



Access to Justice in Contemporary Society – A Holistic Approach

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Abstract

The complex concept which touches almost every aspect of human life that binds people together into a right and fair relationship is what is defined as justice. The constitution of India furnished innumerable constitutional articles that assures humans and citizens the right to access to justice. It is crucial to preserve and protect the belief among the citizens that the legal system is not biased to a particular sector of a community in reality the diminished zones of the society find it impossible to seek justice and injustice is laid down open across the country. Dr. B. R. Ambedkar faded Article 32 was the heart and soul of the Indian constitution is delivered the right to individual to move to Supreme Court to seek justice when they feel that their right have been done delete deprived. This paper fundamentally scrutinizes the causes due to which access to justice is not in the immediate approach to people of the country. The paper further discusses landmark judgements and methods that has upheld the right to access to justice which have emphasized the importance of legal aid and the obligation of the government to ensure citizens with right to injustice and free trial. The study also analyses the effectiveness of contemporary modes of access to justice which is complying of constitutional philosophy or preamble. The Authors also surmises other alternative ways through which citizens can get immediate access the justice in the light of constitution.

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1. INTRODUCTION

India came out as the Nation with the longest Constitution in the world, vowing every individual with their own rights and liberties. Still, in reality, a huge proportion of population of India finds it impossible to access justice. This has its root of cause from various different areas such as expensive suits and lawyers. An individual whether or not having any socioeconomic problems but he is definitely prone to come across a legal issue once in his life. The Indian constitution has every possible solution for the problems and preamble is the very essence to prove it. The preamble is an essential component as it lays down the main objectives which the legislation intends to achieve. It contains ideals that the Constitution seeks to achieve and gives direction and purpose to the Constitution. It also enshrines the grand objectives and socio-economic goals which are to be achieved through constitutional processes but the important question here is whether he would be able to afford the legal services he requires. The presumption on the Indian legal system has been generalized that coping with a legal problem on your own will cause distress, adverse physical health and

disagreeable verdicts which leads to simply giving up and accepting injustice. The people present in the marginalized sectors are the most affected by this as they possess very few resources to battle injustice. Martin Luther King Jr. once said, "Injustice anywhere is a threat to justice everywhere." Indian legal system fails in helping the public with the access to inexpensive and swift justice. There exists a responsibility in making the citizens believe that the system isn't biased to the favour of any particular sector of the society. This paper focuses on the research of the ways to access justice by general public and the relation of constitutional philosophy to it.

2. OBJECTIVE OF THE STUDY

The objective of the study is to help the downtrodden and vulnerable sector of the society to access justice and to make people aware of the wide range of ways to access to justice

3. THEORETICAL FRAMEWORK

Mr. Justice H. R. Khanna in his 'Making of Constitution said: "The framing of a Constitution calls for the highest

statecraft. Those entrusted with it have to realize the practical needs of the government and have, at the same time, to keep in view the ideals, which have inspired the nation. They have to be men of vision, yet they cannot forget the grass roots¹” The preamble is comparable to a condensed constitution. It brings to mind the lofty and expansive goals that our nation's founders had for our Constitution. The Indian Constitution's preamble is often referred to as the "soul," "spirit," and "backbone" of the document. The words “liberty, equality, justice and to promote unity and integrity”. In all these rights ‘justice’ takes a role for the betterment of the society as a whole. Justice requires that every person be granted at least some degree of freedom, it was necessary for all other people to be prevented, if necessary by the use of force, from depriving any individual of that freedom. This is the intellectual underpinning for freedoms and the constraints that are placed upon it, and they appear in the Indian Constitution in a suitable equilibrium. It is impossible to understand the Constitution in its entirety without first reading the preamble. The preamble is the section of the constitution that provides a concise summary of the motivations behind writing the constitution. Article 32 and Article 226 guarantee every Indian citizen access to courts. . Article 32 allows a person to bypass lesser courts and immediately petition the Supreme Court. So, the Constitution safeguards our judicial access right. Under Article 226 of the Constitution, a person can petition the High Court for a fundamental right violation or other concern. Unlike Article 226, Article 32 applies solely to basic right infringement. Article 226 allows the High Courts to hear non-fundamental right violations. Court access requires legal aid. The Supreme Court has advanced access to justice and upheld the Constitution's guarantee of this right. The courts often designate commissioners and expert organisations to handle pro bono or party-representation cases. Public Interest Litigation is used by courts to address problems of the weakest parts of society. Article 14 of the Indian Constitution guarantees equal treatment and equality before the law, and Article 21 protects life and personal liberty, which includes the right to access courts and judicial remedy in all circumstances. Article 32 and Article 226 guarantee every Indian citizen access to courts. . Article 32 allows a person to bypass lesser courts and immediately petition the Supreme Court. So, the Constitution safeguards our judicial access right. Under Article 226 of the Constitution, a person can petition the High Court for a fundamental right violation or other concern. Unlike Article 226, Article 32 applies solely to basic right infringement. Article 226 allows the High Courts to hear non-fundamental right violations. Court access requires legal aid. The Supreme Court has advanced access to justice and upheld the Constitution's guarantee of this right. The courts often designate commissioners and expert organisations to handle pro bono or party-representation cases. Public Interest Litigation is used by courts to address problems of the weakest parts of society. Article 14 of the Indian Constitution guarantees equal treatment and equality before the law, and Article 21 protects life and personal liberty, which includes the right to access courts and judicial remedy in all circumstances. Article 32 and Article 226 guarantee every Indian citizen access to courts. Article 32 allows a person to bypass lesser courts and immediately petition the Supreme Court. So, the Constitution

safeguards our judicial access right. Under Article 226 of the Constitution, a person can petition the High Court for a fundamental right violation or other concern. Unlike Article 226, Article 32 applies solely to basic right infringement. Article 226 allows the High Courts to hear non-fundamental right violations. Court access requires legal aid. The Supreme Court has advanced access to justice and upheld the Constitution's guarantee of this right. The courts often designate commissioners and expert organisations to handle pro bono or party-representation cases. Public Interest Litigation is used by courts to address problems of the weakest parts of society. Article 14 of the Indian Constitution guarantees equal treatment and equality before the law, and Article 21 protects life and personal liberty, which includes the right to access courts and judicial remedy in all circumstances. The Constitution of India is founded on the idea that an equal society that is free from prejudice and fear may best be developed by encouraging individuals to exercise their individual freedom in determining the kind of government that best serves them. Building a system of government in the form of methodical machinery that operates automatically on the wheels of standards and laws rather than on the whims and fancies of individual citizens is the fundamental principle upon which constitutional democracy is based. It is much simpler to imagine such a rule of law system than and a devise mechanism to support it. In this regard the Department of Justice initiative will help in providing justice even to the interior of society.

4. ACCESS TO JUSTICE AND JUDICIARY

“No individual shall be deprived of their life or personal liberty unless in accordance with the procedure that has been established by law, as stated in Article 21 of the Constitution”. In the case of *Menaka Gandhi v. Union of India*², the Supreme Court of India ruled that under Article 21, a person's life and liberty can only be taken away by following the procedure that is established by law. A procedure that has the potential to deprive a person of their life and their freedom need to be just, fair, and reasonable. One cannot consider a legal procedure to be just, fair, or reasonable if it does not include provisions for free legal aid to be made available to those who are low-income and illiterate in order to ensure that they are fairly represented in court. Hence, in order to incorporate provisions for free legal aid within Article 21, the Honourable Supreme Court expanded the ambit of Article 21. In the case *Hussainara Khatoun IV v. Home Secretary*³, the Honourable Supreme Court of India restated its position that the right to free legal aid should be included in Article 21. It should come as no surprise that the right to get free legal representation is an indispensable component of a process that must be "just, fair, and reasonable" before a person accused of a crime can have their life or their freedom taken away. This is a right guaranteed by the Constitution to every accused person who, for any reason, such as financial hardship, is unable to retain legal representation or get legal services. If the specifics of the case and the need for justice necessitate it, the state is required by law to offer legal representation to an individual who has been accused of a crime. assuming the individual who is being accused does not have any objections to the provision of such a lawyer. In the case of *M.H. Hoskot v. State of Maharashtra*⁴, the Honourable Supreme Court

¹ *DD Basu, Introduction to the Constitution of India, p. 3 (3rd Edn. 1946)*

² *AIR 1978 SC 597*

³ *(1980)1SCC98*

⁴ *AIR 1978 SC 1548*

of India once again reiterated the need of the State to give free legal help to poor people by issuing a ruling that was very similar to the previous one. "It stated that if a prisoner is unable to exercise his constitutional and statutory right of appeal including special leave to appeal for want of legal assistance, then it is the obligation of the court under Article 142 read with Article 21 and Article 39A of the constitution to assign counsel to the prisoner provided that he does not object to the lawyer assigned by the court. Additionally, it stated that if a prisoner is unable to exercise his constitutional and statutory right of appeal including special leave to appeal for want of legal assistance". The Supreme Court ordered all Indian magistrates to educate about free legal aid in Mohd. Ajmal Amir Kasab vs. State of Maharashtra⁵. When a suspect is brought before a magistrate, they have the right to legal aid, consultation, and defence. Thus, the magistrate who first produces a person accused of a cognizable offence must inform him of his right to consult and be represented by a lawyer and that, if he cannot afford one, the State will provide one for him. Articles 21 and 22(1) of the Constitution guarantee the right, which must be enforced. All magistrates were ordered to fulfil the above responsibility and commitment. Dereliction of duty would subject the magistrate to departmental action. In Anita Khushwa v. Pushpa Sadan⁶, a Constitution Bench of the Supreme Court supported earlier pronouncements that "access to justice" is a basic right under Article 21 and attempted to specify its components. Justice TS Thakur stated for the Bench that Article 21 and Article 14 provide access to justice. The Chief Justice of India also listed four aspects of access to justice: the state must provide an effective adjudicatory mechanism; the mechanism must be reasonably accessible in terms of distance; the adjudication procedure must be fast; and the litigant's access to the adjudication process must be inexpensive.

5. THE NEW PACE

Department of Justice which is a part of Ministry of Law & Justice, Government of India and one of the oldest Ministries of the Government of India help in attaining the aim of the preamble. Due to the increased workload and need for formulation of various policies and programmes Department of Justice was placed under the supervision of Secretary to Government of India on January 1, 2010. The Chief Justice of India, Supreme Court Judges, and High Court Chief Justices and Judges are appointed, removed, and handled by the Department of Justice. The Department also implements important schemes for Development of Infrastructure Facilities for Judiciary, setting up Special Courts for speedy trial and disposal of sensitive cases (Fast Track Special Court for cases of rape and POCSO Act), E-court Project on computerization of various courts across the country, legal aid to poor and access to justice, and financial assistance to National Judicial Academy for training Judicial Officers. The main mission behind access to justice is to help the justice administration system efficiently, fairly and accessible to all irrespective of status and money. All the mechanisms provided by the Department of justice help in promoting accessibility, ensuring fairness and increasing efficiency of justice delivery

⁵ (2012)9 SCC 1

⁶ 2016

⁷ Section 12 - Criteria for giving legal services.

⁸ <https://sdgs.un.org/goals>

mechanism at ease. "Designing Innovative Solutions for Holistic Access to Justice in India (DISHA)" is a Central Sector Initiative run by the Access to Justice Division. This initiative aims for a period of 5 years i.e. from 2021 – 2026 the main initiatives such as Tele-law, Nyaya Bandhu (Pro-bono Legal Services), Nyaya Mitra, and Legal Literacy & Legal Awareness Project are DISHA's component initiatives. These schemes help to develop a system free from hurdles of long and delayed justice system. As stated in the Preamble and Articles 39A, 14 and 21, it seeks "Justice" for Indians. It also uses technology to spread awareness and simplify Information, Education, and Communication (IEC) material for the masses.

The various mechanisms which help in attaining the complete justice to the mass of people are,

5.1 Nyaya Bandhu (Pro-bono Legal Services)

Nyaya Bandhu (Pro Bono Legal Services) seeks a pan-India structure for pro bono legal services. Advocates interested in volunteering their time and services register on the Nyaya Bandhu Mobile App (available in Android/iOS/UMANG platform) and provide legal advice to those qualified for free legal aid under Section 12 of the Legal Services Authority (LSA) Act, 1987⁷. Pro bono means "for the public welfare" in Latin. Several lawyers provide free legal advice and support to low-income clients. This commendable public service tradition has gone unnoticed. Pro bono legal aid is the main way poor and underserved clients get free legal assistance in many nations. Governments must "provide equal access to justice for all" under UN Sustainable Development Goal⁸. The Department of Justice (DoJ) database of lawyers willing to represent plaintiffs recognised under Section 12 of The Legal Services Authority Act of 1987 to comply with these requirements and encourage pro bono legal services⁹. Colleges or Universities attached to the Pro Bono legal services such as SASTRA Deemed to be University in Thanjavur, Tamil Nadu has taken various camps which helped the rural people to know the legal requisites for their development. The various initiatives such as taking Aadhaar card, linking of Aadhar card with Electricity card, collecting petitions for old age, widow pension etc. The further step went in creating legal awareness in schools and native village on eradication of crimes such as domestic violence, dowry prohibition and also understanding the responsibility of citizens.

5.2 Tele-Law

An e-interface platform that empowers people through pre-litigation guidance to assert their rights and resolve their issues. The specialised pool of Panel Attorneys, video conferencing/telephonic facilities at Common Service Centers (CSCs) and the Tele-Law Mobile App (Android/iOS), connects the impoverished and underprivileged¹⁰. This is an easy method of connecting people via video conferencing, telephonic facilities situated in the various panchayats. Thousands of para Legal volunteers are acting as intermediaries for bridging the gap

⁹ <https://serviceonline.gov.in/serviceLinkHome.html?serviceToken=GEnPsEv0YR546#:~:text=Pro%20Bono%20comes%20from%20the,without%20seeking%20any%20professional%20fee.>

¹⁰ <https://doj.gov.in/designing-innovative-solutions-for-holistic-access-to-justice-disha/>

between the people and tele-law services. Village level entrepreneurs who run facilitation centers, panel lawyers, state coordinators play a vital role in bringing his benefit free of cost to all. This Tele app is currently available in 22 regional languages.

5.3 Nyaya Vikas

Since 1993-94, the Department of Justice has administered the Centrally Supported Scheme (CSS) for District and Subordinate Court Infrastructure Development. The Program helps state governments and UT administrations build court halls and residential units for District and Subordinate Court judges. For lawyers and litigants, the project has been extended beyond 31.03.2021, adding Lawyers Hall, Restroom complexes, and Digital computer rooms to court halls and residential units.

Table – 1: Number of Court Halls in India and Tamil Nadu

Sl no	States & Uts	No. of Court Halls self-owned by Judiciary	No. of Court Halls owned by State / Central Governments	No. of Court Halls in rented building	Total number of Court Halls	No. of Court Halls under construction*
1	Tamil Nadu	1029	101	75	1205	0
2	TOTAL (37states and UTs)	17220	3116	678	21014	2605

Information from Nyaya Vikas Portal¹¹

Based on the information given in the web portal of Nyaya Vikas it can be seen that in Tamil Nadu and other states data sufficient infrastructure facilities is provided by Government in focussing on Justice Administration.

summary. Gram Nyayalayas will engage conciliators to resolve disputes as much as feasible. The Gram Nyayalaya will follow natural justice rather than the Indian Evidence Act, 1872, subject to High Court decisions.

5.4 Gram Nyayalaya

In the 114th Report, the Law Commission of India advised Gram Nyayalayas for affordable and fast justice at the doorstep. On 22 December 2008, Parliament enacted the Gram Nyayalayas Bill, which became law on 2 October 2009. Gram Nyayalayas provide affordable justice to rural residents at their doorsteps and are to be formed for every intermediate Panchayat or a set of contiguous Gram Panchayats. Their headquarters will be in the intermediate Panchayat. The Nyayadhikari will occasionally visit communities and hear parties and decide cases there. Gram Nyayalayas shall hear criminal, civil, and dispute cases. Criminal trials will be

Table – 2: Number of Gram Nyayalayas notified in India

SI No.	State	Number of Gram Nyayalaya Notified
1.	Kerala	30
2.	Karnataka	2
3.	Andhra Pradesh	42
4.	Grand total of (16 states)	479

Gram Nyayalaya Dash Board¹²

A total of 8340 lakhs of funds were released by the Department of Justice which has been distributed among 13 states in India¹³.

Table -3: Civil Cases Pendencies received in Gram Nyayalayas

SI No.	State	Cases pending + Received during the month (civil cases)	Cases disposed	Cases pending
1.	Kerala	27243	2123	25120
2.	Karnataka	32	0	32

Gram Nyayalaya Dashboard¹⁴

Table -4: Criminal Cases Pendencies received in Gram Nyayalayas

SI No.	State	Cases pending + Received during the month (criminal cases)	Cases disposed	Cases pending
1.	Kerala	323	5	318
2.	Karnataka	65	5	60

Gram Nyayalaya Dashboard¹⁵

The above-mentioned information relating to Gram Nyayalayas lead to fact that Tamil Nadu does not follow this mechanism. The main reason it can be seen is the lack of awareness on it.

This mechanism can be considered as a better mechanism for administration of justice in India.

¹¹ *Supra Note 10*

¹² *Supra Note 10*

¹³ <https://dashboard.doj.gov.in/gn/>

¹⁴ *Ibid.*

¹⁵ *Ibid*

5.5 Legal Literacy & Legal Awareness

Development of Innovative Solutions and Holistic Approach Scheme and Legal Literacy and Legal Awareness Project are nationwide, which involves a) a multi-stakeholder, progressive, transformative strategy. b) Incorporate new ideas, tools, and streamlined methods c) allow vulnerable groups to access legal rights and laws. The main objective of the legal literacy focusses on technology for expansion and distribution of legal Literacy through expert collaborations. It also helps in capacity building and use of frontline workers/volunteers for creating effective legal awareness. Under this scheme for movies were disseminated by Ministry of Panchayat Raj. Department of Justice legal literacy content has been posted to DIKSHA, the school education web platform that provides learning materials to instructors, students, and parents.

The Various legal literacy and awareness programs were conducted such as¹⁶:-

- ‘National Law Institute University Madhya Pradesh’ - “Digital Legal Literacy – Design, Development, Management and Testing-eNyayaganga” at National Level by organizing Training and Awareness session.
- ‘National Law School Of India University, Karnataka’ - “Digital Legal Literacy- Dissemination and Assessment” at National Level
- ‘Indian Institute Of Public Administration, New Delhi’ - Monitoring and Evaluation of Legal Literacy and Legal Awareness Projects at National Level

The various initiatives taken by the colleges and universities only prove to the fact better access to justice can be given only by proper awareness. The mechanism taken by the various institutions proves that Government is taking measures to maximize the justice all over India.

5.6 National Legal Services Authority (NALSA)

Article 39A of the Indian Constitution guarantees justice for all by providing free legal aid to the destitute and vulnerable. Articles 14 and 22(1) of the Constitution require the state to maintain equality before the law and a judicial system that promotes justice on the basis of equal opportunity. The Parliament passed the Legal Services Authorities Act in 1987, which went into effect on November 9, 1995, to create a nationwide standard network of free and competent legal services for the weaker members of society. The National Legal Services Authority (NALSA) was established under the Legal Services Authorities Act, 1987 to oversee and evaluate legal aid programmes and establish rules and principles for providing legal services under the Act. State Legal Services Authorities, Supreme Court Legal Services Committees, District Legal Services Authority and Taluk Legal Services Committees in Districts and most Taluks execute NALSA guidelines and hold

Lok Adalats. The Supreme Court Legal Services Committee manages the legal services programme for the Supreme Court of India. NALSA provides policies, principles, standards, and cost-effective solutions for State Legal Services Agencies to implement Legal Services Programmes nationwide. State, District, and Taluk Legal Services Committees are the main players¹⁷.

The main functions of these are

- a) To Provide Free and Competent Legal Services such as Paying court expenses, process fees, and other charges related to legal processes; Giving legal representation; Certified copies of legal documents and orders. Appeal, paper book, printing, and legal document translation.
- b) To form Lok Adalats for amicable settlement of disputes such as
- c) To establish legal awareness camps in the rural areas conducted by schools, colleges etc.

5.7 Lok adalats

Lok Adalat is an Alternate Dispute Resolution method. It is a place to settle legal issues or pre-litigation cases amicably. The Legal Services Authority Act, 1987 makes Lok Adalat statutory. Under this Act, a Lok Adalat award is declared a civil court judgement and is final and binding on all parties. No court can overturn it. Legal Services Authorities/Committees are organising Lok Adalats under NALSA's guidance to settle issues pending before courts and pre-litigation problems. Chapter VI-A of the Legal Services Authority Act, 1987 was added in 2002 to require pre-litigation conciliation and resolution of "Public Utilities Services" disputes. E-Lok Adalat, developed in light of Covid, greatly increased access to justice for those who couldn't attend Lok Adalats. NALSA and the State Legal Services Agencies offer legal literacy programmes as preventive and strategic legal aid. Besides rural legal literacy camps, some states hold annual legal literacy programmes in schools and universities and for women's empowerment. As per the details of grants in Aid released to National Legal Services Authority during the financial year 2021-2022, about 145 crores are provided for fulfilling its duties as the Central Authority under Sections 4¹⁸ and 15(2)¹⁹ of the Legal Services Authorities Act, 1987 and to cover additional expenses under the Act²⁰.

6. CONCLUSION

This paper concludes that access to courts and access to justice is a great backup by Constitution of India. The right to legal aid is now firmly established in a number of acts, including the Legal Services Authorities Act, the Supreme Court Legal Services Committee, the National Legal Services Authority (NALSA), and the various Lok Adalats that are being set up in district and remote villages throughout India to provide

legal services provided under this Act including grants made to State Authorities; 2 [(b) the cost of legal services provided by the Supreme Court Legal Services Committee; (c) any other expenses which are required to be met by the Central Authority.]

²⁰ <https://doj.gov.in/access-to-justice-for-the-marginalized/>

¹⁶ <https://doj.gov.in/legal-literacy-legal-awareness/>

¹⁷ Section 4 and Section 15 of the Legal Services Authority Act 1987.

¹⁸ Section 4 - Functions of the Central Authority

¹⁹ Section 15(2) National Legal Aid Fund. — The National Legal Aid Fund shall be applied for meeting— (a) the cost of Vol 01 Issue 01; Jan-2021; Pg—7-12

legal assistance to those who are unable to afford it. Individuals frequently have the impression that the legal system is impenetrable and unreachable. They imagine it to be a fortress-like structure, complete with formidable walls and entrances. Anyone who is not a member of the inner circle and who does not have the necessary resources is unable to enter the castle. This has to be changed in some way. Everyone who has a legal situation ought to be aware of where they might seek assistance. The state has a responsibility to ensure that the public believes that the justice system is fair, and we can assist the state in meeting this obligation by demystifying the law, expanding the

pool of people who provide legal services, and making the fees associated with these services more affordable. As a result, the public will develop a sense of trust because of the increased awareness that will result from all of the systems and measures that have been taken. All the steps taken through the Department of Justice will bring a drastic change in the overall development of society from fear of injustice.

7. CONFLICT OF INTEREST
Conflict of interest declared none

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