

Access to Criminal Justice and Judicial Reforms

Arihant Pushakr¹ & Kartikaya Pandey²

Abstract

Justice can be defined in a broad sense as protection of an individual's rights as well as the rights of the stakeholders which may include any organization, group, community, etc of any State. It's the responsibility of every State to safeguard the right to justice of it's' people and stakeholders and provide them with access to justice. Judiciary well starts from violation of right, the victim's need for justice, its demand for justice and then finally access to justice. Access to justice implies easily approachable, transparent and affordable access to the institutions established for Justice Mechanism.

The history of providing justice starts well from the time civilization started but the mechanism showed a swift change in the way with time and with advancements in the society. People started living in clusters or groups in societies and population started increasing. Resources always had been limited. Fight for resources gave rise to rights of people and further a strong need for concept of justice was required. This created a need for judicial mechanism and a created a concept of justice. During the periods of kings it was accessible to everyone in the courts of kings but without lawyers. Even the kings were not specialized or educated enough like today's judges. So definitely access to justice was present but fairness or propriety can be doubted.

¹ BA.LL.B 2NDYear GeetaInstitue of Law,Panipat,Haryana.

²BA.LL.B 2ND Year GeetaInstitue of Law,Panipat,Haryana.

Introduction

The words 'Access to Justice' immediately struck in our mind the idea that every person who seeks Justice must be provided with the requisite monies to approach a Court of Justice. But, that is not the only meaning of these words. They also refer to the nature of different rights, to the number of Courts, to the quality of Justice, to the independence of the Judges who man the Courts, to legal aid and public interest litigation and so on.

Role of Judicial institutions

The fundamental rights provided to the citizens by the constitution of India i.e., part-III article 12 to 35, provides the basis rights that must be safeguarded. Article 21 implies "Right to life with dignity". Here to have a dignified life access to justice to everyone is essential and the constitution of India has focused well on the Justice. Justice is a basic feature of the constitution and part of preamble. The quality of human life so as to take access to justice out of the purview of Right to life guaranteed under article 21. Access to justice indeed a fact of right to life guaranteed under article 21 of the Constitution. The access to justice is a fundamental right guaranteed to citizens by Article 14 and article 21 of the constitution of India. Because of that life implies not only life in the physical sense but a bundle of rights that makes life worth living.

Today we have judicial institutions in form of courts at local, district, state as well as centre level in form of judicial courts, district courts, High courts and Supreme Court respectively in India. But its' functioning so far is debatable. "Justice in India is delayed but not denied". But such delayed justice partially shows its' inaccessible nature. However Justice in India has always been accessible to all but it needs some judicial reforms and there is always optimism to it.

Need and access to justice starts from the victim approaching police station. A judicial proceeding basically starts from here itself. The police taking into cognizance of the crime registers an FIR, investigates the matter, collect evidences and then submits a charge sheet which becomes the basis of judicial proceedings. In most of the cases charge sheet is filed after a long period of time. In some cases cognizance of crime is directly taken by courts but that also has to follow the same long procedure.

The appellate as well as the respondent has to hire a lawyer which requires huge money. However, the government provides lawyers for the people to benefit those who cannot afford the private ones, still these lawyers are low in number and most of them work inefficiently. Even the judicial process takes a very long period of time. This discourages the people in

need to go to any judicial institutions. In some cases people spend most of their life or entire life in hope of justice. This makes justice inaccessible. On the other hand it also encourages the criminals to commit crimes.

For people under trial in some non-bailable offence cases have to be in judicial custody for a very longer period of time even if they are innocent. In some of these cases the former have to be in custody for a period longer than the tenure of the punishment they are supposed to be awarded.

Compared to other countries the ratio of judges to population in India is low. Coupled with numerous vacancies the judges are not appointed on time and in appropriate proportion. Movement of cases from one court to another takes a lot of time due to lack of IT infrastructure. There is a lack of information and lack of transparency in the judicial process that makes a citizen to face certain difficulties. Due to absence of judicial standards and accountability act disciplinary action are tough to take against erring judges.

These situations lead to delayed justice which is nothing better than denied justice. Thus judicial system needs to be such that it encourages every citizen to approach judicial institutions in case their rights have been violated, also discourage the negative elements. It should be affordable, easy to access and provide proper justice in a short and defined period of time which requires strong judicial reforms.

Structural reforms like recruitment and appointment of judges should be done. After the Supreme Court struck down the National Judicial appointment commission (NJAC), a memorandum of procedure (Mop) was agreed between the government and the judiciary should be executed in letter and spirit. The number of cases pending in courts are approximately 3crore which needs recruitment of judges to dispose of cases and it should be done through a well-established mechanism like judicial services in time. Judiciary should be made more transparent by introducing RTI. There should be the establishment of fast track courts. Evening courts should be encouraged.

Initiatives like pro-bono legal services are highly appreciated and should always be encouraged. This benefits the socially, economically backward or underprivileged sections of society and motivates them.

Operational reforms like robustness of IT infrastructure should be done. E-courts should be established and hearing of cases should be done through video conferencing to facilitate ease of access. Tribunals and dedicated benches should be established to facilitate hearing of specific and alike matters. The working hours of courts can be increased along with working in shifts. Alternate dispute redressal(ADR) in the form of conciliation,

mediation, arbitration, family courts, gram Nayalaya, etc should be encouraged. Frivolous litigation should be strongly discouraged.

Personnel reforms like training of lawyers should be done through establishment of competent institutions. Increasing number of strikes by lawyers is also a problem. Regulations curtailing strikes should be strengthened with proper grievance Redressal mechanism. The law commission of India has suggested some major reforms in judiciary that needs to be well instituted. There must be full utilization of the court working hours. The judges must be punctual and lawyers must not be asking for adjournments, unless it is absolutely necessary. Similar cases should be clubbed together with use of technology and should be disposed fast with more or less some basic judgment. This will substantially reduce the number of pending cases as well. Judgments must be clear and decisive and free from ambiguity, and should not generate further litigation.

Public interest litigation is a very good initiative to promote access to justice to everyone specially the underprivileged section of the society. The judgment in PIL largely resolves issue of a large mass simultaneously. It promotes ease of justice when rights are diffused in nature, is a collective issue or institutes collective welfare. PIL is not adversarial but more of inquisitorial i.e., courts are actively involved in investigating facts of the case and there are no typical petitioner and defendants, rather they are all stakeholders. Hence PIL in this way are largely beneficial to large mass and facilitate access to justice.

Article 142 empowers the Supreme Court of India to pass any order for ensuring complete justice. There have been instances of application of this discretionary power like in appointment of the new Lokayukta of Uttar Pradesh. Also the judgment of banning liquor shop on National highways to reduce accidents was using this power. The courts should exercise these in circumstances to protect the lives and rights and hence providing indirectly justice itself.

Martin Luther King Jr. said, "Injustice anywhere is a threat to justice everywhere". This quote explicitly conveys the importance of access to justice. in country like India with close to thirty percent people below poverty line, ensuring inclusive justice is a mammoth task. Judicial reforms are needed to overcome the problems of judiciary and facilitate ease of access and Efforts from not only government but also civil society organizations should be taken. Well-functioning judiciary system will not only motivate the citizens but also reduce the crime rates. The people of this country should be made aware of their rights and judicial procedure. Hence only a concerted effort can help to overcome the problems of judiciary and

ensure inclusive, quick and affordable justice to establish a prosperous and harmonious society and Country.

Reforms

Affordable Processing

The affordability of legal services one of a critical aspect of access to justice that seriously affects lower - and middle-income people. This is a huge factor that leads people not proceed

Use of Technology in the justice system

There are many committees or reports comment on the issue of lack of technology developments in the justice sector, use of technology in justice sector to help in easy and fast dispute resolutions . Potential technology solutions include the expansion of online dispute resolution, videoconferencing, interactive court forms, simplified scheduling, e-filing and docket management, and electronic accessibility of court and tribunal documents.

Collaboration with leaderships can help to very vital role to play the “implementation gap”

The most important factor lack of capacity to move from sound recommendations in a report (or series of reports) to implementing those recommendations. This has been referred to as “the Implementation Gap”, to appointment of judges in the vacant seats of court. However, the divided responsibilities for different elements of the system also create impediments to moving forward with systemic change.

Legal- aid

In the case of Criminal cases are mainly depend on public prosecutor. Only public prosecutor can file the case, in this situation the case only proceed by the public prosecutor.

Non-Feasibility of introduction of Hindi as compulsory language in the supreme court

India

The decisions given by the court not only in English language but also in Hindi language. Public are not easily to under the decisions given by court. English language barred the movement of lawyers from lower to the apex court.

Legislative drafting is concerned every legislation although authoritatively enacted in English may have a Hindi authoritative translations along with same at the central level.

Conclusion

In judicial institution need some reform to ease to access justice. Justice is a part of preamble and also basic feature of the Indian constitution. Right to justice is basic part of human rights.

Access to justice is basic principle of the rule of law. In the declaration of the high level meetings on the rule of law emphasize the right of equal access to justice for all including vulnerable groups and state taking all necessary step to provide fair and transparent, effective non- discriminatory, and accountable service that promote access to justice for all.

In the structural reform in judicial institution they should promote all the local level Panchayat,Lokadalat. It will very helpful to resolve the petty cases and not burden on the judicial institution. Justice system shouldbe affordable, effectiveness, easy to access to the public.