

Access to Justice: The Role of Judicial Institutions in Safeguarding and Ensuring Criminal Justice

Ayushi Aggarwal¹

Abstract

Access to Justice implies distinctive things to various individuals. In its tightest sense, it speaks to just the formal capacity to show up in court. Extensively, it connects with the more extensive social setting of our court framework, and the fundamental hindrances looked by changed individuals from the community. Guaranteeing access to justice is a standout amongst the most essential functions of the State. A large portion of our legal rules are aimed at doing justice as per law to parties before the courts. However, access to justice is concerned with how the State guarantees that reasonable, effective and expeditious dispute resolution can be accomplished. It is access to justice that is the expansive subject of this paper.

Inside an expansive subject of access to justice and to focus on the role of courts and tribunals in access to justice, the paper elaborates various points. The paper examines the right of an individual to access trial court under criminal law and the equality before law. The ability to access justice depends not only on the operation of the courts, but also on the ability to be represented before them. The right to be legally represented is one of the most pressing importances to those confronting criminal allegations. Judicial Review and Public Interest Litigation additionally assumes a critical part in access to justice. The idea of Judicial Review under the Indian constitution puts a check on the working of courts to guarantee reasonable, powerful and speedy justice to individuals. The paper likewise alludes to specific issues that are pertinent for the access to equity, viz., requirement for sufficient courts, court fees and the independence of the judiciary.

Further, the paper is a product of critical evaluation of facts and information already available and aims at striking a balance between the individual rights and the obligations of the state.

¹ Ayushi Aggarwal, Research Scholar, TheNorthcap University, Gurugram, Haryana, India.

Introduction

The Indian legal framework, similar to those in Commonwealth nations, is firmly established in the precedent-based law custom. The subject of ‘access to justice’ is one of extraordinary contemporary significance. The words ‘access to justice’ promptly mix up in our mind the idea that each individual who looks for equity must be given the essential monies to approach a Court of Justice. In any case, that isn’t the main significance of these words. They additionally allude to the idea of various rights, to the quantity of Courts, to the nature of justice, to the freedom of the Judges who man the Courts, to legal aid and public interest litigation and so on.

The idea of ‘access to justice’ as a significant human right, likewise perceived in most constitutional democracies as a basic right, has its root in common law as much as in the Magna Carta. The Magna Carta lays the framework for the fundamental right of access to courts in the accompanying words:

“No freeman shall be taken or imprisoned or disseised or outlawed or exiled or in any way ruined, nor will we go or send against him, except by the lawful judgment of his peers or by the law of the land. To no man will we sell, to no one will we deny or delay right to justice...”

The Supreme Court of India also, in 2016, gave new dimensions to the concept of ‘access to justice’ and bring it under the virtue of right to life at par with other fundamental rights.

“We have; therefore, no hesitation in holding that access to justice is indeed a facet of right to life guaranteed under Article 21 of the Constitution. The Citizen’s inability to access courts or any other adjudicatory mechanism provided for determination of rights and obligations is bound to result in denial of the guarantee contained in Article 14 both in relation to equality before law as well as equal protection of laws. Absence of any adjudicatory mechanism or the inadequacy of such mechanism, needless to say, is bound to prevent those looking for enforcement of their right to equality before laws and equal protection of the laws from seeking redress and thereby negate the guarantee of equality before laws or equal protection of laws and reduce it to a mere teasing illusion. Article 21 of the Constitution apart, access to justice can be said to be part of the guarantee contained in Article 14 as well, the Bench added.”²

²Anita Kushwaha v. Pushap Sudan With Transfer Petition (CrL.) No. 116 of 2011. p. 28, 30.

The aim of the paper is to examine and determine the manner and the extent to which judicial and quasi judicial institutions can contribute to access of justice. Country like India has some of the most generous legal system of the world which incorporates numerous social and economic rights, yet they rank very low in securing these rights to all. My focus will be mainly on the role played by the institutions to provide access to justice to the poor. Further, In order to explore the role played by judicial and quasi judicial institutions in providing justice to the poor, the facts and information already available has been critically evaluated; though aims at striking a balance between the individual rights and the obligations of the state. It is based on the Supreme Court's Report "Subordinate Courts of India: A Report on Access to Justice, 2016", wherein the court acknowledged the existence of challenges and barriers to access to justice.

The paper will proceed in the following manner: Part I shall recount the role and functioning of the courts in granting access to justice. I am concerned with how the courts function as a fair and efficient provider of justice to the parties appearing before it. Part II comments on the operation of Legal Aid System in India. It discusses the statutory provisions along with the precedents laid down by hon'ble courts wherein an individual has the right to access to court for securing any justice. Part III shall follow the preceding sections and deals with the barriers to the access to justice. Last, the paper discusses the right to access to justice in the Indian Scenario and evaluate its success. We conclude with the claim that the notion that access to justice, the guaranteed right in India, needs serious reconsideration and offer suggestions as to how legal services can be brought about to those who are in need of it.

Individual Access to Courts

Judiciary is regarded as the guardian of the law. The importance of judiciary in the democratic society can hardly be exaggerated. It not only administrators justice but also protects the rights of citizens.

Turning first to its role, it is said to have three important functions. First, the court is able to conduct a trial in the court and it is directly concerned with doing justice to litigants as it ensures that the determination of their rights in the court was made upon a correct understanding of the law.

Second, in cases of violation of law, a suit is filed against the offender and the judiciary establish justice by providing redress and punishing the offender. The Supreme Court shall have power to issue the directions or orders or writs including writs in the nature

of habeas corpus, mandamus, prohibition, quo warranto, certiorari, whichever may be appropriate for the enforcement of the rights confirmed by the constitution.³

Third, the court enunciates and harmonizes the law. There can be no doubt that it is the proper function of the court to make law, whether it is through the interpretation of statutes or the development of the common law. In fulfilling this role, the court has less to do with the parties although the parties are the one who benefits the most from having the law correctly determined.

The issue of access to justice is extreme and penetrating in India and has influenced the capacity of the legal framework and legal process to react to injustices. The crisis of prolonged delays that has overwhelmed the Indian judicial process calls for reactions at different levels of decision-making. A scope of changes - legal, judicial and institutional - should be started for managing delays and guaranteeing access to justice.

Public Interest Litigation : A Component Of Access To Justice

The concepts of 'public interest litigation' have come to remain in our Constitutional Courts. The use of this exceptional weapon has been extended to each open lively native who has been oppressed of the wrong being executed to convey it to the cognizance of the Court. To that impact, even a letter addressed to the Chief Justice of the High Court or the Supreme Court will be entertained as a Public Interest Litigation. The trend of bringing public interest litigation in the Supreme Court and in the various High Courts by social action groups, the legal aid societies, university teachers, advocates, voluntary organizations and public-spirited citizens has ascended in the nation. This has improved the agonies of thousands of people, emerging from repression, governmental omissions or excesses, administrative lethargy or arbitrariness or the non-enforcement of beneficial legislation. Cases of under trials as well convicted prisoners, women in protective homes, unorganized labourers, untouchables, miseries of scheduled castes and tribes, landless agricultural labourers, slum-dwellers so forth are taken up in PIL cases. The concepts of locus standi have been very much expanded to meet the problems created by damage to environment or environmental pollution. Public interest cases have also come to be filed seeking directions against the Police or State for taking action against corrupt individuals. The result is that the strict rules of 'locus standi' which were applicable in the writ jurisdiction of our Constitutional Courts have, practically vanished.

³INDIA CONST. art.32, cl. 1.

In its essence, the pronouncement of the Supreme Court was explicitly summarised in the case of *Bihar Legal Support Society v. The Chief Justice of India & Ors.*⁴ in the following words:

“The weaker sections of Indian society have been deprived of justice for long long years; they have had no access to justice on account of their poverty, ignorance and illiteracy.The majority of the people of our country are subjected to this denial of ‘access to justice’ and overtaken by despair and helplessness, they continue to remain victims of an exploitative society where economic power is concentrated in the hands of a few and it is used for perpetuation of domination over large masses of human beings..... The strategy of public interest litigation has been evolved by this Court with a view to bringing justice within the easy reach of the poor and disadvantaged sections of the community.”

⁴AIR 1987SC38.

Legal Aid System in India

Legal Aid in India intends to provide equal protection of law and equal access to justice to all people, particularly the poor who lack means to knock at the door of justice. Poor should not be marched upon by the rich because they lack means to seek justice. Equality before law is meaningless unless unequals are made equals. It is evident that the guarantee of equal protection of laws as well as equal access to justice would be no more than an empty platitude, a teasing illusion, if those who lack means, the socially and economically weaker sections of society, are not provided means to access of justice. When rich can enjoy the luxury of approaching the court of law and the poor who need it equally cannot have it, because its expenses put it beyond their reach, the threat to the continued existence of democracy and rule of law is not imaginary but real, very real. Democracy and the rule of law cannot survive if machinery of justice is not accessible to the poor as it is accessible to the rich.

In the context of constitutional demands and state obligations, legal aid has assumed a more positive and dynamic role which must incorporate vital and preventive administrations. Relieving ‘legal poverty’, i.e., the insufficiency of numerous individuals to make full utilization of law and its organizations has now been acknowledged as a component of a ‘welfare state’. Apart from the social, monetary and political prerequisites, on which the claim of legal aid rests, it is presently perceived as an established right emerging under articles 14, 21, 22(1) and 39A of the Constitution and additionally under various statutes and enactments which likewise get their power from the constitution. The Constitution guarantees ‘Right to Constitutional Remedies’ as a fundamental right.

The National Juridicare Report had featured the need to decipher the articles of the Constitution with regards to ground substances. The initial judicial attitude towards legal aid was not progressive in the sense that the bigger part of legal aid went unrecognized. As observed in *Janardhan Reddy v. State of Hyderabad*⁵ and *Tara Singh v State of Punjab*,⁶ the apex court took a restrictive interpretation of statutory provisions giving a man the “right to a legal advisor”, the progression to perceive legal aid as fundamental right directly under Article 21 (switching the prior position), was taken in *SunilBatra v. Delhi Administration*⁷ which managed two circumstances in which a detainee would be entitled for legal aid.

⁵AIR 1951 SC 217.

⁶AIR 1951 SC 411.

⁷AIR 1978 SC 1675.

To begin with, to seek justice from the jail experts and second, to challenge the decision of such authorities in the court of law. As a result, the requirement for legal aid was seen not only in judicial proceedings, but also in the quasi-judicial proceedings. The issue of Right to free legal aid of a needy and poor accused was particularly considered out of the blue by the Supreme Court in *M.H. Hoskot v. State of Maharashtra*⁸ wherein the right to legal aid was considered as a natural component of reasonable and fair procedure. "...This right to free legal aid is the duty of the government and is an implicit aspect of Article 21 in ensuring fairness and reasonableness; this cannot be as government charity", said Justice Krishna Iyer. Along these lines, the Judiciary, through its inventive and far reaching interpretations, presented a comprehensive importance to the idea of legal aid. In a series of pronouncements, the apex court emphasized that legal aid might be dealt with as a piece of Right to Life under Article 21 and furthermore Right to Equality under the watchful eye of law under Article 14.⁹

Barriers To Justice: What Prevents Man From Accessing Courts?

In a welfare State like India where people are known for its cultural and lingual diversity, it is the duty of the State to guarantee equal administration of justice as it is a sine qua non of fair administration of justice. To promote equal administration of justice regardless of financial or other incapacity, the concept of free legal aid emerged. It advances the saying- "*justice should not only be done but seem to be done*".

Another obstacle in the way of administration of justice is delay, cumbersome process and high litigation cost. These issues turn out to be more unpredictable when a man who precedes a court for insurance is poor, uneducated or oblivious about his rights. Inability to get easy, cheap and speedy justice shakes the confidence of people in justice administration system.

Delay and Cumbersome Process

The superfluous entangled and bulky nature of litigation structures that burden litigation are a source of concern, bringing about grave unfairness to poor people. It is not uncommon for any criminal case to drag for a considerable length of time. Amid this time, the accused travels from the zone of 'anguish' to the zone of 'sympathy'. The witnesses are either won over by muscle or money power or they become sympathetic to the accused. As a result, they turn hostile and prosecution fails. In some cases, the

⁸AIR 1978 SC 1548.

⁹Hussainara Khatoon v. Home Secretary, State of Bihar, AIR 1979 SC 1377; Khatri v. State of Bihar, AIR 1981 SC 928; Suk Das v. Union Territory of Arunachal Pradesh, AIR 1986 SC 99; Kishore v. State of Himachal Pradesh, AIR 1990 SC 2140.

recollection becomes fade or the witnesses die. Thus, long delay in courts causes great hardship not only to the accused but even to the victim and the State.

Speedy justice is the right of every litigating person. There is no denying the fact that delay frustrates justice. In the recent past, litigation has increased immensely. The population growth, improved financial conditions, lack of tolerance and materialistic lifestyle may be some of the causes. But in any case, the delay in dispensation of justice has to be eliminated by taking effective steps otherwise the day isn't far when the entire system will collapse.

Costs

To get justice through courts one needs to experience the complex and expensive procedures associated with prosecution. One needs to tolerate the expenses of suit, including court fees and, obviously, the legal counsellor's charge. A poor individual who is scarcely ready to nourish himself won't have the capacity to bear the cost of justice or then again obtain legal redressal for a wrong done to him, through courts. Moreover, a large piece of the population in India is illiterate and live in abject poverty. Therefore, they are totally ignorant of the court-techniques, are afraid and confused when looked for the legal machinery. Accordingly, a large number of people in India are not in a situation to authorize their rights, constitutional or legal, which as a result creates disparity.

Independence of Judiciary

Independence of Judiciary is the sine qua non of the democracy. An independent judiciary alone can fulfil the task of getting justice to the poor. The judiciary should not be swayed by the arguments of one side and close his eyes to the argument of the other side. It should be capable of seeing through the curtain and capable of evaluating the arguments and come to a conclusion.

State of Infrastructure

A "one size fit all" policy would be inappropriate to characterise this issue. Pendency - especially of afresh cases, is not a negative phenomena. With the increase in levels of ease, success, economic advancement, literacy, awareness and understanding, the filings of new cases tend to increase. Each and every case requires a characterized and "adequate" case life with the goal that justice is not hurried and buried. It is only when this defined time line is not followed, a "pending" case turns out a part of "arrears". All things considered, it is well observed fact that the existing judicial personnel has been unable to meet the demands of justice which is reflected in the high number of cases lying pending before the courts.

Conclusion

Access to justice is the pillar on which any successful legal system rests. There is a high possibility of people losing faith in the legal system and the judicial institutions on the off chance that it can't get justice within a reasonable time span and at reasonable cost.

The existing legal and institutional mechanisms for promoting access to justice are inadequate. In every democracy, the government has one noteworthy part to play i.e. to ensure the privileges of every one of its nationals. In India likewise, steps are taken by both the parliament and the judiciary to secure justice. It will be important to stress that India has not the deficiency of laws for securing justice. It is only the lack of dedication for the implementation of the laws. It will be exceptionally advantageous for the political gentry to learn that no nation can be called as developed unless and until it secures justice to each and every single individual of the society. It ought to likewise be recalled that it isn't just the obligation of the institutions to work for achieving justice for all the sections of the general public rather it is the obligation of each individual to assist so the justice can be secured to everyone.