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## **Access to Justice and Rule of Law**

**Dr. Justice B S Chauhan  
Former Judge  
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It has rightly been stated by Gary Gaugen that “justice is doing for others what we would have done for ourselves.” Magna Carta was signed on 15 June 1215 by King Henry II and the Nobles. It was an outcome of revolt by the Nobles against the King, feeling suffocated under the feudal set up of the society and demand of unwarranted taxes from the period of King John. It was a greater charter of liberties. It developed a concept that the King is not above the law and thus evolved the theory of Rule of Law, i.e., law is supreme. The concept of “access to justice” and “rule of law” was formulated in twelfth century, when King Henry II of England consented for formulating a system of Writs for every litigant from all classes of the society. Even the Roman concept “the access to justice” as the doctrine of “*ubi jus ibi remedium*” evolved, which means that if there is a right, there is a remedy. The term ‘justice’ is difficult to define, but it is visualised as the right to get one’s due. Articles 32 and 226 of the Constitution of India, read with the Directive Principles of State Policy recognise the concept of access to justice. Article 21 of the Constitution includes the right to access to the court. The constitutional courts have repeatedly held that power of judicial review is a basic structure of the Constitution and this power being permanent in nature, cannot be taken away by constitutional amendments.

(Vide: *Keshav Singh, Re:*, AIR 1965 SC 745; *Keshavananda Bharti v. State of Kerala*, AIR 1973 SC 1461; and *L Chandrakumar v. Union of India*, (1997) 3 SCC 261.)

Article 39A had been brought in the Constitution in 1976 to conform the right to free legal aid and as a result thereof, the National Legal Services Authority came into existence through the Legal Services Authority Act of 1987. It was found necessary in view of ignorance, illiteracy, poverty of little Indians and to meet the requirements of ‘daridra narayan’ jurisprudence.

(See: *Hussainara Khatoon v. Home Secretary, State of Bihar*, AIR 1979 SC 1369)

It is the combination of judicial activism and executive commitment that the access to justice could be accelerated.

[Vide: *Rudal Shah v. State of Bihar*, AIR 1983 SC 1086; *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675; and *Delhi Domestic Working Women’s Forum v. Union of India*, (1995) 1 SCC 14]

Section 12 of the Legal Services Authorities Act, 1987 ensures right to legal aid and would be available both on means test as well as on the merit test.

(See: *Bihar Legal Support Society v. The Chief Justice of India & Anr.*, AIR 1987 SC 38.)

Section 2(2)(c) of the Act, 1987 specifies that legal service includes rendering of any services in conduct of any case or other legal proceedings before any court or other authority or tribunal and the giving of advice on any legal matter. Articles 14, 21 and 22(1) of the Constitution have been interpreted in a way that access to justice has been recognised as a human right, thus imparting life and meaning to law.

(See: *Hussainara Khatoon v. Home Secretary*, AIR 1979 SC 1377; and *Khatri v. State of Bihar*, AIR 1981 SC 928.)

The Law Commission of India, in its 184<sup>th</sup> Report (2002) titled “The Legal Education and Professional Training and Proposals for Amendment to the Advocates Act, 1961 and the University Grants Commission Act, 1956”, sought drastic remedial steps for bringing transformation by way of legal education in this regard. Article 32 of the Advocates’ Act, 1961, is also significant for students who are willing to represent their clients in a court of law as it empowers the court concerned to permit any person not enrolled as an advocate under the Act, 1961, to appear before it in any particular case and it is the result of this that a large number of undertrial prisoners could get the benefit of section 436A of the Code of Criminal Procedure, 1973 which provides that if the undertrial prisoners have served one-half of the total imprisonment term for which he is accused of is bound to be released on bail with or without surety. This concept has helped the little Indians, bonded labours, et al, as it provided for establishment of the right to speedy trial, right to

legal aid, right to livelihood, right against pollution, right to be protected from industrial hazards and right to human dignity.

[Vide: *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675; *Upendra Baxi v. State of Uttar Pradesh*, (1983) 2 SCC 308; *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473; *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802; *M H Hoskot v. State of Maharashtra*, AIR 1978 SC 1548; *Hussainara Khatoon v. Home Secretary, State of Bihar*, AIR 1979 SC 1360; *Suk Das v. Union Territory of Arunachal Pradesh*, (1986) 4 SCC 401; *Sheela Barse v. Union of India*, AIR 1983 SC 378; *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545; *Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh*, AIR 1985 SC 652; *M C Mehta v. Union of India* (1986) 2 SCC 176; and *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 2 SCR 516.]

It requires awareness among the people that they should be aware of their rights and powers and where to secure these rights to themselves.

Access to justice, quality of justice and judicial accountability are the foremost concerns for all of us. For an ordinary litigant, the permanent problem is that of undue delay in disposal of the case and the poor quality of judgment.

[See: *Madan Mohan Singh & Ors. v. Rajni Kant & Anr.*, AIR 2010 SC 2933; and Benaras Case, 1810]

Justice is an act of rendering what is right and equitable towards one who has suffered a wrong. Court has to strike a

balance and do justice in conformity with law and the procedure established under the Constitution.

Justice means, justice between both the parties. Justice aims to promote the general well-being of the community as well as individual's excellence

(vide: *Dalmia Cement (Bharat) Ltd., v. Union of India*, (1996) 10 SCC 104; *State Bank of Patiala v. S K Sharma*, AIR 1996 SC 1669; and *Delhi Administration v. Gurdip Singh Uban*, AIR 2000 SC 3737).

However, justice has different meanings to different persons. A party feels having got justice only and only if it succeeds before the court, though it may not have a justifiable claim.

The ultimate aim of the law is to secure justice.

Justice is a virtue which transcends all barriers.

Justice cries in silence for long, far too long

Justice fails when judges quail.

Though justice is depicted to be blindfolded, as popularly said, it is only a veil not to see who the party before it is while pronouncing judgment on the cause brought before it by enforcing law and administer justice and not to ignore or turn the mind / attention of the court away from the truth of the cause or

lis before it, in disregard of its duty to prevent miscarriage of justice.

[Vide: *S. Shanmugam Pillai v. K. Shankugam Pillai*, AIR 1972 SC 2069; *In Re: S. Mulgaokar*, AIR 1978 SC 727; *P.N. Dudda v. P. Shiv Shanker*, AIR 1988 SC 1208; *S Nagaraj v State of Karnataka*, (1993) Supp 4 SCC 595; and *Zahira Habi-bulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158.]

### **Rule of Law**

Aristotle advocated the rule of law saying that law should govern and not a citizen. Henry De' Bracton, a 13<sup>th</sup> Century Jurist said that "The King is under no man but under God and the Law."

Early example of the phrase "rule of law" is also found in the petition to King James-I of England in 1610 from the House of Commons wherein the king was asked to be guided and governed by the certain "rule of law" which given both to the head and members that which of right belongs to them and not by uncertain or arbitrary form of government. The Chief Justice of England, Sir Edward Coke fought with the King on the issue and lost the post. Subsequently, the phrase "Be ye ever so high, still the law is above you" became popular.

Rule of Law means absolute supremacy or predominance of law as opposed to the influence of arbitrary power and it also excludes wide discretionary authority. (Vide: *State of Madhya Pradesh v. Thakur Bharat Singh*, AIR 1967 SC 1170)

The term 'Rule of Law' connotes the undisputed supremacy of law and envisages a state of things where law has to be

followed by everyone collectively and individually by the citizens as well as by the State (Vide: Bachan Singh v. State of Punjab, AIR 1982 SC 1325).

Rule of Law provides for equality and absence of arbitrariness and discrimination. Discretionary power, if exercised by the authority for unauthorised purpose, even in good faith, the action becomes vulnerable, being violative of rule of law (Vide: G S Jaisinghani v. Union of India, AIR 1967 SC 1427; J Jayalalithaa v. State of Karnataka, (2014) 2 SCC 410).

Articles 14, 20 and 22 of the Constitution establish the equality before law and equal protection of law, prohibit arbitrariness in State action and for strict compliance of statutory provisions including the procedural law.

Article 20 prohibits violation of human rights of the citizens in criminal proceedings. It protects against ex post facto laws, double jeopardy (section 300 Cr.PC) and self incrimination (Vide: Nandini Satpathy v. P L Dani, (1978) 2 SCC 424 and Balakrishnan A Devidayal v. State of Maharashtra, (1980) 4 SCC 600).

Conduct of the litigant should be amenable to Rule of Law. He should not have defined demeanour and rebellious behaviour and defeat the cause of justice (Vide : Subrata Roy Sahara v. Union of India, (2014) 8 SCC 470).

[Shantanu – Devvrath (Bhishm) – Satyawati – Matsyagandha – Oath of celibacy]

[Ram – Abandoned Sita in matured pregnancy even after Agnipareeksha as a washerman made the comment.]

## **Delay**

Magna Carta (1215) – Justice shall not be denied to anyone. Nor it would be sold, nor delayed.

Justice delayed is justice denied.

Sanyasi of Bhuwalka – fought for his right to succession to the Throne – but succeeded before the Privy Council and order came only after his death (1945).

A poor litigant's view in frustration:

सजा दे, सिला दे, बना दे, मिटा दे ।  
बहुत देर हो गई, ऐ पेतरे इंसाफ ।  
बस अब फैसला सुना दे ॥