

A Legal Study on Access to Justice for Vulnerable Groups in India

SUMMARY OF THESIS

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BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY
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SUPERVISOR
Prof. PRITI SAXENA
SCHOOL OF LEGAL STUDIES

SUBMITTED BY
SHALINI SINGH TOMAR
ENROLLMENT NO.-262/15

DEPARTMENT OF LAW
SCHOOL OF LEGAL STUDIES
BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY
(A CENTRAL UNIVERSITY; NAAC- 'A' GRADE)
VIDYA VIHAR, RAEBARELI ROAD, LUCKNOW-226025 (U.P.), INDIA

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SUMMARY

1. INTRODUCTION:

The quest for justice is visible in all civilisations- ancient, medieval and modern. Equal justice has been the passionate demand of the human soul since man has wronged his fellow man. Justice is “**the chief of virtue**”, which imply fairness and the implicit recognition of the principle of equality.¹ Justice has been the undying craze of kings and Commoners, Philosophers and Poets, Saints, Social Reformers and Thinkers, Judges and Jurists for establishing a human society founded on liberty and equality, universal harmony and peace. It is unimaginable to think of any human being who would not desire justice. Every citizen desire justice in every sphere of their life, whether in day to day life or in the more significant aspects of their life from the State. Justice is the right of every individual without any discrimination whether he is young or old, rich or poor, male or female, from city or village, literate or illiterate.

A functioning, accessible and transparent justice system means the poor have the protection of the law, can access rights and representation in the legal system, and can seek recourse to mechanisms that hold the duty-bearer accountable for the provision of basic services by promoting the effective use of public interest litigation and legal aid.² The lack of legal accountability allows local corruption to undermine economies, diverting resources from where they are needed the most. Lengthy delays in processing legal cases inhibit individual economic activity, while the inability to enforce contracts deters people from entering into them. Overcrowded prisons are full of poor people waiting months or even years for a first trial, forced to give up work opportunities and unable to support their families. Women, who often face multiple forms of discrimination, violence and sexual harassment, are particularly affected by the legal exclusion. To address these legal challenges access to justice becomes essential to enable the basic protection of human rights.

¹ John Rawls, *the theory of justice*, 11 (Harvard university press, 1977).

² Ayesha Kadwani Dias and Gita Welch, *Justice for the Poor: perspectives on Accelerating Access* 1 (Oxford University Press, New Delhi, 2011).

Access to justice is integral to achieving an egalitarian society and inclusive growth. Most of the population of India is outside the protection of justice because they are poor or marginalised within their communities. Employers can easily be cheated, driven from their land, preyed upon by the powerful and intimidated by violence. Democratic governance is undermined where access to justice for all citizens irrespective of gender, race, religion, age, class or creed is absent.³ Access to justice is also closely linked to poverty reduction. They are being poor and vulnerable means being deprived of choice, opportunity, access to essential resources and a voice in decision making.

Access to justice is a fast-growing concept and practice. It encompasses the rule of law, administration of justice, good governance, and democratic ideals. The phrase symbolises the rhetorical and doctrinal interface between legal, social and political factors associated with the administration of justice as it affects the ordinary citizen in the application of both substantive and procedural law.⁴ It acknowledges and seeks to address the gap between citizens and the law, in terms of equality of opportunity and approaches in tackling issues and providing an appropriate remedy. It attempts to eliminate, or at least counterbalance, the impact of inefficient or expensive administration system of justice that effectively denies the absolute protection and recourse of all litigants to the law to redress their grievances and vindicate their rights.⁵ It also helps to assert more precisely the scope of the justice system's role and the courts in being part of the strategy to address the issue of exclusion of the vulnerable groups from a formal system of public administration.

The right to legal aid has been specially recognised as part of the fundamental right to life and liberty enshrined under Article 21 of the Constitution of India. The Supreme Court observed Article 21 of the Indian Constitution that “*legal aid is nothing else but equal justice in action*”.⁶ Article 39A of the Constitution of India in Part IV makes provision for free legal aid to the poor and weaker sections of the society to promote justice based on equal opportunity. The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act,

³ UNDP Access to justice practice note of 9 march 2004s available at: <https://www.un.org/ruleoflaw/blog/document/access-to-justice-practice-note/>(last visited on December 1, 2021).

⁴ *Supra* note 2.

⁵ *Ibid.*

⁶ *M.H. Hoskot v. State of Maharashtra* (1978) 3 SCC 544.

1987, to provide free legal services to weaker sections of the society. In pursuance of this in 1987, the 'Legal Services Authorities Act' was enacted by Parliament, which came into force on 9 November, 1995 to establish a nationwide uniform network for providing free and competent legal services to the weaker sections of the society.

Legal aid is an essential part of the administration of Justice. "Access to justice for all" is the motto of Legal Services Authorities. **S.K. Sharma** gives a precise definition saying "legal aid should be appreciated as a dynamic concept of distributive justice and rule of law."⁷ The goal is to secure justice for the vulnerable groups of society. Particularly to the poor, downtrodden, socially backward, women, children, handicapped etc. Most social evils is an outcome or creation of poverty and the misery that come with being poor in a country like India, at the same time it also needs to be borne in the mind that the judiciary no matter however committed it may be towards uplifting the cause of the poor is ultimately bound by procedural formalities which do not take into account the misery or problem of the masses.⁸ Therefore, the suffering of being so many makes it impossible for the legal system to remove even a few of such issues. Vulnerability is the creation of unjust institutions and unjust society. In a country like India, vulnerable people are influential socially and economically. The only way the vulnerable group can be empowered is through radical revamping the socio-economic structure. Thus, the legal aid programme aimed at rebuilding the socio-economic system by removing socially unjust institutions and creating a new order based upon the ethos of human liberty, equality and dignity of humankind.

Legal Aid conveys the assistance provided by the society to the vulnerable groups in their effort to protect their rights and liberty. It means providing legal aid, arbitration, counselling, and making available lawyers to those who were unable to pay for the legal services and some special categories of society who are usually treated as less privileged.⁹ It also means creating legal awareness among people about their rights, duties and obligations, right of the underprivileged, poor neglected and disadvantaged. However, legal aid, in its ordinary sense, convey the assistance

⁷ S.K. Sharma, "Jurisprudence of Legal Aid: A Constitutional Juridical Perspective" 168 *the Academy Law Review*, XIII 1989.

⁸ Sangita Dhingra Sehgal, *Commentary on The Legal Services Authorities Act* 16 (Universal Law Publishing, 2016 New Delhi- India).

⁹ *Id.* at 13.

provided by the society to its weaker section in their effort to protect their rights and liberties, bestowed upon them by the laws, and to make them get such benefits and right back. In case these rights are snatched from them by the privileged members of the society. If the poor have no means to pay court fees and no money to pay for advocate's fees and another incidental cost of litigation, he certainly is denied an opportunity to seek justice. **Section 304** of the Code of Criminal Procedure, 1973¹⁰ also contemplated providing legal aid already existed even before enacting the Legal Services Authorities Act, 1987.

This become more important in abnormal situation like presently due to Covid-19 the whole world is in unprecedented times. The **COVID-19 pandemic** has posed a never-imagined challenge to every sector of the economy and every nation's activity. When it comes to the legal world, that challenge is even graver. It ought to be, as the world of the bar and the bench is a part of the whole system of 'access to justice'. The concept of 'access to justice has been subjected to a unique challenge, never faced before. The pandemic has produced a state of flux as far as these elements are concerned. Admirably, the judiciary has responded remarkably by, without hesitation, connecting technology to ensure that access to the courts is not impeded. It would be entirely incorrect to say that access has not been restricted; however, the rapid response of the judiciary in adopting technology and devising e-courts and video-conferencing has ensured that the disruption was transitory.¹¹ However, due to the ground realities, many litigants are barred from seeking justice for no fault of theirs. More specifically, in remote rural areas or towns with no internet connectivity. The lawyers cannot contest, and the litigants are suffering from the COVID-19 crisis to blame. However, being safe at home during quarantine is not guaranteed for everyone, and gender-based violence has increased during the pandemic.¹² During the pandemic, women and children face a particular risk of violence during home confinement. But also have limited access to justice due to the impact on the justice

¹⁰ Code of Criminal Procedure, 1973 **Section 304** reads as "*Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State*".

¹¹ Kumar Vaibhav "Access to justice during the Covid-19 pandemic: an Indian perspective" *available at: <https://www.ibanet.org/article/f1a1e3a6-675f-455b-b190-038306399cbb>*(last visited on September 22, 2021).

¹² *Available at: <https://www.undp.org/blogs/changes-and-challenges-justice-time-covid-19>* (last visited on September 5, 2021).

system. Other at-risk groups include victims of human trafficking, marginalised populations, such as day labourers, migrants, asylum seekers, refugees and IDPs, LGBTI persons, persons with disabilities and older persons.¹³

Vulnerable groups face legal discrimination, patchy legal protections, and uneven implementation of safeguards, discriminatory social norms, compounded by many layers of disadvantage such as poverty, ethnicity, disability, geography, and migratory status, remain potent obstacles to equal rights.¹⁴ The vulnerable people experience more frequent and complex interrelated legal problems, leading to cumulative disadvantage when other personal and situational factors intersect. The unprecedented condition of COVID-19 has imposed a wide array of restraints on indispensable rights of vulnerable groups, including free, fair and effective access to justice. With the announcement of lockdown, there are restrictions on freedom of movement and civil liberties. The worst impact of the crisis is on the vulnerable section of the society, whose position has further deteriorated. In broader terms, the rule of law and access to justice remains the foundation through which people can uphold their rights, seek redress for grievances, and protect those who are most at risk of being left behind, regardless of the necessities of our time.

The pandemic has also significantly affected the 2030 Agenda for Sustainable Development. Instead of sprinting towards achievement of the **Sustainable Development Goals (SDGs)** at the start of the last decade for action on the agenda, states are struggling to maintain the line and safeguard progress that has been made.¹⁵ At the same time, the current situation has also spurred innovation and provided an opportunity to rethink and invest in new ways of making justice systems more responsive and accessible to all. In particular, this crisis calls for a renewed effort on **SDG-16** to achieve more peaceful, just and inclusive societies. Justice sector actors from judges to police to legal aid providers such as pro bono lawyers, community paralegals, civil society organizations (CSOs) providing legal aid and others and

¹³ Available at: https://www.unodc.org/documents/Advocacy-Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf (Last visited on September 5, 2021).

¹⁴ UN Women, IDLO, UNDP, UNODC, World Bank and the Pathfinders. "Justice for Women Amidst COVID-19." New York, 2020 available at [undp-gpn-bpps-cb-gender-justice_for_women_amidst_covid-19_En](https://www.unodc.org/documents/Advocacy-Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf) (1) (last visited on September 5, 2021).

¹⁵ Available at: https://www.unodc.org/documents/Advocacy-Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf (last visited on November 30, 2021).

corrections services need to work together to take on a holistic and people-centred approach to resolve the justice problems.¹⁶ Particular attention to empowering people and enhancing their capacities to redress grievances is also critical to achieving access to justice for all.

Therefore, It is the call of time that, not being a critic, rather a supporter, the system requires some fine-tuning, which of course, is underway. However, some words that show after research that, having been part of a few video-conferencing court hearings, simplify the system. The most significant step in this regard would be a simplification of the filing process, procedures and formalities. At the same time, it should ensure that the sanctity of the courts or judicial process is not undermined.

2. OBJECTIVES:

- To examine the importance and need of “Access to Justice” for every citizen of India, and the problems, constraints and obstacles faced by justice seekers.
- To explore the present scenario in India, unfortunately, the litigant, the heart of judicial autonomy, is the most neglected segment. People of India are the consumer of justice, so they should be respected.
- To examine the needs of vulnerable groups at the core of these concerns to ensure access to justice for their rights in general and during Covid-19 in particular.
- To suggest effective measures and solutions for “Access to Justice for vulnerable groups” in India.

3. RESEARCH QUESTIONS:

- Whether lack of awareness of legal rights among vulnerable groups is the barrier to access to justice?
- Whether poverty and the cost of litigation in our country affect citizens' right to equal and social justice?
- Whether legal aid provisions in the law and their implementation are adequate or not?

¹⁶*Id.*

4. RESEARCH METHODOLOGY:

The study, when started, adopted doctrinal and empirical; however, due to the COVID-19 situation, the researcher cannot perform her empirical work. The researcher has mainly focused on doctrinal, analytical, and observational methods simultaneously. In addition to descriptive, explanatory method shall also be applied in accordance with the need of the proposed study. All the primary, as well as secondary documentary sources, have been utilized. Through various books, journals, verdicts of Supreme Court and High courts of India, internet access, earlier research findings and gaps, national and International reports, and articles will be taken as an important research tool.

5. SCHEME OF FINAL CHAPTALIZATION:

The present work is divided into the following chapters:

Chapter-I Introduction:

- The first chapter is the introductory chapter concerning the present analysis's contextual framework, followed by the background of the study, research questions, and utility of research, objectives, research methodology, scope for future research and literature review.

Chapter-II Meaning and Concept of Access to Justice for vulnerable groups in India:

“Access to justice” is a broad concept encompassing people’s adequate access to the formal and informal systems, procedures, information, and locations used in administration justice.¹⁷ Therefore, access to justice connotes such a wide range of issues that the best approach seems to be to describe what it means. It encompasses the rule of law and administration of justice, good governance and democratic ideals. The phrase symbolises the rhetorical and doctrine interference between legal, social, and political factors associated with the administration of justice as it affects the ordinary citizen in applying both substantive and procedural law.¹⁸ It attempts to eliminate or inefficient or expensive system of administration of justice. That

¹⁷ Janet Lord, et al, *Human Rights Yes! Action and Advocacy on the Rights of Persons with Disabilities* (University of Minnesota Human Rights Center,2007)

¹⁸ *Supra* note 2 at 554.

effectively denies all litigants' fullest protection and recourse to the law to redress their grievance and vindicate their rights. It also helps to assert more precisely the scope of the justice system's role and the courts in being part of the strategy to address the exclusion of the poor from a formal system of public administration. So, in this chapter, the researcher has tried to unpack the following-

- Initiated with a conceptual analysis of access to justice for vulnerable groups;
- Examined the meaning and concept of 'access to justice' and its significance in for democratic participation. By ensuring that the parties can express their viewpoint and be heard in a meaningful manner, the parties may feel that the justice system operates fairly regardless of the particular result obtained and be more willing to accept the outcome.
- Elucidated the concept of justice and discussed its different types: distributive, corrective, social, economic, retributive, and transitional justice. These all types of justice have important implications for socio-economic, political, civil, and criminal justice at both the national and international levels.
- Provided insight into the relationship between access to justice and the rule of law and an understanding of the essential elements of access to justice to prevent injustice. The rule of law signifies that officials faithfully execute laws that are enacted by the competent authority; that individuals wishing to enforce the law should have reasonable access to the courts; that no person should be condemned unheard, and that power should not be arbitrarily exercised that orders of the court are obeyed.
- Furthermore, it discussed the challenges of access to justice in enforcing vulnerable group rights. To defeat all these barriers, the state should experiment with the policy or programs.
- In this chapter its find that the gap exists between citizens and the law regarding equality of opportunity and approaches in tracking the issue and providing an appropriate remedy. A mere formal right to access cannot solve problems of access; a declaration of a right does not guarantee its enforcement. Perhaps the most significant issue in India is the lack of information: people ignorant of their rights do not seek the advice of an advocate, even if a government legal aid system provides proper assistance. In addition to the availability of advocates, access to justice may depend on

access to information. The rights and liberties bestowed to them by the legal regime are meaningless since they do not have a golden key to unlock the doors of justice and only the rich have the privilege to enjoy the luxury of law.

Chapter-III Access to Justice for Vulnerable Groups: International Human Rights Perspective:

A functioning, accessible, and transparent justice system means the vulnerable people have the protection of the law, can access rights and representation in the legal system, and can seek recourse to mechanisms that hold the duty-bearers accountable for the provision of essential social services included in the various Sustainable Development Goals. UNDP, UN Commission on Human Rights, WTO and OHCHR is currently involved in providing assistance for justice reform in many countries and focus on building capacity and enhancing technical knowledge at the national level through legal training and education, promotion of legal aid and representation. Access to justice for everyone in all communities is an important right and requirement for building fair and peaceful societies, yet this objective has been achieved in few, so the consequences are damaging for social, economic and political progress and stability. So in this chapter, the researcher has tried to unpack the following-

- Initiated with a conceptual analysis of access to justice and discusses the main impediments to access to justice. It focuses on the contemporary problem of lack of access to justice under international law. As, the obligation of States in providing access to justice has been noticeable since the beginning of the 20th century. The dispensation of justice has been seen as one of the primary functions of a welfare State. Therefore, the State has not only to provide mechanisms to dispense justice but equally must provide for legal remedies for the violation of the legal right.
- Investigated the expanding access to justice government plans, policies and enactments in the European Union, Africa continent, Arab Region, Latin America, and South Asian countries, which focused on the contemporary problems of lack of justice faced by their citizens.
- Underscored the role of international law in promoting legal recognition at the international level. The international bill of human rights developed as a

roadmap for decent and peaceful societies, rise out of the despair, chaos, and bloodshed of two world wars and the desire that such atrocities will never happen again. Since its adaptation, the dedication of human rights defenders and visionary leaders, the dignity of individual people have been uplifted, untold human rights suffering prevented, and the foundations for a more just world laid. But the promise of the international bill of human rights is not yet been fully achieved.

- In this chapter its find that although there is an international law framework for the right to access justice but there is a huge implementation gap at the international at the national level. Therefore, for a 'real raise' in improvement with the right to access to justice, State themselves must be proactive and initiate change through legislation, education, and training in human rights and international law for judges, lawyers, prosecutors, the police, and even military officers. Further, these State will implement and practice what they legislate and not just use their access to justice laws as an 'international showcase' of good intentions with which the road to hell is paved.

Chapter-IV Legal Frame Work & Judicial Approach on Access to Justice for Vulnerable Groups: National Perspective:

The bond between law and society desires to be understood for the good governance of a welfare society in a democratic country. India being a democratic country owes a responsibility to protect such a relation between law and society where the law provides to the requirement of society. This responsibility creates equal access to justice by the people of India an important responsibility on the shoulders of all the four pillars of Indian democracy that's **Parliament, Executive, Judiciary** and **Press**. All the four pillars of the Indian democratic system has strongly advocated for ensuring equal access to justice but still far more must be done. People still are not conscious of their fundamental rights and enabling provisions for eliminating impediments to access to justice. So it becomes very crucial for people to know the legal dimensions of equal access to justice. In this chapter, the researcher has tried to unpack following-

- In India, vulnerable people are illiterate, ignorant, and poor. They have a lack of confidence in the justice system so do not have the same chances of

obtaining fair justice as their educated and well-off counterparts. So, examined the provision of access to justice in the constitution of India for vulnerable groups.

- Portrayed the Indian legal framework both legislative and Constitutional provisions. The Framers of our Constitution while keeping in mind the bitter experience of the past made ample provisions for achieving social, economic and political justice to all the sections of society, and for the same reason devoted chapters on the Fundamental Right and Directive Principles of State Policy in the constitution.¹⁹ Hence, the major task of the Constituent Assembly was to provide us with a vehicle of national progress, which reflects best from previous experience, catering for the need of the present and also at the same time having enough resilience to cope up with the demand of the future.
- Attempts to provide significance of access to justice to establish welfare state through right to free legal aid services in India. The purpose of free legal aid services brings the less advantageous to the same level. So they should have equal opportunities to seek justice like others. State-funded legal aid, which can be complemented by other legal aid service providers, is essential in ensuring the availability of legal advice and assistance and in terms of securing legal empowerment of the poor. Without access to legal aid, they are vulnerable to unfair treatment, unlawful actions and demands for bribes. However, the introduction of legal aid systems aims at removing financial barriers for people who do not have sufficient means to initiate court proceedings. Affordability of access to justice has been, to an extent, taken care of by the State-sponsored legal aid programmes under the Legal Service Authorities Act, 1987. Legal aid programmes have been providing much-needed support to the poorer sections of the society in accessing justice in Courts.
- Discussed the role Indian judiciary as protector of vulnerable group's right and theoretical analysis of pronouncement of the Apex Court and High Court on access to justice; and
- In this chapter concluded that access to justice is a basic right in itself and as a precondition of the enjoyment of all other fundamental rights. It is especially

¹⁹ Available at: <https://www.latestlaws.com/wp-content/uploads/2015/04/Role-of-Courts-in-upholding-Rule-of-Law> (last visited on July 21, 2021).

crucial for this category of vulnerable persons. It is a unique tool to counter the discrimination and often disrespect lack of dignity or even violence that they have faced. Despite all these determination, at the same time, it cannot be denied that the intention of the constitution to achieve social, economic and political justice is yet unfulfilled.

Chapter-V Legal Aid Services and NGOs Role for Accelerating Access to Justice for vulnerable groups:

We as a nation have made immense progress in all fields; the justice delivery system is not an exception. The ever progressing, ever-changing society should have a competent legal system that ensures its survival. Justice if denied to an individual or group would create chaos in the society. Our Constitution ensures justice to all and the adversarial system which we follow requires representation for both parties. As in India being the largest democracy, the state was duty-bound to ensure that justice reached the poorest of the poor. Since it is not possible to ensure the same without Constitutional backing, measures to achieve the said goal were incorporated through the **42nd Constitutional Amendment** in the year 1976. Through, this Amendment Act **Art 39-A** was inserted which provided for equal justice and free legal aid in **chapter IV** of the constitution of India. This was explained by the government of the day as being a part of the measure to remove the difficulties which have arisen in achieving the objective of a socio-economic revolution, which would end poverty and ignorance and disease and inequality of opportunity.²⁰ From then onward legal assistance to the poor become a reality rather than a dream. In this chapter the researcher has tried to unpack following-

- Discussed philosophy behind legal aid service for vulnerable groups in India with meaning and concept. Access to legal aid is necessary to empower the poor, enabling them to strengthen their voice and standing and to demand and exercise their rights. Empowering people to be able to access justice, including

²⁰ Statement of objective and reason (SOR) appended to the constitution (42nd Constitutional Amendment) Bill 1976. The SOR further stated that the provisions were intended to make directive principles more comprehensive and give them precedence over those fundamental rights which have been allowed to be relied upon to frustrate socio-economic reforms for implementing the directive principles. The political context forming the background to the amendment has been briefly adverted to in chapter II.

through the provision of legal aid services, is critical to the reduction of poverty and the prevention of conflict

- Analysis the historical development of legal aid services in India through various committees, reports such as the Bombay Committee 1949, Trevor Harries Committee in West Bengal, Kerala Rules 1958, 14th Law Commission Report (1958) Gujarat Committee (1970), Expert Committee on Legal Aid, Processual Justice to the Poor (1973), Juridicare Committee Report (1977): Committee for Implementing Legal Aid Schemes” (CILAS) and The Legal Services Authorities Act, 1987;
- Examined how NGOs and the public interest litigation work as a strategic arm of the legal aid movement in India to accelerate “access to justice” for vulnerable groups; and
- In the last concluded that any legal service programme merely seeks to help the vulnerable in individual cases within the existing framework of the legal system. It also does not aim to restructure society and reconstruct its socio-economic institutions to eliminate the causes. Which preserve and perpetuate poverty, involves only symptomatic treatment of the disease of poverty and cannot by its very nature is adequate to combat poverty and make the vulnerable group's effective participants in the developmental process.

Chapter-VI Access to Justice for Vulnerable Groups during Covid-19 Pandemic:

Coronavirus is the typical 'Black Swan' event.²¹ Addressing COVID-19 is foremost a public health concern. However, the impact of the crisis and the legal and policy responses developed by states to counter the spread of COVID-19 have much wider ramifications that affect a broad range of human rights. It includes the ability of people to access justice in a timely, fair, and effective manner. The crisis also presents specific justice ‘needs’, such as addressing the rise in gender-based violence and making additional institutional reforms to strengthen the effectiveness of the justice chain in a radically shifted social context. A key concern is that the economic fallout of the crisis has put many groups in society further behind, including children, women, older persons, persons with disabilities, indigenous peoples, lesbian, gay,

²¹‘Black Swan’ is an unforeseen and unpredictable event with great consequences outside the realm of regular expectations because nothing in the past can convincingly point to its possibility and therefore its outcome.

bisexual, transgender, and intersex (LGBTI) persons, migrants, and people living at or below the poverty line.²² The pandemic is making inequalities more visible, such as acute disparities in wealth, access to health, employment and livelihood, and in the ability to adopt preventative preventive. These inequalities are being further exacerbated by the crisis as well as the need for accessible mechanisms to resolve disputes, redress rights violations, and/or counter discrimination. Access to legal services and legal information is critical for empowering people and communities to address these issues. So, in this chapter, the researcher has tried to unlock the following:

- Analysed the impact of the COVID 19 crisis on vulnerable groups of India and states responses to it;
- Examined the unprecedented effect of the pandemic on the functioning of justice systems;
- Furthermore, considered and evaluated the approaches adopted by the judiciary and the legal professionals to minimize the impact of Covid-19 on the Indian legal system; and
- In the last concluded that even in the difficult times the judiciary and the lawyers have succeeded to prove their capability to keep up the spirit of the law in India. But the judiciary still has to mould itself according to the need of the hour to maintain peace and order in the nation.

Chapter VII Conclusion:

The concluding chapter presents the research study with reference to the theoretical analysis, the result obtained from the descriptive study, the conclusion arrived and providing suggestions. Based on the above work researcher has offered some suggestions.

²² OHCHR – COVID-19 Guidance, including on Access to Health Care, Emergency Measures, Stigmatization, Xenophobia, and Racism. *Available at:* https://www.who.int/publications/m/item/a-guide-to-preventing-and-addressing-social-stigma-associated-with-covid-19?gclid=Cj0KCQiArt6PBhCoARIsAMF5wah24hVGk1L9qZ_D1f9LFSjIbB5r72cno58wivKtQj9wymZ5LzPEFe8aAkV4EALw_wcB (last visited on September 9, 2021).

6. UTILITY OF THE RESEARCH FOR ACCESS TO JUSTICE FOR VULNERABLE GROUPS IN INDIA:

This research work is undoubtedly intended to contribute to the existing literature, including legislations and judicial pronouncements on access to justice for vulnerable groups. The researcher has examined the operational problems relating to the access to justice for vulnerable groups and relating legal aid programmes and possible solutions of the problems in the form of some suggestions/recommendations, which may provide genuine grounds for some amendments in the existing legislation. Therefore, this research project would certainly expand the horizons of the existing pool of knowledge, promoting the jurisprudential aspect of the subject.

7. SCOPE FOR FUTURE RESEARCH:

As this research is completed during COVID-19 while it is still existing. So there is scope for future analytical and observational study based on impact of COVID-19 on access to justice for vulnerable groups in India. The pandemic situation give rise to a new normal, but one must be cautious of what we are accepting as normal. The new normal must be accommodating to all and should work towards including the vulnerable groups of the society.

8. CONCLUSION:

This research work has based on a legal study on access to justice for vulnerable groups that includes the poor, women, indigenous people, migrant labours, children, prison inmates; disable Person, homosexuals and transsexuals in India. Access to justice guarantees that people can approach the courts to demand their rights be protected, regardless of their economic, social, political, racial, or migratory status or religious affiliation, gender identity, or sexual orientation. It means individuals to protect themselves from violations of their rights, offering a remedy to the consequences of wrong and holding executive power accountable. A report of the Law Commission of India states that access to justice focuses on two fundamental principles, them being:²³

²³ 222nd Report (2009) of Law *available at*: Commission <http://lawcommissionofindia.nic.in/reports/report222> (last visited on September 9, 2021).

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- a. Accessibility of judicial and quasi-judicial systems to all; and
 - b. Leading to individually and socially fair results to all, irrespective of social and economic conditions.

However, a present scenario in India, continue to survive among paradoxical forces and however proud it may be of our accomplishment in the field of science and technology, social and economic reforms, education and prosperity. Yet it is the same Indian society where people continued to be a vulnerable and sizable section of the Indian people continued to be illiterate and ignorant and consequently living below the poverty line and subjected to all forms of exploitation and misery.²⁴ It remains a caste-ridden society and various negative forces based on language, religion and socio-economic factors continue to haunt us despite more than 60 years of independence. All the progress and prosperity, earned by us post-independence, loses its value on the account of rampant exploitation and injustice. Illiteracy and ignorance force large masses of people to tolerate social and economic inequalities. So, the goal of equality before the law continues to remain a myth or an illusion. Mani-fold problems arisen causing a feeling of helplessness and despair the benefits which our system, nurtured by democracy, and emphasized on the account of hard labour and intellect of our people.

The doors of the court are open to all but that itself is not justice so long as the weakest of the weak is not empowered enough to have access to justice. The major hurdles in the way of securing justice for all are ignorance and illiteracy or poverty. The dark curtain of ignorance has to be ripped apart and eliminate by the power of knowledge and spreading awareness and information. The people are to be known what their rights are and what the obligations of the state and the citizens are towards them. What are the forums and means available for enforcing such rights and obligations and how poverty cannot come in the way of access to justice? The shocking delay in the justice delivery system adds to the worry of an indigent, which is required to be addressed through the means of free legal services.²⁵

The Report of the Working Group for Twelfth Five Year Plan of the Department of Justice notes that “*the alienation of people from the system is*

²⁴ Sangita Dhingra Sehgal, *Commentary on The Legal Services Authorities Act 17* (Universal Law Publishing, New Delhi- India 2016).

²⁵ *M.H Hoskot v. State of Maharashtra*, (1978) 3 SCC 544.

exacerbated by their lack of awareness of their rights, entitlements and processes to redress grievances".²⁶ All the stakeholders must make efforts, especially the Department of Justice, Legal Services Authorities and law Efforts must be made by all the stakeholders, especially the Department of Justice, Legal Services Authorities and law.²⁷ To access legal information, including rights awareness and understanding of court procedures to realise those rights. Such persons need to know the charges against them and be able to prepare their defence and apply for appropriate measures. Similar rights should be ensured for people detained in jail, who should be made aware of the reasons behind their detention, have the opportunity to challenge these before a court, and be given access to legal counsel. The requirement of unhindered access to clients at all stages of proceedings, access to case files, adequate time and facilities to prepare their defence, and confidentiality of communication is vital to ensure that individuals can receive necessary legal support.²⁸ Awareness of legal rights empowers citizens to seek justice against the crimes they suffer and enables them to fulfil their duties and responsibilities. Without understanding, many may remain vulnerable to exploitation, unable to utilize the opportunities provided by law. A variety of approaches has attempted to spread legal literacy. **The National Legal Services Authority (NALSA)** undertakes awareness activities in collaboration with the other legal services institutions through targeted and mass outreach programs, distribution of informative material on legal services, laws affecting ordinary people, and the rights and duties of the citizens. These activities are conducted to reach all population groups.

The necessity of legal aid for vulnerable groups had arisen because the agonizing gap in the ideal of equal access and availability of legal justice reached almost a breakdown point in our society. The long arms of the law failed to reach them. The reality is that the law in our country is in the hand of the rich people and has gone beyond the reach of the poor people. Vulnerable groups have failed badly to enjoy the fruit of law. In such a situation, thus emerged the concept of legal aid which

²⁶ Access to justice for the marginalized-UNDP Project (Govt. of India) Phase-II from 2013-2017 available at: <https://doj.gov.in/other-programmes/access-justice-marginalized/access-justice-marginalized> (last visited on September 9, 2021).

²⁷ *Ibid.*

²⁸ Guidance Note Ensuring Access to Justice in the Context of 19 available at: https://www.unodc.org/documents/Advocacy-Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf (last visited on September 18, 2021).

symbolizes the constitutional assurance of equality before the law and has assured great importance in the administration of justice.

Since the vulnerable groups are the victims of an unjust social and economic structure. It is not going to help them very much to have a legal service programme that works within the existing framework of the law. Thus, it is necessary to have a dynamic and effective legal service programme. That would extend and undertake a new approach to the law and redirect the nature of the legal services. So, the vulnerable groups would see the law as an instrument of social change and economic restructuring. It has always been a pitched battle between the disadvantaged and the privileged, the powerless and the powerful. But we have to bring about socio-economic change and build a new socio-economic order. Where everyone in the country would be an equal participant in the fruits of freedom and development through the law, our social action groups must free themselves from the shackles of out-dated assumptions about law and poverty. It should face the challenge of reality. It also brings a fresh outlook and original, unconventional thinking to bear on the subject and adopt a comprehensive legal service programme. That should be bold in its approach, ambitious in its design and radical in its strategy. It is the only way we shall be able to secure access to justice for all without discrimination. The NGOs also proved very helpful in case of human right violation by providing them legal assistance and advice. The NGOs have filed cases, writ petitions and public interest litigation on behalf of victims and the public at large to protect their human rights.

However, it will be necessary to stress that India has not had a shortage of laws for securing justice. It has only a lack of commitment for the implementation of the laws. In the past, justice reform has focused primarily on buildings, processes and institutions, but this has failed to close the justice gap for vulnerable people.²⁹ In reality, a people-centred approach to justice reform starts with nation population needs and aims to solve the justice problems that matter most to them. People-centred justice empowers people to seek solutions and provides them with quality services throughout their justice journey.³⁰ We can help more people reach a destination where they believe their problems have been somewhat resolved. One of the severe

²⁹ Available at: https://cic.nyu.edu/sites/default/files/english_task_force_report_27jun19-min_compressed.pdf(last visited on September 8, 2021).

³⁰ *Ibid.*

challenges to protecting the rule of law and access to justice is the inability of the formal justice system to deliver speedy and affordable justice to vulnerable groups. The numerous cases in Indian courts are pending indicates injustice with vulnerable groups of India.

Our country is facing unprecedented times in the form of the COVID-19 pandemic. The lives of the citizens have been altered with restrictions on liberty and freedom of the individuals to curb the spread of the virus. These are testing times for humanity around the globe, but India, as a country with such a large and diverse population, has to be stronger than ever. Pillars on which democracy rests must function perfectly to guide us through these rough times. Judiciary's role is more pivotal than it has ever been. It has safeguard citizens' rights and maintains the justice system while punishing the malefactor. At this time Courts has forced to operate in a virtual manner. Lower courts have been judging remand cases while the Supreme Court and High Courts are hearing urgent cases though the process of selecting urgent cases is a bit dubious. However, the virtual courts proceeding have limited access and depend on the availability of the internet and infrastructure. Therefore, during COVID-19 the support of the government is mandatory to develop strategies to strengthen policies, regulations and capacities of the justice sector to continue. So, essential services must provide for vulnerable groups during the crisis. While that business continuity assurance does not come at the expense of the most vulnerable group of society.³¹ This could include strengthening information, communication, and technology (ICT) infrastructures. And supporting the digitalization of case management or prison population management systems to better identify and manage priority caseloads in the short and long term. National authorities should cooperate in developing capacities to prioritize, manage, and track cases and establish functioning systems and operate them in remote areas where possible. For vulnerable groups, gaps persist between the promise of justice and realities in communities, in the workplace, and at home. Therefore, national COVID-19 response plans should ensure that the judiciary and law enforcement authorities remain able to identify, protect, and provide remedies to survivors who are at risk and that necessary emergency funding be allocated towards these efforts, for example prioritising the continuation of court

³¹ Available at: https://www.unodc.org/documents/Advocacy-Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf (last visited on September 8, 2021).

hearings for restraining and protection orders.³² Legal aid providers should be supported to ensure the provision of continued and safe access to legal services, including through helplines and online services. Online services providers should also be equipped with current information on the solutions.

The COVID-19 situation has emerged as an opportunity for the justice sector to examine how the justice system can become more efficient and agile, with a long-term impact that can last beyond the crisis period.³³ The circumstances created by the pandemic have proven that India's legal system, if not ready for tomorrow, has started gearing up for change. *Dr. Martin Luther King, Jr.* summed it up this way: "*Human progress is neither automatic nor inevitable every step toward the goal of justice requires sacrifice, suffering, nor struggle; the tireless exertions and passionate concern of dedicated individuals.*"³⁴

Once the immediate crisis is over, a reflection on the response and the measures adopted to promote and protect people's access to justice in the context of the pandemic necessary. The reflection process should identify and share good practices among actors in the justice sector, including the civil society and private sector. Fruitful innovative strategies adopted during the crisis should be built on. Distilling good practices from this particularly challenging period and advocating for their continued use could help overcome some of the systemic obstacles people experience in accessing justice. For example, support for online dispute resolution, the use of remote technologies for judicial processes measures to reduce the use of preventive detention, virtual access to legal assistance providers, among others. Another effort may continue beyond the recovery phase and have the potential for far-reaching and lasting impact.

9. SUGGESTIONS:

The research work has based on a legal study on access to justice for vulnerable groups in India to examine the operational problem, constraints and obstacles faced

³² Available at: <https://www.undp.org/blogs/changes-and-challenges-justice-time-covid-19> (last visited on September 13, 2021).

³³ Available at: https://www.unodc.org/documents/Advocacy-Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf (last visited on September 8, 2021).

³⁴ King, M. L. "Where Do We Go From Here? In Stride Toward Freedom: The Montgomery Story" New York: Harper Collins (1987).

by justice seekers. After observing the present scenario in India concerning access to justice, the researcher proposes following suggestions:

- The government should conduct regular surveys that draw on international standards and guidelines and improve the availability and quality of data on vulnerable groups' needs to understand justice problems.
- Supporting community-based civil society organizations and paralegals can also teach people how to use online services, share information, and develop referral mechanisms. At the same time, keeping a safe distance and following procedures which also necessary to minimize the spread of the virus.
- Regarding the trials of Criminal cases, the free legal aid, as provided under section 304 of the Criminal Procedure Code 1973, should be made available at all trial stages and not only at the stage of session trials.
- Rule VI of the Rules of Bar Council of India provides that it is the duty of an advocate to render free legal assistance to indigent and oppressed persons. The provisions of rules of the Bar Council of India should be strictly implemented, and it should be made mandatory, if not for all, but in respect of senior advocates. Further, the advocates should be encouraged and inspired not to take any professional fees when acting as advocates in social action litigation or public interest litigation concerning public welfare and social justice.
- All states should devise a mechanism for providing legal awareness at the school level. This will ensure that the next generation is aware, sensitised, respectful of the rule of law, and become harbingers of change.
- Government should establish cooperative arrangements with a wide range of stakeholders, such as non-governmental organisations, community based organisations, religious and non-religious charitable organisations, professional bodies and associations and academic institutions which will in turn ensure effective public participation in the formulation of legal aid policies, programs and legislation.
- The legal aid cells must have an on-going dialogue with the communities they serve. It should address the actual needs of the people.
- The economic criteria for making a person eligible for free legal aid should be fixed at the national level, also taking into account the demographic trends, human development index, per capita income, Ratio of income and

consumption etc. Such criteria should be one and single for the whole nation and to be followed by every state without variation to bring certainty.

- The State should have established neighbourhood information centres to inform vulnerable people of their rights and train social workers to identify their client's legal problems as possible to increase access to justice. So access to justice, to be accurate, must be broad and without discrimination for vulnerable groups.
- During COVID19, technology-based access to justice is new hope for vulnerable groups' rights protection. Heightening the diffusion rate of technology for access to justice should include improving technologies and building the intended beneficiaries' capabilities to harness them. Consequently, institutions of justice should implement proactive policies and actions to address the operational and usage barriers to the technology's potential for promoting access to justice. Without careful planning, institutions of justice risk expending on initiatives that will have minimal impact on access to justice. Therefore the research suggests mechanisms these institutions could include in their related policies and actions. In summary, measures for providing Web-based legal information could incorporate:
 - A collaborative and concerted effort among institutions of justice;
 - The establishment of a national portal of legal information (including, but not limited to, the primary sources of law and justice-related information);
 - Intensifying awareness;
 - Ensuring the accessibility of the website and legal knowledge;
 - Ensuring cyber-safety;
 - Providing assistive mechanisms, and
 - Increasing access to Internet-connected computers.

Actions and policies to increase the diffusion rate of videoconferencing in court proceedings could:

- Ensure quality information;
- Provide education and training for judges and court staff;

- Introduce mechanisms to market video conferencing to the parties involved;
 - Increase the availability of better equipment and better connection in the courts, and
 - Institute mechanisms to coach remote participants on videoconference communication and privacy.
- Besides all these general suggestions there are some specific recommendations for legal literacy/awareness, legal aid clinics, and for training and capacity building process are proposed below:

Recommendations specific to legal aid clinics:

- Department of Justice needs to ensure that sufficient infrastructure is available when legal aid clinics are set up.
- Privacy must be ensured in the legal aid clinics so that people are comfortable about sharing their problems.
- The need to expand the legal aid clinics program should be examined, along with the requirement of more panel lawyers and Para Legal Volunteers.
- More female PLVs may be hired since most of the cases PLVs and Panel Lawyers deal with are family disputes/domestic violence. Women will be more comfortable talking to female PLVs.
- Legal aid clinics are more relevant when ordinary people are in need of legal services. Moreover, such legal aid clinics are potent ways of supplementing legal literacy activities. Hence needs assessment studies by PLVs would be required before setting up the legal aid clinics.

Recommendations specific to the spread of legal awareness/literacy:

- Legal awareness messages should also be broadcast through TV or radio programs in the local languages.
- Periodic legal awareness camps need to be held in remote areas, mainly where communication infrastructure is weak with the help of

the village Panchayats and social organizations. Such awareness camps are also inform vulnerable groups about new government schemes like Nyaya Mitra, Tele Law, and the different apps for courts cases (e-courts service, court case status, Supreme Court of India- Official Mobile et al.)

- Regular legal awareness programs may be held on relevant topics in schools, in shows, documentaries, and puppet shows. They may be a more accessible medium to impart legal awareness/literacy than booklets/pamphlets. Such an approach is also relevant during fairs/cultural events.
- Among other established mechanisms for dissemination, quizzes/competitions may also be held in social forums to draw attention to legal literacy.

Recommendations specific to training and capacity building process:

- To bring attitudinal and behavioural changes in police officers while dealing with crime against women, children, disabled persons, migrant labour and person with a disability. Sensitization programs for the police department on the need for greater awareness of rights of children, women and the more vulnerable groups of populations may also help increase their participation in legal literacy activities. These programmes aim to ensure vulnerable groups Sensitization of police personnel concerning legislation and policies.

What has been suggested in the preceding paragraphs requires revolutionary changes in our society and the mindset of the key players in the justice area. It is the only way when justice becomes a reality for our society's disadvantaged and vulnerable groups. The reality is that nothing can be done or achieved immediately, because there is no short-term remedy. It is hoped that the recommendations and suggestions mentioned by the researcher are followed and adequately implemented. Access to justice may be achieved substantially with the elemental spirit of the Constitution of India.