

Constitutional Vision and Mission of Legal Aid & Access to Justice

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Justice: the Constitutional Vision

- **Justice : Constitution : The First Virtue**
- **The Notion of Justice : Comprehensive one, –**
- **encompassing -**
- **Social, Economic & Political Justice**

Access to Justice – Concept of:

- **Access to justice is the ability of people to seek and obtain a remedy through justice delivery system for grievances in compliance with human rights standards.**

(UNDP Practice Note 2004 on Access to Justice)

Right to Access to Justice: International Instruments

- "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." Article 8 (Universal Declaration of Human Rights, 1948)
- The right of access to justice is also recognised under Article 14 of International Covenant on Civil And Political Rights).
- The right of access to justice is also recognised under Article 67 of the Statute of the International Criminal Court (Rome Statute).

Access to Justice –

A Fundamental Right

- “A person’s access to justice is a guaranteed fundamental right under the Constitution and particularly Article 21. Denial of the right undermines public confidence in the justice delivery system and incentivises people to look for shot cuts and other fora where they feel that injustice will be done quicker. In the long run, this also weakens the justice delivery system and poses a threat to the rule of law.”

Anil Kushwaha v. Pushap Sadan , AIR 2016 SC 3506 (Consti. Bench)

Access to Justice: The 5 Components

- Legal Awareness of the **rights**. (“Legal awareness is the foundation for fighting injustice.”)
- Capacity (**Social & financial**) to move for redress.
- Legal aid services support.
- Swift and timely Redressal (In **Sheela Barse v. Union of India (1988) 4 SCC 226**, the apex Court declared **speedy trial** a right under Article 21.
- Effective enforcement.

Access by Whom ?

- India's population is more than 133 crore, out of which a around 28 percent i.e. 37 Crore are classified as living below poverty line.(**Poverty : World Bank Report 2019**).
- Around 31 crore Indians are still illiterate (<https://www.orfonline.org/research/literacy-in-india>)

Access to Justice :

The Constitutional Vision

■ Constitutional Resolve /Commitment :

The Preamble: To secure Justice: Social, Economic & Political.

■ Constitutional Mandate :

Art. 38.(1) _“The State shall strive to promote the welfare of the people by **securing and protecting as effectively as it may a **social order** in which **justice, social, economic and political**, shall inform all the institutions of the national life.”**

Access to Justice : How to Secure:

- Article 39. A Equal justice and free legal aid : The State shall secure that the operation of the legal system promotes justice, on a basis of **equal opportunity**, and shall, in particular, provide **free legal aid**, by suitable legislation or schemes or in any other way, **to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities**
- In **Khatri II v. State of Bihar (1981) 1 SCC 627**, the **right to free legal aid** was held to be a right covered under **Article 21** of the Constitution.

Access to Justice & Rule of Law

- “Despite complicated social realities, it is submitted that Rule of Law, independence of the judiciary and access to justice are conceptually interwoven. All the three bring to bear upon the quality of aspirations which are guaranteed under our Constitution. .”

The apex Court in *Imtiyaz Ahmad vs. State Of U.P.& Ors .*, (2012) 2 SCC 688

Access to Justice & Legal Aid :

The Statutory Framework:

- Legal Services Authority Act , 1987 – Entitlement ?
Section 12
- Legal Services –Definition- Section 2 (1) (c)
- Legal Aid : Scope under the Act of 1987 : It is not the definition of ‘ legal services’ in Section 2(1) (c) but the provisions contained in **Section 4** of the Act prescribing ‘Functions of the Central Authority’ which indicate towards the real scope of the Act .
- The Statutory Institutions : NALSA , SALSA, DALSA

Access to Justice : P.I.L.

- In **Mumbai Kamgar Sabha, Bombay**, AIR 1976 SC 1455, Justice V.R Krishna Iyer speaking for the apex Court observed :
 - “Test litigations, representative actions, pro bono publico and like broadened forms of legal proceedings are in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the real issues on the merits by suspect reliance on peripheral procedural, shortcomings.”

The Myth & the Reality

- **“Access to justice is basic to human rights and directive principles of State Policy become ropes of sand, teasing illusion and promise of unreality, unless there is effective means for the common people to reach the Court, seek remedy and enjoy the fruits of law and justice.”**

**Justice V.R. Krishna Iyer Quoted in Anil Kushwaha v. Pushap Sadan , AIR 2016 SC 3506
(Consti. Bench)**

The Myth & the Reality

- “.....the weaker sections of Indian humanity have been deprived of justice for long, long years : they have had **no access to justice** on account of their **poverty, ignorance and illiteracy**. They are **not aware of the rights and benefits** conferred upon them by the Constitution and the law. On account of their socially and economically disadvantaged position **they lack the capacity to assert their rights.....**” **S.C. in Bihar Legal Support Society v. Chief Justice of India, AIR 1987 SC 38 (Consti. Bench)**

The Myth & the Reality

- “... India is acclaimed for achieving a flourishing constitutional order, an inventive and activist judiciary, aided by a proficient bar and supported by the State. **The disadvantaged and poor are deprived of access to justice** because of the costs of litigation, both in terms of actual expenses and lost opportunities, and the laudable goal of securing justice - social, economic and political enshrined in the Preamble to the Constitution of India remains an illusion for them.” **New India Assurance Co. Ltd. Vs. Gopali, AIR 2012 SC 3381**

Barriers in Access to Justice

- **Lack of awareness** about rights and remedies.
- **Non-access** due to **social backwardness**.
- **Prohibitive Costs**.
- **Lack of adequate legal aid** and **legal representation** having **efficiency** and **integrity**.
- **Long delays** (As per *India Justice Report, 2019* at the subordinate court level, a case **remains pending for 5 years on average** or more. (*prepared by TISS-Prayas and Vidhi Centre for Legal Policy*)
- **Weak enforcement** of orders and decrees.

Access to Justice :Bridging The Gap:

- **Strengthening Legal Aid Service and Support System.**
- **Soliciting Support form Bar for Pro Bono.**
- **Eliciting support of Law Collages / Law Students**
- **Eliciting support of Civil Society**
- **Using I.C.T. for Legal ACCESS .**

The Role of the Judiciary:

- In *S. P. Gupta v. Union of India*, (1981)Supp. (1) S.C.C. 87 the Supreme Court explained **the role of the judiciary** by saying that it has “to become an arm of the socio-economic revolution and perform an active role calculated to bring social justice within the reach of the common man. It cannot remain content to act merely as an umpire but it must be functionally involved in the goal of socio-economic justice.”

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THANKS