately 3 million people in the local self-government bodies - more than 1/3 of them being women. During last two decades, India has made steady progress on

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1 Student of 4th Year of KIIT School of Law
economic front and has achieved sustained growth of 8.2 percent for last 5 years but poverty has declined only by 0.8 percent. India ranks 134 out of 187 countries on the UN Human Development Index.

Article 39A (Equal Justice and Free Legal Aid) of the Indian constitution, under the Directive Principles of State Policy reads ‘The State shall secure that the operation of the legal system and shall promote justice and shall provide free legal aid by suitable schemes and legislation to ensure equal opportunities.

**CONCEPT: ACCESS TO JUSTICE**

The concept of ‘Access to Justice’ constitutes- First a strong and effective legal system with rights enumerated and supported by substantive legislations. The second is easy and quick access to judicial/ remedial system to the general public. It therefore means that the ability to approach and influence decisions of those organs which exercise the authority of State to make laws and adjudicate on rights and obligations. Access to justice is defined in the black’s law dictionary as the ability within a society to use courts and other legal institutions effectively to protect one’s rights and pursue claims. It considers a potential system acquiring appropriate legal remedies within the Civil and Criminal justice fields. Judiciary, being an effective judicial system, has an important role in ensuring access to justice.

All human beings are born free and equal in dignity and rights and therefore should have equal access to justice when their dignity or their rights are infringed upon. When such systems cannot ensure equal access to justice for all, the vulnerable and marginalized suffer even more, and their human dignity is placed at risk. The poor and disadvantaged sections of society are often victims of criminal acts including human rights violations.

Injustice and illegality tend to have a greater impact on vulnerable populations as they are constrained in seeking redress. Justice mechanisms can be used as effective tools to end this cycle of deprivation and rights violations while simultaneously reducing the risks associated

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2 Human Development Indicators, UN Human Development Index Report 2011

3 Article 39A of the Constitution of India, 1950
with conflict. The Indian Constitution takes into account such issues and guarantees fundamental rights for all. Articles 14 to 32 included in Part-III of the Indian Constitution relating to the Fundamental Rights make it obligatory for the State to ensure equality before the law or equal protection of the laws within India. Article 32 deals with the rights to constitutional remedies including the right to move the Supreme Court for the enforcement of fundamental rights.

**MEANING OF MARGINALIZED GROUPS AND MARGINALIZATION**

People who are marginalized have relatively little control over their lives and the resources available to them in any way.

This has a tremendous impact on the development of human beings, as well as on society. Marginalized people have no proper knowledge of law as well as, so they don’t get proper access of justice.

In general term marginalization describes the overt actions or tendencies of human societies, where people who they perceive to understand or without useful function, are excluded, i.e. marginalized.

These people, who are marginalized, from a Group and Community for their protection and integration and are known as Marginalized groups.

**VARIOUS MARGINALIZED GROUPS**

- People with disabilities
- Schedule Castes
- Scheduled Tribes
- Elderly or Aged People

**ACCESS TO JUSTICE AND CONSTITUTION IN INDIA**

Apart from the Universal Declaration on Human Rights and International Covenant on Civil and Political Rights the Constitution of India, the living document and basic law of this country, provides substantive basis for access to justice. In its preamble only it stands for
securing justice social, political and economic to all the citizens. It guarantees fundamental rights, in its Part III from Articles 14 to 32 to every individual. These rights are not absolute but they are protected under Article 13 of the Constitution which prohibits that enactment of any law which is inconsistent with the fundamental rights.

Article 39A of the Constitution of India which falls under Chapter 4 of the Indian Constitution enjoins upon the State the obligation to ensure that the operation of the legal system promotes justice on the basis of equal opportunity and provides for free legal aid by suitable legislation or scheme to ensure that opportunities for securing justice are not denied to anyone. Therefore, the State under this provision has to endeavor to ensure that citizens irrespective of their status get equal access to the system of justice.

**IT DECLARES THROUGH ARTICLE 14⁴ THAT:**

The state shall not deny any person equality before law or equal protection of laws within the territory of India. So every citizen in India, irrespective of his social, economic and political stature, has accessibility to the courts in the same manner equally and indiscriminately by virtue of article 14.

**SITUATION ANALYSIS**

Despite the progressive measures, the ‘access to justice’ in India has been costly and beyond the reach of poor citizens. Delays in disposal of cases add to the woes of the litigants. Poor and marginalized sections of the society have not been able to fully claim their legitimate stake in the protections provided by the Constitution and legal system, because of which, the realization of justice remains a challenge.

Government’s efforts to take justice to the door step of people in the form of Gram Nyayalayas has met with partial success as only 7 states have notified 168 Gram Nyayalayas so far, of which only 151 have become operational. Implementation of Gram Nyayalayas Act

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⁴ The Constitution of India, 1950
is affected by several constraints in dispensing justice including the lack of infrastructure below the district level, difficulties in getting support from local administration-police, preference among lawyers to appear in district level courts than the Gram Nyayalayas, limited awareness among villagers about court decorum and limited incentives for judges to attend Gram Nyayalayas. Also higher courts do not refer small cases with limited jurisdiction to these institutions.

ACCESS TO JUSTICE AND RIGHT TO FREE LEGAL AID

Our constitution provides for free legal aid as a right, to persons who due to financial or any other reason cannot afford a counsel through Articles 14, 21, 39 A, already discussed above and Articles 22 (1) and 38 of Constitution of India. In a welfare State where the legislation is complex and the people from marginalized communities often find difficult to know what his rights are and how to defend them in a court, this right has utmost importance. It’s not only the Constitution but the case laws also have been developed to elaborate this right.

The Supreme Court expanded this right in MH Hoskot’s case where Justice Krishna Iyer declared If a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory rights in the Court, the courts under Article 142 read with Articles 21 and 39-A of the Constitution, have the power to assign counsel for such imprisoned individual ‘for doing complete justice.

INITIATIVES UNDER LEGAL SERVICES AND ACT-

Constitution of National Legal Services Authority (NALSA)

- Setup with mandate to provide free legal service to weaker section of society.
- To organize Lok Adalat.

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5Article 22(1) provides that A person arrested should not be detained in custody without being informed of the grounds for such arrest and should not be denied the right to consult and be defended by a legal practitioner of his choice.

6NALSA website.
Every state, district and Taluka has state, district and Taluka legal Service authority respectively.

These authorities are responsible for implementing legal services in their respective areas.

Constitution of Lok Adalats:

- Under the act awards made by Lok Adalats deemed to be decree of civil court and no appeal lies before any court against its award.
- Any case pending before any court or any dispute which has been brought before any court can be referred to Lok Adalats.

Between 2006 and 2008, UNDP partnered with the Department of Justice, Government of India to pilot aimed at strengthening access to justice. The project undertook a broad analysis of the justice sector including an identification of key challenges in the criminal justice system, informal justice systems, legal aid and legal empowerment.

To Expand the Reach and Access of Justice:

As discussed above the present legal system is not adequate to protect the legal rights of poor and people living in rural or tribal areas. These people find the system alien and hence do not have access to justice. It requires expansion to reach these marginalized people and for that certain suggestions are given below:

1. The customary idea of "access to justice" as understood is access to courts of law which has become out of reach of above mentioned people due to different reasons for example, abject poverty, social and political backwardness, illiteracy, ignorance, procedural conventions and the cost. One solution is to educate masses and make them aware about complex legal procedures and rights and reliefs provided to them under Constitution as well as under other statutes. Cost of litigation required to be reduced or make it accessible for the common poor man as it is not possible for him to bear the burden of complex and expensive process of litigation.
2. There exist several barriers to justice in the form of financial, geographic, linguistic, logistical, or gender-specific. Emphasis must be put on improving quality and quantity of justice in the form of better prepared defense attorneys, more citizen-oriented court staff, more reasonable hours, better information about the justice system and more no. of courtrooms in each district. Although procedural conduct and rules have already been laid down, what stands here as an important requisite that there is strict adherence on behalf of police authorities, judges, lawyers, law officers as well as protection of legal rights.7

3. More ADR centers should be created for settling disputes out-of-court especially in rural and tribal areas. Mediation and negotiation must now become part of constitutional schemes. Ombudsman does not have the power to make its decision binding on the Government. This limitation must be overcome; its decision should be binding on Government.

4. The dialect of the law, constantly in exceptionally difficult and complicated English, makes it ambiguous even to the proficient or educated individual and this is the dialect that courts and legal counselors are comfortable with. Therefore, the language needs to be simplified so as to make it accessible for the common masses.

5. In a country like India where adversarial model is widely practiced, the expediency of the litigation process has been compromised. Average time taken by civil case to settle is around 20 years. This problem of delay is due to the extended role of advocates in the litigation process.

6. To increase the physical availability of courts, we must increase number of High Courts and subordinate courts in the states. Moreover, the powers of Family Court can also be strengthened.26

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7. More accessibility to constitutional courts is a prime concern. For e.g., fundamental rights can only be filed in High Court and Supreme Court. Subsequently, for example, even petitions emerging out of issues, for example, vanishing, custodial violence, encounter killings or cases where the police can't be enacted because of different reasons, must sent or documented to the High Court. Perpetually, this includes go to the High Court, drawing in a legal advisor there and consistent follow-up. A considerable measure of time and cost is included in this procedure. Even habeas corpus petitions can only be filed in the High Court. Thus the division of jurisdiction between High Courts and subordinate courts needs to be re-examined.

8. The poor and the marginalized rural and tribal communities who cannot afford eminent lawyers or legal experts seek justice through the informal system like Khap Panchayat which leads to their exploitation by such extremist forces flouting the rule of law and constitutional governance. So we must strengthen the Gram Nyayalayas to give force to constitutional values and ensure that such values infuse the content of true aim of adjudication-justice.\(^8\)

Awareness is the main tool for understanding of our rights which are given by our constitution to us. In marginalized group there is lack of awareness. But in today’s scenario Government is helping such people with full potential by policies. Most of women are yet uneducated in our country and they have no any knowledge about their rights, some NGO are working for their rights. Recently Supreme court in famous judgment Shayara Bano vs Union of India And Ors.\(^9\).

The Supreme Court on August 22, 2017 declared the practice of triple talaq as unconstitutional and stated that it was vocative of Article 14 and 21 of the Indian Constitution. The three judges on the 5 judge Constitution bench decided against triple talaq while two ruled in favor. Justices Kurian Joseph, R F Nariman and U U Lalit said triple talaq

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\(^9\)https://indiankanoon.org/doc/115701246/
needs to go while CJI JS Khehar and Justice Abdul Nazeer backed triple talaq.

Such type of judgment is showing Supreme Court ‘s liberal view on access to justice for everyone.

**INITIATIVES**

In the recent years, government has introduced a slew of measures to improve access to justice and justice delivery like setting up e-Courts under a Mission Mode Project for computerization of courts and delivery of e-services to stakeholders (Rs 935 crore), funding of infrastructure in subordinate courts under the State Governments and funding of Family Courts (approx. Rs 4870 crore). To reduce pendency and accelerate the disposal of cases, Department of Justice has asked High Courts to undertake a drive for this purpose.

**JUSTICE INNOVATION FUND**

This was one of the important components of the Project, created for implementing innovative activities on legal empowerment of marginalized people and for developing capacities of intermediaries who assist them. Under this, 15 main projects in major 7 Project States reached out to more than 20 lakh people. More than approximately 7000 paralegals and 300 lawyers were trained through a series of capacity development oriented events. Quality knowledge products on legal empowerment were created; innovative Information Education and Communication (IEC) materials and community radio spots were developed and disseminated to raise legal awareness among marginalized communities.

**YOUNG LAWYERS FOR JUSTICE FELLOWSHIP PROGRAMME**

A programme for training and sensitization of young lawyers was launched in 3 States - Chhattisgarh, Jharkhand and Odisha with a view to encourage them to assist marginalized people in accessing justice. 60 young lawyers were selected, 20 each in Chhattisgarh, Jharkhand and Odisha through a competitive selection process. Series of training programmes were successfully conducted by 3 partner organizations (CLAP, ELDF and
Manthan). Fellow lawyers were trained and sensitised on rights and laws related to marginalized sections, they were also provided inputs on developing their professional skills such as drafting, legal counseling, mediation and conciliation. The programme received active support from Legal Services Authorities, and with the help of mentors, young lawyers were supported in taking up community level activities such as conducting legal awareness camps, providing legal advice, counseling and conducting action research on specific topics etc.

**LEGAL LITERACY TRAINING OF SABLA GIRLS:**

A need for providing legal literacy to Sabla (adolescent girls covered under the Sabla scheme of WCD) came up as a result of convergence between the two central ministries - Ministry of Law and Justice, and Ministry of Women and Child Development. It was decided to train Sabla girls of Madhya Pradesh and Rajasthan.

**CREATION OF LEGAL LITERACY MATERIALS FOR SAKSHAR BHARAT SCHEME:**

IEC materials (12 booklets, 10 motivational songs, 1 short film on legal aid and facilitators guide) on rights and entitlements of the marginalized people were prepared as part of the convergence with MoHRD’s Sakshar Bharat programme. Adult legal literacy will now become a part of the continued adult literacy programme. A handbook comprising the 12 booklets was jointly released by the former Hon’ble Minister for Law and Justice and the Hon’ble Minister for HRD on 18th November 2011 at New Delhi.

**JUDGES TRAINING MODULE ON ANTI-HUMAN TRAFFICKING**

With the active support of the Maharashtra State Judicial Academy (MJA), the Project developed a module for training of judges on anti-human trafficking. Former Chief Justice of India, Hon’ble Shri. Justice Altamas Kabir, released the training module during the valedictory session of the International Conference on Equitable Access to Justice: Legal Aid.
and Legal Empowerment in November, 2012 Delhi. This module was circulated to Judicial Academies across the country.

**CONCLUSION**

Access to justice is a fundamental human right and is indivisible from the other genres of human rights; it actually may in certain instances be the prerequisite for catalyzing the realization of civil, political, economic and social rights. The full realization and enjoyment of the rights of poor, marginalized and vulnerable groups or individuals depends on rights based approaches that equip communities to know and assert their rights in an atmosphere of accountability, empowerment and non-discrimination. In this regard, it is incumbent on all actors involved in promoting the right to access to ensure that core human rights values of dignity, equality and affirmative action for the weakest and most needy are embedded in the interventions that they devise.

Barriers to justice that are attitudinal, procedural or physical have the effect of denying these groups the appropriate standard of justice that is critical for resolving some root causes of marginalization, discrimination, poverty and vulnerability.

One of the major conclusions derived from this study is that while barriers to justice exist for the majority of Indians, the poor, the marginalized and most vulnerable of all groups are the most affected by the failure to access justice. The progression towards comprehensive legal aid programmes is critical in restoring some of the balance in favor of vulnerable and marginalized groups. Improvement in accessing justice by such categories of people requires tackling a range of legal, socio-economic and cultural barriers that exist in the formal and non-formal justice system.