

# Access to justice for marginalized people in India

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*“Injustice anywhere is a threat to justice everywhere”*

*–Martin King Luther Jr.*

## I. Introduction

In India, women, children, Scheduled Castes, and Scheduled Tribes, people with special abilities, LGBTQIA+ Community, and the elderly are looked down upon. These individuals are socially, financially, strategically, and lawfully overlooked and rejected in Indian culture.

Acceptance is of great important in social as well as legal settings. In justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract.<sup>2</sup> Justice is a conceptual desire. Therefore, the idea of “entitlement to justice” is rather vague, and is not limited to simply “settling” or “dismissing” a case. The goes beyond such that to bring acceptance to all in the legal framework, to encourage social acceptance as well.

The Constitution of India gives significant importance to equality and equity by guaranteeing certain fundamental rights. Even the Supreme Court has reliably attempted to decode these rights to ensure justice for the destitute and the marginalised. Unfortunately, reports show that access to justice is not an easy road in India.<sup>3</sup> Bewildering costs, confounding strategy, and nonattendance of care, etc. are some factors contributing to the appalling status of access to justice. This paper delves into the various facets leading to lack of access to justice and lack of support in legal battles for the poverty-stricken individuals and the people born into discrimination.<sup>4</sup>

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<sup>2</sup> Rawl, J., A Theory of Justice, Edition 1997, Cambridge, Cambridge University press, at 11.

<sup>3</sup> DAKSH, Access to Justice Survey, 2017

<sup>4</sup> Ghai Yash and Cottrell Jill, 2010, “Rule of Law and Access To Justice” Marginalized communities and Access to Justice”, Routledge, New York, p. 3

## II. Marginalised Groups

Marginalization, ironically, impacts a huge number of individuals across the globe. The Marginalised have usually little authority over their lives and suffer from a dearth of opportunities open to them in any capacity.<sup>5</sup> An endless circle of thwarting these people is established whereby the lack of a positive and strong relationship between various societal groups surmises discrimination and further limitation. This enormously impacts the improvement of people, as a society.<sup>6</sup>

Right, when everything is said in done term underestimation portrays the plain activities or tendencies of human social solicitations, where individuals who they see to get a handle on or without significant cut-off, are avoided, for example, restricted. These individuals, who are restricted, from a Group and Community for their security and coordination and are known as Marginalized get-togethers.<sup>7</sup>

### a. Classification of Marginalised groups in India

- People with special abilities
- Scheduled Castes
- Scheduled Tribes
- Elderly or Aged People
- Women



## III. Inaccessibility to Justice

There are a lot of reasons because of which common people do not opt to file suits in courts to get justice, some them being:

- Indian justice system is too slow.
- Indian justice system is too complex.
- Indian justice system is too costly

### a. Public Interest Litigation and Access to Justice

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<sup>5</sup> The Hindu, 07/10/2018

<sup>6</sup> <https://www.youthkiawaaz.com/2017/02/indian-judiciary-failure-and-solutions/>

<sup>7</sup> <https://www.indiatoday.in/amp/india/story/backlog-cases-in-courts-pendency-figure>

One of the methods to reach the road to justice is filing of a Public Interest Litigation (“PIL”), which is speedy and cheap. It eliminates the impediments of the poverty-ridden so help them achieve justice.

Justice P.N. Bhagwati proclaimed the introduction of PIL as the beginning of a new time. He believed that the justice system had now become more approachable as now the Court promoted litigation for shielding the sacred and legal privileges of the more vulnerable sections.<sup>8</sup> He expanded the idea further in the case of *People's Union for the Democratic Rights v. Association of India*, wherein he expressed:

**"It would not be correct or reasonable for expect an individual acting star reward public to bring about use out of his pack for setting off to a legal counsellor and setting up an ordinary Writ appeal. In such a case a letter tended to by him can be viewed as a fitting continuing."**<sup>9</sup>

The extent of the guidelines on *locus standi* were extended and the traditionalist stand was discarded to build the admittance to justice for the hindered. Justice Krishna Iyer commented, “If the focal point of gravity is to move, concerning the prelude of Constitutional command, from the conventional independence of locus standi to network direction of Public Interest Litigation.”

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Nevertheless, some reprimand PIL as a result of legal populism and bring up issues about its authenticity, constraints, and effect. It is likewise restricted by open intrigue supporters' lack of assets to explore the contested issue and accomplish positive cures.

b. Right to Free Legal and Aid Access to Justice

A real guide can be found in the 40th aspect of the Magna Carta, which is bestowed as under, “To no one will we sell, to no one will we deny or yield right or regard.”

Our Constitution provides, to individuals who in light of budgetary or some other clarification can't hold up under the expense of direction, a right to justice through Articles 14, 21, 22(1),<sup>10</sup> 38, and 39A. In a country where legal endorsement is discouraged and where the ostracised

<sup>8</sup> SP Gupta v Union of India AIR 1982 SC 149. Now any such person can approach the court in the interest of public or public welfare by filing a petition: In the Supreme Court under Article 32 of the Constitution of India; In the High Court under Article 226 of the Constitution of India; In the Court of Magistrate under Section 133 of the Code of Criminal procedure, 1973

<sup>9</sup> AIR 1982 SC 1473

<sup>10</sup> Article 22(1) provides that “A person arrested should not be detained in custody without being informed of the grounds for such arrest and should not be denied the right to consult and be defended by a legal practitioner of his choice.” Article 38 urges that “The State should strive to promote the welfare of the people by securing and protecting as effectively as it may by a social order in which justice: social, economic and political shall inform all the institutions of national life.”

groups find it hard to evaluate their legal standing and circumstances, the right to access to justice, equality in courts, and the right to free legal aid is of massive and extraordinary importance.

The courts have been trying to expand this right over the years. The Supreme Court, in *MH Hoskot's case*,<sup>11</sup> took the position:

**“If a prisoner sentenced to constraint is inside and out that issues unsuitable to rehearse his set up and genuine right of charm expansive of surprising leave to intrigue (the Supreme Court) for the need of legitimate assistance, there is clear in the Court under Article 142 analyze with Articles 21 and 39-An of the Constitution, ability to allot counsel for such kept individual 'for doing complete regard.”**

In *Menaka Gandhi v. UOI*,<sup>12</sup> Justice P.N. Bhagwati made the following perceptions:

**“We don't think it is conceivable to appear at the advantages of the genuine cycle to the poor to promise them against despicableness and to guarantee about to them their guaranteed and legitimate rights beside if there is a cross-country genuine help program to offer free lawful kinds of help to them.”**

He, further, in *Hussainara Khatoon v. State of Bihar*,<sup>13</sup> stated:

**“This is a set up right of each censured individual who is inadmissible to draw in a legal counsellor and secure legitimate associations, considering reasons, for example, discouragement, desperation or incommunicado circumstance similarly, the State is under a solicitation to give a legal guide to a charged individual if the conditions for the case and the essentials of esteem so require, gave the blamed individual doesn't object to the arrangement of such attorney.”**

Additionally, National Legal Service Authorities Act, 1987 (“NALSA Act”) supervises matters like bona fide direct, legitimate ability and certified consideration.

The real guide framework expected that the misfortune considered her advantages and how to progress toward the court, the genuine guide working conditions were open in eliminated towns and familial areas and that the legal counsellor picked was equipped to manage the work reasonable to the necessities of ordinary/familial individuals. These doubts did not work and got unessential to the concerned idea little of individuals.

#### c. Alternative Dispute Resolution and Access to Justice

Since a huge number of individuals in this nation are poor, ignorant, or unmindful, the State laid down the system of Alternative Dispute Resolution to advance justice based on equivalent

<sup>11</sup> Supra note 12

<sup>12</sup> AIR 1978 SC 597

<sup>13</sup> AIR 1979 SC 13690

openings. *Lok Adalats*,<sup>14</sup> *Grama Nyayalayas*,<sup>15</sup> *Ombudsman*,<sup>16</sup> and the NALSA are some bodies which target delivering speedy social justice to such individuals. Dr. A. S. Anand, a former Chief Justice of India, has wished that the next century would not be a century of litigation, but a century of negotiation, conciliation, and arbitration.<sup>17</sup> However, this is a dream still to be fulfilled since the ADR framework in India is not fully developed yet. Illiteracy and poverty stand as barriers to the realisation of this goal.<sup>18</sup>

d. Comprehension of the boundaries looked by minimized networks in getting to Justice

Care is the chief instrument for awareness. Presently, there is a dearth of care. For instance, majority of women in our country are yet oblivious and have no information about their rights. Although some NGOs work towards their upliftment, a great deal of work is still to be done.

Recently, in the *Shayara Bano case*, the Supreme Court declared the act of triple talaq as illegal and imparted that it was against of Article 14 and 21 of the Indian Constitution. The three assigned specialists on the five Judge Constitutional Bench oversaw against triple talaq while two decided in favour. Judges Kurian Joseph, R F Nariman and U Lalit said triple talaq needs to go while CJI JS Khehar and Justice Abdul Nazeer kept up triple talaq. Such judgments show the Supreme Court's liberal view on entitlement to dignity for all.

#### IV. Fundamental Rights

a. Right to Equality (Article 14-18)

Article 14 to 18 provides all with equality despite differences in race, position, sex, religion, or the place of birth. All have an equivalent right to discourse, work, live, and justice. Under the Indian Constitution, untouchability is abolished and discrimination based on the caste system is prohibited.

b. Right to Freedom (Article 19-22)

- Freedom of speech<sup>19</sup>
- Freedom of expression

<sup>14</sup> Lok Adalat is defined 'as a forum where voluntary effort aimed at bringing about settlement of disputes between the parties is made through conciliatory and pervasive efforts. Mentioned in Rao, P.C. and Sheffield, W, *Alternative Dispute Resolution, What it is and how it works*, Delhi, Universal Law Publishing Co., 1997 at 211.

<sup>15</sup> The e courts constituted under Gram Nyayalayas Act, 2008

<sup>16</sup> Ombudsman is a public sector institution, preferably established by legislative branch of Government, to supervise the administrative activity of the executive branch. Reif, L.C., *The Ombudsman, Good Governance and International Human Rights System*, Martinus Nijhoff Publisher, 2004, at 1.

<sup>17</sup> Law Commission Of India, Government Of India, April 2009, 222th Report on "Need for Justice-dispensation through ADR etc.", p. 13

<sup>18</sup> Ibid.

<sup>19</sup> <https://byjus.com/free-ias-prep/fundamental-rights/>

- Freedom of assembly without arms
- Freedom of association
- Freedom to practise any profession
- Freedom to live in any area of the nation.

c. Right against Exploitation (Article 23-24)

The prohibition of human trafficking safeguards the less privileged against exploitation. Further, this right prohibits the employment of children under the age of 14 years in hazardous industries and workplaces.<sup>20</sup>

d. Right to Freedom of Religion (Article 25-28)

The right to Freedom of Religion shapes an indispensable aspect of the Fundamental Rights. As India is a diverse State, numerous religions exist in our nation. To maintain harmony in diversity, this freedom is of crucial importance since it garners conviction, confidence, and love.<sup>21</sup> It was additionally indicated that India is a secular nation and is not biased towards any religion.<sup>22</sup>

e. Cultural and Educational Rights (Article 29-30)

- To preserve language, script, and culture
- Limitation on the basis of religion, race, caste or language

f. Right to Constitutional Remedies (Article 32)

Article 32 implies that an individual has the option to move to Supreme Court (and high courts likewise) for the enforcement of their fundamental rights. While Writs to the Supreme Court can be applied under Article 32, Writs to the High Courts can be applied for under Article 226.

## V. Conclusion

In the present situation, justice is not accessible to a very large number of the population in India. With the steep incline in several laws and the number of cases, the Courts are under tremendous pressure. According to various survey reports a very large number of cases is pending in Indian courts out of which majority of the cases are in District courts. People still do not approach the court due to the complexity of the procedure and high cost of litigation.<sup>23</sup> This

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<sup>20</sup> The Constitution of India, 1950

<sup>21</sup> NALSA website.

<sup>22</sup> Human Development Indicators, UN Human Development Index Report 2011  
<http://hdrstats.undp.org/en/countries/profiles/IND.HTM>

<sup>23</sup> <https://legaldesire.com/status-of-fast-track-courts-in-india/>

paper contains an innovative idea of establishing the subordinate courts or other options through which justice is easily accessible to all and things could be done in a more efficiently and quickly.

All the above-mentioned alternatives are a quick remedy been provided to the people and it would also reduce the pressure on the courts.<sup>24</sup>



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<sup>24</sup> <https://journals.sagepub.com/doi/abs/10.1177/2322005816652472?journalCode=alea>