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Access to Justice: A fulcrum to Constitutional Machinery

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Abstract

Access to justice which is considered as one of the fundamentals among all fundamental rights and it includes essential elements such as representation, accessibility, enforcement, and adjudication of grievances. Although it is a very wide term its application in the present manner is contracting which is leading us towards crisis of justice. The provisions of this essential could be traced from our supreme law as well as from international humanitarian laws.

Due to many procedural hurdles our laws and legislations are not able to serve their real purpose and thus judiciary is also not helping in serving the cause of justice which is the sole reason behind its establishment. All the concerned authorities and organs must incorporate necessary reforms in the legal framework of our country so that the existing vacuum in our legislations could be traced and exterminated from the roots of machinery.

Keywords: fundamental, adjudication, grievances, humanitarian, incorporate, framework, framework.

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Introduction

Access to justice is a very wide term which not only means that every person who seeks justice must get adequate opportunity to approach the court of justice, but also includes the quality of justice, the time taken to get the justice, and the effect of judgment so delivered to the unrepresented class of society. It is one of the primary right among all other human rights as without right to access an individual will not be able to represent himself and get redressed for violation of the legal provisions. The access to justice in the Indian Judicial System can be traced from common laws which are deep rooted in our codes.

Broadly, the access to justice can be divided in two significant strata's; firstly it represents strong and effective legal system with well defined rights and duties which are backed by legislation and regulations. Secondly, it shows the availability of the efficient legal mechanism to the general litigant public who comes before court of justice in order to access the remedies available for the violation of the rights and duties. It is the fulcrum around which the legal mechanism of the country revolves, if it is obsolete or outdated it can create vacuum in the procedures of indemnification established by law.

It is clearly enshrined in the Preamble of Indian Constitution that providing social, economical, political justice to the citizens will be the prime aim of the welfare state in our country. Not only has our supreme law of the land talked about the importance of access to justice, but many international conventions and laws have made it as a fundamental among all fundamental duties of the state. Universal Declaration of Human Rights (UDHR) has made access to justice to be the foundation of any legal system of the country and has made judiciary to be the protector and developer of this access mechanism.

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However, the existing legal framework is completely compromising with the access as the redtapeism is very rampant and is increasing with high rate and this can be blatant violation of the rights safeguarded by the Constitution. Crisis of Justice is what we are heading towards as although as per reports a single judge of subordinate court is able to dispose of 1200 cases per year, but the amount of new cases filed is 10% more than the rate of disposing. There is 2000 vacant positions of judges in the subordinate and High Court which is adding more flame towards this problem.

Challenges and Barriers before access to justice

The challenges and barriers before access to justice in the prevailing legal system and legislations:-

- **Lack of awareness** – A large section of society is still not aware of their rights, and legal provisions available with those rights like right to receive free legal aid by state for presenting and protecting the rights. The legal illiteracy exists at a very high rate and many professionals of other fields are unaware about the rights and duties available for them.

Also, people have learnt to live in the existing stage of suffering and have learnt to close their eyes like pigeon when a cat is around i.e. for them when a problem is around.

- **Excessive number of laws and legislations** – The United Nations Development Programme (UNDP) in its Note on access to justice have made it clear that too many laws and legislations for particular problem also acts as a barrier in accessing justice as it consumes more time to provide judgment or order.

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- **Delay in adjudication** – It is the root cause of every problem as too current legislations and mechanism is promoting an undue delay and procrastination. The legal machinery is working at a very slow pace and is unable to move hand in hand with the dynamic needs.
- **Procedural Hurdles** – Many times court is not able to solve its real purpose as they are forbidden or restricted by the procedure established for the particular purpose. It also discourages litigants as in order to access the justice they have to follow long and time consuming and oppressive procedure.
- **Impropriety in investigation and prosecution** – Involvement of the foul plays in the investigation of criminal proceedings also acts as a barrier between justice and its access. Political and communal bias in the prosecution may mislead the court and thus deviate the courts of justice to solve their real purpose.
- **Expensive process** – It is not only time consuming, but also an expensive process which makes it worse and deprives the marginalized and backward section of society to come up and serve the cause of justice. The backward section of society is deprived to get access as the amount involved in getting redressed is too high and which disappoints them to file litigation.

As compared to other countries the conviction rate in our country is below 40% of the total cases registered¹. Although India is the country with highest crime rate, but lower when it comes to conviction this fact clearly proves the involvement of foul plays in the prosecution and investigation. It is not like our legislations are full of loopholes or obsolete, but the manner in

¹ Per Chief Justice S.R. Bannumath in judgment dated 21-01-2010 in W.P. No31031 of 2009, para 26.

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which they are implemented or procedures for their application is not matching in the dynamic society.

Strategies that must be adapted to strengthen the capacity of framework:-

There is an imminent need to make certain reforms in our legal framework in order to make it efficient and effective. The reforms are much needed in order to serve the cause of justice and to build a powerful mechanism for getting redressed.

The manner in which the capacity could be rebuilt is through:-

- **Legal Education** - One of the most important things which must be done as soon as possible in order to see the judiciary serving its real cause is through imparting legal education to the marginalized and backward community. Students from various law colleges throughout India could be used for this strategy as they have more efficiency to convey their recent studies to the unawares. It will not only help in bringing legal awareness, but also help the students to know the root problems of our country and then using their skills for upliftment of the marginalized.
- **Coherence in the laws** – Instead of having bulk of laws for a single circumstance there must be cohesiveness in a single legislation which will be able avoid undue delay in the prosecution of accused.
- **Appointment** – There must be immediate appointment of judges in the existing vacancies so that redtapeism could be avoided and the disposal of cases will increase as compared to the current rate.

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- **Relaxation of procedure** – In order to see law serving their real purpose it is important to relax the procedural hurdles so that the important issue to decide comes in the eyes of justice. Public Interest Litigation (PIL) is a live example of this point as we can see that by relaxing traditional doctrine of locus standi in the PIL matters we are able to see that justice is reaching even the unrepresented class of society.
- **Fixing of time** – It is important to impose time restraint in order to avoid unreasonable delay which will not only make this process costly and cumbersome, but also bury the real purpose of the establishment of this machinery.

Comparative Study:

The judicial system of every country plays an intrinsic role in the smooth functioning of the entire machinery and it is very important for the legislature to introduce timely reforms so that the objects of its formation are not defeated because of obsolete mechanism. Here is the comparison of Indian Judicial System with other countries:-

1. **Judicial Transparency** – In the United States, the federal court has made case files and dockets available in public domain with the help of Public Access to Court Electronic Records (PACER) over the Internet since 1997.
However, in India there is no such portal which can provide all the documents available in public domain, and Right to Information is only method through which some transparency can be maintained. Also, it is upto courts discretion whether to provide document under RTI, hence judiciary is acting above the law at its discretion.
2. **In court recording system** – In many countries including United States there is provision of in-court recordings for making judicial proceedings more accessible to the

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media and public, which provides transparency, accountability, and awareness of court proceedings.

In India, there is no such provision of in court proceedings and the courts in some cases may allow the recording of proceedings, but there is no such well defined rule to regulate such systems.

- 3. Freedom of Press** – Freedom of Press is a part of fundamental rights of many countries and this right plays an important role in creating legal awareness in society. The media even airs programs such as the people's court and Judge Judy based on legal court proceedings.

In India the right to freedom of press is subject to many barriers and it is highly restricted in India. The restrictions imposed on this right act as a barrier to interaction between citizens and the judiciary.

- 4. Court staff** – Court staff plays an important role in administration of justice in United States. They overlook at substantive work like drafting, legal research and this helps the judges to focus on the demands of adjudication.

However, in India there is huge pendency of vacancies at essential posts, and inefficient staff which makes administration process for judges to much tedious and cumbersome.

So, in order to gain confidence of public, and to make the process of access to justice more efficient and effective there must be continuous changes in the machinery of administration of justice.

Conclusion

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It is the high time to incorporate much needed reforms in access to justice so that Indian Judiciary will be able to serve the cause for which it was established. The current approach is not only making innocents struggle, but also making our citizens lose faith in the legal system of our country. So, in order to maintain and restore the faith of the Indian citizens it is very important to make necessary changes in our framework.

The need of adequate as well as trained is also equally important as it would not only help in reducing backlogs of the system, but will also help in easy and quick disposal of matters. So, there must be a proper mechanism for selection and appointment of qualified personnel and no pendant vacancies should exist for a longer period of time.

It is the duty of all the three organs especially of Parliament to show concern towards this real cause and incorporate certain amendments or to take necessary steps in order to make justice fruitful. All the authorities must join hands and take much required steps over this issue so that this problem is solved from its roots and our system is extracted from the trap. The manner of functioning must be such that in which justice is not only done by the courts but actually seen to be done.