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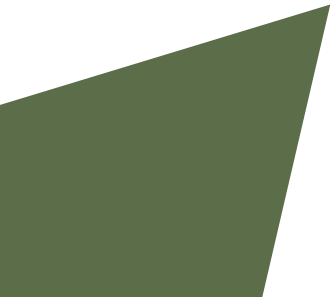
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# Approach to Equity as Human Right

Sayani Das & Shreya Srivastava

## ABSTRACT

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*Equity is viewed as the sole motivation behind an individual moving toward the court. The Supreme Court of India encourages the significance of guaranteeing equity to the oppressed party by making accessible most stretched out access to the equity and the settling framework. It has done likewise through the statute it made on access to equity. In the event that equity is a key ultimate objective of the way toward going to court, at that point getting to the courts that empower equity must be investigated. Access to Justice has been alluded to and credited as an integral part of life in all the enlightened social orders over the World. It is of such criticalness that no administration can be made by overlooking such an idea Therefore, the essential point of this article would inspect the statute of access to equity both in the Indian and the International setting and how the expression "Access to Justice" shapes an imperative piece of the fundamental human privileges of individuals.*

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**Keywords:** Access to Justice, Adjudicating System, Jurisprudence, Justice and Human Rights.

## INTRODUCTION

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Whether in International Law or Domestic Law, access to justice is of fundamental importance and this can be achieved only by effective judicial remedies. The citizens all around the world are vested with some rights to protect their life and living. Contrary to this there are many external forces which try to infringe the citizens of their rights and when this situation takes place, the injured individual can be rescued only with the help of justice.

It is easy to be said than done and this is applicable in the case of 'access to justice' as well. Access to justice as a human right becomes very difficult to avail because of the stringent legal procedure attached to it. The main barriers in the path of access are- exceptions with respect to international justice, the specific treaty agreement (when a particular access is guided by specific treaty agreement then few ancillary complications gets attached to it, like- the other norms or doctrines may start exercising their jurisdiction), and also the non-reviewability of UN Security Council, etc.

Now, if we look into the Indian perspective, it can be observed that the judicial system is deep rooted into the common law practice and the concept of "access to justice" is the foundational stone. The words "access to justice" primarily aims at sufficing justice to the people availing the court of law. But the definition is just not confined to this as they also mean, nature of various rights, quantity of courts, quality of justice, independence of judiciary, legal aid and the public interest litigation. This Article will aim at explaining the International and Indian aspect broadly and as per legal provisions.

## ACCESS TO JUSTICE (INDIAN CONTEXT)

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As we have already seen that Access to Justice is a phrase that has a Common Law origin, it is important to understand what adversarial legalism is. Now, a legal setup working on the adversarial system is one which is basically carried on in the countries following the Common Law system and as contrary to the general notion where there is complete neutrality followed by the state and the litigations are initiated and conducted by the parties to the case and only the cases entailing criminal matters are referred to the State for the initiation of a legal proceedings. The concept of Access to Justice is also originally based on this Adversarial Legalism and in India it is a Legacy obtained for the long years of British raj.

The very set up of Adversary System of law has overpowered the already existing system of Community Justice and the ancient inquisitorial model.<sup>1</sup> The concept, for being a result of the

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<sup>1</sup> Amit Pratap Shaunak, Access To Justice; Available at: <https://www.mondaq.com/india/human-rights/369048/access-to-justice-in-india> [Accessed on 30th May, 2020]



Colonial Minds failed deliver to the requirements of the people of the country since it was only to suit the power holders (here the Britishers) to avoid dissent which were often faced by them for denial of rights to the Citizens of India. The Colonial masters never in their tenure focused on the requirements of ‘*Real or effective Justice*’<sup>2</sup>. In other words it was all de jure justice that was focussed on instead of aiming to achieve the de facto justice.

These Lacunae facing the old concept of Access to Justice were cured with the coming into force of the Indian Constitution in the year 1950, which restructured, redesigned and in turn modelled the scope of the concept to match the Indian perspective of justice. The Constitution was drafted by the founding fathers with an aim to achieve nation’s progress and also to secure to its people social, economic and political justice by acting as a basic grundnorm towards governance.

The various justice viz. Social, political and economic that are laid down in the preamble are incorporated by laying down various provisions of the Constitution either in the form of the Fundamental Rights that are adumbrated in the part III or the Directive Principles of State Policies that are put down in the part IV.<sup>3</sup>

Access to Justice under the Indian Constitution is not just a facet of Article 21 which guarantees Right to dignified life but the same is also ascribed to Article 14. The same was stated by a constitutional bench of the Supreme Court of India in the year 2016 while deciding the case of **Anita Kushwaha v. Pushpa Sadan**<sup>4</sup>. The court in this case enumerated the facets to the right of Access to Justice, to mean and include-

- A proper adjudicatory mechanism is to be provided by the State
- Such a mechanism must be easily accessible with regard to distance
- There has to be mechanism for speedy disposal of cases
- The entire mechanism of adjudication must be affordable

It is the founding fathers of the constitution had aimed to incorporate through the Constitution *the operation of the legal system that would promote justice, on a basis of equal opportunity.*

There are basically two constituents of the right to access of justice viz. **Right to fair and speedy trial; and the Right to free legal aid.**

- **Right to free Legal Aid**

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<sup>2</sup> Amit Pratap Shaunak, Access To Justice; Available at <https://www.mondaq.com/india/human-rights/369048/access-to-justice-in-india> [Accessed on 30th May, 2020]

<sup>3</sup> CONSTITUTIONAL VISION TO ACCESS TO JUSTICE IN INDIA; AVAILABLE AT: <HTTP://WWW.LEGALSERVICESINDIA.COM/LAW/ARTICLE/937/10/CONSTITUTIONAL-VISION-TO-ACCESS-TO-JUSTICE-IN-INDIA> [ACCESSED ON 30TH MAY, 2020]

<sup>4</sup> AIR 2016 SC 3506

The existence of the Right to free Legal Aid can also be traced to the Magna Carta 1215 wherein it is said that “To no one will we sell, to no one will we deny or delay right or justice”<sup>5</sup>. The same is also provided for in the Indian Constitution wherein any person unable to afford a legal support financially is entitled to free legal aid at the cost of the State. There are various articles in the constitution that depicts this right of free legal aid that is guaranteed to all the people of the country.

Article 14 of the Indian Constitution which guarantees equality before law as well as equal protection of law also guarantees to people equal subjection to law in the form of adequate legal assistance to the indigent.

Again Article 21 of the Indian Constitution that provides for the fundamental right of an individual to live a dignified life and that the right to live can in no situation be taken away except for procedure established by law i.e. in the cases of death sentence awarded to the criminals committing crimes of rarest of the rare nature. Such procedure entailing to abridge the right to life must be in accordance to the principle of Natural Justice. The rationale is that if right to dignified life would include fair trial amounting to the fair subjection of people to the law of the land, then it signifies the right of an accused to have access to a counsel to defend his case is again a facet of Fundamental Right enshrined in Article 21.

Further counsel for the accused must also be given sufficient time and facility for preparing the case of the defence. Infringement of these safeguards of reasonable trial would discard the trial and conviction, even if the accused did not ask for legal aid.<sup>6</sup>

Article 38 of the Indian Constitution makes it obligatory on the part of the State to strive to promote the welfare of the people by securing as well as protecting in an effective manner so as to achieve social order in which social, political and economic justice shall inform all the institutions of national life.

It is also Article 39A of the Indian Constitution that provides for justice to all and free legal aid. It makes it obligatory onto the state to secure the fair operation of legal system that would in turn promote justice on the basis of equal opportunity, and shall, especially, provide for free legal aid through proper enactment or schemes or in any other way, to ensure that the opportunities for securing justice are not denied to any citizen by reason of their economic disabilities. In the case of ***Madhav Hayawadanrao Hoskot v. State Of Maharashtra*** the "Preeminent Court didn't

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<sup>5</sup> Constitutional vision to access to Justice in India; Available at: <http://www.legalservicesindia.com/law/article/937/10/Constitutional-vision-to-access-to-Justice-in-India> [Accessed on 31st May, 2020]

<sup>6</sup> Constitutional vision to access to Justice in India; Available at: <http://www.legalservicesindia.com/law/article/937/10/Constitutional-vision-to-access-to-Justice-in-India> [Accessed on 31st May, 2020]

*spare a moment to infer this privilege in Article 22(1) and Article 21 together while squeezing into administration utilization of a Directive Principle of State Policy under Article 39-An of Equal Justice and free legitimate guide" .*

The perspective of people in India broadened with respect to civil liberties, post the decision in the case of **Maneka Gandhi v. Union Of India**<sup>7</sup>, wherein J. P.N. Bhagwati disclosing the heart wrenching state of affairs and callousness of the country's legal as well as the judicial system that has resulted in "*tremendous wretchedness and sufferings*" to the poor people and also the illiterates that led to complete disruption of person's right to observed that-

*"This terrible circumstance cries so anyone might hear for presentation of a sufficient and far reaching legitimate assistance programs, yet up until this point, these cries don't appear to have evoked any reaction. We don't think it is conceivable to arrive at the advantages of the legitimate procedure to the poor to ensure them against shamefulness and to make sure about to them their protected and legal rights except if there is an across the nation lawful help program to offer free lawful types of assistance to them."*

Also in the case of **Hussainara Khatoon v. State of Bihar**<sup>8</sup>, the court said that the procedure under which any person would be deprived of the right to life and personal liberty should be based on reasonable, just and fair standards. And that free legal aid services to the poor and the needy is an essential element of such a procedure.<sup>9</sup>

- **Right to Fair and Speedy Trial**

The Right to Fair and Speedy trial forms a pivotal part of the criminal justice system and any delay in trial by itself leads to denial of justice.

In the case of **Kadra Pehadiya vs. State of Bihar**<sup>10</sup> the court laid down that-

*"It is a crying disgrace upon our adjudicatory framework which saves men in prison for a considerable length of time without a preliminary."*<sup>11</sup>

The court also in a compassionate manner observed that *"... nobody will be permitted to be restricted in prison for in excess of a sensible timeframe, which we think can't and ought not surpass one year for a meeting preliminary ... we neglect to comprehend why our equity framework has become so dehumanized that legal advisors and judges don't feel a feeling of revolt at confining individuals in prison for quite a long time without preliminary."*

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<sup>7</sup> 1978 AIR 597

<sup>8</sup> 1979 AIR 1369

<sup>9</sup> Narendra Kumar, Constitutional Law of India, 10<sup>th</sup> Edn. P.385

<sup>10</sup> AIR 1981 SC 939 b

<sup>11</sup> Constitutional vision to access to Justice in India; Available at:

<http://www.legalservicesindia.com/law/article/937/10/Constitutional-vision-to-access-to-Justice-in-India>

[Accessed on 1st June, 2020]

Also in a bail petition filed by the petitioner in the case of, **Babu Singh v. State of UP**<sup>12</sup>, Justice Krishna Iyer laid down that-

*"Our equity framework even in grave cases, experiences moderate movement disorder which is deadly to 'reasonable preliminary' whatever a definitive choice. Expedient equity is a part of social equity since the network, in general, is worried in the criminal being condignly lastly rebuffed inside a sensible time and the honest being cleared from the extreme experience of criminal procedures."*<sup>13</sup>

The Code of Criminal Procedure, 1973 in its section 482 to be read with 483 lays down that any case has to be expeditiously disposed off/settled within 6 months. Adjournments can only be granted in case judiciary finds the circumstances of the case beyond its control. Overcrowded courts, inadequate resources, fiscal deficiency cannot be the reasons for deprivation of a person of his right to Speedy Trial.

In the case **Katar Singh v. State of Punjab**<sup>14</sup>, the court declared right to speedy trial as an important aspect of fundamental right guaranteed to people of their life and liberty. And in the case **A. R. Antulay v. R.S. Nayak**<sup>15</sup>, the Court declared certain aspects and guidelines relating to the speedy trial and that quashing of cases should only depend upon nature of the case.

## CURRENT STATUS OF ACCESS TO JUSTICE

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**The right has even after so many years failed to serve the aspirations of the millions of people who had dreamt of a society; free from the social evils such as communalism, corruption and so on, when the Constitution was being drafted. Our status towards providing access to justice to all the section of society is detrimental; thus it entails rampant steps to be taken towards saving the Country from such worse situation and aiming to regain the trust reposed by the mass.**

## ACCESS TO JUSTICE: AROUND THE GLOBE

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The Civil Legal Aid system has great potential to provide justice to the people who have faced the violation of their rights. But, there are obstructions in the path of accessing this. Barriers to access to justice can be visibly seen in one of the 'oldest democracy' i.e., in the United States wherein the

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<sup>12</sup> 1978 AIR 527

<sup>13</sup> Constitutional vision to access to Justice in India; Available at:

<http://www.legalservicesindia.com/law/article/937/10/Constitutional-vision-to-access-to-Justice-in-India>

[Accessed on 1st June, 2020]

<sup>14</sup> 1994 SCC (3) 569

<sup>15</sup> 1988 AIR 1531

racial discrimination among women, minorities and immigrants are rampant therein. To suffice the statement the current example can be brought into the scenario, wherein, an unarmed black man named George Floyd have been killed ruthlessly by an Ex-officer Derek Chauvin in the Minneapolis district of the United States. The fired officer has been charged with ‘manslaughter’ and ‘third-degree murder’ which have stir up the States in a propelling protests in a Pan-American way.

Most of the Asian communities are driven by the epidemic of ‘Poverty’ and this have been stressed upon by a report of 2005- defects in the plan for monetary turn of events, sought after by numerous conditions of the Asian locale, are sufficiently reflected in the developing neediness and social rejection of enormous divisions of the populace. Genuine infringement of monetary and social rights have gotten engraved in activities of the state. Influenced populaces find that in the present condition of globalization their own administrations are either incapable or reluctant to change the challenges they stand up to. Misuse of work and exhaustion of nature are a portion of the genuine types of infringement coming about because of the new financial game plans. Indigenous populaces are regularly especially influenced by such violations. Governments, having the essential commitment of tending to the neediness issue, have neglected to embrace quantifies that straightforwardly address the main drivers of destitution.

## **IMPLEMENTATION IS THE KEY**

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The idea of access to equity has different structures in Asia. During the 1970s, associations of legal counselors and social advancement laborers utilized legitimate intercessions that went past the standard idea of lawful guide. They understood that legitimate guide as customarily characterized would not generously resolve the enduring of poor people and the disadvantaged. The court-arranged way to deal with acquiring equity was insufficient. Laws, regardless of restrictions, must be valuable because of poor people and the hindered. Different structures in government and society ought to be used to completely address profound established issues of poor people and the distraught.

Indonesia's "auxiliary lawful guide," the Philippines' "formative legitimate help" and India's lawful assets approach are instances of lawful mediations that were utilized by lawful experts and para-experts in Asia during the 1970s and 1980s. They all centered around minimized gatherings, worked under the rule that current laws and lawful frameworks were commonly one-sided for the rich and the amazing, consolidated lawful work with social/network activation programs, underscored the significance of enabling poor people and the hindered, and occupied with law

change. During the 1990s such legitimate intercessions have likewise been known as open intrigue case or social activity litigation (especially in South Asia) and elective law practice in the Philippines.

From the 1990s to the present, more organizations were built up to deliver the entrance to equity question. More activities have been attempted, some effectively actualized. These activities incorporate the law and improvement programs that fuse legitimate strengthening as a significant segment. Studies on the effect of lawful strengthening exercises to a great extent show positive result, especially on getting poor and distraught networks to follow up on their problems. But access-to-equity law professionals face various difficulties. The 2008 Regional Conference on Lawyering for Social Justice and Human Rights prescribed various measures to address basic concerns and difficulties of these Asian law professionals, in particular,

- a. Systems administration and alliance working among attorneys and law gatherings
- b. Legal change projects and (re)formulation of government approaches, so as to improve access to equity by poor people
- c. Provincial planning, for example, setting the structure for incorporating equity work with expansive based advancement work, creating territorial law in regards to cases including global human rights instruments, building up database on best practices/documentation of achievements and difficulties, getting ready local human rights reports, and systems administration with other "networks" or entertainers (like national human rights organizations, companies)
- d. Gaining from the triumphs and disappointments in utilizing legitimate methodologies by the networks
- e. Proceeding with limit working to advance laws and global human rights instruments, augment utilization of the media, train individuals on universal human rights instruments and access to equity, and train paralegals
- f. Boosting linkages and fundamentally captivating global bodies and territorial developments.

Late activities in the area incorporate the improvement of close participation between the entrance to-equity law specialists and individuals from the legal executive, the administrators, and the legislature officials. Access-to-equity programs establish a critical piece of the human rights work in Asia.

## **SUGGESTIVE MEASURES & CONCLUSION**

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Worldwide points of view on viable approaches to reinforce access to the common legitimate guide framework incorporate assessing access, for instance, by social occasion data about who gets to the common lawful guide framework, how they get to the framework, how effectively they get to it, and what the results are for them; distinguishing hindrances to get to; bringing issues to light of lawful administrations that can address issues (regardless of whether those issues feel "lawful" or not); financing lawful guide; and guaranteeing the execution of equivalent access to equity.

The Declaration of 1999 provided with the Right and responsibility of Individuals, Groups and Organs of Society to promote and protect Universally Recognized Human Rights and Fundamental Freedoms gives that human rights safeguards, among different administrations, add to neediness easing, philanthropic help, post-strife remaking, and to improving individual markers of improvement, for example, access to human services and grown-up proficiency, among numerous different exercises. This announcement is significant in stressing the work on against neediness and access to equity as crafted by human rights protectors. Human rights-based way to deal with access to equity, key to understanding the "bigger opportunity" of being liberated from need and dread and being allowed to live in dignity, is a specific apparatus for these human rights safeguards.