

ACCESS TO JUSTICE IN INDIA: REALITY OR MYTH?

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ABSTRACT

A just and equitable society is characterized by access to justice, which is a fundamental component of the rule of law. This article provides a thorough examination of the idea, starting with a conceptual introduction and following its development over time within the Indian legal system. It critically examines the function of the Indian judiciary, emphasizing several essential rulings from the Supreme Court and other High Courts that have significantly advanced and expanded this idea. The article highlights enduring structural flaws, from procedural intricacies to socioeconomic obstacles, that impede the attainment of justice for marginalized and vulnerable groups despite judicial activity and constitutional protections. To close the gap between legal rights and actual access, the discussion concludes with proposals for workable reforms and policy-oriented solutions. By reiterating the necessity of an inclusive, easily accessible, and responsive justice delivery system in India, this article aims to contribute to the current intellectual and policy discourse.

Keywords: Access to Justice, Indian Judiciary, Legal Reforms, Judicial Activism, Justice Delivery System, Rule of Law.

1. A PRELUDE

One of the fundamental tenets of the rule of law is access to justice. This idea is based on the belief that everyone should receive justice equally, regardless of gender, class, creed, status, or religion. The concept of providing free legal aid to the underprivileged segments of society is based on the conviction that “justice belongs to everyone.” Articles 14, 21, 32, 226, and 39A of the Indian Constitution contain clauses that ensure equal justice and free legal aid. Free legal assistance is mentioned explicitly in Article 39A¹, which is under Chapter IVA, i.e., the Directive Principle of State Policies (DPSPs), whereas Articles 14, 21, 32, and 226 deal with the aspects of access to justice. Despite being non-justiciable, DPSPs impose a responsibility on the state to guarantee that our judicial system fosters both justice and free legal assistance. Through various channels, the state provides legal assistance to anyone on the list of recipients of free legal aid. To guarantee the efficient execution of access to justice, India has established Legal Services Authorities at the national, state, and district levels under the Legal Services Authorities Act, 1987. The eligibility for free legal assistance is outlined in Section 12 of the Legal Services Authorities Act of 1987². It includes a list of beneficiaries, which provides for all women and children, members from Scheduled Tribes and Castes, industrial workers, victims of mass disasters, people with disabilities, sufferers of human trafficking, people in custody, and all individuals with a yearly income of a maximum of three lakhs for cases in district and high courts and five lakhs for cases in the Supreme Court.

2. ACCESS TO JUSTICE FROM JUDICIAL LENS

In the landmark judgment of *Hussainara Khatoon v. State of Bihar*³ The Hon’ble Supreme Court of India has recognized ‘free legal aid’ as a fundamental right enshrined under Article 21 of the Constitution of India. The court held that free legal aid is an inalienable right of a prisoner who has no financial means to engage a lawyer to represent him before the court. Thus, access to justice coupled with free legal aid becomes fundamental in criminal law jurisprudence. The Framework designed by the Judiciary in India plays a proactive role in safeguarding the rights of its citizens. Yet, we come across cases daily in which justice has not been done to the victims even after 30-40 years. There are increasing cases of police encounters, custodial deaths, media trials, etc. These instances give the impression that ‘justice delayed is justice denied’, meaning that the justice is not the one the victim/state is seeking. The fact of delayed justice, non-reporting of cases, lack of legal awareness, etc., casts doubt on whether access to justice is a reality or remains a myth in India.

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¹ Art. 39A, Constitution of India

² s.12 Legal Services Authorities Act, 1987

³ (1980) 1 SCC 98

The constitutional mandate under Article 39A was to provide equal justice and equal opportunity to be heard without any discrimination, which is also a facet of natural justice. The principles of Natural Justice include a right of *Audi Alteram Partem* to an individual at trial, which means that he can't be convicted without being heard, and if such an individual is unable to engage a lawyer citing financial constraints then it becomes the duty of the state to provide him with legal assistance otherwise it will be a case of gross failure of justice. In the case of *Khatri and Ors. v. State of Bihar*⁴. The Supreme Court ruled that the idea of Access to Justice includes not only free legal help, but also the person's awareness of their entitlement to free representation in court. This goal was reaffirmed in the case of *M. H. Hoskat v. State of Maharashtra*⁵, in which the Hon'ble Supreme Court ruled that the right to free legal aid is a constitutionally guaranteed fundamental right. The Indian Judiciary is dedicated to upholding the principles of natural justice; we believe that everyone deserves a fair trial. In the landmark case of *Ajmal Mohammad Amir Kasab and Ors. v. State of Maharashtra*⁶, the Indian judiciary ensured that even a terrorist should be allowed to represent himself, and he was given legal representation at the expense of the state, to ensure that he is not condemned without being heard.

The Indian judiciary is making commendable efforts to broaden access to justice by building facilities such as Lok Adalats, Outreach programs in association with legal services authorities and other NGOs, the recruitment of Paralegal Volunteers, awareness campaigns, and so on. The Indian Judicial system is adapting the paradigm shift from traditional ways to technological advancements in a magnificent way, from the introduction of E-courts, e-filing of cases, online hearings, digitized legal resources, to having access to a hybrid mode of hearings with real-life court room experience at our workplace, which is for the ease and convenience. This flexible approach has helped not only the courts and litigators, but also the parties knocking on the doors of courts seeking justice. The introduction of obtaining transcripts of court hearings is also a recent advancement.

3. ROLE OF EXECUTIVES AND JUDICIAL ACTIVISM

The joint efforts of the Executives and the Judiciary have helped establish the Alternative Dispute Resolution mechanism, which reduces the caseload and offers a quick out-of-court settlement of issues via various modes such as arbitration, mediation, and conciliation. This also includes *Lok Adalats*, where matters that require less application of judicial wisdom can be dealt with, for example, cases under the Motor Vehicle Act, Consumer Protection Act, etc. The establishment of the Fast-track Court to expedite the disposal of cases involving women and children is one such significant step towards strengthening access to justice. The Constitution of the National Legal Service Authority and other legal service authorities require public awareness campaigns to ensure free legal aid, which is significant. But the shortcomings of Lok Adalats and fast-track courts can't be overlooked. There is a limited impact of digitization on courts and rural India; there are mixed outcomes in NALSA's effectiveness across states, and the slow progress in filling judicial vacancies and building infrastructure cannot be ignored. Both the judiciary and the executive branch are working hand in hand to expand access to justice across the country. The initiatives taken by the Ministry of Law and Justice to create a comprehensive framework for access to justice include implementing *Nyaya Bandhu* and platforms like *Tele-Law*. *Nyaya Bandhu* is a pro-bono legal services organization functioning throughout the country, connecting practicing advocates who are willing to offer legal pro bono assistance with the marginalized beneficiaries of legal services through mobile technology⁷. Whereas tele-law is a platform that aims to bridge the gap between those seeking legal assistance and those providing it. It works through common service centers in a video-conferencing mode.

The introduction of e-courts has not only made navigating the courts smoother, but also streamlined the filing of cases/petitions through the e-filing mode. Under this scheme of access to justice, the beneficiaries are not restricted to the general public; it includes a wide range of litigators, court staff, parties, and witnesses.

⁴ (1981) 1 SCC 627

⁵ (1978) 3 SCC 544

⁶ (2012) 9 SCC 1

⁷ Free Legal Aid And Advice Through Nyaya Bandhu Program. Available at (<https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=1944789>) Accessed on July, 18, 2025.

The judicial dynamism led to the introduction of various compensation schemes, such as the Victim Compensation Scheme. The legal services authorities are proactively involved in providing compensation to victims. This scheme aims to provide compensation to crime victims. For this, the Victim Compensation Fund is created, which receives funding from the respective state governments. The idea behind creating this fund is to provide the victim with the necessary support and to help mitigate their suffering. For the victims of sexual offences and rape survivors, we have the *Nirbhaya Fund*, and similarly, for the victims of acid attacks, the Laxmi Fund has been created. The introduction of three new criminal laws has the objective of promoting fair trials, by providing speedy trial and access to justice more effectively. In *Bhartiya Nagarik Suraksha Sanhita, 2023*, the provisions of the Witness Protection Scheme are expressly provided to ensure a fair trial. This comprehensive approach not only ensures that the concept of legal aid is effectively implemented but also encompasses a wide range of services beyond traditional legal representation. It holistically promotes access to justice.

4. LACUNAS IN THE EFFECTIVE IMPLEMENTATION OF ACCESS TO JUSTICE

Unfortunately, even with all these technological advancements and intense efforts by the judiciary and executives, there are problems such as judicial delays, resource constraints, and economic hardships. Geographical barriers, lack of legal awareness among the general public, quality of legal aid, and systemic biases remain in a sad state of affairs. There are over 40 million pending cases⁸, in the courts, which cause prolonged litigation, transfer of judges, and lack of infrastructure in lower courts, form a significant hardship. It ultimately results in delayed justice, high litigation costs make justice inaccessible to the economically disadvantaged strata, provided they are not very educated and lack legal awareness, there exists a rural-urban divide in courts, which creates a problem while accessing judicial remedies, social inequalities, gender discrimination, and caste-based biases pose a hindrance in making legal representation. There are challenges in the effectiveness of legal services due to underpaid and overburdened legal aid counsels.

5. SUGGESTIVE MEASURES: A WAY FORWARD

To ensure the effective implementation of Access to Justice in India, we need immediate judicial reforms that focus on filling judicial vacancies, improving existing infrastructure, and reducing litigation delays through process optimization. There should be subsidized legal services, fee waivers, and expansion of legal aid for citizens with lower incomes. We should increase the pace of outreach programs and public awareness towards legal rights and legal services, especially in rural areas of India. The promotion and expansion of Alternative Dispute Resolution mechanisms are of utmost importance, as they ensure effective and speedy remedies for the parties without resorting to litigation. Last but not least, we must adopt measures to improve accountability and ensure fair representation. These are some of the many ways to achieve access to justice in practice.

6. CONCLUSION

Access to Justice is both a right and a necessity for a functioning democracy. Access to justice is a constitutional mandate, yet people often find it inaccessible or out of reach. The belief that if one is an outsider and not very familiar with legal procedures, then this can't be their cup of tea is prevalent in society and needs to change. The drive for justice gives a voice to the voiceless and serves as both a sword and a shield. But, for that, every individual must know where to approach when they come across a legal problem, and the sense of fear and doubt must not cast them away from the doors of justice. To keep citizens' faith in the concept of justice alive, it is the state's obligation to make them believe that the justice delivery system is working fairly and without internal or external bias. We must always strive for a welfare state; to do so, we must reconcile aspirations and reality, and, to the best of our capabilities, achieve the aspired reality by introducing sustainable reforms and effective policy implementation. Let us all commit ourselves to making justice accessible to all citizens in India in whatever way we can.

⁸ https://njdg.ecourts.gov.in/njdg_v3/