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

## THESIS

SUBMITTED TO THE
BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY
LUCKNOW

FOR THE AWARD OF THE DEGREE OF

**Doctor of Philosophy**

IN

LAW


SUPERVISOR
Prof. PRITI SAXENA
SCHOOL OF LEGAL STUDIES

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DEPARTMENT OF LAW
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BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY
(A CENTRAL UNIVERSITY; NAAC- 'A' GRADE)
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**2022**


Dedicated to
Beloved Parents

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# DECLARATION

I, **Shalini Singh Tomar**, hereby declare that this research work embodied in this Ph.D. thesis titled **"A Legal Study on Access to Justice for Vulnerable Groups in India"** has been carried out by me under the supervision of **Prof. Priti Saxena**, School of Legal Studies Babasaheb Bhimrao Ambedkar University, Lucknow.

This Research work is an original work and it has not been previously submitted in part or full for any other degree or diploma in this or any other University. This is also to declare that the thesis is essentially free from all kinds of plagiarism.

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# CERTIFICATE

This is to certify that the thesis titled **"A Legal Study on Access to Justice for Vulnerable Groups in India"** submitted by **Ms. Shalini Singh Tomar** is an original research work and has not been previously submitted in part or full for the award of any other degree or diploma to this or any other university.

This thesis submitted to Babasaheb Bhimrao Ambedkar University, Lucknow satisfies all the requirements as stipulated in the *Doctor of Philosophy (Ph.D.) regulations, 1999 as amended in 2013* and it is fit for submission and evaluation for the award of the degree of Doctor of Philosophy of the University.

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# ACKNOWLEDGEMENT

*The present attempt is directed by the supernatural power, which awakened to be endowed with the prestigious task of accomplishing the work in hand. On the occasion of submission of this thesis first and foremost, I would like to express my deepest sense of gratitude to Almighty for his loving care and enabling me to accomplish this venture.*

*I bow my head with great reverence in the pious feet and take my hand towards my inner soul to* ***Babasaheb Bhimrao Amebdkar ji****, a great scholar on his name university is established, I am extremely thankful to our Vice-chancellor* ***Prof. Sanjay Singh*** *for providing me a suitable platform to carry out my research work.*

*With an utmost degree of sincerity, I avail this opportunity to express my heartfelt thanks to my learned guide and supervisor* ***Prof. Priti Saxena,*** *Department of Human Rights, School of Legal Studies, Babasaheb Bhimrao Ambedkar University Lucknow for her keen interest, valuable guidance, consideration, criticism and unceasing encouragement throughout the thesis work without her interest and deep involvement my thesis could not have been successfully completed.*

*I wish to express my deep sense of gratitude to* ***Prof. Sanjeev Kumar Chadha,*** *Head, Department of Law, School of Legal Studies, BBAU, Lucknow for permitting me to work on this topic and his active support and all the facilities provided by him in this regard.*

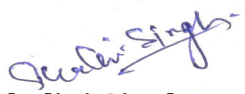
*I am thankful to my seniors* ***Dr. Anil Kumar, Dr. Manindra Kumar Singh*** *and my friends* ***Sateesh Kumar, Ashwini Chaudhari, Amit Chawdhary, Shiv Kumar, Dinesh Singh, Irsad Ahmad, Mamta Rajpoot, Prashant Tripathi*** *and* ***Shipra Mishra*** *for their possible help during the course of research and preparation of thesis.*

*I express my thanks to the entire library staffs especially to* ***Dr. O.P. Saini,*** *Assistant Librarian, of the Gautam Buddha Central Library, BBAU, Lucknow.*

*I have no words to express my gratitude to my mother* ***Smt. Taruna Singh Tomar*** *& my father* ***Shri Ranveer Singh Tomar*** *for their blessing, affection and every kind of support throughout my research. I am also immensely thankful to my family members for their love and affections every kind of support throughout my research.*

*I also acknowledge my sincere gratitude to my brother* ***Aditya Veer Singh*** *and Sisters* ***Kanchan Singh*** *and* ***Monika Singh*** *for their love, encouragement and for being a source of strength and motivation over the years.*

*Last but not the least, I am also thankful to the* ***Dr. Swadesh Kumar,*** *Proprietor of Scholars Hub, Ratanakarkhand, Southcity, Lucknow, for transforming the manuscript into the present form.*



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# ABBREVIATIONS

| | | |
|---|---|---|
| A.C | : | Appeal Cases |
| A.L. J | : | Australian Law Journal |
| A.L.J. R | : | Australian Law Journal Reports |
| A2J | : | Access to Justice |
| AAL R | : | Anglo-American Law Review |
| AIR (J) | : | All India Reporter Journals |
| AIR | : | All India Reporter |
| AIR(SC) | : | All India Reporter (Supreme Court) |
| Ala L Rev | : | Alabama Law Review |
| All ER Rev | : | All England Law Reports Annual Review |
| All L J | : | Allahabad Law Journal |
| All L R | : | Allahabad Law Reports |
| All L T | : | Allahabad Law Times |
| All. E. R | : | All England Law Reports |
| Alld. | : | Allahabad |
| ALR | : | American Law Reports |
| ALT | : | Allahabad Law Times |
| ALT | : | Andhra Law Times |
| Am U L Rev | : | American University Law Review |
| APEC | : | Asia Pacific Economic Corporation |
| APQ | : | American Philosophical Quarterly |
| Art. | : | Article. |
| ASIL | : | American Society of International Law |
| BJLS | : | British Journal of Law and Society |
| BLJ | : | Banaras Law Journal |
| BLR | : | Bombay Law Review |
| Bom. | : | Bombay |
| C.A | : | Court of Appeal |

| | | |
|---|---|---|
| C.A. D | : | Constituent Assembly Debates |
| C.J. I | : | Chief Justice of India |
| CEDAW | : | Convention the elimination of all forms of Discriminations against women |
| CESCR | : | Committee of Economic, Social and Cultural Rights |
| CJEU | : | Court of Justice of the European Union |
| Com | : | Committee |
| Cr. L. J | : | Criminal Law Journal |
| Cr. P. C. | : | Code of Criminal Procedure |
| Del. | : | Delhi |
| | | Development |
| Doc. | : | Document |
| DOJ | : | Department of Justice |
| e. g. | : | Example gratia (for Example) |
| E. R | : | English Reports |
| ECHR | : | European Convention on Human Rights |
| ECOSOC | : | Economic and Social Council |
| ECtHR | : | European Court of Human Rights |
| Ed. | : | Edition |
| EPW | : | Economic and Political Weekly |
| EU | : | European Union |
| EWHC | : | High Court of England and Wales |
| FB | : | Full Bench |
| FIR | : | First Information Report |
| GA | : | General Assembly of the United Nations |
| GOI | : | Government of India |
| H.C | : | High Court |
| H.R.L. J | : | Human Rights Law Journal |
| Harv. L. R | : | Harvard Law Review |
| HR | : | Human Rights |
| HRC | : | Human Rights Committee |
| HRQ | : | Human Right Quarterly |

| | | |
|---|---|---|
| I.A. | : | Indian Appeals |
| I.E | : | Indian Express |
| i.e. | : | id est (that is) |
| IBA | : | International Bar Association |
| Ibid | : | In the same place (Ibidem) |
| IBR | : | Indian Bar Review |
| IC | : | Indian Cases |
| ICC | : | International Criminal Court |
| ICCPR | : | International Covenant on Civil and Political Rights |
| ICESCR | : | International Covenant on Economic, Social and Cultural |
| ICJ | : | International court of Justice |
| ICT | : | Information and Communication Technology |
| IJIL | : | Indian Journal of International Law |
| IJPA | : | Indian Journal of Parliamentary Affair |
| IJPA | : | Indian Journal of Public Administration |
| ILF | : | International Legal Foundation |
| ILI | : | Indian Law Institute |
| ILO | : | International Labour Organizations |
| ILR | : | Indian Law Reports |
| Infra | : | Below |
| IPC | : | Indian Penal Code |
| IPPs | : | Information Privacy Principles |
| J. C. L& Crim. | : | Journal of Criminal Law and Criminology |
| j. | : | Journal |
| JBCI | : | Journal of Bar Council of India |
| JCPS | : | Journal of Constitutional and Parliamentary Studies |
| JILI | : | Journal of Indian Law Institute |
| JT | : | Judgement Today (SC) |
| KLT | : | Kerala Law Times |
| LAC | : | Legal Aid Clinic |
| Lit. | : | Litigation |

| | | |
|---|---|---|
| LLP | : | Legal Literacy Program |
| LQR | : | Law Quarterly Review |
| LT | : | Law Times |
| MDGs | : | Millennium Development Goals |
| MLJ | : | Madras Law Journal |
| MLR | : | Modern Law Review |
| MP | : | Madhya Pradesh |
| MPL | : | Muslim Personal Law |
| NALSA | : | National Legal Services Authority |
| NGO | : | Non-Governmental Organization |
| NGO | : | Non-Governmental Organization |
| NHRC | : | National Human Rights Commission |
| NMJDLR | : | National Mission on Justice Delivery and Legal Reforms |
| OHCHR | : | Office of the High Commissioner for Human Rights |
| P.C | : | Privy Council |
| Para | : | Paragraph |
| PIL | : | Public Interest Litigation |
| PL | : | Panel Lawyer |
| PLT | : | Political and Law Times |
| PLV | : | Para Legal Volunteer |
| R/W | : | Read with |
| SC | : | Supreme Court |
| SCC | : | Supreme Court Cases |
| SCJ | : | Supreme Court Journal |
| SCR | : | Supreme Court Reports |
| SDG | : | Sustainable Development Goals |
| Sec | : | Section |
| SLMA | : | State Literacy Mission Authority |
| SLSA | : | State Legal Services Authority |
| Supp | : | Supplementary |
| Supra | : | Above |

| | | |
|---|---|---|
| u/s | : | Under Section |
| UDHR | : | Universal Declaration of Human Rights |
| UK | : | United Kingdom |
| UN | : | United Nations |
| UNC | : | United Nations Charter |
| UNDP | : | United Nations Development Programme |
| UNGA | : | United Nations General Assembly |
| UNODC | : | United Nations Office on Drugs And Crime |
| UOI | : | Union of India |
| UP | : | Uttar Pradesh |
| USA | : | United States of America |
| VDPA | : | Vienna Declaration and Programme of Action |
| viz. | : | namely |
| Vol. | : | Volume |
| Vs. | : | versus |
| w.e.f. | : | With effect from |
| WCED | : | World Commission on Environment and |
| WHO | : | World Health Organization |
| WLR | : | Weekly Law Reports |
| WTO | : | World Trade Organization |

# CHAPTER-I

# INTRODUCTION

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# INTRODUCTION

## 1.1 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.

The quest for justice began with the famous slogan of the French Revolution, **"Liberty, Equality and Fraternity"**. Hence Liberty, Equality and Fraternity are the three fundamental principles of justice. Each of them has been interpreted and re-interpreted by the judiciary from time to time with the principal object of promoting the interests of vulnerable groups of society. To build up-social order free from oppression and exploitation in society.

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

[1] John rawls, *the theory of justice*, 11 (Harvard university press, 1977).
[2] Ayesha Kadwani Dias and Gita H.Welch, *Justice for the Poor: perspectives on Accelerating Access*, 1 (Oxford University Press, New Delhi, 2011).

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.

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.

Access to justice is a fundamental requirement of any democratic society and an inherent aspect of the rule of law. The right is so fundamental and inalienable that

[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.*

no system of governance can ignore its significance, leave alone afford to deny the same to its citizens. The **Magna Carta**, the **Universal Declaration of Rights, the International Covenant on Civil and Political Rights,** 1966, the ancient Roman Jurisprudential maxim of *'Ubi Jus Ibi Remedium'*; the development of fundamental principles of common law by judicial pronouncements of the Courts. Over centuries past have all contributed to accepting access to justice as a basic and inalienable human right. That all civilised societies and systems recognise and enforce.

In their monumental comparative work on the civil justice system, **Cappelletti** and **Garth** point out that the emergence of access to justice as '**the most basic human right'** was in recognition that possession of rights without adequate mechanisms for their retribution would be meaningless.[6] It was not enough that State proclaimed a formal right of equal access to justice for every citizen. The State was required to guarantee, by affirmative action, adequate access to justice. The notion of justice evokes images of the rule of law, the resolution of the conflict, institutions that make laws, and those that enforce them. Access to justice implies but goes well beyond the right to an effective remedy, equal access to courts, a fair trial, or the right to legal aid for those who lack sufficient resources.[7] Access to justice inheres to the notion of justice. Two primary purposes which are intended to be served by providing access to justice are:[8]

a) To ensure that every person can invoke the legal processes for redressal, irrespective of social or economic status or other capacities; and
b) Every person should receive just and fair treatment within the legal system.

Justice has ever been the ideal of humanity and has been an urge behind all social reforms and revolutions. Moreover, Justice has been the aim of the lawmakers, endeavour and duty of the judges to provide and the ultimate test of every social welfare government and good governance. Whichever form of government a society opts for, the noble ideals of **justice, equality and liberty** should incense its entire constitutional edifice. **Justice Chandrasekhar** has high lightened as to how

[6] M. Cappelletti and B. Garth, *Access to Justice and the Welfare State* 1(European University Institution, 1981).
[7] Amnesty International, Fair Trial Manual, Second Edition, 2014, in particular Chapter 11 "Right to equality before the law and courts", p. 103, Chapter 13 "Right to a fair hearing", p. 118, and Chapter 3 "Right to legal counsel before trial", p. 43.
[8] S Muralidhar *Law, Poverty and Legal Aid Access to Criminal Justice* 1 (Lexis Nexis 2004).

economic inequality hampers equality in the administration of justice, in his following words:

> *"Theoretically all are equal in the eyes of the law and justice. But in reality, economic inequality has made justice beyond the reach of the weaker section of the people. As the law has become so complicated and the procedure in the courts is so technical the very rarely a litigant will be able to put forth his case before the court without the aid of an advocate. How many people in our country can afford to pay the fee for engaging the service of advocates?... a litigant also to incur expenses for the travel between his place of residence and has the place where the court is situated and for bringing his witness to the court."*[9]

The ideal State has two key attributes: (i) it is founded upon justice, and (ii) all the citizens within it are happy. Law no doubt is for the man, for the society for the advance towards those fundamental goals is evocatively expressed in the Preamble by the expression "we the people of India," and it comprises ideals and aspirations of the people of India." Law is not static, backwards-looking or tradition-bound. The Preamble of the Indian Constitution invokes 'Justice- social, economic and political as a core principle. The guarantee of equality of law and equal protection of law lies at the heart of the judicial setup. The right to life encapsulates the essence of all rights and liberties. The Supreme Court has universally recognised and reiterated that timely justice and speedy trial are facets of the right to life under our Constitution. Ensuring equal and seamless access to justice is a constitutional mandate and just in terms of a fundamental right under **Part III** and fundamental in the governance of the country directive under **Part IV** of the Indian Constitution, loaded with multiple constraints. **Article-14** mandates that the State shall not deny to any person equality before the law or equal protection of the law within the territory of India and strongly suggests equality of access to the courts. This "**equality clause**" is of wide import. This clause postulates that equals cannot be treated unequally and unequal cannot be treated equally. This means that all persons, without considering their status, are equally entitled to seek the assistance of the courts to protect their rights and interests. In the

[9] D.M. Chandrasekhar *"Legal Aid to the Weaker Sections of the People"* paper read as at the 7th Annual Conference of Indian Society of Criminology, Aligarh Muslim University, Dec 28- 30, 1977.

Indian Constitution, **Articles 38, 39(b) and (c) and 39-A** comprise provisions for achievement of non-exploitative advocating equal rights for all in the society. Hence, it is the Constitutional duty of the Legislature and the Executive and those who operate judicial power to join the struggle for achieving these targets.

Judiciary is the third pillar of democracy. The nature of judicial functions is such that they can play and should also play an essential role as a catalytic agent and an accelerator in the process of achieving socio-economic justice to the masses. The Supreme Court of India is designated as the custodial of fundamental rights and "rule of law".[10]The courts are created to adjudicate disputes between parties for their amicable solution and often indicate some normative principles that institutions are bound by to secure the right to justice[11]. It was not long ago that a Constitution Bench of the Honourable Supreme Court of India, in the case of **Anita Kushwaha v Pushap Sudan**[12], while holding that access to justice apart from being a facet of right to life under Article 21 of the Constitution of India. It is a part of the guarantee contained in Article 14 as well. The bench also described the essence of 'access to justice' as constituting of the following elements:[13]

- The State must provide an effective adjudicatory mechanism;
- The mechanism provided must be reasonably accessible in terms of distance;
- The process of adjudication must be speedy; and
- The litigant's access to the adjudicatory process must be affordable.

These principles are not merely formulated but frequently redefined with new insight and adapted whichever suit changing times according to the transformation of society, even while ensuring that the core Constitutional values are affirmed.

Effective and seamless Access to Justice is the essential requirement of a system, which purports to guarantee legal rights to the people at large. Hence unless some provisions are made for helping the poor for payment of court fee, process fee, lawyers' fee and other miscellaneous and incidental charges and cost of litigation.

[10] The Supreme Court of India, annual report 2007-2008 *available at:* http://supremecourtindia.nic.in (last visited on September 22, 2021).
[11] Keshav Dayal, *Makers of Indian Constitution,* 68 (Universal Law Publishing Co Pvt. New Delhi, 2014).
[12] (2016) 8 SCC 509.
[13] *Ibid.*

Vulnerable groups are denied equality, as envisaged in the national rules and law. The State has to make justice accessible, especially when it is realised that most litigation centres on small men with poor means. Therefore one shall not forget that the law is not only speaking about justice but also deliver justice and legal aid to the poor, who is imperative. It is in fact, the delivery system of social justice. **Chief Justice R. S. Pathak** has aptly observed:

> *"Legal aid has served to highlight the problems suffered by the poor and the weaker sections of the people. If employed appropriately, it can, in certain cases, result in bringing relief to them with an expeditiousness and directness not ordinarily conceivable through the traditional procedures of litigation, to make it possible for the economically weak to fight against economically strong in court, not only to get into court but to stay if necessary, to the bitter end."*[14]

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"*.[15] 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, 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."[16] The goal is to secure justice for the vulnerable groups of society. Particularly to the poor, downtrodden, socially backward, women,

[14] *Sheela Barse* v. *State of Maharashtra* (1983) 2 SCC 96.
[15] *M.H. Hoskot* v. *State of Maharashtra* (1978) 3 SCC 544.
[16] S.K. Sharma, "Jurisprudence of Legal Aid: A Constitutional Juridical Perspective" 168 *The Academy Law Review*, XIII 1989.

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.[17] 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.[18] 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 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, 1973[19] also contemplated providing legal aid already existed even before enacting the Legal Services Authorities Act, 1987. In **Centre of Legal Research v. State Of Kerela,**[20]

[17] Sangita Dhingra Sehgal, *Commentary on The Legal Services Authorities Act* 16 (Universal Law Publishing, New Delhi- India 2016).
[18] *Id*. at 13.
[19] 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".*
[20] AIR 1986 SC 1322.

the Apex Court directed that voluntary organizations and social actions groups engaged in Legal Aid Programmes must be encouraged and supported by the state.

Providing equal access to justice in India has engaged the interest of lawmakers,[21] the Central and State governments,[22] law academics,[23] judges,[24] and occasionally the legal profession.[25]Expert bodies constituted by the State to examine the question have emphasised the vision of legal aid as a tool for achieving the social objectives.[26] Their reports have stressed the procedural and substantive components of the right to access justice.[27] Legal aid thus not restricted assistance by way of representation in legal proceedings: it envisages initiating law and institutional reform.[28]However, the introduction of the Legal Service Authorities Act 1987 revolutionised the whole scheme of the legal aid movement in the country. But now, the legal aid movement in India too require a similar approach. Thus there is an urgent need to look into the movement's challenges today. Challenges are constantly to be met with the response; it is high time for addressing those issues that may affect the growth we achieved in providing legal aid.

The other critical response of the judiciary to the need to provide access to justice for vulnerable groups is **Public Interest Litigation**, the judicial innovation in

[21] In kerala, the Legal Aid to the Poor Rules was made in 1958. There have been separate legislations for legal aid in Karnataka, M.P., Tamil Nadu and West Bengal. In 1987, the legal services authorities act was enacted.

[22] The appointment by both the central and state governments of expert committees on legal aid has been in vogue in India since 1977. Between 1980-1995 the central government constituted and funded the committee for the implementation of Legal aid schemes ( CILAS). After enactment of LASS there have been no committee on legal aid. The focus has sifted to managing the areas of pending cases in the different levels of courts.

[23] Marc Galanter (ed.) *Law And Society In Modern India,* 279 (Oxford Publication, 1989).

[24] Gujarat Committee under the chairmanship of Justice P.N. Bhagwati in 1971. By a notification dated 27th October 1972, the Ministry of Law and Justice, Government of India, appointed an Expert Committee on Legal Aid with Justice Krishna Iyer as chairman to examine the matter of making legal aid and advice available to the community Another committee of two judges Justice P.N. Bhagwati and Justice Krishna Iyer was set up for providing adequate legal service programmes in all the states on a uniform basis. This committee in its final report popularly known as *"Report On National Juridicare: Equal Justice-Social Justice"* submitted in the year 1977 stressed the need for a new philosophy of legal service programme to be framed in the light of socio-economic conditions prevailing in the country. This is discussed in chapter

[25] The bar council of India, a statutory body constituted under the advocate act 1961 for the purpose of regulating the legal profession made an unsuccessful attempt to frame a legal aid scheme which would be financed and run by lawyers.

[26] Ministry of Law, Justice and Company "Affair Report on National Juridicare: Equal Justice-Social Justice, Ministry of Law, Justice And Company Affair "(1977).

[27] Ministry of Law, Justice and Company Affair, "Expert Committee on Legal Aid: Processual Justice to the Poor" (1973).

[28] *Ibid*.

the late 1970s. The main objective of PIL is to secure easy and effective access to justice for disadvantaged classes and groups for the meaningful realization of their guaranteed fundamental rights. This objective would be difficult to achieve without liberalizing the requirement of *locus standi*. **Professor Baxi** prefers the term Social Action Litigation (SAL) to describe how the social disadvantage groups invoke the court's process to enforce their rights. He has described the need of SAL as:

> "*The future of law… (and access to justice) is partly, but vitally, linked to the future of social action litigation because though it great and unending injustice and tyranny begin to hurt the national conscience and prod at least one major institution of governance to take people miseries seriously."* [29]

This innovation of PIL would soon encompass a wide range of subjects not limited to those unable to access the courts because of their peculiar disadvantage.[30] Although the PIL jurisdiction in its early evolution witnessed a concerted attempt by the judiciary to tackle issues arising in the criminal justice system overcrowding of prison, providing representation to indigent accused, reforming the monetary bail process, enforcing the right to speedy trial infusing human rights orientation into judicial sentencing approaches, dealing with a range of under trials from those in protective custody to the mentally ill to juvenile prisoners, to name a few- the momentum was, for a variety of reasons, not sustained.[31]

This becomes more important in abnormal situation like presently due to Covid-19the 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

[29] Upendra Baxi' "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" 132 *Third World Legal Studies Volume IV* (1985).
[30] *Supr*a note 8.
[31] *Ibid.*

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.[32] 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.[33] 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 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.[34] Many may suffer a loss of employment and livelihoods, limited access to health services, access to housing, and increased risk of facing penalties imposed by the State for breaking emergency regulations. The guidelines for women and children deprived of liberty during the pandemic. Including cases where women are imprisoned with their children. Particular attention is needed for gender and child sensitivity in developing protocols.

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.[35] The vulnerable people experience more frequent and complex interrelated legal problems, leading to cumulative disadvantage when other personal and situational factors intersect.[36] The

[32] Vaibhav Kumar "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).
[33] *Available at:* https://www.undp.org/blogs/changes-and-challenges-justice-time-covid-19 (Last visited on September 5, 2021).
[34] *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).
[35] 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 (1) (Last visited on September 5, 2021).
[36] UN Women, UNDP, UNODC, and OHCHR. 2018 available at "A Practitioner's Toolkit on Women's Access to Justice Programming." New York: United Nations. *Available at*: https://www.unwomen.org/en/digital-library/ publications/2018/5/a-practitioners-toolkit-on-womensaccess-to-justice-programming (Last visited on September 5, 2021).

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.[37]

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.[38] 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 corrections services need to work together to take on a holistic and people-centred approach to resolve the justice problems.[39] Particular attention to empowering people and enhancing their capacities to redress grievances is also critical to achieving access to justice for all.

The impact of the pandemic has been majorly seen in the Indian courtrooms. To adhere to social distancing norms and curb the spread of the second wave of this infectious virus, the Indian Courts have again resorted to Virtual Court Rooms to ensure that the administration of justice remains uninterrupted.[40] It must be noted that the concept of Virtual Courts is not novel in India. In 2003, the Supreme Court of

[37] *Id.*
[38] *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).
[39] *Ibid.*
[40] In Re: Guidelines for Court Functioning through Video Conferencing during COVID- 19 Pandemic, 2020 SCC Online SC 355.

India in **State of Maharashtra v. Prafulla Desai**[41] held that recording evidence by a court through video conferencing shall be considered *'as per the procedure established by law'*.[42] Since then, several subordinate Courts in India have already framed guidelines and held judicial proceedings through video conferencing. Recent steps towards digitisation by the bench complement the virtual courts and electronic filings. It has been cited from two instances: first, the introduction of e-courts portals/apps, ensuring the availability of soft-copies of court orders and immediate access to case status. Second, in 2016 direction passed by the Honourable Supreme Court of India in the case of **Youth Bar Association of India v Union of India**,[43] for uploading copies of first information reports (FIRs) on the websites of the police/ State, which, if properly implemented, could be linked to the e-filing process, to ensure the electronic availability of FIRs to the courts. Also requiring a mention is the Supreme Court's mobile application, which has improved access to case information.

Any new technological intervention in an existing system is bound to cause severe discomfort initially, for it takes us far beyond our comfort zones. However, with time and testing, not only do we adapt to it, but technological advancement also starts to achieve perfection. The legal system is no stranger to technology and has always kept up-to-date with technological advances. For instance, the advent of the internet and information technology resulted in enacting the new statute, namely the Information Technology Act, 2000, and amendments to the age-old Indian Evidence Act, 1872. Since history is full of examples of the law adapting to 'change', there is no reason why the pandemic should be different. Indeed, it is not so, as is evident from the dynamism and adaptability demonstrated by our legal system. The Bench and the Bar have wholeheartedly cooperated and collaborated to ensure that the system continues to work: courts are in operation, and we can assure benefactors that the system, though brought down by the pandemic's chaos, has been revived.[44] The only facet that 'access to justice' has adopted during the pandemic is ensuring 'remote access'/'virtual access', which is many steps ahead and far more positive than 'no access'. Current times echo the words of **Benjamin Cardozo**:

[41] (2003) 4 SCC 601.
[42] (2003) 4 SCC 601.
[43] (2016) 9 SCC 473.
[44] *Ibid.*

> *"Existing rules and principles can give us our present location, our bearings, our latitude and longitude. The inn that shelters for the night are not the journey's end. The law, like the traveller, must be ready for the morrow. It must have a principle of growth. The circumstances created by the pandemic have demonstrated that India's legal system, if not ready for tomorrow, has started gearing up for change."*[45]

There has been some criticism of and opposition to virtual courts, electronic filings etc. It can be silenced only with time and further perfection of the system. Any new system is bound to be hindered in problems. The court video-conferencing applications and systems are no exception. However, it is encouraging to see the tremendous amount of hard work and tireless efforts contributed by support staff in adapting the judiciary to the new system. It is also true that not all are conversant with technology. Still, current circumstances demand that our legal culture adopt so.

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. At this juncture, the golden words of the Honourable **Justice Verma** must guide our judiciary:[46]

> "*Rules of procedure are not by themselves an end but the means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice. Construction of a rule of procedure which promotes justice and prevents its miscarriage by enabling the court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of the permissible construction, must be preferred to that which is rigid and negatives the cause of justice. The reason is obvious. Procedure is meant to sub-serve and not rule the cause of justice. Where the*

[45] Benjamin Cardozo, *The Growth of the Law, Indian Economy* 16 (Universal Law Publishing Co 2006).
[46] *Vali Perro* v *Fernandeo Lopez & Ors*, (1989) 4 SCC 671.

> *outcome and fairness of the procedure adopted is not doubted and the essentials of the prescribed procedure have been followed, there is no reason to discard the result simply because certain details which have bit prejudicially affected the result has been inadvertently omitted in a particular case. In our view, this appears to be the pragmatic approach that needs to be adopted while construing a purely procedural provision. Otherwise, rules of procedure will become the mistress instead of remaining the handmaid of justice, contrary to the rile attributed to it in our legal system."*

The other area, which faces a more significant challenge, is the conduct of mediation proceedings. Often, court-ordered mediation proceedings are conducted through the legal services authorities. It is yet to be seen how the mediation proceedings would adapt to virtualisation, for the essence of mediation is the presence of contesting parties before the mediator, attempting to settle the matter with the intervention/counselling of the mediator. Litigants, *vis-a-vis* the Bench and the Bar, cannot be expected to have the same level of adaptability for virtual/electronic proceedings. Therefore, what will be required is using traditional systems only, albeit with modifications to ensure social distancing and safety. The oft-lightly taken mediation proceedings, as compared to court proceedings, would be far more challenging when attempting to keep up with the latest circumstances and technology. Similar challenges would apply to legal aid. To reiterate, the difficulty would be making the litigants and clients adapt to the change. However, hopefully, the same would withstand the test of time, for the post-COVID-19 world has been a different place altogether, with entirely different norms.

Although the COVID-19 lockdown is not permanent, the new norms it necessitates have permeated our system, and these are here to stay. Online hearings should try to replicate this openness as far as possible by allowing litigants and the general public to watch the hearings. Opacity reduces citizens' confidence that even in an online hearing, their case will be heard on merits while giving a fair hearing to all

parties, leading to enforceable remedies, utilising conspicuously appropriate procedures and perceived to be so.[47]

## 1.2 LITERATURE REVIEW:

**Books-**

The researcher has presented briefly herein the information collected from comprehensive literature**.** Many books, articles, reports have been reviewed. These are the following:

The first reviewed book is "**Strengthening Governance through Access to Justice**" by Anita Singh and Nasir Aslam Zahid (eds.) 2009, PHI Learning Private New Delhi-110001

The authors examined the journey into the history of administrative innovators who thought of a system that could advance without injustices or alienation from the ordinary people. This book is an investigative study on the issue of strengthening governance in the context of changing perceptions of the justice dispensation system in South Asia.

The second reviewed book is "**Justice for Poor Perspective on Accelerating Justice"** by Ayesha Kadwani Dias and Gita Honwana Welch 2009, Oxford University Press, New Delhi

The book identifies the role of access to justice in securing accountability for realising the millennium development goals (MDGs) and ensuring participation and non-discrimination in the development and decision-making processes geared towards the realization of such MDGs. The author examined the access to justice as a part of good governance and discussed its central block for economic and social reforms and the protection and promotion of human rights. The author also looks at the international financial mechanisms and tools put in place by NAFTA, WTO, and World Bank to assess if, and to what extent, there is a provision in such means and devices for vulnerable members of society to adequate access to legal justice. The author further explores the international law instruments (binding and non-binding) to

[47] Available at: https://www.hindustantimes.com/analysis/ensure-access-to-justice-in-a-post-covid-world/story-o4OLC4wEa40hSLCJFww0HJ.html(last visited on September 9, 2021).

promote access to justice UN mechanisms that promote access to justice. Its urges, therefore, the states incorporate international human rights laws, declarations, and guidelines, into their legislation. The second chapter, 'Access To Justice In Plural Legal Systems' highlight the community, justice institutions, and judicialization: a lesson from Rural Peru; women and access to justice; access to justice and women's human rights in a plural legal framework: a case study of the application of Hudood laws in Pakistan. The third chapter, 'Access to Justice and Public Interest Litigation', analyses the public interest movement in South Africa: law as a means of promoting social justice; social action litigation and access to justice in Nigeria: a critical case study; public interest litigation in central and eastern Europe. In the fourth chapter, 'Democracy, Governance, And Justice Programming' author discuss the independence of the court and access to justice in Kenya: a new constitutional vision; judicial and anti-corruption reform in Africa: between market efficiency and access to justice for the poor; legitimacy, accountability, and judicial independence: toward judicial effectiveness; focusing on legal empowerment: the UNDP LEAD project in Indonesia.

The third reviewed book is **"Law, Poverty and Legal Aid Access to Criminal Justice"** by S. Muralidhar 2004, LexisNexis, New Delhi.

The book focuses on the importance of the rights of justice for those interacting with the criminal justice system as a complaint, suspects, status offenders or prisoners. The author has traced the historical evolution of criminal legal aid in the country, analysed the relevant status, schemes, and judicial pronouncement and seeks to demonstrate the linkage that the denial of legal aid has with the loss of liberty of an individual with in the criminal justice system.

The fourth reviewed book is "**Law& Life"** by VR Krishna Iyer 2008, Universal Law Publishing Co Pvt. New Delhi.

In this book, each problem is discussed by the author from the human rights angle to develop an Indian jurisprudence that will incorporate this perspective. The author examined the people's access to judicial process for redress of public grievance through pro bono, Public Interest Litigation proceeding and the basic structure of the feudal Indian Legal system's substantive and procedural feature are conditioned by Victorian vintage values. For **Justice Krishna Iyer** the right to human dignity is not a

question of individuals fighting for their rights but a struggle of an entire people for a more just and humane society. He recognizes the right to dissent. He is not afraid to come to a logical conclusion from his postulates and he, at all times, tries to combine theory with practice. The book is packed with new ideas, information and innovative interpretations of various laws and the Constitution. The author first gives the background of the problem and goes to its roots, and then in each case, gives concrete suggestions for a possible remedy. The author suggests that the remedy lies in having more public interest litigation, freedom of information and special courts to deal with this growing problem.

The fifth reviewed book is "**The Preamble**" by Deepak Kansra 2013 Universal Law Publishing Co Pvt. New Delhi.

The author highlights the value-based and contextual grounding of constitutional ideals such as justice, equality and liberty. Justice in specific has been explained in the general and particular sense, taking shape in the name of distributive justice, corrective justice, cumulative justice, retributive justice, and so on. In this regard, the relevant provisions of the Indian Constitution have been discussed vis-à-vis political, economic and social justice,

The sixth reviewed book is **'Social Problems and Social Justice'** by Neil Thompson 2017, Palgrave.

This book discusses the nature and significance of social problems and considers the relationship between social problems and social justice. It provides an overview of some of the critical problems currently facing society and clearly and systematically demonstrates how they perpetuate social injustice, inequality and discrimination. In developing this book, the author aims to provide a sound foundation of understanding of a range of complex issues relating to social problems and social justice and the relationship between them. The author introduces the relationship between a social problem and social justice and clarifies the value of understanding the relevance of social justice and social issues. He analyses a range of social problem from a social justice perspective and review efforts to address social problem and promote social justice in this book.

Seventh reviewed book is **'A Theory of Justice'** by John Rawls 1971, Harvard University Press.

The book is a 1971 work of political philosophy and ethics by the philosopher John Rawls, in which the author attempts to provide a moral theory alternative to utilitarianism and that addresses the problem of distributive justice (the socially just distribution of goods in a society). The theory uses an updated form of Kantian philosophy and a variant form of conventional social contract theory. Rawls's theory of justice is fully a political theory of justice as opposed to other forms of justice discussed in other disciplines and contexts.

Eight reviewed book is '**The Battle against Injustice: Is Justice Getting Punished?**' by G. Ramachandra Reddy 2010, Serials Publication.

The book touched on the issue of the delivery of justice in India. The author relates the delivery of justice to most contemporary realities like Developments in Political & Legal Issues, Police Encounters-Instant Justice or Injustice through the Process of Accountability of State & Criminals, Advancing Justice by correcting wrong views on the value with the telling effect. The insight provided by the author in the book, with his vast experience in police service, will add to the growing volume of justice delivery in India.

The night reviewed book is **'Access to Justice'** by Deborah Rhode 2004, Oxford University Press.

The book height lighted that "Equal Justice under Law" is one of America's most proudly proclaimed and widely violated legal principles. But it comes nowhere close to describing the legal system in practice. This book reveals the inequities of legal assistance in America, from the lack of access to educational services and health benefits to gross injustices in the criminal defence system. It proposes a specific change plan, offering tangible reforms for coordinating comprehensive systems to deliver legal services, maximizing individuals' opportunities to represent themselves, and making effective legal services more affordable for all Americans who need them. The author takes the American national ideal of "equal justice under law" as its starting point. Examining the nature and extent of procedural justice available to people with little or no income, discussing how closely the reality matches our

national ideal. The book presents a convincing picture of a civil and criminal justice system that falls woefully short. The book closes with a comprehensive roadmap for reform in America.

The tenth reviewed book is **'Access to Justice and Legal Aid: Comparative Perspectives on Unmet Legal Need'** by Jacqueline Hodgson 2017, Bloomsbury Publishing.

This book considers how access to justice is affected by restrictions to legal aid budgets and increasingly prescriptive service guidelines. As common law jurisdictions, England and Wales and Australia share similar ideals, policies and practices. But they differ in aspects of their legal and political culture. In the nature of the communities they serve and their approaches to providing access to justice. These jurisdictions thus provide us with different perspectives on what constitutes justice and how we might seek to overcome the burgeoning crisis in unmet legal need. The book fills a significant gap in existing scholarship to bring together new empirical and theoretical knowledge examining different responses to legal aid crises both in the domestic and comparative contexts, across criminal, civil and family law. It achieves this by examining the broader social, political, legal, health and welfare impacts of legal aid cuts and prescriptive service guidelines. Across both jurisdictions, this work suggests that it is the most vulnerable groups who lose out in the way the law now operates in the twenty-first century. This book is essential reading for academics, students, practitioners and policymakers interested in criminal and civil justice, access to justice, the provision of legal assistance and legal aid.

**Journals-**

Dr. R. Seyon "**Legal Justice: Right to Legal Services and Legal Aid**" *lex revolution* (Journal of Social and Legal Studies) volume-I, issue I, Jan march 2015.

The author examined the legal aid service provided by lawyers to an indigent litigant at state expenses, has to be considered an integral part of access to justice in the common law.

Shailendra Kumar and Sangmitra Choudhury "**Migrant workers and human rights: A critical study on India's COVID-19 lockdown policy**" Social Sciences & Humanities Open Volume 3, Issue 1, 2021.

The author examined the mistakes committed by government during pandemic which caused unbearable difficulties for labours in India.

G.O. Koppell, "**Legal Aid in India,"** *Journal Of The Indian Law Institute,* vol. 8, No. 2 (April-June 1966), Pp. 224-25.

The author examined the purpose and objectives of three constitutional articles- 38,22 (1) & 14 and found that the constitution visualized and attempted to provide for a society in which justice is equally and even headedly supplied for all the citizens of India.

Upendra Baxi, "**Access, Development and Distributive Justice: Access Problems of the "Rural" Population",** *Journal Of The Indian Law Institute*, Vol. 18, No 5 (July-Sep.1976).

The author examined the notion of access to justice for the rural population of our country as central concern to political theory, science, and jurisprudence. According to its dictionary meanings, access generally connotes the ability or means to participate or permission or liberty to do so or to approach or communicate. But the population from the rural area faces so many difficulties to access justice to enforce their fundamental rights.

## 1.2 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.

## 1.3 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?

## 1.4 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.

## 1.6 SCHEME OF FINAL CHAPTALIZATION:

The present work is divided into the following chapters:

**Chapter-I:** Introduction.

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

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

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

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

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

**Chapter-VII:** Conclusion and Suggestions.

**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, and literature review.

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

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;
- Elucidated the concept of justice and discussed its different types: distributive, corrective, social, economic, retributive, and transitional justice;
- 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;
- Furthermore, it discussed the challenges of access to justice in enforcing vulnerable group rights; and
- In the last concluded that the gap exists between citizens and the law regarding equality of opportunity and approaches in tracking the issue and providing an appropriate remedy.

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

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;

- 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. It focuses on the contemporary problem of lack of access to justice under international law concerning claims against transactional corporations.; and
- The chapter concluded by drawing attention to the fact 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.

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

In this chapter, the researcher has tried to unpack following-

- Examined the provision of access to justice in the constitution of India for women, children, old age, person with disabilities and transgender;
- Portrayed the Indian legal framework both legislative and Constitutional provisions, relating to access to justice with particular reference to right to life and right to equality for non-discrimination, and its enforceability during arrest and detention;
- Attempts to provide significance of access to justice to establish welfare state through right to free legal aid services in India;
- 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 it is acknowledged that despite all Constitutional determination, 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:**

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;
- 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:**

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.

## 1.7 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.

## 1.8 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. A more serious study on impact of covid-19 on access to justice can be done.

# CHAPTER-II

# MEANING AND CONCEPT OF ACCESS TO JUSTICE IN INDIA

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*"The United Nations has learned that the rule of law is not a luxury and that justice is not a side issue. We have seen people lose faith in a peace process when they do not feel safe from crime. We have seen people resorted to violence and illegal means without credible machinery to enforce the law and resolve disputes. And we have seen that elections held when the rule of law is too fragile seldom lead to lasting democratic governance. We have learned that the rule of law delayed is lasting peace denied and that justice is a handmaiden of true peace. We must take a comprehensive approach to Justice and the Rule of Law. It should encompass the entire criminal justice chain, not only police but also lawyers, prosecutors, judges and prison officers, and many issues beyond the criminal justice system. But a "one-size-fits-all"*[1]

Formal Secretary-General of the United Nations, Kofi Annan

## 2.1 INTRODUCTION:

Much used, but little understood, the phrase 'access to justice' has remained a nebulous concept. For many, the phrase is synonymous with due process of law and ideals behind the rule of law so that the concept is understood to mean:

> *"The right to one's day in court, the right to be heard, the right to take part in procedures through which one's fate is determined all provided the basic substance of due process, which is, in turn, at the heart of our conception of fairness and justice*[2]*"*

This definition gives priority to law and legal institutions. It is self-evident that law as justice is only an answer if the question asked is legal. Moreover, one should look at getting to law notes as an end itself, but as a means to an end, the desire and

[1] Access to Justice - UNDP. *Available at*: https://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/access-to-justice-practice-note/Justice_PN_En.pdf?( Last visited on January 29, 2021).
[2] L. Lipson and S. Wheelers (eds.), *Law and Social Science* 527 (New York: Russell Sage Foundation, 1986).

the actual substantive satisfaction of the claim. More recently, the concept of justice has expanded to include the right to enjoy human rights, including socio-economic and cultural rights.[3] Indeed, the right to access is increasingly recognised as paramount among the new individual and social rights since the possession of rights is meaningless without a mechanism for their effective vindication.[4]

## 2.2 A CONCEPTUAL ANALYSIS OF ACCESS TO JUSTICE:

The concept "access to justice" encapsulates crucial questions not only for the legal profession and civil procedural scholars but also for our society at large, and competing for social concerns makes these questions challenging to resolve.[5] The meaning of the term "justice" can vary between countries and cultures. However, the idea of justice is common to all and generally includes notions of fairness, accountability and equity of outcome.[6] "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.[7] Recognising that formal, 19th and 20th-century rights of access to justice were inadequate since they amounted in practice to denials of adequate access for much of the population, there has been an increasing effort in the 21st Century to move beyond a merely formal right. As with most legal concept, while there is a general understanding of the concept, there is no exact definition of what is meant by access to justice. Instead the term is used to describe a variety of provisions that protect and promote equality and the right to a fair trial. 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

[3] Montreal Principles on Women's Economic, Social and Cultural Rights, 26 *Human Rights Quarterly* (2004).
[4] M. Chappelletti and B. Garth (Eds.), *Access to Justice: A World Survey* 8 (Florence: Tipografia, 1978 Vol. 1).
[5] M. Cappelletti and B. Garth, *Access to Justice and the Welfare State* 1(European University Institution, 1981).
[6] UNHCR, Action Sheet 10, "Access to Justice," Available at: http://unhcr.org/4794b4e12.pdf (last visited on June 1, 2021).
[7] Janet Lord, et al, *Human Rights Yes! Action and Advocacy on the Rights of Persons with Disabilities* (University of Minnesota Human Rights Centre, 2007).

ordinary citizen in applying both substantive and procedural law.[8] It attempts to eliminate or inefficient or expensive system of administration of justice. That 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. Hence, the traditional and common understanding of what is meant by access to justice is access to the formal judicial system for dispute resolution.[9] This involves the courts' right to access and the legal representation before the courts. Recognising that formal, nineteenth-century rights of access were inadequate since they amounted in practice to denials of effective access for much of the population, there has been an increasing effort in the twentieth Century to move beyond a merely formal right.[10] In its true sense, access to justice refers to a much broader bundle of issues that may impact or affect the ability of individuals or groups. It seeks redress for perceived wrongs through legitimate means, which may transcend the formal judicial system. In this context, access to justice has been said to include the followings-

> *"Access to a fair set of laws,… Protection from harm (policing)… legal representation, including the services provided by the paralegal sector,… an appropriate set of the institution in which problem and dispute can be settled… appropriate remedies and solution to the problem…popular education about law, institution, and procedure. And threading through all of these… was the important requirement that the access should be affordable, otherwise, it was not accessible"*[11]

However, to evaluate the fairness or justness of a legal process they were involved in, litigants are more likely to express absolute satisfaction with the legal process if they feel that they could both speak and be heard by the decision-maker.[12]

[8] *Supra* note 2 at 554.
[9] L.K. Yuille, "No One's Perfect (Not Even Close): Re-Evaluating Access to Justice in The United States and Western Europe" 42 Columbia Journal of Translation Law (2004).
[10] *Supra* note 52 at 1.
[11] Wilfried Scharf and Daniel Nina (eds.), *The Other Law- Non- State Ordering in South Africa* 40 (Jute Law lansdown, 2001).
[12] Nourit Zimmerman and Tom R Tyler, "Between Access to Counsel and Access to Justice: A Psychological Perspective" 37 *Fordham Urb LJ* 473(2010.)

Thus, 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.

### 2.2.1 History of the Common Law Right of 'Access to Justice:

The concept of access to justice has varied throughout history according to the prevailing ideas, determined by the development of social rights.[13] "Access to justice" is always an invaluable human right, also recognised in most constitutional democracies as a fundamental right. It has its origin in common law and the Magna Carta. In England, during the reign of ***Henry II***, in the 12th Century, the concepts of 'access to justice' and 'rule of law' took roots when the King agreed for establishing a system of writs that would enable litigants of all classes to avail themselves of the King's justice.[14] But soon, the abuses of 'King's Justice' by ***King John*** prompted the rebellion in 1215, which led to the 'Magna Carta' that became the initial source of British constitutionalism and human rights. It represented then and now is a social commitment to the Rule of Law and a promise that even 'the King is not above the law'.[15] As ***Blackstone*** stated later, "It is the function of the common law to protect the weak from the insults of the stronger"[16] The Magna Carta lays the foundation for the basic right of access to courts in the following words:[17]

> "*No freeman shall be taken or imprisoned or disseised or outlawed or exiled or in any way ruined, nor will we go or send against him, except by the lawful judgment of his peers or by the law of the land.*
>
> *To no man will we sell, to no one will we deny or delay right to justice.*
>
> *Moreover, all those aforesaid customs and liberties, the observance of which we have granted in our kingdom as far as pertains to us towards*

[13] Valesca Lima and Miriam Gomez, "Access to Justice: Promoting the Legal System as a Human Right" January 2020 *available* at: https://www.researchgate.net/publication/338423278 (Last visited on March 1, 2021).
[14] *Available at:* http://www.delhihighcourt.nic.in/library/articles/Access%20to%20justice (Visited on January 10, 2021).
[15] *Available at:* https://indiankanoon.org/doc/58259708/?type=print (Visited on April 11, 2021).
[16] *Available at:* https://avalon.law.yale.edu/18th_century/blackstone_bk3ch3.asp (Visited on April 20, 2021).
[17] *Available at:* https://www-casemine-com.cdn.ampproject.org/v/s/www.casemine.com/judgement/in/58117f132713e179478e9c8a/amp?(Visited on January 29, 2021).

> *our men, shall be observed by all our kingdom, as well clergy as laymen, as far as pertains to them towards their men.*
>
> *Wherefore, it is our will, and we firmly enjoin, that the English Church be free, and the men in our kingdom have and hold all the aforesaid liberties, rights and concessions, well as peaceably, freely and quietly, fully and wholly, for themselves and their heirs, of us and our heirs, in all aspects and all places for ever, as is aforesaid."*[18]

In the more than 500 years following the 'Magna Carta,' the Courts resolved disputes, created precedents and laid down vast principles which came to be known as the common law. Every right when it is breached must be provided with a right to a remedy, i.e. *Ubi Jus Ibi remedium* says the Roman maxim.[19] The latest theory is that the right to 'access to justice' was part of the common law and later recognised as part of the 'Constitutional Law'. In ***R .v. Secy. of State for Home Deptt***.[20] The Court held that access to justice was a basic right that could not be denied or diluted by any kind of interference or hindrance. It is a principle of our law that every citizen has a right to unimpeded access to a court. In ***Raymond v. Honey Raymond v. Honey***, [21] **Lord Wilberforce** described it as a "basic right". Even in our unwritten Constitution, it must rank as a constitutional right. These views establish that 'access to justice' is a basic fundamental right embedded into the common law and cannot be taken away except by valid legislation or constitutional amendment.[22]

When the Indian Courts later adopted the common law of England, the right to access to courts became part of our law, even long before the coming into force of our Constitution on 26th January 1950. Before the Constitution came into force, rights in existence were continued even after the Constitution because of Art. 372.[23] Two interesting cases that arose in the pre-independence era, which would indicate that the concept of a non-derogable right of access to justice was recognised and enforced by the courts in this country, may here be referred to. One of the early decisions was the

[18] *Available at:* www.bsswebsite.me.uk/history/MagnaCarta (Visited on January 19, 2021).
[19] *Available at:* https://indiankanoon.org/doc/58259708/?type=print (Visited on January 25, 2021).
[20] 1994 QB 198 Steyn, L.J.
[21] 1983 1 AC 1.
[22] *Available at:* http://www.delhihighcourt.nic.in/library/articles/Access%20to%20justice (Visited on April 11, 2021).
[23] The Constitution of India.

Bombay High Court in ***Re: Llewelyn Evans***.[24] In that case, Evans was arrested in Aden and brought to Bombay on the charge of criminal breach of trust. At the stage of granting remand of the prisoner to police custody, Evans' legal adviser was denied access to meet the prisoner. The Magistrate who ordered if in custody, of getting into communication with his legal adviser to prepare his defence". The other judge on the Bench, ***Justice Madgavkar,*** added that the right under that provision implied that the prisoner should have a reasonable opportunity:

> *"If the end of justice is justice and the spirit of justice is fairness, then each side should have equal opportunity to prepare its case and to lay its evidence fully, freely, and fairly before the Court. This necessarily involves preparation. Such preparation is far more effective from the point of view of justice if it is made with the aid of competent legal advice – advice so valuable that in the gravest of criminal trials, when life or death hangs in the balance, the very state which undertakes the prosecution of the prisoner, also provides him, if poor, with such legal assistance".*[25]

Another instance of the courage and craftsmanship of our Judges in India, particularly during difficult times of our political and legal history, is provided in the decision in ***P.K. Tare v. Emperor.***[26] The petitioners, who had participated in the Quit India Movement of 1942, challenged their detention under the Defence of India Act, 1939 as being vitiated on account of the refusal of permission by the authorities to allow them to meet their counsel to seek legal advice or approach the court in person. The Government of the day contended that the Defence of India Act 1939 took away the right to move a habeas corpus petition under S.491 of the Criminal Procedure Code, 1898. The court rejected this contention relying on the observation of Lord ***Hailsham in Eshugbayi v. Officer Administering the Govt. of Nigeria***[27] that "such fundamental rights, safeguarded under the Constitution with elaborate and anxious care and upheld time and again by the highest tribunals of the realm in the language of utmost vigour cannot be swept away by implication or removed by some sweeping generality. No one doubts the right and the power of the proper authority to remove,

[24] AIR 1926 Bom 551.
[25] *Available at:* https://zombiedoc.com/access-to-justice.html (Last visited on April 1, 2021).
[26] (AIR 1943 Nagpur 26).
[27] (1931) AC662.

but the removal must be express and unmistakable, and this applies whatever government is in power and whether the country is at peace or war." ***Justice Vivian Bose***, giving the leading opinion of the court, explained that the right to move the High Court remained intact notwithstanding the Defence of India Act, 1939. Further, although the courts allow a great deal of latitude to the executive and presumptions in favour of the liberty of the subject get weakened, "those rights do not disappear altogether." The court categorically ruled that the "attempt to keep the applicants away from this Court under the guise of these rules is an abuse of power and warrants intervention." ***In the course of his judgment, Justice Vivian Bose*** emphasised the importance of the right of any person to apply to the court and demanded that he be dealt with according to law. He said: *"The right is prized in India no less highly than in England or indeed any other part of the Empire, perhaps even more highly here than elsewhere; and it is jealously guarded by the courts."*

### 2.2.2 Access to Justice and Rule of Law:

Access to justice is a basic principle of the rule of law. the doctrine of rule of law in its social meaning cannot afford to rule out the insufficient and inadequate protection and enforcement of the right of all people in usual course.[28] The rule of law in its real spirit by excluding arbitrariness must postulate that the people are under the rule of law and not under the rule of men. Gujarat Legal Aid Committee[29] rightly observed that

> "*there could be no rule of law unless the machinery of law is readily accessible to all. The poor must be placed in the same position as the rich by means adequate legal aid."*

Consequently, it is a fundamental right that allows individuals to use legal tools and mechanisms to protect their rights. As an essential element of the rule of law, access to justice is a vital part of civil, criminal, and administrative law.[30] It is both a process and a goal, and it is crucial for individuals seeking to benefit from

[28] *Supra* note 17 at 64.
[29] Report of Gujarat Legal Aid Committee 107 (1971).
[30] Valesca Lima and Miriam Gomez, "Access to Justice: Promoting the Legal System as a Human Right" January 2020 *available at:* https://www.researchgate.net/publication/338423278 ( Last visited on March 1, 2021).

other procedural and substantive rights.[31] The concept 'access to justice' means the ideas fundamental to implementing the rule of law. In the absence of access to justice, people cannot have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable.[32] It has two significant components: (1) A strong and effective legal system with rights, enumerated and supported by substantive legislations; (2) A useful and accessible judicial/ remedial system easily available to the litigant public. 'Rule of Law' can be taken to mean, on the one hand, limited government, normally in the form of the separation of powers, and on the other, the existence and real application of a body of rules and rights that regulate the relationship between the state and the individuals in a society, and between the individuals themselves.[33] Rule of Law collates the rules which are based on the principles of freedom, equality, non-discrimination, fraternity, accountability and non-arbitrariness and is specific, regular and predictable. The rule of law can be said to exist to the extent that this basic normative set of rules and rights, generally embodied in a constitutional text, is minimally binding and overriding in a given community's political and social order. At one level, the rule of law means the mechanisms by which political power is checked and subordinated to pre-set rules of the game. It refers to the effective protection and advancement of rights entitlements, defined in the Constitution at another level.[34]

The colonial antecedents of legal systems in Asia severely stack up the odd against achieving access to justice for poor and otherwise vulnerable people decades after the colonial rule. The conception of the rule of law in the colonial era was formal and instrumentalist. In the formal sense, it means that all those whom the law addresses should know what they meant to do and be able to do what is required by law. Some of the conditions mentioned in the literature, which the rule of law system

[31] Manuale di diritto europeo in materia di accesso alla giustizia, European Union Agency for Fundamental Rights, Wien FRA (2016).

[32] *Available at:* https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/(Visited on April 21, 2021).

[33] Pilar Domingo, "Rule of Law, Citizenship and Access to Justice in Mexico" Vol. 15, No. 1 University of California Press on behalf of the University of California Institute for Mexico and the United States and the Universidad Nacional Autónoma de Méxic 154 (Winter, 1999).

[34] Rule of law finds limitations even in the more developed of democracies, as increasingly through the complexities of globalization and modernization, decision-making processes fall outside the traditional political institutions and, there- fore, also outside the control mechanisms of rule of law. Equally, the needs of modern society cannot be fully met through traditional justice systems, as new types and magnitudes of juridical conflicts arise at a rate that exceeds institutional capacities, or their rate of renewal.

should fulfil in the formal sense, are generality, publicity, prospectively, non-contradictory, stability, unity, conformability, and clarity.[35] The colonial period provided no foundation for the use of law by citizens in defence of their rights. It simply produced 'individualisation without rights and bureaucratisation without the rule of law'.[36] In January 1959, a congress of International Commission of jurists inaugurated by India's Prime Minister, ***Jawaharlal Lal Nehru,*** redefined the concept of the rule of law. The Delhi Declaration on Rule of Law in a free society recognised that:

> *"The rule of law is a dynamic concept for the expansion and fulfilment of which jurist are primarily responsible and which should be employed not only to safeguard and advance the civil and political rights of the individual in a free society, but also to establish social, economic, educational, and cultural conditions under which his legitimate aspirations and dignity may be realised."*[37]

Hence, the issues of the rule of law and access to justice are essential ingredients of the justice delivery system and go hand in glove in ensuring its aura reaches the contours of the entire population of a country. The role of the three organs of government, i.e. the Legislature, Executive and Judiciary are significant in ensuring that the same is upheld and proper mechanisms are implemented for easier and efficient access to justice. The Judiciary in particular, as the Guardian of the Constitution and the people, play an essential role to secure the ability of the people to have equal access to just laws and a trusted system of justice that holds all persons accountable, protects their human rights, and ensures their safety and security. The rule of law facilitates transparency in all judicial processes for proper access to justice**.**[38] Transparency throughout the justice system guards against abuse of power by officials, such as court personnel destroying court records or judges altering the

[35] Lon L. Fuller, *The Morality of Law* 33-94 (Yale University Press, 1969 revised edition).
[36] W.J.Mommsen and J. A. De Moor ( eds.), *European Expansion And Law* 304 (Oxford: Berg, 1992).
[37] International Commission of Jurist, New Delhi, India 5-10 January, 1959. *available at:* http:/www.icj.org/article.php3?id_article=3088&id_rubrique=11&lang=en&print=true ( Last visited on January 13 2021)
[38] USAID, "Guide to ROL," 2008 *available at:* https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice (Last visited on April 2, 2021).

outcome of cases or making judgments that contradict the evidence.[39] Consider transparent case-tracking mechanisms, which make it difficult to tamper with files, and transparent trial processes, which prevent judges from ruling in favour of power brokers when the evidence should lead to a conviction. Access to justice is the ability of people to seek and obtain a remedy through informal or formal institutions of justice is a mutually reinforcing component of the rule of law. Without access, justice is merely an illusion.[40] The demand for Access to justice is that the State has put mechanisms in place that can dispense justice. These mechanisms are usually the courts of law. Every citizen who has suffered the violation of his right may approach a court of law for justice to be done to him. The significance of access to justice for both citizens and the State cannot be underestimated. It has to be remembered that access to justice is an essential element of the rule of law and, therefore, of democracy. 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.[41]

From the above, it is clear that justice and its administration are essential requirements for the rule of law. Actions against the government to limit executive power and ensure that government is accountable are also important aspects of the rule of law. The courts are the guardian of rights and enable people to protect their rights against infringement by other people or bodies in society. It thus stands to reason that if people cannot access courts to defend their rights, respect for the rule of law is diminished.

### 2.2.3 'Access to Justice' for Democratic Participation:

The uncontested truth is that an 'Access to Justice' is a crying need for democracy to survive. In a liberal democratic society, true access to justice requires that all people without discrimination have an equal right to participate in every

[39] *Ibid.*
[40] Guiding Principles for Stabilization and Reconstruction 'UNITED STATES INSTITUTE OF PEACE PRESS Washington, *available at :* http://cdncf38.usip.org/Courses/MoDA.OL1/Mod8/Resources/GuidingPrinciples_S7_Rule.pdf ( Last Visited on March 3, 2021).
[41] Justice F.M. Ibrahim Kalifulla, *RULE OF LAW & ACCESS TO JUSTICE available at:* http://hcraj.nic.in/joc2014/16.pdf (Last visited on March 3, 2021).

institution where the law is debated, created, found, organised, administered, interpreted and applied. This means securing equal opportunities for vulnerable people to gain full access to positions of authority within the legal system. Access to justice is a fundamental right that must be guaranteed in democratic, participatory, and egalitarian societies. It is the right of all individuals to use the legal tools and mechanisms to protect their other rights. There is no access to justice when people are discriminated against by law and justice systems for economic, social, or political reasons.[42] All human beings are born free and equal in dignity and rights and therefore should have equal access to justice when their dignity or rights are infringed upon.

However, discriminatory or deficient justice systems can undermine this basic human right principle. A report of the Law Commission of India states that access to justice focuses on two basic principles, them being:

(1) Accessibility of judicial and quasi-judicial systems to all; and

(2) Leading to results that are individually and socially fair to all, irrespective of social and economic conditions.[43]

Hence, access to justice encompasses multiple variables, including quality, availability, accessibility, impartiality, and accountability of justice systems and is central for the realisation of fundamental rights guaranteed by the Constitution of India.[44] If such systems cannot ensure equal access to justice for all, the marginalised and vulnerable people suffer even more, and their human dignity is at risk.[45] Moreover, a society emerging from conflict often suffers severe case backlogs and other deficiencies. On one side is the concern with opening up courts and administrative agencies to disadvantaged groups who have been unable to use those institutions effectively, if at all.[46] Despite all these challenges, the justice system must

[42] Valesca Lima and Miriam Gomez "Access to Justice: Promoting the Legal System as a Human Right" January 2020 *available at*: https://www.researchgate.net/publication/338423278 (Last visited on March 30, 2021).
[43] Law Commission of India, 222nd Report on Need for Justice-dispensation through ADR etc. (April, 2009).
[44] Agenda for the Ninth Meeting of the Advisory Council of the National Mission for Justice Delivery and Legal Reforms, *available at:* https://doj.gov.in/national-mission-justice-delivery-and-legal-reforms (Last visited on January 29, 2021).
[45] Programming for Justice: Access for All, A Practitioners Guide to Human Rights-based Approach to Access to Justice, UNDP (2005).
[46] M. Cappelletti and B. Garth, *Access to Justice and the Welfare State* 1 (European University Institution, 1981)

handle cases efficiently and predictably, according to set principles and procedures, including equality before the law and equal application of the law.

Indeed, this approach to access to justice represents a broader concept of what access should entail; there is still a tension between this broader concept 'access to justice' that is focused on participation in a variety of legal and political institutions that impact individuals' lives, and a concept of access that is focused on providing individuals with access to lawyers and legal services as a means of procurement justice. The existing paradigm about what access should include and how access achieves justice has largely focused on the belief that access to lawyers will assist individuals in getting a better outcome, which is typically defined as justice. So, quality and quantity in this area are inevitably in tension, making it very difficult to determine a proper balance between the values of access and justice.[47]Underlying this paradigm are certain assumptions about what people are believed to want from the legal system, namely to win their case.[48]Part of the explanation for a move toward broader conceptualisations of access to justice might lie in the corresponding shift away from the traditional dispute resolution process as the exclusive means individuals may obtain justice.[49] In particular, limitations within the traditional dispute resolution framework challenge the idea that litigation is an appropriate forum for achieving social justice.[50] Moreover, the evolution of alternative dispute resolution processes has provided individuals with an opportunity to have a more direct 'say' in the process and, in so doing, participate in the resolution of their legal issue in a manner that reflects their concepts of justice. This contrasts with the passive role clients play in the court system.

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[47] *Ibid*.

[48] Susan Silbey and Sally Merry, "What Do Plaintiffs Want? Re-Examining the Concept of Dispute" *9 No 2 The Justice Syst. J.* 151(1984)

[49] The tension between a broader concept of access that focuses on participation and a concept that is focused on legal outcomes arises in the context of access to justice initiatives such as self-help for self-represented litigants. Self-help initiatives are broadly defined as the provision of legal advice and information to self-represented litigants by volunteer lawyers with the understanding that the self-represented litigants will continue to manage their own legal matter. In the particular context of self-help initiatives, this tension reflects the fact that there are legitimate practical concerns associated with self-represented litigants' ability to participate meaningfully in a judicial system that is both professionalised and designed by and for lawyers and judges. One of the responses to this concern involves a discussion about how the existing court systems and procedures as well as the key players in that system will need to be reshaped to better encourage and facilitate meaningful participation.

[50] Lucie White, "To Learn and Teach: Lessons from Drefontein on Lawyering and Power" 699 *Wisc L R* (1988).

## 2.3 THE CONCEPT OF JUSTICE:

'JUSTICE' is often used in everyday discussion, but what is "justice". How is it described to understand define to get access? Law is frequently misunderstood as the ultimate expression of justice in society. But justice is more than just the law. Justice is not only about responding to problems and disputes. It should also positively contribute to sustainable development and act as a portal to other rights.[51] Often, when anyone thinks of the study of justice immediately, they think of crime. Laws and Crime is a portion of the study of justice, but the only portion of it.[52] However, the study of justice involves more than just the operation of our criminal justice system and how to respond to a particular action by passing a law to make that activity a crime. The rule in justice studies is identifying that often the dominant perspective or the views of the majority class are not the same as "justice". Any single morality or opinion can't capture the idea of justice but only emerges from the interaction among contending perspectives. So, regard must be given to the perspectives of the vulnerable group, the poor and other minorities. Justice requires acknowledgement that sometimes minorities and the oppressed must receive what may be regarded as "special status" and privileges to prevent what otherwise would be a tyranny of the most powerful groups or people in society. Justice, under various names, governs the world-nature and humanity, science and conscience, logic and morals, political economy, politics, history, literature and art.[53] Whatever name may be given to 'Justice', it is the most fundamental in society, most primitive in the human soul, and most sacred among ideas. It is the essence of religion and reason, the secret object of faith and knowledge. Nothing can be imagined more universal, stronger and more complete than justice.[54]

### 2.3.1 Justice: The Highest Ideal of Mankind:

The concept of justice is as origin and growth of human society itself. The Greeks looked upon justice as a virtue in action and, therefore, a virtue in early

[51] *Available at:* https://cic.nyu.edu/sites/default/files/english_task_force_report_27jun19-min_compressed.pdf (Last visited on January 29, 2021).
[52] Margot A. Hurlbert and James P. Mulvale, *Pursing Justice: An Introduction to Justice Studies* Halifax, (N.S. Fernwood Pub.2011).
[53] *Ibid.*
[54] Robson & Watchman, "Justice Lord Denning and the Constitution"20 *U.L. Rev* 711 (1986).

times.[55] For ***Augustine***, 'the cardinal virtue of justice requires that we try to give all people their due; for ***Aquinas***, justice is that rational mean between opposite sorts of injustice, involving proportional distributions and reciprocal transactions'. This is the view taken by ***St. Thomas Aquinas*** and ***Augustine***, who claim that an unjust law is no law. ***Hobbes*** believed 'justice is an artificial virtue, necessary for civil society, a function of the voluntary agreements of the social contract; for ***Hume***, justice essentially serves public utility by protecting property.

Similarly, ***Cicero*** described justice as the disposition of the human mind to render everyone his due.[56]Justice meant goodness and willingness to obey laws to both ***Plato*** and ***Aristotle***.[57] ***Plato*** defines it as, 'justice is a virtue establishing rational order, with each part performing its appropriate role and not interfering with the proper functioning of other parts'. ***Aristotle*** stated that justice consists of righteousness or complete virtue in relation to one's neighbour. Aristotle expands on justice by stating that it consists of treating equally and unequally, in proportion to their inequality.[58] This is also known as distributive justice. The second type of justice that Aristotle contrasted with distributive justice was "rectificatory" justice or corrective justice. The corrective function of justice is called corrective justice.

After the offices, rights and duties are allotted by the Legislature, they need protection against illegal attacks. Here comes the function of justice to maintain and protect the distribution and restore the distributive equilibrium if disturbed. According to ***Roscoe Pound***, Social System has defined certain things as belonging to each individual. 'Justice' consists in rendering him those things and not interfering with his having and using them within defined limits.[59] According to ***John Rowls***, the concept of justice is proper balancing between competing claims.[60] ***John Rowls*** starts with a premise that society is a cooperative venture for mutual advantages and so a set of principles is required to determine the distribution of advantages. These principles are

[55] *Available at:* https://brewminate.com/the-concept-of-justice-in-greek-philosophy-plato-and-aristotle/(Last visited on February 1, 2021).
[56] Justice Markandey Katju, *Law In Scientific Era- The Theory And Dynamic Positivism* 73 (Universal Law Publishing co. pvt. Ltd. 2000).
[57]Afifeh Hamedi, "The Concept of Justice in Greek Philosophy (Plato and Aristotle)" 5 No 27 December *Mediterr. J. Soc. Sci* MCSER Publishing, Rome-Italy, (2014).
[58] R.W. Browne, *The Nichomachean Ethics of Aristotle*, 5 (London: Gerorge Bell and Sons,York Street, Convent Garden 1889).
[59] Roscoe Pound, *The Ideal Element in Law* 123 (Tagore law Lectures, University of Calcutta, 1958).
[60] John Howls, *Theory of Justice* 3 (Oxford Paper backs, 1976).

the principles of social justice. They provide a path of assigning rights and duties in society's basic institutions and define the appropriate distribution of benefits and burdens of social cooperation.[61] ***Rowls*** says that the primary object of Justice is the basic structure of society, or more exactly how the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation.[62] Justice, according to **Salmond** is 'giving everyone man his due'. He defines law as the body of principles recognised and applied by the state in the administration of justice. **Salmond**'s point is not that law is justice, but that law is the instrument by which justice can be achieved. For Mandela, justice was as fundamental to society as peace or the economic necessities of life. He was imprisoned for 27 years by a legal system that not only failed to provide equality before the law but which he denounced for allowing "the unjust to prosecute and demand vengeance against the just."[63]

Traditionally, in India, the ruler's duty or ***Rajadharma*** was not to resolve disputes in accordance with any of the ruler's perspective laws but to achieve justice by restoring *Dharma* depending on the customs and duties of individuals involved in a particular dispute. Here 'Justice' is an integral part of *Dharma. Dharma* is that-which sustain and ensure the progress and welfare of all in this world and leave about an external bliss in the world. ***Dharyate anena iti dharmaha***- to mean the rules which support, harmonise, integrate and unite the insert and the sentiment, the individual and the society, nation and the world is thus *Dharma*. Justice as part of said *Dharma* embodies duties, obligations, liberties of individuals and the State and its legal enforcement with legal fictions if any, for the common good and in the broader public interest and welfare.[64]

However, the definition of justice is a moving target; conceptualising justice is an ever-changing, subjective process of assessing the fairness of relations between individuals and groups.

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[61] *Id*. 4.
[62] *Id.* 7.
[63] United Nations, "Nelson Mandela International Day 18 July," March 20, 2019. *Available at:* https://www.un.org/en/events/mandeladay/(Last visited on April 9, 2021).
[64] Justice Dr. B. Shiva Sankar Rao *Transformative Justice from Punitive to Restorative in The Indian Context an Empirical Study* (June, 2020 ) doctor of law (LL.D Thesis, Chanakya National Law University, Patna)

### 2.3.2 Different Levels of Justice:

Justice is action following the requirements of some law. Whether these rules are grounded in human consensus or societal norms, they are supposed to ensure that all members of society receive fair treatment. Issues of justice arise in several different sphere and play a significant role in causing, perpetuating, and addressing conflict. Just institutions tend to instil a sense of stability, well-being, and satisfaction among society members, while perceived injustices can lead to dissatisfaction, rebellion, or revolution.[65] Each of the different spheres expresses the principles of justice and fairness in its way, resulting in various types and concepts of justice: Distributive, Corrective, Social Retributive, and Transitional.[66] These all types of justice have important implications for socio-economic, political, civil, and criminal justice at both the national and international levels.[67] All these are discussed below:

#### 2.3.2.1 Distributive Justice:

Distributive justice ensures a fair division of social benefits and burdens among a community or country members. It is achieved through constitutional and other legislation for examples: (a) Rights to vote; (b) Right to own property (c) equitable and non-arbitrary taxation. The complete principle of distributive justice would simply describe that a distribution is just if everyone is entitled to the holdings they possess under the distribution. A distribution is just if it arises from another just distribution by legitimate means. The legitimate means of moving from one distribution to another are specified by the principle of justice in transfer. The general outlines of the theory of justice in holdings are that a person's holdings are just if he is entitled to them by the principles of justice in acquisition and transfer or by the principle of rectification of injustice.[68] If each person's holdings are just, the total set (distribution) of holdings is just.[69] While in corrective justice, the two persons confront each other as co-equals, three or more are more necessary in distributive justice in which one, who imposes burdens upon or grants advantages to the other, is

[65]Michelle Maiese and Heidi Burgess "Types Of Justice*" available at:* https://www.beyondintractability.org/essay/types_of_justice#narrow-body(Last visited on April 9, 2021).
[66] *Ibid.*
[67] Morton Deutsch, "Justice and Conflict," in Morton Deutsch, Peter T. Coleman, Eric C. Marcus, *et.al. (eds.) The Handbook of Conflict Resolution: Theory and Practice*, John Wiley & Sons (2011).
[68] *Ibid.*
[69] *Ibid.*

superior to them.[70] Fair allocation of resources, or distributive justice, is crucial to the stability of a society and the well-being of its members. This has been embedded in the Indian Constitution as equality before the law under Articles 14[71] and 38[72].

Hence, distributive justice serves to secure a balance or equilibrium among the member of the society. It aims to prevent class conflict, procuring the welfare of all classes, and secure the greatest good of the whole community. And it is in this context social engineering becomes the prime function of law. Roscoe Pound has enunciated that social engineering is the improvement of the law in the light of social wants of the time so that the law may procure the greatest good of the largest number in society. However, in doing this, balancing competing interests becomes inevitable.

**2.3.2.2 Corrective Justice:**

When distributive justice is infringed, then there is a disequilibrium which needs to be rectified through corrective justice. Corrective justice asserts a connection between the remedy and the wrong. Here, the idea involved is that the injustice done by one person to another person should be corrected. The function performed by the courts called administration of justice. Corrective justice acts to restore the status quo by compelling the former to make restitution. In modern time, corrective justice has stepped into the domain of public law. With public interest litigations, the idea of corrective justice is expanding. If a member of the community has encroached upon the rights, privilege or property of another member or gained some benefit improperly at the expense of another the distributive equilibrium gets disturbed which can be restored only by returning whatever is improperly gained or by compensating the loss of the victim. Here comes the function of courts. The chief function of courts is to apply justice in a corrective sense. In a just system of law, therefore there are on the one hand rules intended to procure equality of distribution and on the other specific

[70] Gurbax Singh v. Financial Commissioner and Another 1991 SCC 167.

[71]The Constitution of India art. 14 read as "*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."*

[72] The Constitution of India art. 38 read as *" (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. (2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.*

rules relating to the application of corrective justice by courts.[73] In this type of justice, a judge tries to restore an unjust situation between parties to equality.[74]

### 2.3.2.3 Social Justice:

'Justice' is, by definition, about fairness. Social justice is about to social context of righteousness and the fairness of the social context. It is not just about the individual issue in specific contexts, but how those individual issues reflect a wider pattern of injustice, discrimination and oppression.[75] As Jansen puts it: 'Our emphasis on the qualifier *social* in social justice is intended to signal solidarity with primary struggles for creating *social institutions* that promote human equality, dignity and fairness'.[76]

Today political democracy has become a social democracy that aims at the welfare of all its classes, for want of appropriate system of administration of justice is not available to all. We cannot keep our political democracy on the path of social progress and economic development. Therefore, it is idle to speak of the blessing of democracy in which the poor, though, enjoy all the equal protection of the law yet suffers all the unjust social consequence.[77] Society rots if one citizen is overpowered or undermined by another. A democratic government cannot succeed in such an undemocratic society.

### 2.3.2.4 Equal Justice:

Eminent jurist ***Thompson*** describes equality as the absence of unfair discrimination. If someone is discriminated against, they will suffer a detriment that they will lose somehow, be denied access, be given less, be expected to accept disparaging treatment, and so on, depending on the context.[78] Equality, in this sense, is not the same as 'treating everybody the same' while equality in its literal sense implies sameness; in the moral, political and professional sense we are using here, it is

[73] P.J Fitzgerald, (ed.) *Salmond on Jurisprudence*, 62 (Sweet & Maxwell, 1966).
[74] H.L.A Hart (eds.), *An Introduction to the Principles of Morals and Legislation* (London: Athlone Press 1970).
[75] Neil Thompson, *Social Problems and Social Justice* 3 (Macmillan Education Palgrave 2017).
[76] S. Jansen, J. Pooley, L. Taub-Pervizpour, *Media And Social Justice*, 8 (Palgrave Macmillan US 2011).
[77] *Supra* note 17 at 64.
[78] N Thompson, '*Promoting Equality; Working with Diversity and Difference*, 21 (Basingstoke, Palgrave Macmillian 3rd edn., 2011).

a matter of equal fairness.[79]In terms of equality, social injustice can be seen to apply when an individual, group or category of people is discriminated against and treated unfairly in one or more ways. Where equality arises, this is not simply about groups being seen as different from one another, but as representing some sort of hierarchy of rights and privileges, with certain groups being at the bottom of the heap and suffering a detriment because of it.

Equal justice is corrective of inequalities, which cause a social imbalance in society. Equal justice requires as systematic approach in removing the prevailing inequalities and injustice in our community. Suppose a large section is prevented from exercising its legal power to protect their rights and security of honourable existence. In that case, there can be neither equality nor justice in such a society.[80]

**2.3.2.5 Retributive justice:**

It appeals to the notion of "just desert" -- the idea that people deserve to be treated the same way they treat others. It is a retroactive approach that justifies punishment as a response to past injustice or wrongdoing.[81] The central idea is that the offender has gained an unfair advantage through their behaviour and that punishment will set this imbalance straight. In other words, those who do not play by the rules should be brought to justice and deserve to suffer penalties for their transgressions.[82] The notion of deterrence also plays in here; the hope is that the punishment for committing a crime is large enough that people will not engage in illegal activities because the risk of punishment is too high. In addition to local, state, and national justice systems, retributive justice also plays a central role in international legal proceedings, responding to violations of international law, human rights, and war crimes.[83]

Moreover, there is a tendency to slip from retributive justice to an emphasis on revenge; some suggest that restorative justice processes are more effective. While a

[79] S. Witcher, '*Inclusive Equality*' 46 (Bristol, the Policy Press 2015).
[80] *Supra* note 17 at 64.
[81] Mark R. Amstutz, "Retributive Justice and the Limits of Forgiveness in Argentina," *The Healing of Nations: The Promise and Limits of Political Forgiveness,* (Rowman & Littlefield, 2005). *available at:* <http://books.google.com/books?id=gTFnh2GuD8EC>.(Visited on May 18, 2021).
[82] *Available at:* https://www.beyondintractability.org/essay/types_of_justice#narrow-body >( Last visited on May 9, 2021).
[83] *Ibid.*

retributive justice approach conceives transgressions as crimes against the state or nation, restorative justice focuses on violations as crimes against individuals.[84] It is concerned with healing victims' wounds, restoring offenders to law-abiding lives, and repairing harm done to interpersonal relationships and the community. Victims take an active role in directing the exchange that takes place and defining the obligations and responsibilities of offenders. Offenders are encouraged to understand the injury they have caused the victims and take responsibility for it. Restorative justice aims to strengthen the community and prevent similar damages from happening in the future.

**2.3.2.6 Transitional Justice:**

It derives from reparation and accountability for victims, as they are recognised for their dignity as human beings and as citizens. Some governments and institutions ignore the massive abuses as a way to deal with this issue, but it destroys the values in which any worthy justice system must settle. Transitional justice is rooted in accountability and redress for victims. It recognises their dignity as citizens and as human beings. Ignoring massive abuses is an easy way out, but it destroys the values of any decent society.[85] Transitional justice urges the most difficult questions imaginable about law and politics. By putting victims and their dignity first, it signals the way forward for a renewed commitment to making sure ordinary citizens are safe in their own countries – safe from the abuses of their authorities and effectively protected from violations by others.[86] Massive atrocities and systematic abuses destroy societies. Their legacy can produce fragility, weakness, instability, politicisation, and scarcity of resources to political and judicial institutions such as Parliament, the courts, the police, prosecutors, etc. Violations of rights undermine citizens' confidence in the ability of the state to safeguard their rights and security.[87] It is not uncommon for communities to be destroyed and social and political organisations weakened in this context. The need to respond with legitimacy

[84] For further clarification of the different forms of justice, including retributive, restorative, and procedural, see Jeffrey A. Jenkins's discussion on "Types of Justice," in *The American Courts: A Procedural Approach*, (Jones & Bartlett Publishers, 2011). *Available at:* <http://books.google.com/books?id=yvT5SVwbakUC>>( Last visited on May 18, 2021).
[85] *Available at:* https://www.ictj.org/about/transitional-justice (Visited on May 4, 2021).
[86] *Ibid.*
[87] Valesca Lima and Miriam Gomez 'Access to Justice: Promoting the Legal System as a Human Right' *available at:* https://www.researchgate.net/publication/338423278 (Last visited on May 22, 2021).

to these massive rights violations defines transitional justice.[88] The objectives of transitional justice will vary in each situation. However, its features – the recognition of the dignity of individuals, the reparation and admission of violations of rights, and the objective of preventing their repetition – are constant. Among its complementary goals are:[89]

- Create responsible institutions and regain confidence in them;
- Enable access to justice for the most vulnerable social sectors after violations of rights;
- Ensure that women and marginalised groups truly participate in the search for a just society;
- Respect the rule of law and Facilitate peace processes and promote durable resolutions for conflicts;
- Laying the foundations to address the underlying causes of conflict and marginalisation and promote reconciliation among them.

Transitional justice is not practical to fix everything that is wrong with society. The long-term social and political struggles for justice and equal opportunities might be assisted by the measure of transitional justice but not solved by it.[90]It is not a particular type of justice like distributive justice, restorative justice or retributive justice. It is the application of a human rights policy in particular circumstances. It is not "soft" justice. It is the attempt to provide the most meaningful justice possible in political conditions.[91] If it is simply an effort to evade meaningful justice measures, it is sophisticated impunity.

'JUSTICE' is thus the human expression of a more comprehensive universal principle of nature. If humans are entirely faithful to nature, their actions will be spontaneously just. Each form of justice was viewed as a total organism. Impartial administration of justice is always regarded as one of the primary duties of the state, and it is considered the foundation of justice in conflict resolution. Hence, it is needful to say in this context that- ***ends of justice are higher than the ends of mere law.***

[88] ICTJ (2009) What is Transitional Justice? The International Center for Transitional Justice, New York.
[89] *Ibid.*
[90] *Available at:* https://www.ictj.org/about/transitional-justice (Last visited on May 4, 2021).
[91] *Ibid.*

## 2.4 THE CHALLENGES OF ACCESS TO JUSTICE IN ENFORCEMENT OF THE RIGHTS:

Access to justice, as a fundamental right in itself and a precondition for the enjoyment of all other rights, is particularly crucial for this category of vulnerable people and constitutes a unique tool in the fight against discrimination (and often the lack of respect, lack of dignity or even violence) they face.[92] But our justice sector has many stumbling limitations which restrict the vulnerable group of people from moving the court of law for 'Justice'. Most disputes are resolved without recourse to formal legal institutions or dispute resolution mechanisms. The human rights movement which was gaining momentum following the establishment of the United Nations Organization in 1945 broadened the scope of access to justice which ceased to mean only access to courts. It became increasingly clear that access to justice demands would not be fulfilled purely by emphasising courts. Justice sector reforms would not be complete, and we would be in the presence of the denial of justice, as long as citizen continues to be compelled to abandon their legal claims because of the inherent complexity of the process of enforcing such rights.This is why the state must first establish access to justice that the public in general faces and the nature of justice problems that constitute the demand for legal services. In United States America, the Access to Justice Technology Principles concept was first expressed by King County, Washington law librarian Jean Holcomb in the Washington State Bar News.[93] The Preamble reads:

> "*The use of technologies in the justice system must protect and advance the fundamental right of equal access to justice. There is a particular need to avoid creating or increasing barriers to access and to reduce or remove existing barriers for those who are or may be excluded or underserved, including those not represented by counsel*".[94]

[92] J Beqiraj, L McNamara and V Wicks, "Access to Justice for Persons with Disabilities: from International Principles to Practice" *International Bar Association*, (October 2017).
[93] *Ibid.*
[94] Richard Zorza and Donald J Horowitz, "The Washington State Access to Justice Technology Principles: A Perspective for Justice System Professionals" 27, No. 3 *Justice Syst. J.* 252 (2006).

Reservations notwithstanding, increasingly national constitutions also make provision for equality, non-discrimination on the grounds of sex and gender and the right to a fair trial. [95] While some Constitution requires the state to help the indigent by providing free legal assistance, there appears to be limited focus or understanding of the other impediments people face in accessing legal institutions.[96] In the literature, the barriers to the use of courts are generally divided into three categories- economic, geographical, and socio-psychological.[97]In a society recovering from violent conflict, several obstacles to justice—financial, geographic, linguistic, logistical, or gender-specific—are present. Improving access is not just about more courtrooms or more staff.[98] It is also about the quality of justice. Justice systems that are remote, unaffordable, slow, or incomprehensible to the public effectively deny legal protection.[99] Increase the quantity and quality of justice administration to address these problems. Better prepared defense advocates, more citizen-oriented court staff, more reasonable hours, better information about the justice system are all means for improving quality.[100]The realisation of fundamental rights, both individually and collectively, is now defined in the field of the administration of justice. Access to justice policies was envisaged through a lens of integral treatment of the needs that make equality in law possible by introducing legal mechanisms for the *de facto* inequalities.[101] Today the citizens of India prefer to suffer in silence than to approach a judicial set-up to secure and defend rights. They take recourse to the justice delivery mechanism only as a last resort or out of compulsion. Suppose one examines the shortcoming of the existing justice delivery mechanism in the form of judicial hierarchy. In that case, one will find that "denial of access to justice" is the most glaring defect of the judicial setup. It is too formal, costly, burdensome, time-consuming and full of procedural complexities. Many other factors prevent the

[95] G. Budlender, "Access to Court" 121 *South Africa Law Journal* 339-58 (2004).
[96] *Supra* note 2 at 133.
[97] UNDP Human Development Report 2004: Cultural Liberty in a Diverse World 58 (New York: 2004).
[98] *Available at:* https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice >(Visited on January 8, 2021).
[99] United Kingdom Department for International Development, "*Safety, Security, and Accessible Justice*,"(2002).
[100] *Available at:* https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justicen (Visited on January 22, 2021).
[101] Richard Zorza and Donald J Horowitz, "The Washington State Access to Justice Technology Principles: A Perspective for Justice System Professionals" 27, No. 3 *Justice Syst. J.* 252 (2006).

venerable groups from accessing justice or just serve as a corollary or cause of the need for lawyers. These include:

### 2.4.1 Financial or Economic Barriers to Access to Justice:

Access to Justice has never been a problem for one who has access to all means and is financially sound. Access to Justice is a colossal difficulty for someone who has no recourse to financial resources. Therefore, he had no recourse to pursue legal remedies, assuming that he was aware of his rights. The cost of Litigation in the courts generally is prohibitive for vulnerable people, in addition to payment of lawyer's fees and meeting other expenses directly connected with the litigation. There are certain opportunity costs such as loss of income while helping to prepare the case or attending the proceedings. The poor suffer at two ends. Firstly, he has to spend on litigation and secondly, he has to lose the wages for the time spent in connection with litigation. The opportunity costs of lost wages can be prohibitive for the indigent who is just keeping his body and soul together. The 'delay' in getting justice generally multiplies litigation costs, which puts tremendous pressure on the economically weaker litigant to withdraw his claim or settle for much less than his legitimate claim.

Inflation of legal costs due to corruption and demands for bribes is pervasive in some jurisdictions.[102] In a state where the rule of law is not upheld, judges may fear for their livelihoods if they rule against the powerful and may thus not be in a position to be neutral arbiters.[103] If the legal system does not inspire confidence in its impartiality and integrity, few are likely to use it.[104] Another dimension of the cost issue is linked to the opportunity costs argument. Here even if the person is able to pay for legal service, or if legal aid is available, the opportunity cost in the form of lost wages for time taken off from work may still render the institution of legal proceeding prohibitive. For women, opportunity costs may include difficulties in sourcing child care. The present population, the demographical analysis and the under trial prison statistics reports indicate that almost 75% of the undertrials belong to the unprivileged sections of the society and therefore have little or no access to Justice.

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[102] C. Nyamu-Musembi, for or Against Gender-Equality? Evaluating The Post-Cold War "Rule of Law" *Reforms in Sub-Saharan Africa' UNSRID Occacional Paper* 7, (August 2005).
[103] L. Madhuku, "Constitutional Protection of the Independence of the Judiciary: A Survey of the Position in Southern Africa" 46 *Journal of African Law* 244 (2002).
[104] F. Banda, *Women, Law and Human Rights: An African Perspective* 148 (Oxford Hart, 2005).

The cost or expenses argument is frequently advanced as a factor that hinders access to justice. The contention is that if the cost of obtaining legal service is unaffordable, people without financial resources will not be able to use the law. Moreover, the acute problem of unawareness has escalated this ratio to significant proportions, further eroding the concept of access.[105]

### 2.4.2 Social Barriers to Access to Justice:

Social Barriers are those obstructions that arise by virtue of the social setting in which the person resides or has grown up or nurtured. When the very society in which the person resides becomes the obstacle in voicing his opinions, this leads to the obfuscation of justice. In addition to financial resources, the difference in social status and educational background is of vital importance in determining the accessibility of people to justice. A vital barrier is the lack of knowledge about legally enforceable rights. The vulnerable people have no awareness of available free legal assistance facilities and recourse to them.[106] So the disputants' financial and educational capability is central to the provision or denial of effective access. Some of the parties enjoy undue strategic advantages over their adversaries.[107] Discussing the problem of unmet need, the Oxford survey on claiming compensation after accidents discussed how socio-psychological factors such as knowledge, access to social networks, and general competence determined the degree of access to legal services enjoyed by individuals.[108] ***Galanter*** argues that it is lack of legal competence which hinders access to justice:

> *"Lack of capacities poses the most fundamental barriers to access, and correspondingly upgrading of party capacity holds the greatest promise for promoting access to legality. Party capacity includes a range of personal capacities which can be summed up in the term 'competence': the ability to perceive grievance, information about*

[105] *Supra* note at 133.
[106] B.Abol-Smith, M.Zander & R. Brooke, *Legal Problems and the Citizen* 8 (London, 1973).
[107] Galanter, "Afterwards Explaining Litigation" 9 *Law & Soc'y Rev*. 347, 350 (1975).
[108] D. Harries, *Compensation And Support For Illness And Inquiry* (Oxford University Press, 1984).

> *the availability of remedies, psychic readiness to utilise them, ability to manage claims competently, seek and utilise appropriate help."* [109]

Therefore, the socially and economically disadvantaged sections do not in that sense 'access' the legal system for Justice. They engage with the legal system nevertheless, negatively. They are not drawn into it wisely in situations of conflict with the law, as complainants, suspects, 'encroachers' or defendants. These situations accentuate the denial of access to justice to basic legal services, resulting in grave violations of their fundamental rights.

### 2.4.3 Geographical Barriers to Access to Justice:

Access to justice is a right and an expectation for every citizen. If the courts are located a long way away from where people live, then access to them becomes difficult in the physical senses, and people are less willing to prosecute their claim.[110] For those living in rural areas, comparing the majority of women in much of the developing world, this can raise the problem of transport and accommodation costs and difficulties of child care. Inferior or inadequate access to court and legal aid services in remote areas cannot be an acceptable response to the needs of our rural communities. Assessing justice should not be daunting because a person lives in a rural area. Yet across the country, geographic distance ageing population, outdate technology with slow or non-existent internet connectivity, and other problems. All present obstacles significant challenges that threaten the ability of citizens living in rural communities to access the justice system. Out of the total of 1210.2 million populations in India, the size of the rural population is 833.1 million (or 68.84% of the Total Population).[111] Each State has a substantial rural population. The States which have the highest proportion of Rural Population are Uttar Pradesh (18.6%), Bihar (11.1%) and West Bengal (7.5%) in India.[112] However, the crux of the matter is to accord a necessary 'priority to the justice agenda' that is:

[109] M. Galanter, "Why the "Haves" Come out Ahead: Speculations on the Limit of Legal Change" 9 *Law & Soc. Rev*. (1974).
[110] *Supra* note 2 at 134.
[111] Census of India 2011, Rural Urban Distribution of Population, Dr C. Chandramouli, Registrar General & Census Commissioner, India (Ministry of Home Affairs New Delhi : 15th July 2011).
[112] *Ibid.*

> *"Access to a just result requires access to the justice system. Use often technology in the justice system should serve to promote equal access to justice and to promote the opportunity for equal participation in the justice system for all. Introduction of technology or changes in the use of technology must not reduce access or participation and, whenever possible, shall advance such access and participation".*[113]

So every State has a stake in identifying and addressing the challenges of providing equal access to justice for its rural communities. In India, Tele Law is an excellent initiative by the Department of Justice for people from remote areas. The project would connect lawyers with clients through the Para-legal volunteers stationed at CSCs run by village-level video conferencing facilities. It will help people to find legal advice through video conferencing from lawyers.

### 2.4.4 Psychological Barriers to Access to Justice:

The lack of awareness and unwillingness to enter into legal proceedings is another significant barrier to access justice. The same sentiment was echoed in ***Khairi v. State of Bihar*** that "*It is common knowledge that about 70 per cent of the people in the rural areas are illiterate and even more than that percentage of people are not aware of the rights conferred upon them by law".*[114] Even those who know how to find qualified legal advice and capacity also avoid court. Psychological inaccessibility is also a more subtle phenomenon. It is compounded by various factors, such as the anxiety-provoking formality of the legal process, the language barrier for some litigants, the mysterious legal machinations with its dated, diehard methodology because Victorian vintage values still condition the substantive and procedural features of the feudal Indian legal system.[115] Many disputants overcome these feelings and file their claims with the court. Others are defendants in the suit and, finding no other choice, manage to participate in the proceedings with varying effectiveness. However, for some people, the psychological barriers may not prove surmountable. Especially for the vulnerable group like the poor, the illiterate and those unable to

[113] Richard Zorza and Donald J Horowitz "The Washington State Access to Justice Technology Principles: A Perspective for Justice System Professionals" 27, No. 3 *Justice Syst. J.* Technology and Courts 252 (2006), Taylor & Francis, Ltd.
[114] AIR 1981 SC 928 at 931.
[115] Justice Krishna Iyer, (ed.) *Law and Life* 17 (Universal Law Publication, 2015).

speak the languages of the majority, women, otherwise the courtroom may appear to be something awe-inspiring. Complicated procedures, detailed forms, intimidating courtrooms and overbearing judges and lawyers make the litigant feel lost, a prisoner in an alien world. The justice system should be linguistically accessible with local language proceedings or provision of interpretation.[116]

### 2.4.5 Legal Barriers to Access to Justice:

Legal barriers to access to Justice are the barriers that can be attributable to the very legal system in which we operate. Vulnerable groups of people cannot obtain remedies for numerous reasons, which may or may not be attributable to their societal stature, or their economic independence, but which may also have a stark bearing on the quality of justice delivered by the legal system itself. 'In most legal systems, private citizens are not even allowed to appear in court to present their case – a monopoly of competence is bestowed on the legal profession. Legal Impediments to Access to Justice is not a mere problem, but a vicious circle that takes in its ambit, every single cause, which cumulatively contributes to the denial of Justice. Legal rules thus require litigants to use lawyers, but lawyers are often in short supply. People are unable to obtain remedies because of a variety of reasons, which may or may not be attributable to their societal stature, or their economic independence, but which may also have a stark bearing on the quality of justice delivered by the legal system itself. The problems are manifold; however an attempt has been drawn to look at Justice Dispensing problem from the view point of three very crucial stakeholders: the Litigants, the Courts and the Executive. The term Executive has a broad association and includes the police, the other executive agencies, include those which are accountable for carrying out policy operations, as well as those which are also known as ancillary agencies which are necessitated for the proper adjudication of the dispute. As the United National Development Programme (UNDP) has aptly stated:

> *"Legal awareness is the foundation for fighting injustice. The poor and other disadvantaged people cannot seek remedies for injustice when they do not know their rights and entitlements under the law. Information on remedies for injustice must be intelligible to the*

[116]*Available at:* https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice (Last visited on May 8, 2021).

> *public, and knowledge provided to them must serve their practical purposes."*[117]

Although the appropriate mechanisms are in place yet, either due to the diversity of such forums or the lack of coordination between various departments, access to justice remains a distant dream. The first step to overcome these barriers is their identification. Some of the Legal Barriers have been laid down as under:

- **Cumbersome procedures**: Cumbersome court procedures often prevent justice seekers from obtaining justice from courts. In determining claims of parties before it, the courts have to follow the laws of procedure for justice delivery. Many of the procedures are time-consuming and emphasise several technicalities. This fact adversely affects the speedy disposal of the suit.
- **Dilatory and time-consuming justice:** Generally, litigation before courts is time-consuming, which causes many litigants to take away from courts from obtaining justice. Often, the courts of law are situated in the towns and cities, making it difficult for litigants from rural areas to approach them and waste their time getting there. In addition to this aspect, delivering justice under the adversarial system is a protracted and time-consuming process. Isn't it said that justice delayed is justice denied? [118] The causes for delay are numerous - loopholes in the law itself, inefficient police investigation methods, redundant and voluminous paperwork, lack of infrastructure etc. The inadequacy of justice personnel and infrastructures could be viewed as an essential source of the poor's lack of access to justice. Former Chief Justice ***P N Bhagwati,*** in his Law Day speech in 1985 has said:[119]

> *"I am pained to observe that the judicial system in the country on the verge of collapse..... Our judicial system is crashing under the weight of arrears. It is trite saying that justice delayed is justice denied. We often utter this platitudinous phrase to express our indignation at the delay in disposal of cases but this indignation is only at an intellectual*

[117] United Nations Development Programme, Access to Justice Practice Note, 2004, *available at:* www.bit.ly/2tVfb0S accessed (Last visited on May 2, 2021).
[118] British Government. 2002. White paper on 'Justice for All' *available at:* at http://www.image.guardian.co.uk/sys-files/ Politics/documents/2002/07/17/Criminal_Justice.pdf. (Last visited on June 8, 2021).
[119] *Available at:* https://www.ebc-india.com/lawyer/articles/2004v1a1.htm (Visited on May 8, 2021).

> *and superficial level. Those who are seeking justice in our Courts have to wait patiently for year and years to gets justice. They have to pass through the labyrinth of one Court to another until their patience gets exhausted and they give up hope in utter despair.... The only persons who benefit by the delay in our Courts are dishonest who can with impunity avoid carrying out their legal obligations for years and each affluent person who obtains orders and stays or injunctions against Government and public authorities and then continues to enjoy the benefits of such stay or injunction for years, often at the cost of public interest".*

Access to justice is one of the fundamental and most important aspects of equal justice. Despite this, Courts are "far away" to render justice in a judicious way to many people, as the judicial system suffers from many problems like inordinate delay in disposal of cases, mounting costs of litigation, corruption at the judicial level, lack of transparency and accountability and soon. Denial of access to justice deprives a human being of life with dignity and thus a violation of the right to life under Article 21 of the Constitution. The state is under a constitutional mandate of equal justice implicit in Article 14 and the right to life and liberty conferred by Article 21.

Access to justice and quality legal representation need not be dependent upon one's zip code. Therefore, proper policy on access to justice should compensate the aim of establishing a variety of compensatory mechanisms capable of responding to the different needs of people who are not otherwise privileged. The state should be transforming each integral instrument into a remedy with the capacity to subvert the influence of the structural economic, social, and cultural barriers that weigh on the group of the population to which action is directed. To defeat all these barriers, the state should experiment with the policy or programs. The nature of the state function of administration of justice involves a range of services benefits to citizens, which should be oriented in its operation by the principle of universality, equality, freedom, speed, continuity, adaptability, integrity, and quality. That's why the administration of justice is one of the non-delegated functions of the state.

## 2.5 THE SIGNIFICANCE OF THE RIGHT TO ACCESS TO JUSTICE FOR UNMET LEGAL NEEDS:

Access to justice system is one that is capable of providing the service required to fill the gap in the right protection. It requires an efficient, systematic and permanent assessment system, a continuous analysis of the framework or the conceptual premises on which such a system could be established. Therefore the whole system turns on the establishment of the nature and extent of the gap between the given standard and the specific level of the protection of these protections. This in turn implies that the supplying system should be established based on the actual needs of the population.[120]

### 2.5.1 Victim of Multiple Discrimination:

Justice requires equal distribution amongst the identical; this entails that there should be grouping or classification of the people. Equality and justice can be achieved only when people are fairly and rationally grouped. Injustice tends to have a greater impact on vulnerable populations as they are constrained in seeking redress. Justice mechanisms can be used as effective tools to end this cycle of deprivation, frustration and rights violations while simultaneously reducing the risks associated with conflict. Access to justice public services should ideally respond to every different type of legal need. The poor and vulnerable group of society are often victims of criminal acts, including human rights violations. This requires the establishment of mechanisms that build a capacity in as many different instances as required to reach disadvantaged groups. Justice systems are based upon the assumption that equality before the law protects the equality of fact in the enjoyment of rights.[121] Poverty and other disadvantages reveal the inaccuracy of this assumption. Ensuring access to justice for the vulnerable groups implies therefore a transformation in the way that we address equality by designing and implementing special initiatives for the diverse unmet legal needs.[122]Unmet legal needs may vary according to specific groups of people. Special attention and the particular tool will therefore be required to

[120] *Ibid.*
[121] Supra note 2 at 563.
[122] *Ibid.*

identify such needs. Particularly vulnerable groups that may require special attention may be-

- The poor;
- Women;
- Indigenous people;
- Migrant;
- Children;
- Prison Inmates;
- Disable Person;
- Homosexuals and Transsexuals.

An essential function of the welfare state is the creation of conditions that assure social justice by removing social inequalities created by the economic system.[123] Poverty has been a problem at all times, and it did not become less acute with the advancement of civilisation. Hence, there is a great responsibility on the shoulders of a socialist state to assure social justice to the poor masses of the society.[124] The control and eradication of poverty is essentially the function of the modern welfare state. This can be done by launching socio-economic schemes by Government. But so long as it exists, it creates disabilities on the part of poor persons, and they become unable to have the full benefits of legal and political rights.

By contrast, a more substantive approach would consider access to justice as an instrument for the transformation of power relations that perpetuate the exclusion, poverty, and dependency of groups such as women, Prison Inmates, Indigenous people, minors, disabled person, homosexuals and transsexuals, migrant, the elderly, workers, and so on. This vision is the result of incorporating development and human rights perspective into the concept of access to justice and transforming access to justice policies into a positive obligation to the state in delivering the justice system.[125]The demand for access to justice is measured in terms of unmet legal needs. These mechanisms that the state can put in place to fulfil unmet legal needs maybe two types. On the one hand, those that include the provision of public service are

[123] Supra note 17 at 63.
[124] *Ibid.*
[125] Supra note 2 at 554.

aimed at creating the condition for the potential recognition of a right and, on the other hand, compensatory mechanisms for the eventual loss of rights. The harmony of both types of mechanisms is the direct responsibility of the state and is causally related to the existence of an individual or collective right. Therefore, an unmet legal need is a way to describe the absent or defective mechanism for making a right effective. It can be diverse, given the enormous variety and heterogeneity of rights, given the various conditions that must be present for the realisation of a single right. For this reason, we do not determine the relationship between a right and legal need. Each right generates a plurality of legal needs, and each legal need can contribute to the realisation of more than one right. Only when we frame the issue in these terms can we understand the degree of difficulty in specifying and identifying the legal needs of a population. The legal need for the same right but different subjects may vary. The legal needs of a subject with respect to the same can vary right over time.

This is particularly desirable in the adversary system governing our jurisprudence, which requires both sides to be represented by lawyers of equal merit. Poor are often victims of the justice delivery system because of their inability to afford a capable lawyer.[126] The financial disability of a litigant coming in the way of securing justice is a blot on my civilisation's conscience. It is of utmost importance that this handicap is remedied by the support of society for the weaker sections by the provision of legal aid. Justice A.S. Anand aptly explained the legal system in the following words:

> *"The poor, illiterate and weaker section in our country suffer a day out in their sruggle for survival and look to those who have promosed than equality- social, political, and wconomic. We, who are responissible foe upholding the rule of law in the country, may not be in a position to solve all of their problems but we can certainly contribute our might to nourish and safeguard the constitutional goals of "equal justice for all" to the extent possible. I am deeply pained when I noticed that all over the country, a very large number of under-trail prisoners suffer prolonged incarceration even in petty criminal matters merely for the reason that they are not*

[126] Supra note 17 at 63.

> *in a position, even bailable offences, to furnish bail bonds and get released on bail. Many of them during such confinement only develop criminal traits and come out fully trained criminals*."[127]

Hence, State budgetary Precedence needs to be given to access justice measures. All institutions which provide legal aid and services for vulnerable people need to be strengthened and kept free of bureaucratic controls. Prison reform should be undertaken on a more committed measure. This may amount to a total paradigm change, and a cultural shift as most of the problems in the governance of justice delivery is deeply embedded into India psyche, but that requires political will and a concerted effort by all the stakeholder's reforms in the judiciary should not be confined to property and regulatory reforms but bring in meaningful and courageous reforms in Criminal Justice System which may facilitate a psyche change. This would mean on a very simplistic plane that law administering agencies would not treat one as a criminal until a detainee is convicted; Police being the first face of justice dispensation, must possess an 'innocent-supposing' psyche as opposed to a 'guilt-presuming' psyche. Positive dialogue or interaction with police stations and court/officials can inculcate a positive mindset in that would-be claimant. Such informal exercises could be undertaken with civil society groups in the most affected areas of society.

### 2.5.2 Essential Element of Access to Justice:

Without access to justice, people cannot make their voices heard, exercise their rights, cope with discrimination or hold decision-makers accountable.[128] The administration of justice must be impartial and non-discriminatory. The legal complexity and richness of the concept of access to justice lie in the fact that it is both a right and the means of restoring the exercise of rights that have been disregarded or violated. As an indispensable component of specific rights, such as the right to liberty and personal safety, it is closely linked to the right to effective judicial protection (fair

[127] Nayaya Deep 47 Vol II (Oct- Dec1999).
[128] General Assembly in paragraphs 14 and 15 of the Resolution adopted of the 30 November 2012.

trial or due process), the right to an effective remedy, and the right to equality.[129] The essential guides for 'Access to Justice' are given below:

### 2.5.2.1 Recognise that Increased Access to Justice Depends on Public Confidence in the Justice System:

The citizen-friendliness and quality of institutions are as crucial as proximity to the population they serve. Increasing access to justice for vulnerable people is not always about quantity-quality is essential when designing legal aid programs because poor legal representation is not necessarily better than lack of legal representation.[130] Thus, justice systems must be linguistically and culturally accessible. Simplified procedures and widely promulgated laws and decisions help too.[131]

### 2.5.2.2 Promote Procedural Fairness:[132]

Adequate procedural protection helps ensure that law enforcement cannot violate the rights of individuals. Procedural fairness helps mitigate abuse by police, judges, and prosecutors by establishing fair rules for legal proceedings and adhering to them. For criminal offences, procedural fairness involves guaranteeing the right of those accused of crimes to know the charges levied against them in a language they understand, the right to obtain or be provided counsel, the right to present evidence in their defence, the opportunity to hear or review the prosecutor's evidence, the opportunity to confront and cross-examine witnesses (where oral proceedings exist), and a right to a speedy trial, particularly if incarcerated. In civil matters, procedural fairness ensures that all parties have a full and equal opportunity to be heard, to present evidence and arguments in support of their position, to have notice of and opportunity to respond to the case presented against them, and to receive timely and adequate notice of all court proceedings.

[129] Despouy L (2008) Report of the Special Rapporteur on the independence of judges and lawyers (A/HRC/8/4). Human Rights Council, United Nations, Geneva.
[130] *Available at:* https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice ( Last visited on January 8, 2021).
[131] USAID, "Guide to ROL," 2008 available at: https://www.usaid.gov/sites/default/files/documents/USAID-Rule-of-Law-Practitioners-Guide-July-2020.pdf ( Last visited on March 8, 2021).
[132] *Ibid.*

### 2.5.2.3 Ensure Equal Application of the Law:

In a society emerging from conflict, individuals with power and vulnerable populations may receive unequal treatment.[133] This imbalance in the application will likely have caused deep mistrust in the system or may have led to violent resolution of disputes.[134] While applying the law equally regardless of identity is critical to creating equity, a semblance of fairness and legitimacy. This involves applying laws without any discrimination, treating all parties equally in the courtroom, and having rulings that are consistent with the law regardless of the identity of the parties (gender, class, religion). Ensure the law is consistently and equally applied in both criminal and civil matters (land titling, enforcement of leans, landlord-tenant disputes, and debt collection).[135]

### 2.5.2.4 Promote Legal Awareness:

For the population to access justice, they must understand their basic rights and the means for claiming them. For most people, the laws and the formal justice system are alien institutions they hesitate or do not understand. Legal awareness helps counter this problem of misunderstanding and promote access to justice.[136] Legal awareness campaigns can be conducted by the state but they are most effective when conducted by civil society at a grassroots level or through the media. Because providing information to huge populations is a significant challenge, trusted and familiar social networks (i.e., community-based formal and informal networks) can be used to enhance legal awareness efforts.[137] Legal awareness of suspects and the accused should also be promoted. Messages should be in local languages and should take into account literacy rates.[138]

### 2.5.2.5 Support the Enforcement of Remedies:

Remedies have no use if they are not enforced. The enforcement of remedies is the province of the prosecution service, the police, and the prison service. NGOs

[133] *Id.*
[134] *Available at:* https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/acc (Visited on March 8, 2021).
[135] *Ibid.*
[136] *Ibid.*
[137] *Ibid.*
[138] *Available at:* https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice (Visited on January 9, 2021).

should also monitor the enforcement of remedies.[139] Access to justice is not easily defined. It is much more than improving an individual's access to courts or guaranteeing legal representation, but it can be defined in terms of ensuring that legal and judicial outcomes are just and equitable.[140]

## 2.6 CONCLUSION:

This chapter has been a conceptual analysis of access to justice that refers to the establishment of institutions and procedural rules granting access to all and the substantive laws themselves and the empowerment of vulnerable people to obtain justice. The significance of access to justice for both citizens and the State cannot be underestimated. The research acknowledges the gap between citizens and the law, in terms of equality of opportunity and approaches in tracking issues and providing an appropriate remedy. The ultimate say from above is that- ***As crime wounds, justice must cure it.*** The law's ideal and object should thus promote justice and prevent people from injustice. 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.

[139] UNDP, "Programming for Justice," 2005 *available at:* https://pdf.usaid.gov/pdf_docs/Pnadm700.pdf (Visited on January 19, 2021).
[140]UNDP (2004) Access to justice and rule of law. Democratic Governance Group, Bureau for Development Policy, UNDP, New York *available at:* https://www.undp.org/publications/access-justice-practice-note (Visited on January 9, 2021

# CHAPTER-III

# ACCESS TO JUSTICE: INTERNATIONAL HUMAN RIGHTS PERSPECTIVE

# CHAPTER-III
# ACCESS TO JUSTICE: INTERNATIONAL HUMAN RIGHTS PERSPECTIVE

*"You can't talk about development if people within a community don't think they have equal access to justice. Nobody feels safe. You can't even begin to talk about development if citizens don't share a sense of belonging and entitlement to their community justice system. Legal aid is such a fundamental necessity for human existence: it calls for a much greater public investment than we currently see."*

Yahaya Al-Hassan Seini, Executive Director, Legal Aid, Ghana.

## 3.1 INTRODUCTION:

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.[1] The reasons are that the barriers such as cost, complexity, and corruption cause people either not to seek redress or be defeated by the process. The concept 'access to justice' is typically thought of as a *jural* relation between a citizen or a group with rights and the State as an independent service provider. In the realms of civil and criminal law, access signifies equal opportunities for recourse to structures, procedures, and remedies for rectifying civil wrongs or prosecution and punishment for crimes.2 Gender, race and impoverishment continue to disrupt and

[1] *Available at:* https://thecommonwealth.org/media/news/access-justice-all-not-yet-reality-%E2% 80% 93-there-are-ways-forward (last visited on February 27, 2021).
[2] *Supra* note 2 at 554.

haunt universal prescriptions concerning access values, structures, and processes. Further, access to the law must not be conflated with access to justice. Hence, it is essential to ensure that access initiatives do not stop providing access to legal processes and retain their goal of providing access to justice.

Any legal rights ensured to citizens are fruitful only if they can effectively assert their rights. So access to justice is of considerable significance whenever citizen suffers a violation of their human right. But the problem behind assuring access to justice faced by states is not simply one of creating more lawyers or establishing legal aid systems, but of altering the procedures of the courts and especially their relationship with the community[3], to effectively extend justice, right and democracy, to the vast majority of poor and excluded. It primarily affects the vulnerable group of people in any country in applying both substantive and procedural law. The problem facing developing countries is the gap that is in existence between citizens and the law of the land in terms of equality of opportunity and providing an effective remedy for violation of fundamental rights guaranteed under the law[4]. The citizens living in poverty and marginalised groups are unaware of their legal rights. They often lack legal protection and access to mechanisms to solve their grievances, increasing vulnerability.[5] The Countries Such As Syria, Turkmenistan, North Korea, Libya, Cuba, Saudi Arabia, Pakistan, Sri Lanka, Myanmar, and Afghanistan are more places where people suffer from some of the most severe, systematic abuses of human rights. Citizens of that countries experienced rampant human rights violence are considered guilty of crimes against humanity; these actions display pervasive humanity without any right to access to justice. In Saudi Arabia, political prisoners are held in detention, and democracy is silenced by threats of intimidation and arrests all. At the same time, women continue to face significant oppression and discrimination based on sex. In Saudi Arabia, females and the poor who are considered to be at the bottom of the totem pole often denied basic human rights and knowingly oppressed by the country's political entities. In North Korea, human rights abuse is very plentiful. Prisoners,

[3]Albie Saches and Gita Honwana Welch, (eds.), *Liberating the law, creating popular justice in mozabique, (*Zed Book, 1990).

[4] Universal Declaration of Human Rights, 1948, art. 8.reads as "*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*".

[5]*Available at:* https://www.undp.org/content/undp/en/home/2030-agenda-for-sustainable-development/peace/rule-of-law--justice--security-and-human-rights/access-to-justice.html (last visited on December 1, 2020).

mostly consisting of impoverished individuals locked up for committing petty crimes in their efforts to survive, are subject to horrific treatment.[6] Since the beginning of 2018, in the Democratic Republic of the Congo UN Human Rights have registered 175 convictions for serious human rights violations.[7] Gender, race, and improvement continue to disturb and hunt universal prescriptions concerning access values, structures, and processes.

## 3.2 INTERNATIONAL LAW AND SOURCE OF ACCESS TO JUSTICE:

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. The human rights movement, which gained momentum following the Second World War, further crystallised the obligation of the State to provide adequate access to justice to its citizens. The various United Nations Declarations and, more importantly, the provisions of the multiple Conventions which the parties have ratified have become legally binding on the latter. Accordingly, member States are obliged to take all measures to ensure that they provide adequate access to justice to their citizens following the provisions of the human rights law. States have to comply with certain obligations stipulated under the various human rights treaties as members.

On the one hand, States have a negative obligation not to obstruct access to the remedies laid down therein. Still, they also have a positive duty to ensure that mechanisms are in place so that all individuals can access those remedies. To achieve that objective, States are required to remove any regulatory, social, or economic obstacles that prevent or hinder the possibility of access to justice.[8]The judicial system of states should ensure the judicial proceedings are conducted fairly[9] and

[6] *Available at:* https://borgenproject.org/human-rights-violations/ (last visited on December 11, 2020).
[7] *Available at:* https://www.ohchr.org/Documents/Publications/OHCHRreport2018.pdf/(last visited on December 15, 2020).
[8] *Available at:* https://www.cidh.oas.org/countryrep/AccesoDESC07eng/Accesodesci-ii.eng.htm (last visited on November 5, 2020).
[9] Basic principle on the independence of the judiciary principle 7 reads as "*It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions*".

remove all barriers in the judicial system that marginalises the vulnerable segment of the population. Hence, it is essential to ensure access to legal processes and retain their goal of providing access to justice.

Several human rights instruments have provisions on access to justice, some of which are binding or non-binding.

### 3.2.1. The International Bill of Human Rights:

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. Inequality or discrimination in the world has grown and fundamental freedoms are under strain the world over with populism and intolerance among individuals on the high risk. The world leaders working with other countries, UN Human Rights strives to turn this around; to help make human rights a reality for everyone without discrimination, everywhere. By building up the capacity of countries to protect rights, by bringing people together across sectors and continents to address barriers, by speaking out publicly against abuses, by forging partnerships for global and local change, we make a tangible difference in people's lives. Now more than ever, every State must stand up together for human rights recognition and its protection stand up for equality, justice and freedom. In a divided world, human rights unite us to find a brighter future for its entire human being.[10]The international bill of human rights, built up of the Universal Declaration of Human Rights 1948, International Covenant on Civil and Political Rights and its two Optional Protocols 1976, and Justice in International Covenant on Economic, Social and Cultural Rights also of 1976 furnishes the core basics of international human rights norms and principles to secure all people from all forms of human rights abuses.

[10]*Available at:* https://www.ohchr.org/Documents/Publications/UNHumanRights_CfS_cmyk_online.pdf(last visited on November 6, 2020).

### 3.2.1.1 Universal Declaration of Human Rights:

Sixty years ago, in 1948 new world had emerged to rebuild the faith and confidence of ordinary people towards their governments. A refreshing discourse on human dignity and equality before law and equality before law outshined governance issues, which eventually brought the issue of citizens' vulnerability to the forefront of statecraft and democracy. UDHR elaborate on peaceful life against state excesses such as violence, torture and illegal confinement. This declaration remains the fundamental legal framework to question and seek redressal against all kinds of abuse to human dignity.[11] A significant section of this declaration is dedicated to an elaboration of the kind of legal support required by vulnerable people and the obligation of their respective governments to provide it.

Access to justice received universal formal attention from 48 member states of the UN on 10 December 1948, the aftermath of the 2nd World War, with the Universal Declaration of Human Rights proclamation.[12] UDHR is the first and single most important document recognised internationally as the standard for human rights. The declaration affirmed that the inherent dignity and equal and inalienable rights of all human family members is the foundation of freedom, justice, and peace in the world. It let the world believe that everyone has rights to freedom and equality, life and security, nationality, representation, educational work, family and freedom of thought, expression and belief. The aims and objectives of UDHR urge in the preamble that is 'every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance'. The UDHR was recognised internationally as the yardstick for human rights and, in particular, for laying down the key components to establish access to justice for everyone without any discrimination.[13]The UDHR prescribes 'equality before the law' and 'equal protection

[11] Amita Singh and Nasir Aslam Zahid, *Strengthening Governance through Access to Justice* 4 (PHL Learning Private Limited 2009).
[12]Universal Declaration of Human Rights, 1948, Art. 10 read as "*Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".*
[13] *Supra* note 2 at 20.

of the law'and guarantees 'freedom from arbitrary arrest, detention or exile'.[14] For criminal justice, the UDHR secure the right to a fair and public hearing by an independent and impartial trial; the resumption of innocence, all the guarantees necessary for defence. Article 8 of the UDHR clarifies that rights without remedies would be meaningless.[15] The Declaration requires States to put in place competent mechanisms that would ensure the enforcement of the rights of individuals by providing them effective remedies for acts violating any rights under the UDHR, or the constitution or by law[16]. It demonstrates that States should protect and promote the fundamental rights of their citizens by ensuring their accessibility to tribunals or courts which can enforce their claims. Where a man has a right, he must, according to the Declaration, have the means to vindicate and maintain the right and must be able to avail an effective remedy in case of its violation. The other Articles of the UDHR require States to ensure that no situation should arise or no circumstance should be used as a pretext for the violation of a person's rights, outlined in the Declaration[17]. However, The UDHR being a mere declaration is per se not legally binding. It is considered a 'common standard of achievement for all peoples and all nations. With the International Bill of Rights, the principles enshrined therein developed into binding 'juridical commitment'.

### 3.2.1.2 The International Covenant for Civil and Political Rights:

ICCPR was adopted by a resolution of the United Nations General Assembly on 16 December 1966.[18] It establishes the positive obligation on state parties to respect the core principles of access to justice in making policies for their citizens. It assures that every state party gives effect to the right provided in it and ensures that their citizens should enjoy such rights legally.[19] Some of the components that form a

[14] Universal Declaration of Human Rights, 1948, art. 9 read as*"No one shall be subjected to arbitrary arrest, detention or exile"*

[15] Universal Declaration of Human Rights, 1948, art. 8 read as *"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the Constitution or by law".*

[16] *ibid*

[17] Universal Declaration of Human Rights, 1948, art. 28 and 30.

[18] Adopted by GA Resolution A/RES/2200A(XXI)of 16th December 1966. 160 countries have signed and ratified the ICCPR, albeit with some reservations and derogations.

[19] The International Covenant for Civil and Political Rights 1966 art. 40 reads as*"The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights: (a) Within one year of the entry into force of the present Covenant for the States Parties concerned; (b) Thereafter whenever the Committee so requests".*

fundamental part of the right to access justice are found in the ICCPR. The Covenant does acknowledge the right to access justice. However, the only recognition of the right is not a purposeful solution to current time problems. Article 2 Para 3 of the ICCPR ensures the protection of an individual's rights by States in a three-fold manner. In case of violation of the rights or liberties, the States would have to provide their enforcement through an effective remedy, the right to the remedy would have to be determined by competent judicial, administrative or legislative authorities.[20]

Article 14 of the ICCPR encompasses the spirit of access to justice in a comprehensive manner. Article 14 of the ICCPR mandates the fundamental principle of equality before the courts and tribunals to all persons and a fair and public hearing by a competent, independent and impartial tribunal established by law.[21] While Article 14 (3) (c) incorporates "trial without undue delay", Article 14(3)(d) of the ICCPR mandates that an offender is entitled "to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any case if he does not have sufficient means to pay for it. It is also to be noted that in the case of special courts such as military tribunals,, the OHCHR believes that the legal process should be very exceptional and take place under the conditions that genuinely afford the full protection stipulated in the article 14 of ICCPR. In the case of criminal offences, the ICCPR sets out specific obligations of States to ensure a speedy trial[22] and provide state-funded counsel for persons who cannot afford the costs of legal representation. The Human Rights Committee (HRC) provided the scope to certain elements of Article 14(3) of the ICCPR. In elaborating on the meaning of when the 'interests of justice would require free legal representation, the Committee considered, in the *Norway* case[23], the severity of the charge and the complexity of the case in making the determination. As a result, in a case where the accused is charged with a minor criminal offence that would have likely resulted in a

[20] The International Covenant for Civil and Political Rights 1966 art. 2 (3) read as "*(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted"*.

[21] Brownlie Ian (ed.), *Basic Documents on Human Rights*, 130 (Clarendon Press, Oxford, 3rd Edition, 1992).

[22] The International Covenant for Civil and Political Rights 1966 art.14 (3) (c) read as "*To be tried without undue delay"*.

[23] *Reid v. Jamaica*, Communication No 250/1987 (20 July 1990).

fine, the Committee found that the State is not required to provide free legal assistance. It is worth noting that the ICCPR does not explicitly address how legal aid must be provided. However, the Human Rights Committee (HRC) has also stated that counsel should receive adequate remuneration for providing legal assistance under a state-funded legal aid plan.[24] Similarly, it has affirmed that legal aid must be assigned to the accused if he does not have the means to pay for it as provided under the ICCPR[25] and that the legal assistance must be effective.[26] Again, the Human Rights Committee has held that accused persons have a right to legal advice before trial requiring the State to appoint legal counsel during the pre-trial period.[27]

Article 14 of the ICCPR appears to incorporate directives for the trial of criminal offences. But its essence may also be applied to proceedings that are not criminal. Therefore, the right to access justice is recognised in two separate but complementary articles of the ICCPR[28]. Thus the ICCPR includes guarantees about a fair trial and encompasses a stipulation concerning access to the court.

### 3.2.1.3 The International Covenant on Economic Social and Cultural Rights 1966:

The International Covenant on Economic Social and Cultural Rights is one of the International Bill of Rights components. The Covenant is a legally binding document that protects a range of economic, social and cultural rights without discrimination based on creed, political affiliation, and gender of a race[29]. Article 2 (1) of the Covenant indirectly addresses the right to access to justice by providing that, "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical to the maximum of its available resources to achieve the full realisation progressively in the present Covenant by all appropriate means including particularly the adoption of legislative measures[30]. It thus follows that States must have a proper

[24] *Ibid.*
[25] *Wright and Harvey v. Jamaica*, Communication No 459/1991, (27 October 1995).
[26] *Supra* note 2 at 23.
[27] *Ibid.*
[28] The International Covenant on Economic Social and Cultural Rights 1966 art. 2 (3) (c) read as "*To ensure that the competent authorities shall enforce such remedies when granted"* and art. 14 of the ICCPR.
[29] *Supra* note 2at 23.
[30] *Id*. at 24.

grievance redressal mechanism in place to breach their fundamental rights of the citizens. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) is a critical human rights treaty that strengthens access to justice concerning people's economic, social and cultural rights.[31] It establishes an international complaints mechanism that allows individuals who have exhausted all attempts at remedy within their own countries to claim before the UN Committee on Economic, Social and Cultural Rights (CESCR) that their rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR)[32] have been violated, to get redress. The OP-ICESCR corrected the historical imbalance between the protection of civil and political rights, on the one hand, and economic, social, and cultural rights, on the other.[33] As such, it is an essential confirmation of the equality, interdependence, and indivisibility of all human rights, and the most acceptable tool to strengthen access to justice globally.

Both the ICCPR the ICESCR have their monitoring and compliance committees to ensure compliance with the norms lay down therein – a) the Human Rights Committee b) the Committee on Economic, Social and Cultural Rights. These Committees are access mechanisms to monitor the fulfilment by State parties of all their obligations, including the access to justice obligation.

### 3.2.2 Other Human Rights and International Law Instruments Promoting Access to Justice:

A human rights approach seeks to develop people`s capacity to demand accountability in two ways: by defining a minimum scope of legitimate claims and enhancing the accountability mechanisms and processes to protect these claims.[34] There are many areas of intervention to improve access to justice through a Human Rights perspective, these areas being: normative protection of rights; capacity to oversee the protection of rights through national rights commission, civil society, and

[31] *Available at: https*://docs.escr-net.org/usr_doc/Booklet_2_ Jan_2011_FINAL.pdf ;(last visited on October 5, 2020).
[32] NGO Coalition for the OP-ICESCR, A Toolkit for Action – Booklet 1: Refreshing Your Knowledge about the International Covenant on Economic, Social and Cultural Rights, *available at:* https://docs.escr-net.org/usr_doc/ Booklet_1_FINAL-12-7-2010(3).pdf. ;(last visited on October 9, 2020).
[33] *Available at:* https://www.escr-net.org/sites/default/files/case_study_uruguay_english_0.pdf ;(last visited on October 10, 2020).
[34] UNDP practitioners guide to right-based- approach to access to justice '*Programming for Justice: Access to All' available at*: https://www.un.org/womenwatch/daw/cedaw/ (last visited on July 9, 2020

parliament; capacity to provide justice by the ministry of justice, courts, prosecutors, and informal system; and ability to demand justice via legal empowerment, awareness and aid, especially on the part of the poor and disadvantaged.

The phrase 'access to justice' does not find express mention in the various human rights treaties and documents. But various components of the right such as the right to fair treatment, right to legal aid, absence of unreasonable delay, and such other components are given due recognition and importance in these instruments. Is that they all affirm and promote the right to access justice? Human rights instruments have protections against specific factors that could obstruct access to justice. Though they may differ in their specific provisions, they all condemn any practice that encroaches upon the individual's right to fair and equal treatment. They provide not only for the continuance of the traditional protection under the civil and criminal laws but also stipulate protection in all spheres of human endeavour and interaction. Some of these human rights instruments focus on the protection of vulnerable people and communities.Other UN instruments specifically affirm the rights to access justice and for treatment. There are several exciting aspects of the various human rights instruments mentioned above:

**3.2.2.1 International Convention on the Elimination of All Forms of Racial Discrimination (CERD):** It came into force on 4 January 1969, solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person.[35]

**3.2.2.2 The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW):** which came into force on 3 September 1981is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines discrimination against women and sets up an agenda for national action to end such discrimination.[36] As studies show that all over the world, women have had difficulty accessing the law and, once they access it, obtaining justice.[37]

[35]*Available at:* https://ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx (last visited on July 9, 2020).
[36] *Available at*: https://www.un.org/womenwatch/daw/cedaw/ (last visited on July 9, 2020).
[37] M. Schuler And S. Kadirgamar- Rajashingham, *Legal Literacy: A Tool For Women,s Empowerment* (Washington: Woman, Law And Development OEF International, 1992).

**3.2.2.3 United Nations Convention against Torture (CAT):** which came into force on 26 June 1987, condemns the act of torture and provides access to justice, including appropriate remedies such as compensation for the victim of torture.[38] CAT incorporates the principle of equal protection before the law, which suggests no discrimination towards law users. It also assures that law will be accessible to all. Indeed if a state is to meet its obligations to respect, ensure, protect, and fulfil the rights of its citizens, then a functioning justice delivery system is essential.

**3.2.2.4 U.N. Convention on the Rights of the Child (CRC):** It will further highlight the nature and scope of such international human rights treaties in respect of access to justice. The CRC is a very comprehensive document that protects the child's rights. It corporate a complete range of civil, political, economic, cultural, and social rights for the child. All these reflect the rights enshrined in the UDHR 1948. The preamble provides that the child's best interest should be the primary consideration of all states. It protects when a child is deprived of their liberty and confirms the right to "prompt" access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of their liberty.[39] Furthermore, Article 40 conveys heightened responsibility on the State to protect the child's fundamental rights and freedoms in situations where the child has infringed penal law. All these rights must be implemented and practised by the judicial authorities of the State.[40]

**3.2.2.5 International Convention on The Protection of The Rights of All Migrant Workers and Members of Their Families (CMWF)** which enter into force on 1 July 2003 protects the rights of vulnerable groups within society. This Convention confirms that Migrant workers, and members of their families have the right to equality before the courts and tribunals. In determining any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair

[38] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, art. 13 *"Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given".*

[39] Convention on the Rights of the Child,1989, art. 37(d) reads as *"Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action".*

[40] *Id*., art 40 (b).

and public hearing by a competent, independent and impartial tribunal established by law.[41]

**3.2.2.6 Convention on the Rights of Persons with Disabilities (CRPD):**[42] The Convention entered into force on 3 May 2008. The Convention follows decades of work by the United Nations to change approaches and attitudes to persons with disabilities. It urges to a new height the movement from viewing persons with disabilities as "objects" of charity, medical treatment and social protection towards viewing persons with disabilities as "subjects" with rights, who are capable of claiming those rights and making decisions for their lives based on their free, and informed consent as well as being active members of society.[43]

The Convention is intended as a human rights instrument with an explicit social development dimension for access to justice. It adopts a broad categorisation of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms without any discrimination. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights areas where their rights have been violated, and where protection of rights must be reinforced.[44]While the particular provisions are different, these human rights treaties condemn any practice that impinges on the individual's rights to fair and equal treatment, and further affirms the right to access justice. This includes equal and fair treatment and protection by the laws, courts and tribunals. They also generally provide for the provisions of effective remedies if these rights are violated.

[41] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. 1990. art. 18 (1) reads as "*Migrant workers and members of their families shall have the right to* equality *with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law"*.

[42] The Convention on the Rights of Persons with Disabilities and its Optional Protocol (A/RES/61/106) was adopted on 13 December 2006 at the United Nations Headquarters in New York, and was opened for signature on 30 March 2007. There were 82 signatories to the Convention, 44 signatories to the Optional Protocol, and 1 ratification of the Convention. This is the highest number of signatories in history to a UN Convention on its opening day. It is the first comprehensive human rights treaty of the 21st century and is the first human rights convention to be open for signature by regional integration organizations.

[43] *Available at:* https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html (last visited on January 5, 2021).

[44] *Ibid.*

### 3.2.3 The Treaty-Bodies and Access to Justice:

Mostly The popular features of the instruments are that they each have a monitoring instrument and implementation committee. These committees are international access mechanisms but operate quite differently from courts. The primary function of such a committee is to monitor the fulfilment by state parties of all these obligations, including access to justice obligations under the treaty. The treaty body does so by examining periodic reports submitted by the state party. The UNDP can play an important role here, in some countries; it has to provide support and assistance to the government in preparing such reports, NGOs and the civil society to prepare shadow reports. The right to access to justice is a vital part of the UNDP mandates the states to reduce poverty and strengthen democratic governance. In the broad context of justice reform, UNDP's specific niche lies in supporting justice and related systems so that they work for those who are poor, disadvantaged and marginalised.[45] . For UNDP, access to justice involves normative legal protection, legal awareness, legal aid and counsel, adjudication, enforcement, and civil society oversight. Within Europe and the Commonwealth of Independent States, UNDP's regional programme for 2011-2014 promotes human rights and access to justice for social inclusion and legal empowerment.[46] Access to justice report can furnish information which the treaty body examines and enter into dialogue with the state party after that provides the state party with concluding observations as to how the state party can offer support and assistance to the government in responding constructively to such concluding observations. The second important function of a treaty body is to prepare General Comments on each Article of the treaty, interpreting such article of the treaty interpreting such article and elaborating for the states parties their obligations under such Article and recommended steps to be taken. Thus the treaty bodies can help develop the jurisprudence on access to justice as it relates to each human rights treaty. UNDP always adopts the perspective that this right concerns more than access to courts: it concerns access to an effective remedy for a problem protected by the law. A policy of access to justice, therefore, implies the creation or strengthening of each body, State and community, centralised or decentralised, which may help to guarantee the exercise of rights, and also able to

[45]Available at Strengthening Judicial Integrity through Enhanced Access to Justice *available at:* file:///C:/Users/atya8/Downloads/Access%20to%20justice.pdf (last visited on October 20, 2020).
[46] *Ibid.*

give a response, with impartiality and integrity, to the demand of the people, especially to those who are the most disadvantaged. Therefore as set out in the UNDP's Human Development Report' of 2002 'to improve access to justice and strengthen the protection of human rights, UNDP responds to the request from counties seeking assistance to clarify and streamline the legal system 1st to make it more professional and accessible to the courts and police and public authority for justice; 2nd to improve the legal aid services for poor citizens; 3rd to promote alternative dispute resolution; 4th to support the integration of legal obligations for incorporation into national law, and integrate human rights into development programming.'

### 3.2.3.1 The Aarhus Convention, 1998:

The Convention on Access to Information, Public Participation in decision making and Access to Justice in environmental matters was signed on 25 June 1998. The Convention aims to protect and preserve the environment to promote sustainable development.[47] Article 9 specifically relates to access to justice by establishing a right to information and access to justice before the court if a request for such environmental information has been ignored or wrongfully refused, in part or in whole. Article 9 (2) state that the court proceedings should be conducted expeditiously and be inexpensive. Further, the remedies given should be adequate and effective. Thus, The Aarhus Convention, is an example of how regional treaties can supplement international treaties in establishing adequate access to justice, rights and remedies. **The** Budva Declaration[48] adopted last year at the sixth session of the Meeting of the Parties to the Convention addresses this critical issue and demonstrates a strong commitment by Parties to the Aarhus Convention to promote environmental democracy throughout efforts to deliver on the 2030 Agenda on Sustainable Development.[49]

[47] *Available at:* http://www.unece.org/env/pp/document/cep43e.pdf (last visited on November 2, 2020).
[48]https://www.unece.org/fileadmin/DAM/env/pp/mop6/HLS/ECE_MP.PP_2017_16_Add.1ECE_MP.PRTR_2017_2_Add.1_E.pdf (last visited on 6 September 2020).
[49]*Available at:* https://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/20th-anniversary-of-the-adoption-of-the-aarhus-convention/protecting-your-environment-the-power-is-in-your-hands.html(last visited on September 6, 2020).

## 3.3 MAJOR REGIONAL HUMAN RIGHTS INSTRUMENTS FOR ACCESS TO JUSTICE:

Various regional human rights instruments elaborated also protect civil, political, economic, social and other rights, including access to justice.

### 3.3.1 Expanding Access to Justice in the European Union:

The European Convention for the Protection of Human Rights and Fundamental Freedoms[50] is a specific legal content, and usable form to the human rights set out in the Universal Declaration of Human Rights. However, it is binding on the member states in Europe. It elaborates the fair trial rights which serve as a classic example for future human rights instruments. In European human rights law, the notion of access to justice is enshrined in Articles 6 and 13 of the European Convention on Human Rights (ECHR)[51] and Article 47 of CHAPTER VI entitled 'JUSTICE' of THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION [52] which guarantee the right to a fair trial and an effective remedy, as interpreted by the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), respectively.[53]According to international and European human rights law, EU Member States must guarantee everyone the right to go to court, or an alternative dispute resolution body and obtain a remedy when their rights are violated.[54] Under EU law, everyone is also entitled to an effective remedy before a court to enforce EU law rights. One crucial area is non-discrimination law, where EU law prohibits discrimination on the grounds of sex, racial or ethnic origin, sexual orientation, age, disability and religion or belief. This

[50] The European Convention on Human Rights and Fundamental Freedom was signed in Rome (Italy) on (4 November 1950) by 12 member states of the council of Europe and it entered into force on 3rd September 1953. The said convention is referred in this work by its abbreviation ECHR.

[51] The European Convention on Human Rights and Fundamental Freedom, 1950, art.13 reads as "*Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity*".

[52]The European Convention on Human Rights and Fundamental Freedom, 1950, art. 47 reads as "*Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice*."

[53] *Available at*: https://www.echr.coe.int/documents/handbook_access_justice_eng.pdf (last visited on September 6 2020).

[54] *Available at*: https://fra.europa.eu/sites/default/files/fra_uploads/1506-FRA-Factsheet_AccesstoJusticeEN.pdf (last visited on October 6, 2020).

factsheet provides information on access to justice, focusing on non-discrimination law, excluding criminal law. The European Convention stipulates that in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. [55] The Article states that States must ensure a fair and public hearing for grievances within a reasonable time. An independent and impartial tribunal must give such a hearing instituted by law. Thus, in the European Convention, the human right of access to justice is seen as the right to a "fair hearing". In **Airey v. Ireland**,[56] the European Court held that the fulfilment of a duty under the ECHR requires positive action by the State and thus it involves a positive duty to ensure effective access to the courts.[57] The Court made it clear in the same case that this right should be 'practical and effective' and not theoretical and illusory. In **Golder v. the United Kingdom**[58] the European Court of Human Rights held that although Article 6(1) did not expressly state a right of access to the courts, the procedural guarantees it provided would be meaningless without such a right. The European Court observed that the fair conduct of a civil proceeding is pointless, if one does not have the right to bring the proceeding in the first place, and explained that the Convention presupposes the right of access to the courts, just as it presupposes the existence of the courts themselves.

### 3.3.2 Expanding Access to Justice in Latin America:

The evolution of Access to justice in **Latin America** was explained in part by a doctrine through a model of three stages, also called the 'Access to justice wave'. The 1st wave sought the establishment of *pro bono* mechanisms of assistance and representation before the courts for a person below a certain level of income. The objective was to protect equality before the law and remove barriers to the human right to equality. The 2nd wave of Access to justice was marked by justice sector

[55] The European Convention on Human Rights and Fundamental Freedom, 1950, art.6.
[56] (1979) 2 EHRR 305.
[57] The European court of human rights also made it clear in the same that aid in civil case should be considered as an aspect of fair trial.
[58](1975) 1 EHRR 524. Mr. Golder was serving a fifteen- year sentence for robbery in Parkhurst Prison on the Isle of Wight. He claimed to have been wrongly accused by a prison office of participation in a jail house disturbance. Even though no disciplinary charges were even pursued, the allegations remained in his prison record and may have adversely affected his prospects for parole. He asked for permission from the home secretary to consult a solicitor in order to sue the guard for libel to challenge the accusation. Permission to contact a lawyer was refused. Accordingly, the right to fair hearing under article 6 (1) include the right of access of court itself.

reform in the region during the 1990s and early in the decade that sought to optimise the functioning of the courts and tribunals. The concern about improving the system stemmed from an emerging perception that the proper functioning of the machinery of justice served to accelerate social-economic development and ensure democratic stability. Part of this movement reoriented the search for a more efficient system and mechanism to protect citizens' 'collective interest'. It also laid the foundation for the 3rd wave of the right to access justice by creating procedural mechanisms such as class actions or public interest litigation. So the realisation of fundamental rights both individually and collectively is now defined in the field of administration of justice. The access to justice policies was envisaged through a lens of necessary treatment of the needs that make equality in law possible by introducing legal mechanisms that compensate for *de facto.* Therefore, a proper policy on access to justice should compensate the aim of establishing a variety of compensatory mechanisms capable of responding to the different needs of diverse excluded social groups, transforming each integral instrument into remedy with the capacity to subvert the influence of the structural economic, social and cultural barrier that weigh on the group of population to which action is directed. The American Convention on Human Rights: *Pact of San Jos, Costa Rica,* [59] imposes a general legal obligation on State Parties to respect the rights and freedoms recognised in the Convention. It specifically recognises the rights to a fair trial and equal judicial protection[60]. Article 8 of the American Convention on Human Rights 1969 incorporates the right to a fair trial.[61] The Convention underscores a person's right to a hearing with due guarantees and within a reasonable time by a competent tribunal. This right is further reinforced by Article 25, which stipulates the right to prompt and straightforward recourse or any other effective recourse to a competent court or tribunal in case of violation of fundamental rights recognised by the Constitution or the Convention[62]. Hence the nature of the state function of administration of justice involves the range of services benefits to citizens,

[59] Came into force on 18 July 1978, i.e., the date of deposit of the eleventh instrument of ratification or adherence with the General Secretariat of the Organization of American States, in accordance with article 74 (2).

[60] American Convention on Human Rights, 1969, arts. 24 and 25.

[61] American Convention on Human Rights, 1969 art. 8 reads as (1) "*Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labour, fiscal, or any other nature*".

[62] American Convention on Human Rights, 1969, art.25.

which should be oriented in its operation by the principle of universality, freedom, equality, continuity, speed, adaptability, integrity, and quality.[63]

### 3.3.3 Expanding Access to Justice in the Africa Continent:

At the time of independence, many African countries officially recognised legal pluralism, deeming customary law, and Islamic sharia as the source of direction as well. The coexistence of different legal systems is generally acknowledged by African states and even valued its rich cultural wealth of African countries. The state law constitutes the most visible part of the legal system in Africa. However, it is less extensive than the 'unofficial law' whose instruments community courts, religious leaders, and civil society organisations help resolve personal and social conflicts. Globalisation has added another dimension of the African legal pluralism,, the human rights concept. So human rights are enshrined in most African constitutions and assure access to justice for every citizen. Access to justice means that where people, particularly the poor, need protection and recognition of their rights, an effective solution is available. In most African countries, formal justice systems are unaffordable to ordinary people and therefore inaccessible. Lack of financial support to pay for the basic legal fees and transport to court, long delay, and lack of affordable legal aid as well as bribery to the policeman and court clerks all constitute a fundamental denial of access to justice. At the Arusha Conference,[64] recommendations underline the importance of the user of an alternative method of dispute resolution: the establishment of paring legal service; a continuous legal education for legal practitioners, law enforcement agent, judges and lawyers to keep them abreast of new simplification of the law and court procedures and introduction of small cases and family courts with the easier procedure and the introduction of access to justice. The Arusha conference also calls for establishing a government legal scheme so that responsibility does not rely solely on civil society organisations. African states increasingly acknowledge these difficulties and are trying to cope with these in two basic ways: on the one side, expanding the existing structure like more court building and better-trained judges, prosecutors and investigating policemen. On the other side where the State recognises and considers existing informal mechanisms

[63] *Supra* note 2 at 557.

[64] The conference on citizen, communities and constitutionalism in east Africa was held in Arusha from 17 to 19 July 2000, *available at:* http://www. Kituo chakatiba .co.ug./ sub-theme3,htm (last visited on September 6, 2020).

of conflict resolution, civil society organisations, and the traditional normative and judicial systems as instruments that can contribute to making justice more accessible to the people. Like the American Convention, though not in identical terms, the African Charter on Human and Peoples' Rights 1981, commonly known as the Banjul Charter, delineates every individual's right to have his cause heard[65]. This right includes "the right to appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force"[66].Thus, the African Charter on Human and People's Rights contains the guarantee of access to the courts in unequivocal terms.

### 3.3.4 Expanding Access to Justice in the Arab Region:

Good governance in the Islamic tradition is closely associated with the rulers who deliver justice. Since the 20th century, justice has become anchored in the socialist tradition, which influenced many Arab constitutions, with Islamic Sharia and Colonial codes. However, the legal structure becomes a hybrid of Islamic, Ottoman, and French or British in many Arab states. The demand for reform in legal structure in Arab states raises a variety of approaches that range from Islamic fundamentalist to conservative, revisionist, and reformist, which affect the justice system intricately complex. So in overall ways, reforming the justice system of Arab states has to do with the accessibility of justice to all citizens equally without any discrimination. The affordability thereof is an essential quality of rendering justice, and the cultural acceptability of the norms and codes applied to render justice, especially for the poor and marginalised citizens. There is also a need to ensure equality in resource distribution that would facilitate access to justice. The Iraq experience in the Saddam years was led by the local leaders of tribes and families, and extremist religious courts. Thousands of Iraqis are detained without trial or serving prison sentences imposed after unfair practices, torture remains rife and continues to be committed with impunity, and Iraq at that time was one of the world's leading executioners.[67] To

65 African Charter on Human and Peoples' Rights, 1981, art. 7 reads as *(1) Every individual shall have the right to have his cause heard. This comprises: (a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b )The right to be presumed innocent until proved guilty by a competent court or tribunal; (c) The right to defence, including the right to be defended by counsel of his choice; (d) The right to be tried within a reasonable time by an impartial court or tribunal.*

66 *Ibid.*

67 *Available at:* https://www.amnestyusa.org/reports/iraq-a-decade-of-abuses/(last visited on September 10, 2020).

reform the justice sector in the Arab States, one must deal with a lack of trust in the law of land and state failure to secure justice institutions for citizens. Otherwise, a state of lawlessness makes each group do what they want in the name of fighting the occupier or to protect itself against the failed State like the situation prevalent in the Syrian Arab country. In Syria Security forces arbitrarily arrested civilians and former fighters who had reconciled with the government and continued to detain tens of thousands of people, including peaceful activists, humanitarian workers, lawyers and journalists, subjecting many to enforced disappearance and torture or other ill-treatment, and causing deaths in detention.[68] But access to justice reforms in the Arab region has not yet given equal attention to more fundamental issues related to the entire justice system, from its normative phase to the oversight one.[69] The existing commercial law amendment alone or introducing a new one has proven too little reform and does not respond to the massive needs of human rights guarantee, especially of vulnerable citizens. The normative law governing civil and criminal codes is still waiting for more reforms in Arab states. So UNDP-POGAR launched in four pilot countries Egypt, Jordan, Morocco and Yemen. The aim is to establish a demand-based system, which works in partnership with key governance institutions in the Arab region, including legislatures, judiciaries, civil society organisations to identify the needs of its citizens and solutions to their problems. It delivers a wide range of services and activities to strengthen the triple pillars of good governance: participation, the rule of law, and transparency and accountability.[70] POGAR's ten broad themes or substantive dimensions of governance embody the normative principles of participation, the rule of law and transparency and accountability. Although these standards all apply as yardsticks for evaluating political institutions and practices, their relevance varies with the concrete theme's nature to meet citizens' unmet legal needs.[71] Over the five years, several measures have been taken to improve the efficiency of the judicial system in all these four countries. The states have formulated a policy to simplify litigation procedures and introduced legislative reforms to improve judicial performance. The object of these reforms is to consolidate, revise, coordinate, simplify and shorten law, and eliminate ambiguities.

[68] *Available at:* https://www.amnesty.org/en/countries/middle-east-and-north-africa/syria/report-syria (last visited on July 8, 2020).
[69] *Supra* note 2 at 526.
[70] *Available at:* https://www.pogar.org/gender_subdomain/index.html (last visited on July 5, 2020).
[71] *Ibid.*

Moreover, amendments have been made to the criminal and civil procedural law to address the backlog of civil and criminal cases.

### 3.3.5 Expanding Access to Justice in South Asia Reign:

In sixty years, as ideological and expansionist strategies, Asia region took a backseat in governance, a new form of nexus between poverty and injustice deepened in public life. The failures of the First and the Second Developmental Decades tore the lives of marginalized people in the whole developing world, but its impact was most severe in South Asia, which had the greatest concentration of poor people in the world. The effect of consistent policy failures designed to uplift the poor subsequently increased their vulnerability and dependence on state machinery, which became the sole arbiter and the sole benefactor for provisions of justice for them.[72] The States in transition, such as China, India, Brazil and many South Asia countries, carried some of the worst records on providing justice to the poor and, in turn, gained wealth at the cost of creating severe disruption in socio-economic lives of the poor and deepening the divides between the rich and poor. In Pakistan, *Jirga* and *Panchayat* rulings with religious practice, whereas they are rooted in the power of feudal lords and Islamic doctrine. Unfortunately, these institutions have dealt with crimes of an extremely serious nature. Given their arbitrary and summary character, the absence of a modern method of investigation, lack of judicial acumen and the patriarchal mindset, it is unlikely that these institutions work for dispensing justice to the poor people and not as mechanisms for perpetuating the power and privileges of the powerful. Moreover, these institutions are never formed with female representation in their penal, therefore not representing a woman's point of view.[73]The Islamic courts in Pakistan have failed to take the *Quranic* law to its logical conclusion, that is, implement the law on *quzfh,* which requires persons giving false evidence and bringing false cases implicating women of illegal sexual relations, to be whipped and their evidence forever disregarded.[74] In China, a socialist country, the prevailing situation is that the legal aid is actually far from meeting the need of the poor even though it appears to be a completely pro-poor system in the first instance. The concept of legal aid in China has still not rooted in the agenda. It therefore has not aroused the full attention of

[72] Amita Singh and Nasir Aslam Zahid, *Strengthening Governance through Access to Justice* 5 (PHL Learning Private Limited 2009).
[73] *Id*. 35.
[74] *Supra* note 2 at 179.

government at all levels in a manner that has shaped up an institution in other countries. China has a limited number of lawyers who undertake the more pressing legal-aid obligations.[75] NGO's in China are also not as active as those in other countries. Therefore, most people are unaware of their rights to obtain legal aid free of charge. In Nepal's fluid post-conflict political context, important issues such as those relating to accountability for serious crimes and human rights violations amounting to crimes under international law that were committed during the war are increasingly being resolved through "political consensus" by a handful of political party leaders, which has had the effect of systematically eroding an already weak rule of law, as well as entrenching impunity for serious crimes and gross human rights violations.[76] In Sri Lanka to improve the situation of human rights violation is now better through the Equal Access to Justice Project –Phase II was developed to deepen and orient the activities of Phase I of the Equal Access to Justice Project within a conflict prevention framework, and with a renewed emphasis on vulnerable communities in the North and East.[77]The project works with disadvantaged groups to ensure that communities have increased knowledge of their rights and are able to access and benefit from legal services. It seeks to address the causes of injustice, i.e. poverty, need for accountability and greater respect for minority rights, through its focus on priority communities/areas, including the Displaced People in the North and East, estate workers, women and other groups affected by conflict and/or marginalisation, and build trust in the justice system and to support confidence-building through the rule of law and access to justice.[78] In Brazil legal system systematically fail to abide by international principles, such as those in the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (particularly its first principle, the right to legal aid as an essential element of a functioning criminal justice system based on the rule of law). Still, the authorities choose to ignore what should be one of the cornerstones of our State, which purports to be a democratic State governed by the rule of law. The Brazilian legal system is not ready to guarantee full and equal access

[75] *Supra* note 260 at 98.
[76] *Available at:* https://www.icj.org/regions/asia-pacific/south(last visited on January 5, 2021).
[77] *Available at:* https://www.lk.undp.org/content/srilanka/en/home/operations/projects/democratic_governance/equal-access-to-justice-phase-ii-.html (last visited on January 5, 2021).
[78] *Ibid.*

to justice, particularly the right to defence for all citizens.[79] There is no requirement under Brazilian law for suspects to access legal advice during a police investigations. Some scholars believe that the involvement of a lawyer during the pre-trial phase is contrary to Brazil's inquisitorial tradition.[80]

After analysing all these Major Regional Human Rights Instruments for Access to Justice, the following observations can be drawn below:

- The right to access justice appears in different forms, as in access to courts or as the right to a fair trial or as the right to an effective remedy or right to free legal aid or as the right to judicial protection. Despite the differences in the language used in the enactments, the contours of access to justice are visible in the Regional Human Rights Instruments.
- As is the case, every legal right is subject to restriction and regulation, with all other rights. Thus the imposition of time limits, the grant of immunities, the requirement of leave, or the mandatory compliance in an emergency with a specific legal procedure, are some of the valid restrictions on the right of access to courts that have been acknowledged in The Regional Human Rights Instruments.
- All The Regional Human Rights Instruments have confirmed the right to fair legal process, access to justice and fair treatment, independence of the judiciary and the proper administration of justice lies at the foundation of a fair and effective justice system.
- Although some of the essential dimensions of access to justice81 have been touched, some of its other components have been overlooked in the core human rights instruments, as discussed above.

[79] Isadora Fingerman, *The challenges of access to justice and enforcement of the right to counsel in Brazil available at* :https://www.tandfonline.com/doi/full/10.1080/09627251.2013.805371 (last visited on January 14, 2021).
[80] *Ibid.*
[81] The right to an effective remedy, right in full equality to a fair and public hearing by an independents and impartial tribunal, right to be tried without undue delay in criminal cases ,right to legal assistance, among others.

## 3.4 U. N. MECHANISM THAT PROMOTES ACCESS TO JUSTICE:

To strengthen the citizen's access to justice right, the United Nations organisations work with international and national partners to develop strategies, plans, and programmers for justice delivery reforms. United Nations organisations also assist and help the Member States in strengthening the justice system in their State in areas including monitoring and evaluation; empowering the poor and marginalised people to seek response and remedies for injustice; improving legal protection, legal awareness, and legal aid; civil society and parliamentary oversight for all; addressing challenges in the justice sector such as police brutality, inhumane prison conditions, lengthy pre-trial detention, and impunity for perpetrators of sexual and gender-based violence and other serious conflict-related crimes; and strengthening linkages between formal and informal structures.[82] Notably, the cost of legal advice and representation in accessing justice is one of the significant obstacles in developing countries. So a legal aid project is recognised as a principal element of strategies to enhance access to justice. The Declaration of the High-level Meeting on the Rule of Law committed the Member States to take all necessary steps to provide fair, transparent, adequate, non-discriminatory, and accountable services that promote access to justice for all, including legal aid.[83]The United Nations, through many programmes, assists appropriately in the development and reform of national policies and frameworks on legal aid. The United Nations system also supports to make sound the provision of legal aid by strengthening the capacities of rights holders, enhancing legal aid programmes empowering rights holders, particularly the poor and marginalised groups, and supporting legal awareness programmes and legal aid clinics for help and public outreach campaigns.

There is both binding and non-binding Convention or regional and international instruments, but they are far-reaching from the goal. In reality, the picture is different; there is a considerable gap between principle and implementation as an enabling environment to work. UN Human Rights is on the frontlines of the global struggle for human rights. We manifest the world's commitment to promoting,

[82]*Available at:* https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/ (last visited on July 7, 2020).
[83] *Id*., para 12-14.

protecting, and realising the full range of human rights and fundamental freedoms set out in the Universal Declaration of Human Rights. Under the leadership of the UN High Commissioner for Human Rights, with a staff of 1,300 working in more than 70 countries, we pursue all avenues in our quest to make human rights a lived reality for all people, everywhere.[84] The creation by the UN Human Rights Commission of its system of Special Rapporteurs, the creation of the Office of the High Commissioner for Human Rights (OHCHR) and the establishment of the international criminal court represent different approaches to closing the implementation gap. The situation prevalent in Belarus is an alert for the world that provides insight into the problem judges and lawyers face in executing their function as 'protector of human rights principles'. It also highlights the importance of the implementation of the UN mechanism to ensure that states adhere to the principles they have signed up to. In Belarus, the Special Rapporteurs of the commission of Human Rights found that the legal justice system was oppressive and did not enjoy independence.

Further, the lawyers were forced to renew their licence to practice every five years.[85] In 2019, Belarus continued to harass and pressure civil society activists and independent media. Authorities denied access to journalists at government events, arbitrarily prosecuted dozens of journalists, and arrested peaceful environmental protesters.[86] Belarus also remains the only European country to use the death penalty. A shot to the head executes those condemned to death. Authorities do not inform families of the execution date or the burial place.[87]

There are various mechanisms established under the UN system for the promotion and protection of access to justice as provided under the International Bill of Rights and different other soft law instruments.

[84] CASE FOR SUPPORT MAKE HUMAN RIGHTS A REALITY FOR ALL *available at*: https://www.ohchr.org/Documents/Publications/UNHumanRights_CfS_cmyk_online.pdf (last visited on December 8, 2020).
[85] *Available at:* http://www.unhchr.ch/hurican/hurican. Nsf/0/591F8B73CB6E8025906005A9307 (last visited on July 14, 2020).
[86] *Available at:* https://www.hrw.org/world-report/2020/country-chapters/belarus (last visited on September 6, 2020).
[87] *Ibid.*

### 3.4.1 UN Human Rights Council:

The main body which until June 2006 coordinated these activities was the 'United Nations Commission on Human Rights' replaced by 'United Nations Human Rights Council'. The UN established the Commission in 1946 as the essential United Nations intergovernmental body to protect and promote fundamental human rights. The UN Commission on Human Rights, between 1946 and 2006 created as a subsidiary body of ECOSOC, served as the UN's central policy organ in the human rights field. However, the first 20 years of its existence, the commission believed itself not to be authorised to deal with human rights complaints. Over time, the council`s responsibility widens to include the human rights of children, migrant workers, women, racism, and indigenous peoples. During its first two decades, therefore, and together with other UN bodies such as the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the UN Commission on the Status of Women, and the Commission on Human Rights Crime Prevention and Criminal Justice, it concentrated on setting human rights standards and drafting several historically vital international human rights instruments and reports. So the Council is under obligation to address human rights violations, promotes human rights assistance and education, reviews States' human rights records, works to prevent human rights abuses, responds to emergencies, and serve as an international forum for human rights dialogue[88]. The General Assembly established the Human Rights Council as the key United Nations intergovernmental body responsible for human rights. At the international level, the UN Human Rights Committee has, since its establishment, led the way among UN treaty bodies in interpreting concepts relating to access to justice.[89] One of the criticisms of the UNCHR was the prominence it gave to countries such as Libya without sound Human Rights credentials.

#### 3.4.1.1 Special Rapporteur on the Independence of Judges and Lawyers:

Special Rapporteurs assist the UN Commission on Human Rights by carrying out an investigative function concerning violations of human rights and fundamental freedoms. The commission identified the need for a Special Rapporteur on the

[88] *Available at*: http:// www2. Ohchr.org/english/press/hrc/kit/hrcs_fs2. Pdf syria/ (last visited on November 18, 2020).
[89] United Nations (UN), Committee on Human Rights, General Comment No. 32 (2007).

independence of judges and lawyers because of the realisation that an independent and impartial judiciary and an independent legal profession are essential prerequisites for the protection of human rights and for ensuring non-discrimination in the administration of justice and equal access to justice for all. The Special Rapporteur notes that an independent judiciary should guarantee an efficient and effective administration of justice for all, without discrimination of any kind, such as based on race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or another status, to protect and enforce human rights equally. [90]Legal aid is an essential component of a fair and efficient justice system founded on the rule of law. As such, it represents an important safeguard that contributes to ensuring fairness and public trust in the administration of justice.[91] At present, there are 12 Special Rapporteurs with a country mandate.[92]

- Receiving complaints about access to justice;
- Investigating, fact-finding, and reporting on such complaints;
- Making recommendations to UN human rights bodies, mechanisms, and Special Rapporteurs;
- Making recommendations to the appropriate governmental authorities.

### 3.4.1.2 The Office of the High Commissioner for Human Rights (OHCHR):

Another important mechanism of the UN, 'The Office of the High Commissioner for Human Rights' (OHCHR) was established by the UN General Assembly in 1993.OHCHR is another mechanism established under the UN system which has to lead to the responsibility to protect and promote human rights enjoyment and full realisation, by people under international laws and treaties. The OHCHAR also appears to have considered a 'further step in securing access to justice'. It is a part of the United Nations Secretariat and is headed by the High Commissioner for Human Rights. It seeks to contribute to more effective national implementation of human rights through its programmes and technical cooperation with the UN states. The office supports the human rights components of peacekeeping missions in several

[90] Gabriela Knaul "Report of the Special Rapporteur on the independence of judges and lawyers" (April 2014). *available at:* https://undocs.org/A/HRC/23/43 (last visited on November 20, 2020).
[91] *Ibid.*
[92] Belarus, Burundi, Cambodia, Cuba, Democratic People's Republic of Korea, Haiti, Liberia, Myanmar, Palestinian territories occupied since 1967, Somalia, Sudan, and Uzbekistan.

countries and has many countries and regional offices and centres. The High Commissioner for Human Rights regularly comments on human rights situations globally and has the authority to investigate situations and issue reports on them.[93]Their considerations extend to a requirement by states to provide more descriptive reports on the steps taken to ensure equality before the courts for justice. These include equal access to courts, fair and public hearing and competence and impartiality and independence of the judiciary. All these steps should be enacted into legislation and strictly observed in practice. These include equal access to justice. It won increasing praise and support for the work it has done over the years, and many observers ascribed these successes to the high calibre of its successive high commissioners.[94] But On Sudan, we are deeply concerned about the weak resolution that envisions an end to the Independent Expert's mandate once an OHCHR office is set up; a "deal" Sudan has already indicated it does not feel bound by, and which is an abdication of the Council's responsibility to human rights victims in Sudan while grave violations are on-going.[95]

**3.4.1.3 The International Criminal Court:**

The International Criminal Court was established by the Rome Statute of 1998[96] in 2002, with jurisdiction to try individuals for some of the most severe crime such as genocide, a crime against humanity apartheid, war crimes and aggression. The call for an international criminal court (ICC) was repeatedly made throughout the preparatory process leading up to the UN World Conference on Human Rights (Vienna, 1993) and is explicitly contained in the Vienna Declaration and Programme of Action (VDPA) adopted, by consensus, at the Vienna World Conference. The Rome Status, which promote access to justice, includes an independent prosecutor with power to initiate an investigation; incorporation of gender concern both into the definition of crime as well as in the composition of the court; protection of victim and witness; provision of reparations to the victim; inclusion of internal armed conflict in

[93] *Available at*: https://www.un.org/en/sections/what-we-do/protect-human-rights/ (last visited on November 7, 2020).
[94] *Available at:* https://www.britannica.com/topic/human-rights/The-UN-Commission-on-Human-Rights-1946-2006-and-the-UN-Human-Rights-Council /(last visited on November 7, 2020).
[95] *Available at*: https://www.icj.org/hrc39-sessionend/ /(last visited on December 20, 2020).
[96] *Available at:* http:// legal. un. Org/icc/statute/99_corr/cstatus.htm /(last visited on December 21, 2020).

the definition of war crimes; jurisdiction of the court for all 'core crimes', genocide[97], against humanity[98] and war crimes[99]. It is evident that while the ICC is no doubt a welcome development, the main arena where individuals can gain access to justice at the national level still needs to be done.

### 3.4.2 'Equality of Arms' in Jurisprudence of International Criminal Justice:

The principle of equality of arms' is one of the foremost principles of the fair trial concept that encompasses several guarantees linked to the defence opportunities during the criminal procedure. For a fair trial in any proceeding, the balance of rights between the parties is essential for procedural fairness, and the judge should perform his competence in providing all necessary preconditions. The legitimacy, integrity, and acceptability of international criminal proceedings should be tested by compliance with human rights guarantees as one of the most reliable criteria for fair criminal justice. As fairness is an essential part of any system of justice, and in the absence of it, justice cannot be done or be perceived to have been done. A proper balance must be maintained between the fundamental rights of the accused and the vital interests of the international community in the prosecution of persons charged with serious violations of international humanitarian law.[100]

The Rome Statute of the International Criminal Court confirms complete discretion on the presiding judges of the Trial Chamber over the procedural model to be followed to secure the end of justice at trial.[101] The presiding judge may give any

[97] Rome Statute of the International Criminal Court, 1998, art. 6.

[98] Rome Statute of the International Criminal Court, 1998 art. 7 (1) reads as*" For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.*

[99] *Id.*, art. 8.

[100] *Prosecutor v. Radoslav Brđjanin,* (2004), Para.62 International Criminal Tribunal for the Formal Yugoslavia (ICTY).

[101] Rome Statute of the International Criminal Court, 1998, art. 64(8) (b) *"At the trial, the presiding judge may give directions for the conduct of proceedings, including to ensure that they are conducted*

directions for the conduct of proceedings to ensure that a trial should be fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.[102] As per the rule of law, the accused person is entitled to a fair trial. For a fair trial, the accused must be informed promptly by a police officer about the cause and content of the arrest.[103] The court facilitates the accused to pay with legal assistance without payment if they lack sufficient means where the interest of justice is required.[104] The principle of 'Equality of arms' plays an essential role in the jurisprudence of the European Court on Human Rights. The European Commission has recognised the principle of equality of arms and first concluded it in 1959[105] and 1963[106] and the European Court of Human Rights in 1968 in Neumeister v. Austria[107] The principle of equality of arms between the parties in a criminal trial goes to the heart of the fair trial guarantee.

Moreover, for the establishment of a healthy criminal justice system, the concept of a "fair trial" must be understood to include a strong and independent defence. The imperative for the credibility of international justice is to ensure the full participation of defence lawyers as key actors of the third pillar. The prevalence of the principle of equality of arms in protecting individual rights of accused persons should be understood as an indispensable safeguard against abuse of procedural powers, so judges, prosecutors, and legal professionals should check and balance each other during the proceedings.[108]

### 3.4.3 Ensuring quality and effective legal aid services for criminal defence:

In criminal justice, a functioning legal aid system is essential to ensure a fair, efficient and effective criminal justice system. Providing legal aid to persons accused or suspected of a crime can protect their right to a fair trial, including ensuring lawful and appropriate treatment towards them by criminal justice actors, which is a growing problem for many countries worldwide. Providing effective legal aid can significantly

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*in a fair and impartial manner. Subject to any directions of the presiding judge, the parties may submit evidence in accordance with the provisions of this Statute".*

[102] Rome Statute of the International Criminal Court, 1998, art. 64 (2).

[103] *Id.*, article 67.

[104] *Ibid.*

[105] *Szwabowicz v. Sweden*(1959) 2 ECHR.

[106] *Ofner and Hopfinger v. Austria; Pataki and Dunshirn v. Austria* (1963) ECHR.

[107] (1968) European Court of Human Rights.

[108] *Ibid.*

reduce prison overcrowding and thus contribute to cost savings for the State. Moreover, legal aid is particularly critical in ensuring equal access to justice for women and protecting the rights of persons with special needs, such as children, the elderly, people with disabilities or persons belonging to religious, linguistic or ethnic minority groups. Legal aid also helps safeguard the rights of victims and witnesses in the criminal justice process. Ensuring the quality and effectiveness of legal aid services is often a significant challenge as legal aid providers often lack the time, resources, or skills to provide quality services. For example, in providing criminal defence, legal aid providers sometimes play a passive role and only meet their clients a few minutes before representing them in court, without adequate investigation, case preparation and legal research before the court proceeding. The International Legal Foundation (ILF)[109] has adopted a three-pronged approach to ensuring quality standards of legal aid provision-

1. **Case-by-case mentoring-** Mentoring is an effective tool for building the skills of legal aid lawyers as it creates an ongoing relationship to cultivate lawyers' ability to identify problems, incorporate new techniques and strategies into their practice, and fosters professional ethics, enabling them to become more proactive advocates for their clients.
2. **Clear performance standards-** it provides written guidelines that secure the minimum level of quality required, encourages good practices for individual legal aid providers and sets a bar for uniformity in the practice across the entire legal aid system.
3. **Systematic monitoring and evaluation-** Monitoring and Evaluation (M&E) allows for the continuous gathering of information and then, at pre-selected intervals, analyse and assess that information. When establishing an M&E system, to understand it is helpful to break it down into two components: (a) the process: who will conduct M&E, who will be evaluated, when, how, and how to catalogue information for future reference, etc.; and (b) the substance: what activities are to be monitored, against what standards, how will this differ when monitoring and evaluating the performance of an individual legal

[109] The International Legal Foundation (ILF) assists post-conflict and transitional countries in establishing public defender systems that provide effective, quality criminal defense services for the poor. To date, the ILF has established public defender programs in Afghanistan, Nepal, the West Bank, and Tunisia.

aid provider, the public defender office, or the entire legal aid system, etc. When M&E is systematically and comprehensively carried out, it is an invaluable means of improving the quality of legal aid services. This includes monitoring and evaluating criminal legal aid providers to assess whether the relevant standard for providing quality legal representation is met. For example, case management systems (CMS) can be developed to track each action performed on the case, such as meetings, motions filed with the court, trial activities and outcomes. The data can then evaluate and compare overall performance and develop a plan to address gaps.

In civil matters, access to legal aid for poor and marginalised groups – for example, to resolve disputes over land and property or in commercial or family cases– can help empower poor and marginalised groups by providing them information and support to enable them to claim their rights and entitlements, use their assets, and grant them access to services and benefits they are entitled to under the law. It is important to note that access to civil legal aid and criminal legal aid are essential in ensuring access to justice. The UN Special Rapporteur on Extreme Poverty, in her 2012 report on Extreme Poverty and Human Rights,[110]has clearly outlined the importance of access to legal aid services for civil matters in addition to criminal issues, noting that international human rights law explicitly established the right to legal aid for criminal proceedings which is "particularly important for those living in poverty, who face a range of obstacles in negotiating bail procedures, pre-trial detention, trials and sentencing, and appeals. Nonetheless, free legal aid should not only be provided in criminal matters, but also in civil matters when individuals do not have sufficient resources to pay for legal assistance and, without such assistance, they are prevented from asserting their rights." She continues to note that the "lack of legal aid for civil matters can seriously prejudice the rights and interests of persons living in poverty, for example when they are unable to contest tenancy disputes, eviction

[110] United Nations Human Rights Office of The High Commission "Report of the Special Rapporteur on extreme poverty and human rights" (2012). In the report, the Special Rapporteur on extreme poverty and human rights analyses the obstacles to access to justice for persons living in poverty. Access to justice is a fundamental right in itself and essential for the protection and promotion of all other civil, cultural, economic, political and social rights. Without effective and affordable access to justice, persons living in poverty are denied the opportunity to claim their rights or challenge crimes, abuses or human rights violations committed against them. The Special Rapporteur emphasizes that improving access to justice for persons living in poverty requires tackling a range of legal and extra legal obstacles present both within and outside of the formal justice system, including social, economic and structural obstacles'.

decisions, immigration or asylum proceedings, eligibility for social security benefits, abusive working conditions, discrimination in the workplace or child custody decisions. Indeed, exclusion of certain categories of claims from the scope of free legal aid, such as housing or immigration proceedings, or exclusion from representation before quasi-judicial tribunals, such as welfare or employment appeal boards, discriminates against the poor."

### 3.4.4 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems:

The General Assembly unanimously adopted the **UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (67/187)**,[111] In December 2012, the first international instrument on the right to legal aid.[112] The UN Principles and Guidelines establish minimum standards for the right to legal aid in criminal justice systems and provide practical guidance on ensuring access to effective criminal legal aid services. It Recognising that legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law and that it is a foundation for the enjoyment of other rights, including the right to a fair trial, as a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.[113] It recognises that legal aid is an essential part of a properly functioning criminal justice system that is based on the rule of law.[114] It is also a foundation for enjoying other legal rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process. The State must ensure that a comprehensive legal aid system is in place that

[111] Resolution adopted by the General Assembly [on the report of the Third Committee (A/67/458)] 67/187. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

[112] *Available at:* https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf (last visited on December 28, 2020).

[113] It Recognizing also that the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, annexed to the present resolution, can be applied by Member States, taking into account the great variety of legal systems and socioeconomic conditions in the world, *Available at* :https://www.unodc.org/documents/justice-and-prison-reform/UNprinciples_and_guidlines_on_access_to_legal_aid.pdf (last visited on December 21, 2020).

[114] United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Principle (1). 'Right to legal aid' reads as "*Recognizing that legal aid is an essential element of a functioning criminal justice system that is based on the rule of law, a foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process,14 States should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution"*.

is accessible, effective, sustainable and credible.[115] States should guarantee the right to legal aid in their national legal systems for all citizens at the highest possible level, including in the constitution.[116] States should be under obligation to ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process.[117] The State should provide the victim of crime legal aid and advice throughout the criminal justice process and also be informed by the police about their right to legal aid assistance and protection.[118]The State should take appropriate measures to protect the right of women to access legal aid in the implementation of the women's right to access to justice.[119]The States should ensure special efforts to promote children's adequate access to justice and prevent stigmatisation and other adverse effects on children due to their being involved in the criminal justice system.[120]The UN Principles and Guidelines provide that legal aid authorities should be independent of government and empowered to develop their

[115] *Id.,* principle (2) reads as "*States should consider the provision of legal aid their duty and respon- sibility. To that end, they should consider, where appropriate, enacting specific legislation and regulations and ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable and credible. States should allocate the necessary human and financial resources to the legal aid system*".

[116] *Available at:* http://www.unodc.org/documents/justiceandprisonreform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf /(last visited on 21 December 2020).

[117] United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. Principle (3) reads as *"States should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process. Legal aid should also be provided, regardless of the person's means, if the interests of justice so require, for example, given the urgency or complexity of the case or the severity of the potential penalty. Children should have access to legal aid under the same conditions as or more lenient conditions than adults"*.

[118] *Id.,* Principle (7) "*States should ensure that effective legal aid is provided promptly at all stages of the criminal justice process"*.

[119]*Id.,* Principle (9) reads as "*States should establish effective remedies and safeguards that apply if access to legal aid is undermined, delayed or denied or if persons have not been adequately informed of their right to legal aid"*.

[120] *Id.,* Principle 10 reads as "*Special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including, but not limited to, the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. Such measures should address the special needs of those groups, including gender-sensitive and age-appropriate measures. States should also ensure that legal aid is provided to persons living in rural, remote and economically and socially disadvantaged areas and to per- sons who are members of economically and socially disadvantaged groups"*.

budget, establish systems for coordination of appointments, accreditation and training of legal aid providers, and assessing legal aid needs across the national territory.[121]

### 3.4.5 Model Law on Legal Aid in Criminal Justice Systems with Commentaries:

The adoption of the UN Principles and Guidelines in 2012 gives birth to the need and political will in countries around the world to develop or amend their legal aid legislation. In response, UNODC[122] developed the Model Law on Legal Aid in Criminal Justice Systems[123] with Commentaries to provide assistance and guidance to those States seeking to develop or upgrade their laws on legal aid. As a legislative tool, the Model Law on Legal Aid aims to support States by suggesting possible legislation models, including on the administration, funding and organisation of a national legal aid mechanism. In addition, the Model Law includes commentaries to each article, which explains the legal basis for each provision and presents a variety of examples from different legal aid systems around the world. Moreover, the Model Law adopts a broad approach to legal aid, in line with the UN Principles and Guidelines. It is not limited to legal representation but also includes the provision of legal advice, assistance and information, which may be offered by a wide variety of legal aid providers and that reaches the vulnerable members of the society as the main legal aid beneficiaries. The Model Law acknowledges that legal aid systems worldwide differ in terms of institutional arrangements, delivery schemes or general scope of application. Therefore, it is recommended that the Model Law be adjusted to each national legal system's constitutional principles and particularities, where needed, including by taking into account the federal or unitary system of government and the civil, common or mixed legal tradition a specific country.

[121] *Id.*, Principle 11 reads as "To ensure the effective implementation of nationwide legal aid schemes, States should consider establishing a legal aid body or authority to provide, administer, coordinate and monitor legal aid services."

[122] the United Nations Office on Drugs and Crime (UNODC) remains committed to delivering vital evidence-based and gender-responsive technical assistance to those in need, especially the marginalized, vulnerable and disadvantaged groups. These include people who use drugs and with drug use disorders, who are in prison and who have HIV/Hepatitis C.

[123]Model Law on Legal Aid in Criminal Justice Systems with Commentaries *Available at:* https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Model_Law_on_Legal_Aid.pdf (last visited on January 3, 2021).

### 3.4.6 Global Study on Legal Aid:

The UN system has launched a Global Study on Legal Aid[124] to gather data on the current State of access to legal aid services worldwide to further contribute to the global knowledge base on legal aid.[125] The Global Study on Legal Aid undertaken by UNDP and UNODC and aims to gather data on the current State of legal aid in 49 countries around the world. Country Profiles were developed for countries where both Member States and independent national experts completed the survey on legal aid conducted as part of the Global Study. The publication by the State also includes a Table of Legislation that provides current and accurate information about the legislation that guarantees the right to legal aid in 125 countries. Country Profile has eight sections: (a) Country snapshot (b) Legal aid at a glance (c) Legislative framework (d) Delivery model (e), Service providers (f) Finances (g) Provision of legal aid in criminal and civil or administrative cases (h) and Quality safeguards.[126]

For the specific purpose of this study, "legal aid" is defined as "legal advice, assistance and representation at little or no cost to the person designated as entitled to it," mirroring the more detailed definition used in the UN Principles and Guidelines.[127]Legal aid is a critical component in ensuring access to justice, and a core principle of development and the rule of law recognised in the UN Principles and Guidelines as "an essential element of a fair, humane, and efficient criminal justice system."

UNDP and UNODC undertook this Global Study on Legal Aid to establish a baseline understanding of how the right to legal aid has been defined and addressed

[124] This Global Study on Legal Aid was initiated in 2014 and presents data gathered in 2015 from both Member States and independent national experts. The Global Report, Country Profiles and the Case Studies publications of the Global Study on Legal Aid provide an initial overview of the current state of legal aid worldwide. It illustrates how States have striven to safeguard the right to legal aid services in criminal matters and to meet the demand for legal aid services in a wide range of civil and administrative matters.

[125] Peace, justice and strong institutions EU support for implementing SDG 16 worldwide *Available at:* www.europarl.europa.eu (last visited on December 21, 2020).

[126] *Available at:* https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/GSLA_-_Country_Profiles.pdf /(last visited on september 21, 2020).

[127] The UN Principles and Guidelines states that "the term 'legal aid' is defined as "legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require. Furthermore, "legal aid" is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes."

by different countries across different contexts and to document the various types of legal aid services provided in civil, criminal and administrative cases, including legal advice, assistance, and representation. The findings from this study can assist legislators, policymakers and other national and international stakeholders working in this area to identify priorities, gaps and policy recommendations to strengthen access to legal aid services as a means to empower people to seek out justice and realise their rights.

### 3.4.7 Justice and Strong Institutions Support for Implementing SDG 16 Worldwide:

The emergence of sustainable development is most commonly attributed to the 1987 Brundtland Report published by the World Commission on Environment and Development (WCED).[128] WCED took stock of the current State of human development and the natural environment and recommended the adoption of 'sustainable development' as a way forward, defining the concept as the development that meets the need of the present without compromising the ability of future generations to meet their own needs.[129] The Brundtland Report recognises the importance of development, especially to achieve basic requirements for the poor, and the concurrent importance of natural resource utilisation in attaining such a level of development.

The Agenda for Sustainable Development 2030, adopted by the United Nations General Assembly in September 2015, includes Goal 16 on promoting peaceful and inclusive societies to achieve access to justice for all and establishes effective, accountable and inclusive institutions at all levels without any discrimination.[130] It represents a new milestone as compared with the earlier millennium development goals.[131] Millennium development goals, which included sustainable development and poverty eradication, could not achieve to the full extent, if access to justice is denied, especially to the vulnerable or disadvantaged members

[128] WCED our common future (oxford: OUP,1987).The commission established in1983 as an independent body associated to government and the UN system, but outside their control.
[129] *Supra* note 260 at 131.
[130] Peace, justice and strong institutions EU support for implementing SDG 16 worldwide *Available at:* www.europarl.europa.eu (last visited on December 21, 2020).
[131] *Ibid.*

of society. However, set up various programmes to address this issue.[132] At the heart of the 2030 Agenda for Sustainable Development lies a vision of a "just, equitable, tolerant, open and socially inclusive world in which the needs of the most vulnerable are met."[133]Justice for all is not only about responding to problems and disputes. It should also positively contribute to sustainable development and act as a portal to other rights.[134]Accordingly, SDG 16 was adopted to fill a gap in the previous Millennium Development Goals (MDGs) and aims to significantly reduce all forms of violence, and violence-related death in police custody rates everywhere[135] and end abuse, exploitation, trafficking and all forms of violence against and torture of children.[136] At the same time, several of its targets, such as peace, corruption-free institutions, and freedom from violence, were once seen as prerequisites of sustainable development. In every country, Conflict, insecurity, weak institutions, and limited access to justice for a vulnerable group are remain a significant threat to sustainable development, so promoting the rule of law at the national and international levels to ensure equal access to justice for all is very necessary.[137] To establish inclusive societies, it is important to ensure responsive, inclusive, participatory and representative decision-making at all levels[138] and ensure public access to information at all levels and protect fundamental freedoms, under national legislation and international agreements.[139] To promote, peaceful and inclusive societies, the State should make strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime[140] and enforce non-discriminatory laws and policies for sustainable development.[141] Every SDG target are linked especially with other targets, depending on them or fostering their achievement. In the case of the SDG 16 targets, these inter-linkages is even more vital. The SDG 16 targets are strong enablers for sustainable development in general.

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[132] 'Promoting democracy through justice sector reform'. *Available at:* http:// www. Undp.Org/ governance/ justice.htm /(last visited on December26, 2020).
[133] United Nations, Transforming Our World: The 2030 Agenda for Sustainable Development. (New York: United Nations, 2015).
[134] https://cic.nyu.edu/sites/default/files/english_task_force_report_27jun19-min_compressed.pdf
[135] Sustainable Development Goals 16. 1
[136] *Id.*,16.2
[137] *Id.*,16.3
[138] *Id.*, 16.7
[139] *Id.*,16.10
[140]*Id*,.16.a
[141] *Id.*,16.b

SDG 16, with its overarching objective – the promotion of peaceful and inclusive societies and strong institutions – represents an innovative approach for development cooperation. These realities on the ground are also being increasingly recognised at the global level, including the linkages between access to justice, poverty and inequality, accountability and the rule of law, and ensuring equitable development. Global Report [142]the targets under Goal 16, particularly targets 16.3 and 16.b, seek to measure the extent to which the rule of law and equal access to justice for all is promoted and the extent to which non-discriminatory laws and policies are enforced.[143] Ensuring access to legal aid services contributes directly to the achievement of these targets by providing a means for people who are not able to afford legal services to access legal advice and representation – whether to secure inheritance and property rights for women, to protect housing rights for people who live in the margins of poverty, to access legal defence for criminal matters, or to enable vulnerable groups, including children, persons with disabilities and others, to access qualified and effective legal aid services to protect their rights in legal matters. At the international level, the importance of legal aid has been specifically recognised because by putting people at the centre of justice systems, we can help unblock the path towards more sustainable development patterns for vulnerable people.

## 3.5 CONCLUSION

The task of this chapter has been to analyse selected international human rights and other international law instruments related to access to justice. It established that starting from the International Bill of Rights through to various soft law instruments; there is an extensive base of international and regional law instruments which deals with access to justice. 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.

[142] *Supra 260* note 120.
[143] Peace, justice and strong institutions EU support for implementing SDG 16 worldwide *available at:* www.europarl.europa.eu (last visited on December 21, 2020).

# CHAPTER-IV

# LEGAL FRAMEWORK AND JUDICIAL APPROACH: NATIONAL PERSPECTIVE

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# LEGAL FRAMEWORK AND JUDICIAL APPROACH: NATIONAL PERSPECTIVE

## 4.1 INTRODUCTION:

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.

## 4.2 ACCESS TO JUSTICE UNDER THE CONSTITUTION OF INDIA:

India became free from British rule after a long battle for independence, and finally, we attained our long-awaited desire for self-rule. Our founding fathers drafted for us the basic rule of governance for the country in the form of the constitution. Constitutions are the most authoritative expressions of a State's system of governance and accountability, posing both opportunities and threats to the advancement of gender equality.[1] UNDP[2] defines a constitution "*as the framing legal instrument, which captures the basis of the social contract between the State and the people that it serves. It constitutes a body of rules that outlines the authority and powers of the*

[1]Available at: https://www.ohchr.org/Documents/Publications/PractitionerToolkit/WA2J_Module1.pdf (Visited on July 29, 2021).

[2] The United Nations Development Programme is the global development network of the United Nations. It promotes technical and investment cooperation among nations and advocates for change and connects countries to knowledge, experience and resources to help people build a better life for themselves.

*State, including as it relates to the rights that citizens and others enjoy to the State*."[3] 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 principle in the constitution.[4] 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.[5] Social justice was the major plank for **Dr B.R. Ambedkar,** and even while introducing the draft of the Constitution in the Constituent Assembly, he pointed out that with:[6]

> *"This Constitution we are entering the era of 'one man one vote', i.e. political democracy, but the social democracy seems to be still a goal not very easy to achieve. Justice is equated with equity and fairness.[7] Social justice, therefore, according to him means that all sections of society, irrespective of caste, creed, sex, place of birth, religion or language, would be treated equally and no one would be discriminated on any of these grounds."*

Similarly, economic justice would mean that all the natural resources of the country would be equally available to all the citizens and no one would suffer from any undeserved want. Similarly, Political justice entitles all the citizens to equal political rights such as the right to vote, right to contest elections and right to hold public office etc. Fundamental rights mentioned in **Part III** include in its content, certain basic rights which every individual enjoys being a citizen of a free nation; it tries to ensure that minimum standards that are required for survival with dignity and

[3] UNDP Guidance Note on Constitution-making Support, p. 5, (New York, 2014). Available at https://www.undp.org/publications/undp-guidance-note-constitution-making-support (last visited on January 21, 2021).
[4] 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).
[5] Justice F.M. Ibrahim Kalifulla, "*RULE OF LAW & ACCESS TO JUSTICE NJA",* South Zone Regional Judicial Conference on *"Role of Courts in upholding Rule of Law"*(Tamil Nadu State Judicial Academy 31.01.2014 to 02.02.2014) available at: http://tnsja.tn.gov.in/article/RULE%20OF%20LAW%20-%20FMIKJ-FINAL.pdf(last visited on July 21, 2021).
[6] Available at: http://164.100.47.194/loksabha/writereaddata/cadebatefiles/vol7.html(last visited on July 21, 2021).
[7] *Supra* note 335.

respect are not taken away. **Articles 14** to **32** included in **Part-III** of the Indian Constitution relating to the Fundamental Rights make it obligatory for the State to ensure equality before the law or equal protection of the laws within the territory of India.[8] The Indian Constitution takes into account such issues and guarantees fundamental rights for all.[9] **Directive Principles of State Policy** were formulated to lay down directives for the state.[10] **Dr B. R. Ambedkar** very eloquently stated;

> *"Because we did not want merely a parliamentary form of Government to be instituted through the various mechanisms provided in the Constitution, without any direction as to what our economic ideal, as to what our social order ought to be, we deliberately included the Directive Principles in our Constitution. The word 'strive' which occurs in the Draft Constitution, in judgment, is very important. We have used it because our intention is even when there are circumstances which prevent the Government, or which stand in the way of the Government giving effect to these Directive Principles, they shall, even under hard and unpropitious circumstances, always strive in the fulfilment of these Directives. That is why we have used the word 'strive'. Otherwise, it would be open for any Government to say that the circumstances are so bad, that the finances are so inadequate that we cannot even make an effort in the direction in which the Constitution asks us to go."*[11]

The judicially enforceable **'Fundamental Rights'** provisions of the Indian Constitution are outlined in **Part III** to distinguish them from the non-justifiable **'Directive Principles'** outlined in **Part IV**, which establish the inspirational goals of economic justice and social transformation. It means that the Constitution does not provide any judicial remedy when directive principles are not followed, but in the words of ***Dr. Ambedikar*** *"State may not have to answer for their breach in a Court of*

[8] Available at: https://www.doj.gov.in/sites/default/files/UNDP%20Final%20report_18May2017.pdf (last visited on July 21, 2021).
[9] *Ibid.*
[10] *Supra* note 335.
[11] *Ibid.*

*Law. But will certainly have to answer for them before the electorate at election time."*[12]

**'PREAMBLE'** of the Constitution aims at securing to all citizens Justice: social, economic and political. The **Preamble** pervades through and inspires all the provisions of the Constitution. It indicates the general purposes for which framers of the Constitution made the several provisions of the Constitution.[13] The **Preamble** in express language states that the People of India, in the exercise of their sovereign will have solemnly resolved to constitute India into a **Sovereign Socialist Secular Democratic Republic** with a view to secure to all its citizens; **Justice,** social, economic and political; **Liberty** of thought, expression, belief, faith and worship; **Equality** of status an opportunity and to promote among them all; **Fraternity**, assuring the dignity of the individual and the unity and integrity of the nation. The targets set out in the **Preamble** are sought to be achieved through the Fundamental Rights and Directive Principles enshrined in **Parts III** and **IV** of the Constitution. In the Preamble, it is solemnly declared that the first and foremost things that the State is going to secure for its citizen are **'Justice'**. Justice ***Palekar***, in **Keshavananda Bharati** Case[14], has dwelled into the choice of words used in the Preamble and observed,

> *"The pre-eminent place in the Preamble is given to JUSTICE-social, economic and political, and it is obvious that without JUSTICE the other concepts, such as LIBERTY, EQUALITY and FRATERNITY would be illusory. In a democratic country whose institutions are informed by JUSTICE-social, economic and political, the other three concepts of LIBERTY, EQUALITY and FRATERNITY will be automatically fostered. Social and political Justice takes care of Liberty; and Justice, social and economic, takes care of Equality of status and opportunity."*

***Justice R C Lahoti*** has beautifully articulated the interrelationship between these four words:

[12] *Available at:* https://www.latestlaws.com/wp-content/uploads/2015/04/Role-of-Courts-in-upholding-Rule-of-Law (last visited on August 29, 2021).
[13] *In Re Berubari Case*, 1960 SC 845.
[14] *Keshavananda Baharti* v. *State of Kerala*, AIR 1973 SC 399.

> *"Unless there is justice, liberty is meaningless, nor would liberty survive without justice. Justice and liberty would secure equality. Moreover, justice and liberty in their interplay would express themselves into 'equality'. 'Fraternity' would be merely a nightmare or only wishful thinking but for justice, liberty and equality. The four words placed in that order is a philosophical journey of how the Constitution shall work. Of all the four concepts the most significant is justice"*[15]

Moreover, the **Preamble** of the constitution of India articulates the State commitment for its citizens to ensure 'Justice' 'liberty', 'equality' and 'fraternity'. These have to be secured and protected with social justice and economic empowerment and political justice under **'Rule of Law'.**[16]

### 4.2.1 Right to Equality for Non-Discrimination in the Access to Justice:

India is among the most diverse nations in the world and has the most representative democracy. It has a robust Constitution that protects the plural, secular nature of the country and guarantees to all its citizens, their equality before the law under **Article 14**.[17] Apart from the preamble, 'Access to Justice' also benefits from fundamental rights. The fundamental rights enshrined in **Part III** of the Constitution are the tools to achieve the objectives set out in the preamble. These are fundamental, natural and inalienable rights that are essential for the growth and development of human beings which ultimately lead to the growth and development of a nation. **Article 14** provides that *"the State shall not deny anyone equality before the law or equal protection of the law in the territory of India*". Right to Equality under **Article 14** uses two expressions **"equality before the law"** and **"equal protection of the law"**. Equality, before the law is taken from England and equal protection of the law, is taken from the American Constitution.[18] These two terms sound the same, but they

[15] R C Lahoti, *'Preamble: The Spirit and Backbone of the Constitution of India* 9 (Eastern Book Co. Lucknow, 2004).
[16] Prayas Dansana, "*NATURE OF JUSTICE ENVISAGED UNDER PREAMBLE TO CONSTITUITION OF INDIA" available at:*
SSRN: https://ssrn.com/abstract=2718197 or http://dx.doi.org/10.2139/ssrn.2718197 (last visited on August 2, 2021).
[17] *Available at*: https://www.doj.gov.in/sites/default/files/UNDP%20Final%20report18May2017.pdf (last visited on August 2, 2021).
[18] The Equal Protection Clause is part of the first section of the Fourteenth Amendment to the United States Constitution. The clause, which took effect in 1868, provides *"nor shall any State ... deny to any person within its jurisdiction the equal protection of the laws"*.

have different meanings and aspects. **Equality before the law** provides that everyone is equal before the law regardless of position and economic resources; on the other hand, **equal protection** of the law provides a helping hand in terms of special provisions to people. Who are in a less advantageous position so that they can enjoy the benefits of the law as their well to do counterparts enjoy and equality before the law could be maintained? Hence, access to justice as well is the facet of the right guaranteed under **Article 14** of the Constitution, which guarantees equality before the law and equal protection of laws to not only citizens but non-citizens also. Equality before the law and equal protection of laws under **Article 14** is not limited in its application to the realm of executive action that enforces the law. It is as much available in relation to proceedings before Courts and tribunal and adjudicatory from where the law is applied and justice administered.

Ensuring effective access to justice for all means taking into account the specific challenges encountered by different groups. Recognising that some groups of society are at a particular disadvantage is a crucial first step towards achieving access to justice for them.[19]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. Thus, provisions such as free legal aid become essential to ensure equal protection of the law, which is a fundamental right of every person. Vulnerable people inability to access courts or any other adjudicatory mechanism provided for the determination of rights and obligations. It is bound to result in denial of the guarantee contained in **Article 14** of the Constitution both in relation to equality before the law as well as equal protection of laws. The absence or inadequacy of any adjudicatory mechanism is bound to prevent vulnerable people from enforcement of their right to equality before laws and equal protection of the laws from seeking redress. Thereby negate the guarantee of equality before laws or equal protection of laws and reduce it to a mere teasing illusion. In ***Anita Kushwaha v. Pushap Sudan,***[20] the Supreme Court of India discloses the need to reiterate that "access to justice" is vital for the rule of law under **Article 14** of the Constitution. That by implication includes the right of access to an independent judiciary. It is submitted that the stay of investigation or trial for

[19]*Available at:* https://www.refworld.org/pdfid/55b211924.pdf (last visited on August 19, 2021).
[20] AIR 2016 SC 3506.

significant periods runs counter to the principle of rule of law. Wherein, the rights and aspirations of citizens are intertwined with the expeditious conclusion of matters. It is further observed by the Supreme Court of India that:

> *"Delay in the conclusion of criminal matters signifies a restriction on the right of access to justice itself, thus amounting to a violation of citizen's rights under the Constitution, in particular under Article 21. Article 21 of the Constitution apart, access to justice can be said to be part of the guarantee contained in Article 14 as well."*

Therefore, it is not sceptical that to guarantee access to an effective remedy, rules on eligibility must be formulated to ensure that certain categories of people, and especially people with low income, have access to adequate legal aid and assistance. If vulnerable groups of people come across more difficulties in their access to justice than others, most of the barriers they encounter are common to them all. Indeed, the conditions of access to justice are too often faced with both legal and practical obstacles that need to be identified and tackled in order to guarantee equal access to justice for all.[21]

**4.2.1.1 Disadvantaged Groups:**

A vulnerable group of people share a combination of characteristics that lead to discrimination and are particularly subject to unequal treatment. Many facets of an individual may well be grounds for discrimination. For illustration, a refugee womn may face racial discrimination. But also she is on separate occasion faces gender discrimination, (sequential discrimination) at the same time but several levels (additive discrimination) or by the effect of the interaction of all grounds of discrimination with each other (intersectional discrimination). To show the full extent of the discrimination experienced, the combined effect of all grounds for discrimination has to be considered.[22] It should always be kept in mind that each individual is unique and that the effects of several discrimination grounds can be combined and make it more difficult for some people to access their rights.[23] So that

[21] *Available at*: https://www.refworld.org/pdfid/55b211924.pdf (last visited on August 19, 2021).
[22] *Ibid.*
[23] *Ibid*.

the State under obligation to provide public assistance in cases of undeserved need within the limits of its economic capacity and development.[24]

**4.2.1.1.1 Women's Access to Justice in India:**

Women victims of violence experience various difficulties and barriers in accessing justice. **The UN Women Global Gender Equality Constitutional Database** estimates that 192 constitutions contain provisions on equality and non-discrimination, such as equality before the law, equal rights based on sex and the duty of the State to protect all individuals from discrimination.[25] But the situation of women is not improved so it is necessary to look beyond legal measures and analyse the interaction of politics, economics and culture in women's access to justice in cases of violence. Considering only the existence of laws protecting women, the availability of free legal assistance and the adjudication and enforcement process as a framework for access to justice for women victims of violence would be limiting. It would fail to address the subordinated and subjugated identities of women in law and society.[26] It would also fail to account for the structural inequalities between men and women, the systemic and historic disadvantaged position of women, and the prevailing gender bias and system of patriarchy that continue to persist in the judicial system and society.[27] In **Charu Khurana and others v. Union of India and others,**[28] the controversy arose about the prevalence of discrimination of gender equality in the film industry. Where, women were not allowed to become make-up artists. She was only allowed to work as hair-dressers. Referring to various earlier judgments and Article 51-A(e)[29], the Court observed:-

[24] The Constitution of India, art.41 reads as "*the State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."*

[25] *Available at:* https://www.ohchr.org/Documents/Publications/PractitionerToolkit/WA2J_Module1.pdf (last visited on August 9, 2021).

[26]*Available at*:https://www.ohchr.org/documents/HRBodies/CEDAW/AccesstoJustice/WomensLegalAndHumanRightsBureau.pdf(last visited on August 9, 2021).

[27] *Ibid.*

[28] (2015) 1 SCC 192.

[29] The Constitution of India, art. 51A(e) *"to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women"*

> *"The sustenance of gender justice is the cultivated achievement of intrinsic human rights. Equality cannot be achieved unless there are equal opportunities and if a woman is debarred at the threshold to enter into the sphere of a profession for which she is eligible and qualified, it is well-nigh impossible to conceive of equality. It also clips her capacity to earn her livelihood which affects her individual dignity."*

In **Voluntary Health Association of Punjab v. Union of India and Ors**[30], while dealing with female foeticide.

> *"It needs no special emphasis that a female child is entitled to enjoy equal rights that a male child is allowed to have. The constitutional identity of a female child cannot be mortgaged to any kind of social or other concepts that has developed or is thought of. It does not allow any room for any kind of compromise. It only permits affirmative steps that are constitutionally postulated. Be it clearly stated that when rights are conferred by the Constitution, it has to be understood that such rights are recognised regard being had to their naturalness and universalism. No one, let it be repeated, no one, endows any right to a female child or, for that matter, to a woman. The question of any kind of condescension or patronisation does not arise."*

Even after decades of the women's movement's commitment to the law, justice through the law remains fraught with barriers for women, especially on two levels. On the one hand, the structural inaccessibility of the justice system has especially for poor and marginalized women. By this, we mean that the legal system presumes that its users would have at the very least a certain degree of awareness of their rights as citizens, a formal education, financial resources, time and mobility.[31] On the other hand, barriers are encountered by women after they enter the judicial process. These barriers include procedural delays, evidence that may be difficult to produce but is vital to their case, gender biases, the non-recognition of many gender-specific wrongs and rights that exist within the legal system and the limitation of financial resources.[32] In India women who seek justice are challenged by a complex landscape of laws,

[30] (2016) 10 SCC 272.
[31] Available at: http://pldindia.org/wp-content/uploads/2013/02/Access_to_Justice.pdf (last visited on August 4, 2021).
[32] "*NATIONAL CONFERENCE ON WOMEN & ACCESS TO JUSTICE"* A Report December 10-11, (Partners For Law In Development, New Delhi 2006).

systems and institutions. **The Special Rapporteur on Violence against Women, Its Causes and Consequences (SR on Violence against Women)** described the female experience in India as commonly consisting of a "continuum of violence . . . from the '***womb to the tomb'***."[33] **The High-Level Group's report** identified five promising approaches for increasing justice for women:[34]

- Eliminate legal discrimination against women by repealing discriminatory laws which limit justice for women and adopting laws that empower women and signal that certain types of behaviour are unacceptable.[35]
- Overcome disadvantages for poor and marginalized women by providing access to legal aid and paralegal services, promoting legal literacy, and overcoming poverty barriers.
- Empower women, economically and as rights-holders by enabling legal identity, strengthening women's land rights, and using collective action as a catalyst for change.[36]
- Include women as decision-makers by ensuring equal representation of women in decision making at all levels in the justice sector.

#### 4.2.1.1.2 Access to Justice in India for Old Age Person:

The right of 'Access to Justice' can be understood as integrated, dependent and expanded on the rights to an effective remedy, a fair trial and equality. The right to an effective remedy speaks to substantive access to justice, while the right to a fair trial sets standards regarding procedural access to justice.[37] Non-discrimination or equality clauses can attach to the right to an effective remedy and fair trial, further reflecting the foundation of a general right to access to justice.[38] While access to justice

[33] Rashida Manjoo, "Special Rapporteur on Violence against Women, Its Causes and Consequences" Mission to India, 7, U.N. Doc. A/ HRC/26/38/Add.1 (Apr. 1, 2014).
[34] High-level Group on Justice for Women, Justice for Women - High-level Group Report. (New York: UN Women, IDLO, World Bank and Task Force on Justice, 2019).
[35] *Available at:* https://cic.nyu.edu/sites/default/files/english_task_force_report_27jun19-min_compressed.pdf (last visited on August 19, 2021).
[36] *Ibid.*
[37] The Universal Declaration of Human Rights (UDHR) contains the earliest articulation of the right to an effective remedy (Art 8) and the right to a fair trial (Art 10).
[38] Equality rights are now fairly commonplace, and can be found in documents like the European Convention on Human Rights (Art 14), the Charter of Fundamental Rights of the European Union (Arts 20–26), the American Convention on Human Rights (Art 24) and the African Charter on Human and Peoples' Rights (Arts 2 and 3).

encompasses civil and criminal systems, this issue of Generations focuses on the civil side, wherein older people are likely to experience most of the rights, disputes, and options for resolution.[39] Access to justice provides an effective conceptual framework to thread together the articles and to highlight the practical roles professionals of all disciplines can play to ensure that the rights of ageing clients, patients, family, and friends are recognized and enforced.[40] The State has the obligation subject to its economic capacity to provide free legal assistance to poor, illiterate or ignorant people.[41] **The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Act, 2019**, piloted by **the Social Justice and Empowerment Minister**, has provisions for the elderly to claim maintenance and for mandatory registration of senior citizens care homes and other such institutions which will have to comply with prescribed minimum standards.[42] An Act gives effect to the provisions for the welfare of parents and senior citizens. An Act defines "abuse" against an old person as physical, verbal, emotional and economic abuse, neglect and abandonment, causing assault, injury, physical or mental suffering. An Act also provides for the establishment of a tribunal for senior citizens to file support and assistance claims, and applications from those above 80 years of age should be resolved within 60 days.[43]

#### 4.2.1.1.3 Access to Justice in India for Children:

Access to justice for child victims is often hampered by barriers such as lack of knowledge and awareness about their rights, court and legal representation fees and dependence on adults to bring rights violations to justice. Children generally, contact with the judicial system in cases on civil or family law, such as custody, divorce

[39] Charles P. Sabatino , "Older Adults and Access to Justice" *J Am Aging Assoc*, Vol. 43, No. 4, 7 (Winter 2019–20).
[40] *Ibid.*
[41] The Constitution of India, art.41 reads as "*the State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."*
[42] *Available at*: https://social.un.org/ageing-working-group/documents/eleventh/Inputs%20NGOs/Access-to-justice-in-old-age-special-focus-on-right-to-work-online.pdf (last visited on August 4, 2021).
[43]The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Act, 2019, s. 5 (4) reads as *"Every application under sub-section (1) shall be disposed of by the Tribunal within a period of ninety days from the date of receipt of such application: Provided that in case of senior citizens who are eighty years or above, such application shall be disposed of within a period of sixty days: Provided further that in exceptional circumstances and for reasons to be recorded in writing, the Tribunal may extend such period only once for a maximum period of thirty days."*

hearings, placement in alternative care and witnesses to domestic violence. The major obstacles to access to justice for children are the non-applicability of secular law to some regions of the country and in family matters for certain religious areas, corruption and inefficiency. However, children's cases are often processed through justice systems designed for adults that are not adapted to children's rights and specific needs.[44] Hence, a child, particularly as a victim requires some extra safeguards to understand the proceedings. If an alleged or convicted perpetrator, the balance between the punishment and the rehabilitation must lean towards rehabilitation by judges. Children and young people are heavily reliant on justice systems to protect and promote their rights.[45]Legal needs and victimization surveys are not designed to capture their justice needs, but other evidence suggests they face an even wider justice gap than adults. Justice systems fail children when they are victims of injustice. They are often unable to access justice institutions or lack the support to participate in proceedings. However, Young people are more vulnerable to the negative psychological impacts of harsh punitive measures.[46] They often have less knowledge and confidence than adults to claim their rights and seek redress. Child-friendly justice services can help meet the needs of children both as to justice seekers and when they conflict with the law.[47]

Therefore, **UNICEF India** is functioning to make ensures access to justice for all children, including excluded and marginalized children. It works with other professionals so that they are informed about their rights to seek redress for violations against injustice and gets support during justice processes. Public interest litigation is also available for children directly or through their representatives to challenge laws and government actions that violate children's rights.[48]

[44] *Available at*: https://www.unicef.org/india/what-we-do/justice-for-children (last visited on August 8, 2021).
[45]*Available at:* https://cic.nyu.edu/sites/default/files/english_task_force_report_27jun19-min_compressed.pdf (last visited on August 8, 2021).
[46] Centre for Human Rights & Humanitarian Law, "Protecting Children against Torture in Detention: Global Solutions for a Global Problem". (Washington DC: Washington College of Law, American University, 2017).
[47] ACPF and DCI, Achieving Child Friendly Justice in Africa. (Addis Ababa and Geneva: The African Child Policy Forum/Defence for Children International Secretariat, 2002).
[48]*Available at:* https://archive.crin.org/en/library/publications/india-access-justice-children.html (last visited on August 8, 2021).

**4.2.1.1.4 Access to Justice for Persons with Disabilities:**

Approximately one billion people, or 15 per cent of the global population, experience some form of disability.[49] Persons with disabilities face disproportionate socio-economic marginalisation resulting in poorer health and medical treatment, lower quality of education, limited employment prospects and generally broad-ranging restrictions on their community participation.[50] These negative outcomes are exacerbated by the obstacles to access to justice. Specifically, encounters by people with disabilities. Disability is both a cause and a consequence of poverty. Hence, effective access to justice is one of the essential ingredients for sustainable development and poverty eradication. Access to justice, as a fundamental right in itself a precondition for the enjoyment of all other rights. It is also particularly crucial for this category of vulnerable people and constitutes a unique tool in the fight against discrimination (and often the lack of respect, lack of dignity or even violence) they face. Paradoxically, however, those most in need of effective access to justice are those who most often face obstacles. **The Constitution of India** under **Article 14** guarantees to all its citizens' equality of law and equal protection of law irrespective of caste creed colour gender or any other such ground. **Articles 15** and **16** specifically prohibit discrimination on the ground of religion, race, caste, sex or place of birth or any of them. Moving a step ahead in this regard **The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995** was passed by the parliament to give an exclusively formal structure to the safeguarding of the Rights of 'differently-abled persons.[51] This Act has a separate chapter titled 'Non-Discrimination' to counter the discrimination faced by people with disabilities. **Section 45, 46** and **47** of this Act gives power to quasi-judicial and judicial bodies to efficiently dispose of cases of discrimination faced by people with disabilities. This act has now been replaced by **The Rights of Persons with Disabilities Act 2016. Article 13** of the **Rights of Persons with Disabilities Act, 2016**, ensures that persons with disabilities should *"enjoy legal capacity on an equal basis with others in all*

[49]World Bank, Disability: Overview, 29 March 2017, *available at:* www.worldbank.org/en/topic/disability/overview (last visited on 11 June 2021).

[50] J Beqiraj, L McNamara and V Wicks, "Access to justice for persons with disabilities: From international principles to practice" 35 *International Bar Association*, (October 2017).

[51] *Available at:* https://legalvidhi.co.in/legal-articles/access-to-social-justice-for-people-with-disabilities/ last visited on August 8, 2021).

*aspects of life."*[52] The law also states that *"any person providing support to the person with disability shall not exercise undue influence and shall respect his or her autonomy, dignity and privacy."* However**, article 14** of the act provides for the nomination of a *"limited guardian"* if a designated authority finds that a person with a disability who has been provided with *"adequate and appropriate support"* is *"unable to make legally binding decisions.*" The guardian is to act in consultation with the person with a disability. If a person with a disability is deemed by the designated authority to require multiple *"limited guardianships"* for a long period, the authority can grant *"total support"* to this person.

Moreover, **Lesbian, Gay, Bisexual, Transgender/Transsexual and Intersex** (LGBTI+) group of people who also face disproportionate levels of injustice. In India, they are at such high risk of violence at the hands of families, communities, and the authorities that researching their justice needs is impossible.[53]Migrants, refugees, and stateless people, who face discriminatory laws. Often they have little meaningful access to justice services, despite having urgent and complex justice needs. Many refugees are denied fair treatment concerning housing and employment. Obtaining legal documentation is often a major challenge.[54]Therefore, the rights of vulnerable groups to gain justice will not just be beneficial for them. The process of reform requires that the courts become more open, flexible and responsive to vulnerable groups. That means improving the quality of lawyering, encouraging the development of more accessible information about rights and remedies, and ultimately improving the quality of justice itself.[55]

### 4.2.2 Right to life and Access to Justice:

The importance of **'Access to Justice'** flows from **Article 14** and has a direct bearing on the Right to Life as guaranteed by **Article 21**.[56] **Article 21**of the Constitution ensures that "*No person shall be deprived of his life or personal liberty*

[52] The Rights of Persons with Disabilities Act, 2016, No. 49 of 2016, *available at:* http://www.disabilityaffairs.gov.in/upload/uploadfiles/files/RPWD%20ACT%202016.pdf art.13 (Visited on June 29, 2021).
[53]*Available at:* https://cic.nyu.edu/sites/default/files/english_task_force_report_27jun19-min_compressed.pdf (last visited on August 7, 2021).
[54] HiiL, Justice Needs and Satisfaction in Jordan 2017 - Legal problems in daily life. (The Hague: HiiL, 2017).
[55] *Available at:* http://www.mdac.org/en/accessing-justice-children (last visited on August 6, 2021).
[56]*Available at*: https://www.doj.gov.in/sites/default/files/UNDP%20Final%20report_18May2017.pdf (last visited on August 7, 2021).

*except according to procedure established by law*". The Supreme Court of India in **Menaka Gandhi V. Union of India** [57] has declared that *life implies not only life in its physical sense, but a bundle of rights that makes life worth living".* However, the word 'life' in **Article 21** implies not only life in the physical sense but a bundle of rights that makes life worth living. There is no juristic or another basis for holding that denial of "access to justice" will not affect the quality of human life so as to take access to justice out of the purview of the right to life guaranteed under **Article 21**. The Supreme Court of India has by a long line of decisions given an expansive meaning and interpretation to the word 'life' appearing in **Article 21** of the Constitution. In **Sunil Batra v. Delhi Administration,**[58] the right against solitary confinement and prison torture and custodial death was declared to be a part of the fundamental right to life under **Article 21** of the Constitution. In **Charles Sobhraj v. Suptd. Central Jail**[59] the right against bar fetters was declared to be a fundamental right protected under **Article 21** of the Constitution In **Hussainara Khatoon IV V/s. Home Secretar**[60] the Supreme Court of India declared speedy trial as an integral and essential part of the fundamental right to life and liberty enshrined in **Article 21**.In **Prem Shankar Shukla v. Delhi Administration,**[61] the right against handcuffing was declared to be a fundamental right under **Article 21**. In **Khatri II v. State of Bihar,**[62] the right to free legal aid was held to be a fundamental right covered under **Article 21** of the Constitution. So also in **Rudal Shah v. State of Bihar,**[63] the right to compensation for illegal and unlawful detention was considered to be a fundamental right to life under **Article 21** and also under **Article 14** of the Constitution of India. In **Sheela Barse v. Union of India,**[64] the Supreme Court of India declared speedy trial to be an essential right under **Article 21** of the Constitution. In **Parmanand Katara v. Union of India**[65] right to an emergency, medical aid was declared to be protected under **Article 21** of the Constitution. **Shantistar Builders v. Narayan Khimalal Totame** [66]right to shelter, clothing, decent environment and decent accommodation

[57] (1978) 1 SCC 248.
[58] (1978) 4 SCC 494.
[59] (1978) 4 SCC 104.
[60] 1979 SCR (3) 532.
[61] (1980) 3 SCC 526.
[62] (1981) 1 SCC 627.
[63] (1983) 4 SCC 141.
[64] (1988) 4 SCC 226.
[65] (1989) 4 SCC 248.
[66] (1990) 1 SCC 520.

was also held to be a part of life. In **M.C. Mehta v. Union of India**[67]right to a clean environment was held to be a right to life under **Article 21** of the Constitution. In **Lata Singh v. State of U.P.**[68] right to marriage was held to be a part of the right to life under **Article 21** of the Constitution. In **Suchita Srivastava v. Chandigarh Administration**[69] right to make reproductive choices were declared as the right to life. While in **Sukhwant Singh v. State of Punjab**[70] right to reputation was declared to be a facet of the right to life guaranteed under Article 21 of the Constitution. In **Tamilnad Mercantile Bank Shareholders Welfare Association v. S.C. Sekar and Others**[71] the Supreme Court of India declared that an aggrieved person cannot be left without the remedy. Access to justice is recognized a fundamental right for every citizen. In **Imtiyaz Ahmad v. State of Uttar Pradesh & Ors.**[72] the Supreme Court of India emphasizing the importance of access to justice and recognizing the right as a fundamental right relatable to Article 21 of the Constitution of India, and observed:

> *"Unduly long delay has the effect of bringing about the blatant violation of the rule of law and adverse impact on the common man's access to justice. 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 another forum 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."*

In **Brij Mohan Lal v. Union of India and Ors**. [73]The Supreme Court declared that Article 21 guarantees to the citizens the rights to an expeditious and fair trial and observed:

> *"Article 21 of the Constitution of India takes in its sweep the right to an expeditious and fair trial. Even Article 39-A of the Constitution recognises the right of citizens to equal justice and free legal aid. To put it simply, it is the constitutional duty of the Government to provide the citizens of the*

[67] (1997) 1 SCC 388.
[68] (2006) 5 SCC 475.
[69] (2009) 9 SCC 1.
[70] (2009) 7 SCC 559.
[71] (2009) 2 SCC 784.
[72] (2012) 2 SCC 688.
[73] (2012) 6 SCC 502.

> *country with such judicial infrastructure and means of access to justice so that every person can receive an expeditious, inexpensive and fair trial. The plea of financial limitations or constraints can hardly be justified as a valid excuse to avoid performance of the constitutional duty of the Government, more particularly, when such rights are accepted as fundamental to the human rights of citizens."*

In the recent Constitution Bench Judgment decision of the Supreme Court of India in **Subramanian Swamy v. Union of India**[74] the Supreme Court of India held reputation to be an inherent and inseparable component of Article 21of the Constitution. It also pointed out that **Article 39A** made free legal service an inalienable element of reasonable, fair and just procedure and that the right to such services was implicit in the guarantee of **Article 21.**The given pronouncements mentioned judgment above have interpreted and understood the word "life" appearing in Article 21 of the Constitution on a broad spectrum of rights considered incidental and/or integral to the right to life. There is no excuse why access to justice should be considered to be falling outside the class and category of the said rights. That already stands recognised as being a part and parcel of the **Article 21** of the Constitution of India. Therefore, without any hesitation, the Supreme Court of India has held that that "access to justice is indeed a facet of right to life guaranteed under **Article 21** of the Constitution".[75]

### 4.2.3 Access to Justice during Arrest and Detention:

Another supporting constitutional provision that supports access to justice is **Article 22** of the Constitution of India. Many of those arrested or detained are poor, ill-educated or disadvantaged for some other reason. They often lack the knowledge or experience needed to understand and navigate the criminal justice system and also have limited and financial resources to effectively navigate the system.[76] Many are children, that is, a person who is under 18 years of age,[77] who, in addition to these disadvantages, may lack the legal authority to make decisions on their own, and who

[74] [W.P (Crl.) No.184 of 2014].
[75] *Anita Kushwaha v. Pushap Sudan* AIR 2016 SC 3506.
[76] The Federal Court of Justice of Germany stated explicitly that at the time of the first police interrogation, the suspect usually is not prepared for such a situation, without any adviser and in an environment he is not used to, often confused by events and afraid, due to the scenario of the interrogation. (Germany, Entscheidungen des Bundesgerichtshof in Strafsachen, 38, 214).
[77] *Ibid.*

need support to ensure that they are dealt with appropriately.[78] The right to consult and to be defended by a legal practitioner of his choice is a fundamental right of every person without any qualification of affordability under **Article 22** of the Constitution of India. The infringement of a fundamental right due to police and prosecutorial misconduct invoke State liability.[79] Therefore, State has to provide legal representation in such circumstances where a person can't afford to pay the advocate's fees. The purpose to consult and be defended by a legal practitioner of once choice is guaranteed to enable the detenue to prepare for own defense. In the case of arbitrary and unlawful deprivations of liberty, the detainees are frequently also deprived of access both to lawyers and to their own families and also subjected to torture and other forms of ill-treatment.[80] It is essential, therefore, that the legal rules that exist in international law to remedy and prevent these kinds of human rights violations be adhered to by national judges and prosecutors, and that lawyers are aware of their contents, to enable them to act effectively on behalf of their clients.[81] This right belongs to the arrested person not only at the pre-trial stage but also at the trial before a criminal court or before a special tribunal and whether the arrest is made under the general law or a special statute.[82]

The Supreme Court of India has in various judgements recognized the right to *'legal assistance to persons in custody'* and *'near custodial interrogation'*. The Supreme Court in **Nandini Sathpaty v P.L Dani*[83]*** has observed as follows concerning the need for providing legal assistance at early stages:

> *"The spirit and sense of Art. 22 (1) is that it is fundamental to the rule of law that the services of a lawyer shall be available for consultation to any accused person under circumstances of near-custodial interrogation. Moreover, the observance of the right against self-incrimination is best*

[78] Available at: https://www.unodc.org/documents/justice-and-prison-reform/eBook-early_access_to_legal_aid.pdf (last visited on August 9, 2021).
[79] Law Commission of India, 277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies, (August, 2018).
[80] UN doc. E/CN.4/1999/63, Report of the Working Group on Arbitrary Detention. Available at https://www.ohchr.org/en/issues/detention/pages/annual.aspx last visited on August 1, 2021).
[81] Available at: https://www.ohchr.org/documents/publications/training9chapter5en.pdf (last visited on August 1, 2021).
[82] *State of M.P.* v. *Shobharam* AIR 1966 SC 1910.
[83] AIR 1978 SC 1025.

> *promoted by conceding to the accused the right to consult a legal practitioner of his choice."*

In ***Sheela Barse v State of Maharashtra***[84], the Hon'ble Supreme Court of India has held:

> *"whenever a person is arrested by the police and taken to the police lock-up, the police will immediately give an intimation of the fact of such arrest to the nearest Legal Aid Committee and such Legal Aid Committee will take immediate steps to provide legal assistance to the arrested person at State cost provided he is willing to accept such legal assistance."*

The Hon'ble Supreme Court of India in **Mohd. Ajmal, Amir Kasab v. State of Maharashtra**[85] held as follows:

> *"We, accordingly, hold that it is the duty and obligation of the magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the state. The right flows from Articles 21 and 22 (1) of the Constitution and needs to be strictly enforced."*

Thus, Prompt access to legal advice and assistance is the key to guaranteeing a fair trial and the rule of law.[86] A functioning legal aid system, as part of a functioning criminal justice system, may reduce the length of time suspects are held in police stations and detention centres, in addition to reducing the prison population, wrongful convictions, prison overcrowding and congestion in the courts, and reducing reoffending and revictimization.[87] Early intervention by legal aid providers helps to ensure that rights are respected, improves the efficiency and fairness of the criminal

[84] AIR 1983 SC 378.
[85] (2012) 9 SCC 1.
[86] Ed Cape, "Improving Pretrial Justice: The Roles of Lawyers and Paralegals" 43 *New York: Open Society Foundations*,( 2012)
[87] *Available at*: https://www.unodc.org/unodc/en/Human-rights/access-to-justice.html (last visited on August 3, 2021).

justice system and represents an important safeguard against torture and other forms of ill-treatment.[88]

### 4.2.4 Enforceability of Right to Access to Justice:

The vulnerable groups of society are frequently victims of criminal acts including human rights violations. Surely the poor ability to access justice through the judiciary as well as outside of it would diminish the quality of life of vulnerable groups. The key facets of access to justice are the need for adjudicatory mechanisms, public awareness of their rights and role of adjudicatory mechanisms, public access to these adjudicatory mechanisms in terms of physical distance, speedy process of adjudication and affordability of the process of adjudication.[89] Members of the vulnerable group find themselves in unjustified positions to defend their rights and are not often able to access remedies in cases of fundamental rights violations. Ensuring access to justice, therefore, requires increased attention towards the vulnerable so that they may lead dignified lives free of violations and discrimination as equal citizens. It requires an aware citizenry that is able to access legal remedies as necessary and an equally responsive judicial system that is able to deliver speedy and unbiased justice. Injustice and discrimination tend to have a greater impact on vulnerable populations as they are constrained in seeking redress. Justice mechanisms can be used as effective tools to end this cycle of deprivation and rights violations while simultaneously reducing the risks associated with conflict.[90] As per **V.R. Krishna Iyer**, the prominent jurist of our Country and the former Judge of the Supreme Court of India, *"access to justice, which is fundamental in the implementation of every human right, makes the judicial role pivotal to constitutional functionalism."*[91] Access to the justice system is capable of providing the service required to fill the gap in the right protection. In the Constituent Assembly Debates, **Dr. B.R. Ambedkar** once said; "*If I am asked which is the most important provision of the Indian Constitution, without which the Constitution would not survive I would point to none other than*

[88] Office of the United Nations High Commissioner for Human Rights, Association for the Prevention of Torture and Asia Pacific Forum of National Human Rights Institutions, Preventing Torture: An Operational Guide for National Human Rights Institutions, HR/PUB/10/1 (May 2010).
[89] *Available at:* https://www.doj.gov.in/sites/default/files/UNDP%20Final%20report_18May2017.pdf (last visited on September 9, 2021).
[90] *Ibid.*
[91] Justice V.R. Krishna Iyer, *Legally Speaking* 171 (Universal Law Publishing Co. Delhi, 2003).

*article 32 which is the soul of the Indian Constitution."*[92] . It is one of the highly cherished rights. It is a very important and integral part of the basic structure of the constitution. It gives Supreme Court a status of the protector and guarantor of Fundamental Rights as **Article 32** provides for the enforcement of fundamental rights in case of infringement. This right puts stress on the obligation of State to protect fundamental rights. **Article 32** states that:

> *"(1) the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part [Part-III] is guaranteed.*
>
> *(2) the Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part."*

In the year 1981 in ***the Judges' Appointment and Transfer case*** [93] that the Supreme Court of India for the first time took the view that:

> *"where a person or class of persons to whom legal injury is caused by reason of violation of a fundamental right is unable to approach the court for judicial redress on account of poverty or disability or socially or economically disadvantaged position, any member of the public acting bona fide can move the court for relief under Article 32 and also under Article 226, so that the fundamental rights may become meaningful not only for the rich and the well-to-do who have the means to approach the court but also for the large masses of people who are living a life of want and destitution and who are by reason of lack of awareness, assertiveness and resources unable to seek judicial redress*."

The concept of access to justice, primarily, necessitates a potential system securing appropriate legal remedies within the Civil and Criminal justice fields. Judiciary, being an integral part and parcel of an effective judicial system, has a greater role in ensuring access to justice. Similarly, **Article 136**[94] is also a very

[92] *Bandhua Mukti Morcha* v. *Union of India* & Others 1984 AIR 802, 1984 SCR (2) 67.
[93] *S.P. Gupta* v *President Of India And Ors* AIR 1982 SC 149.
[94] The Constitution of India, art. 136 (1) reads as *"Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree,*

significant provision in the Constitution. In our constitutional scheme, the High Court and Supreme Court have been depicted as the guardian of fundamental rights. Both also have been bestowed with the power to held void any law passed by state and union legislature. If it is prove that the law abridges of any fundamental right, as enshrined under **Article 13 (2)**[95] of the constitution. Hence, it is true that a declaration of a fundamental right is meaningless. Unless, there is effective machinery for the enforcement of fundamental rights. It is the remedy that makes the right a reality. If there is no remedy there is no right. **Article 226** also provides a similar right as provided under **Article 32** but it is not a fundamental right. Its scope extends to fundamental rights as well as non-fundamental rights **Article 32** and **Article 226** respectively. This is one of the most unique features of the Indian Constitution.

## 4.3 WELFARE STATE & ACCESS TO JUSTICE:

Peace and harmony are essential for the growth and development of a nation, which can be achieved through the equitable administration of justice. In a welfare state like India where people are known for their diversity, the state should ensure equal administration of justice as it is a *sine qua non* of fair administration of Justice. To promote an equal administration of justice, regardless of economic or another handicap, the concept of free legal aid has emerged. It promotes the saying that justice should not only be done but appears to be done. Another obstacle in the way of the administration of justice is the delay, the cumbersome process and the high cost of litigation. These problems become more complex when a person who comes to court for protection is poor, illiterate or ignorant of their rights. The inability to obtain easy, cheap and quick justice undermines the very faith of the people in the system of the administration of justice. **Prof. M. Cappelletti** has explained the importance of access to justice in the following words:[96]

*determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. (2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces."*

[95] The Constitution of India, art.32 (2) reads as "*The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."*

[96] Mauro Cappelletti (ed.), ACCESS TO JUSTICE AND THE WELFARE STATE 365 (Florence, Italy: European University Institute,1981).

> *"The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement – the most 'basic human right' of a system that purports to guarantee the legal right."*

Access to justice is, much more than improving an individual's access to courts or guaranteeing representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and inequitable.[97]Therefore, the State is under an obligation to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice- social, economic & political shall inform all the institutions of the national life.[98] Legal aid also falls within the scope of **Article 38,** as it diminishes inequality due to economic factors and seeks to provide equal opportunities to make use of legal services regardless of their affordability.

The State, according to **Article 46** of the Constitution, should promote with special care the educational and economic interests of the weakest section of the people. And also protect in particular, of the schedule castes and schedule tribes from social injustice and all its forms of exploitation. In this way, **Article 46** of the Constitution has the scope of incorporating within its scope the obligation of the State to enact laws to provide free legal assistance to the weakest sectors of society, including schedule castes and schedule tribes. So that they should have the advantage of equal access to justice, which is essential to prevent injustice and exploitation. In India, this concept of social action litigation was initiated by Justice **Krishna Iyer** in **Mumbai Kamgar Sabha V. Abdullabhai[99]**

> *"The relevance of Equal access to justice is not only supported by fundamental rights but also by directive Principles enshrined in part IV of*

[97] United Nations Development Programme, Access to Justice – Practice Note (2004). *Available at:* https://www.undp.org/publications/access-justice-practice-note (last visited on September 9, 2021).
[98] The Constitution of India, art. 38 (1) reads as *"State is directed to strive to minimize the inequalities in income, to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."*
[99] AIR 1976 SC 1455.

*the Constitution. They are not enforceable like fundamental rights but they are the guiding principles for the governance of the welfare State. Article 38, 39A, 41 & 46 though not enforceable but has aptly guided the promotion of equal access to justice in India."*

### 4.3.1 Right to Free Legal Aid to Establish Welfare State:

Equality in a country like India where differences between people due to social, economic and political factors are prevailing is a long way off without the support of provisions such as legal aid. The Constitution of India is the living document of this Country and the basic law of this Nation. As disclosed in its preamble, it stands for securing justice to all the Citizens. One of our directive principles also talks about free legal aid. It says that the state shall secure the operation of the legal system and promote justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes. In any other way, to ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities. Such provisions became part of our constitution keeping in view the immense poverty in the country, where a significant portion of the population find it difficult to arrange for their basic needs, such as food and clothing. In such situations, how could the people think of indulging in costly and time taking litigation when their rights are violated? **Article 39A** of the Constitution of India which falls under **Chapter IV** of the Indian Constitution enjoins upon the State the obligation to ensure that the operation of the legal system promotes justice on the basis of equal opportunity and provides for free legal aid by suitable legislation or scheme to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability.[100] Therefore, the State under this provision has to endeavour to ensure that citizens irrespective of their status get equal access to the system of justice.[101] Therefore, In **Article 39A**, the Constitution retains its aspiration to secure and promote access to justice, in the following terms;

*"The State shall secure that the operations of the legal system promote justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to*

[100] *Available at:* https://www.doj.gov.in/sites/default/files/UNDP%20Final%20report_18May2017.pdf (last visited on September 9, 2021).
[101] *Ibid.*

> *ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities*".

However, Article 39-A promotes justice based on equal opportunities for the vulnerable group. It imposes on the state an imperative duty to provide free legal aid to the poor. The Indian Parliament, in fulfilment of its obligations under this article, enacted the **Legal Services Authorities Act 1987,** which provided for free legal aid. The **42nd Amendment** which inserted **Article 39A** also introduced some changes **to schedule VII** of the Constitution of India. It removed **entry 3,** administration of justice, from the States list and added it to the concurrent list as **entry 11-A**. The purpose of such amendment was to allow both unions and states to enact laws for legal aid and the promotion of equal access to justice for a vulnerable group.

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.[102] 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.[103] 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.[104] Legal aid to the needy has been recognized as one of the facets of access to justice in **Madhav Hayawadanrao Hoskot vs. State Of Maharashtra**[105] where this court observed:

> *"If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the Court under Art. 142 read with Arts. 21 and 39A of the Constitution, power to assign counsel*

[102] *Available at:* https://www.unodc.org/documents/justice-and-prison-reform/eBook-early_access_to_legal_aid.pdf (last visited on September 1, 2021).
[103] *Available at:* https://www.refworld.org/pdfid/55b211924.pdf (last visited on September 1, 2021).
[104] *Anita Kushwaha v. Pushap Sudan* AIR 2016 SC 3506.
[105] (1978) 3 SCC 544.

> *for such imprisoned individual for doing complete justice. This is a necessary incident of the right of appeal conferred by the Code and allowed by Art. 136 of the Constitution. The inference is inevitable that this is a State's duty and not the government's charity."*

Similarly in ***Sukh Das v. Union Territory of Arunachal Pradesh***[106], It was held that:

> *"Free legal aid at the State's cost is a fundamental right of a person accused of an offence. This right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21."*

Therefore, 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 through the provision of legal aid services, is critical to the reduction of poverty and the prevention of conflict.[107]

## 4.4. ROLE OF INDIAN JUDICIARY IN WELFARE STATE:

With a population of 1.2 billion people, India is a multi-cultural, multi-linguistic, multi-religious and multi-ethnic secular country. India is also the most representative democracy which elects approximately 3 million people in the local self-government bodies more than 1/3 of them being women. During the last two decades, India has made steady progress on the economic front and has achieved sustained growth of *8.2%* for 5 years. But unfortunately, poverty has declined only by *0.8%*.[108]India ranks 134 out of 187 countries on the UN Human Development Index.[109] Despite the progressive measures taken by the government, the 'access to justice' in India has been costly, so beyond the reach of poor citizens.[110] Delays in the disposal of cases add one of the causes to the woes of the litigants. As **Cappelletti**

[106] AIR 1986 SC 99.
[107] United Nations Development Programme, Envisioning Empowerment: A Portfolio of Initiatives for Achieving Inclusion and Development (New York: UNDP, 2009), *available at*: www.undp.org/content/dam/aplaws/publication/en/publications/ democratic-governance/legal-empowerment/envisioning-empowerment/Envisioning%20Empowerment_full.pdf (last visited on September 9, 2021).
[108] Planning Commission, Government of India, according to Draft Approach Paper for the Twelfth Five Year Plan, (2011).
[109] Human Development Indicators, UN Human Development Index Report 2011 *available at:* http://hdrstats.undp.org/en/countries/profiles IND.HTML (last visited on May 18, 2021).
[110] *Available at:* https://doj.gov.in/other-programmes/access-justice-marginalized/access-justice-marginalized (last visited on May 22, 2021).

**and Garth** observe, *"the possession of rights is meaningless without mechanisms for their effective vindication"*.[111] Moreover, vulnerable groups of the nation have not been able to fully claim their legitimate stake in the protections provided by the Constitution and legal system, because of which, the realization of justice remains a challenge.[112]

Hence, justice demands preferential treatment to the vulnerable groups is usually synonymous with "groups at risk"[113] (aged, poor, women, children, and other under-privileged persons) to correct the imbalance existing in the society. Every nation has certain anti-social elements and infringement of one right by these anti-social elements is inevitable. Every legal system provides for the redressal of such infringement of rights in its constitution or other law. For such redressal of infringement of rights, one has to invoke the state machinery engaged in the service of justice delivery. These machinery are established by the State itself are legally bound to ensure justice is done. With the emergence of the view that justice has to be rendered according to the law, the courts assist the State in enforcing rights as a necessary condition of peace, order, and civilization. The basic purposes of which are intended to be served by providing justice are **1st**, to ensure that every person can invoke the legal process for redressal irrespective of social or economic status or other capacities. **2nd**, that every person should receive a just and fair treatment within the legal system. All persons are equal before the courts and tribunals. They enjoy certain procedural guarantees in civil and criminal trials. Equality before the courts means that all people must be guaranteed the right of equal access to an independent and partial court or tribunals for the determination of civil dispute or criminal charges without discrimination. Over the years the courts have decreed that all individuals regardless of economic status should have equal access to the law assuring victims. The accused and the general public that the resulting verdict fair, correct, swift, and final. The research has demonstrated that sustainable access to justice narratives emphasize that judicial reforms should be comprehensive. It could cover socio-economic and legislative spheres too.

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[111] M. Cappelletti and B. Garth, *Access to Justice and the Welfare State* ( European University Institution, 1981)

[112] *Available at:* https://doj.gov.in/sites/default/files/Increasing-A2J_0.pdf (last visited on May 22, 2021).

[113] *Available at:* https://www.forskningsetikk.no/en/resources/the-research-ethics-library/research-on-particular-groups/vulnerable-groups/ (last visited on February 18, 2021).

### 4.4.1 Access to Justice in Traditional Judicial System:

Access to justice is more than improving an individual's access to courts or guaranteeing legal representation.[114] Access to justice is defined as the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances[115] in compliance with human rights standards.[116] There is no access to justice where vulnerable group of people fear the system, see it as alien, and do not access it; where the justice system is financially inaccessible; where individuals have no lawyers; where they do not have information or knowledge of rights; or where there is a weak justice system. Access to justice involves normative legal protection, legal awareness, legal aid and counsel, adjudication, enforcement, and civil society oversight.[117] Access to justice supports sustainable peace by affording the population a more attractive alternative to violence in resolving personal and political disputes.[118]

Moreover, the prevailing system of administration of justice should base on the common law jurisprudence. Being traditionalism is not suitable to the socio-economic conditions of the rural land. In this situation the formalism in law alienates the illiterate and cause deprived of the judicial process. In India, because of poverty and illiteracy, the people are unable to protect and defend their basic rights; observance of fundamental rights is not regarded as good politics and their transgression as bad politics.[119] However, our justice delivery system is expensive, dilatory and cumulative disastrous. And counsel's fees and other fringe expenses and the maze and mystique of the legal proceedings have put justice beyond the reach of the poor. Consequently, the Constitutional promise of Justice: social, economic and political, made on the high pitch has proved a farce for the teeming millions. Who

[114] UNDP, "Access to Justice," 2004. *available at*: https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/end-notes/rule-law#Access (last visited on May 19, 2021).
[115] A grievance is defined as a gross injury or loss that constitutes a violation of a country's criminal or civil law or international human rights norms and standards.
[116] United Nations Development Programme, Programming for Justice: Access for All: A Practitioner's Guide to Human Rights-Based Approach to Access to Justice (Bangkok: UNDP, 2005). Hereafter: UNDP, Programming for Justice, 2005.
[117] *Supra* note 445.
[118] *Available at:* https://cic.nyu.edu/sites/default/files/english_task_force_report_27jun19-min_compressed.pdf(Visited on March 27, 2021).
[119] *Maneka Gandhi* v. *UOI* AIR 1978 SC 597.

have been marginalised from the mainstream of the national life because of illiteracy, poverty and ignorance?

**4.4.1.1 Court Fees in India: Poor Are Paying the Price for Justice:**

Court fees in civil courts appear to have been first levied in the 18th century by **Madras Regulation III of 1782, Bengal Regulation XXXVIII of 1795** and **Bombay Regulation of 1802.**[120] Paradoxically, the preamble to the Bengal Regulation justified the imposition of court fees on the ground that it would prevent the institution of frivolous litigation.[121] **Justice Krishna Iyer Committee on Legal Aid** stated that "*something must be done; we venture to state, to arrest the escalating vice of burdensome scales of court fee. That the State should not sell justice is an obvious proposition, but the high rate of court fee now levied leaves no valid alibi is also obvious".*[122] Yet another aspect of 'access to justice' is the system of demanding 'court fees' from the parties who move the Courts. ***Lord Macaulay***, who headed the Law Commission of India,[123] declared that the preamble to the **Bengal Regulation of 1795** was 'absurd' when it stated that *"high court fee was intended to drive away vexatious litigants; the reason he gave was that such increase will also drive away honest plaintiffs who are unable to pay court fee".* Starting from the **14th Report titled "Reform of Judicial Administration" (1958)**, the Law Commission has been repeating that the argument that court fee is increased to prevent vexatious litigation, cannot be accepted.

In **P.M. Ashwathanarayana Setty v. State of Karnataka**[124] judgment, **Justice Venkatachaliah** observed that

> "*the court fee as a limitation on 'access to justice' is inextricably intertwined with a The correlations between the amount raised through the 'fee' and the expenses involved in providing the services need not be examined to ascertain any accurate, arithmetical equivalence or precision in the correlation; but it would be sufficient that there is a broad and general correlation. ... Now at the end of the day, what remains is the suggestion*

[120] Law Commission of India, 14th Report on "Reform of Judicial Administration" (1958).
[121] *Ibid*.
[122] *P. M. Ashwathanarayana Setty* v. *State of Karnataka*, 1989 Supp (1) SCC 696.
[123] The first such Commission was established in 1834 under the Charter Act of 1833 under the Chairmanship of Lord Macaulay.
[124] 1989 Supp (1) SCC 696.

> *necessary regarding the rationalisation of the court fees under the 'Rajasthan Act' and the 'Karnataka Act'."*

The arguments in the case highlight an important aspect. The levy of court fees at rates reaching 10 per cent *ad valorem* operates harshly and almost tends to price justice out of the reach of many distressed litigants. The Directive Principles of State Policy, though not strictly enforceable in courts of law, are yet fundamental in the governance in the country. They constitute *fons Juris* in a Welfare State. The prescription of such high rates of court fees even in small claims as also without an upper limit in larger claims is perilously close to arbitrariness, unconstitutionality. The ideal is, of course, a state of affairs where the State is enabled to do away with the pricing of justice in its courts of justice. In this reach for the ideal, it serves to recall the words of ***Robert Kennedy:***

> *"Some men see things as they are and say why I dream things that never were and say why not? " ...The governments concerned should bestow attention on these matters and bring out a rationalization of the levies."*

The Commission in ***189th Report***[125] did not find any better reason to take a different view than the one expressed by the Supreme Court and the Commission in its ***14th and 128th*** Reports that the underlying real reason for the enhancement of court fees appears to be the collection of more revenue by the States which is not sound public policy. On the other hand, higher court fee will discourage the honest and genuine poor litigant. The Commission emphasized that any enhancement of court fee should not adversely affect the right of access to justice. Further, the amount collected by way of the court fee should not be more than the expenditure incurred in the administration of civil justice. Subject to these limitations, the amount of fixed court fee prescribed under Schedule 2 of the Court-fees Act, 1870 may be enhanced in proportion to the extent of devaluation of the rupee.[126]

However, access to justice is a concept that refers to the extent to which people can obtain a satisfactory response to their legal needs at a reasonable cost. Whose scope is defined through the application of a right-based approach and an

[125] Law Commission of India, 189th Report on Revision of Court Fees Structure 96, (2004).
[126] Law Commission of India, 189th Report on Revision of Court Fees Structure 96, 112-113 (2004).

assessment of the nature and extent of the public activity and the necessary legal mechanisms or instruments by which such rights are guaranteed? A traditional way of looking at access to justice issues would focus on the machinery of the public administration of justice. Further, to analyse and strengthen access to justice, this approach mainly focuses on building the capacity of the court system, on its organization and capacity to deliver services, thereby expanding their reach and increasing their effectiveness.[127]

Therefore, equal access to justice visualizes a social order where justice will be brought within the reach of every person. Irrespective of their station in life conditioned social existing and economic constraints. Equal access to justice must be the condition precedent for the claim and realisation of the constitutional guarantee of Justice- Social, Economic and Political. Thus access to justice is a function of government in a civilized to provide and maintain adequate and effective machinery, both within and outside the formal judicial process. In which all citizens acting individually or as a group, can have access on an equal basis for the impartial resolution of their dispute. The Supreme Court of India has opined that the essence of access to justice is the four main facets in a welfare state that are:

i. The State must provide an effective adjudicatory mechanism;
ii. The mechanism so provided must be reasonably accessible in terms of distance;
iii. The process of adjudication must be speedy; and
iv. The litigant's access to the adjudicatory process must be affordable.

- **The State must provide an effective adjudicatory mechanism:** One of the most fundamental requirements for providing to the citizens access to justice is to set up an adjudicatory mechanism whether described as a Court, Tribunal, Commission or Authority or called by any other name whatsoever, where a citizen can agitate his grievance and seek adjudication of what he may perceive as a breach of his right by another citizen or by the State or any one of its instrumentalities. So that the right of a citizen to access justice is protected, the mechanism provided must not only be effective but must also be just, fair and objective in its approach. So also the procedure which the court, Tribunal or Authority may adopt for

[127] Ayesha Kadwani Dias and Gita H. Welch, *Justice for the Poor: perspectives on Accelerating Access* 554 (Oxford University Press, New Delhi, 2011).

adjudication, must, in itself be just and fair and in keeping with the well-recognized principles of natural justice.

- **The mechanism must be conveniently accessible in terms of distance:** The mechanism so provided must, having regard to the hierarchy of courts or tribunals, be reasonably accessible in terms of distance for access to justice since so much depends upon the ability of the litigant to place his/her grievance effectively before the court/tribunal/court/competent authority to grant such a relief.[128]
- **The process of adjudication must be speedy:** "Access to justice" as a constitutional value will be a mere illusion if justice is not speedy. Justice delayed, it is famously said, is justice denied. If the process of administration of justice is so time-consuming, laborious, indolent and frustrating for those who seek justice that it dissuades or deters them from even considering resort to that process as an option, it would be tantamount to a denial of not only access to justice but justice itself. In ***Sheela Barse's*** case,[129] the Supreme Court declared speedy trial as a facet of the right to life, for if the trial of a citizen goes on endlessly his right to life itself is violated. There is jurisprudentially no qualitative difference between denial of speedy trial in a criminal case, on the one hand, and civil suit, appeal or other proceedings, on the other, for ought we know that civil disputes can at times have an equally, if not, more severe impact on a citizen's life or the quality of it. Access to Justice would, therefore, be a constitutional value of any significance and utility only if the delivery of justice to the citizen is speedy, for otherwise, the right to access to justice is no more than a hollow slogan of no use or inspiration for the citizen. It is heartening to note that over the past six decades or so the number of courts established in the country has increased manifold in comparison to the number that existed on the day the country earned its freedom. There is today almost invariably a court of Civil Judge junior or senior division in every taluka and a District and Sessions Judge in every district. In terms of accessibility from the point of view of distance which a citizen ought to travel, we have come a long way since the time the British left the country. However, the increase in literacy, awareness, prosperity and proliferation of laws has made the process of adjudication slow and time consuming primarily on account of the overworked

[128] D.K. Basu v. State of West Bengal (2015) 8 SCC 774.
[129] (1988) 4 SCC 226.

and understaffed judicial system, which is crying for the creation of additional courts with requisite human resources and infrastructure to effectively deal with an ever-increasing number of cases being filed in the courts and mounting backlog of over thirty million cases in the subordinate courts. While the States have done their bit in terms of providing the basic adjudicatory mechanisms for disposal of resolution of civil or criminal conflicts, access to justice remains a big question mark on account of delays in the completion of the process of adjudication on account of poor judge population and judge case ratio in comparison to other countries.

## 4.4 CONCLUSION:

Thus, access to justice is a basic right in itself and as a precondition of the enjoyment of all other fundamental rights. It is especially 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 NGO'S ROLE FOR ACCELERATING ACCESS TO JUSTICE FOR VULNERABLE GROUP

# CHAPTER-V
# LEGAL AID SERVICES AND NGO'S ROLE FOR ACCELERATING ACCESS TO JUSTICE FOR VULNERABLE GROUP

## 5.1 INTRODUCTION

*"LEGAL AID includes legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require. Furthermore, "legal aid" is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes."*[1]

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 we 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

[1] UN General Assembly resolution 67/187, para. 8 *available at:* https://www.unodc.org/documents/justice-and-prison-reform/GA_67.187_English.pdf ( last visited on October 21, 2021).

ignorance and disease and inequality of opportunity.[2] From then onward legal assistance to the poor become a reality rather than a dream. The legal aid, when we embark on a journey to trace the root of the legal aid movement in India, it unfurls the long distance we covered. The consistent efforts on the part of legal luminaries like Justice V.R, Krishna Iyer and Justice P.N. Bhagwati and many more unknown warriors who fought for the rights of the voiceless strengthen our legal pillars.

## 5.2 PHILOSOPHY BEHIND LEGAL AID FOR VULNERABLE GROUPS:

Although the concept of legal aid is very old, the sense in which we understand it today is a recent phenomenon. Legal aid is intended to provide the poor and vulnerable sections of the society the required assistance to look after themselves regarding the exercise and enforcement of their rights.[3] Legal aid is considered to be an instrument to achieve equality before the law as provided in our constitution. As mentioned above the concept is very old. It drew the attention of the world particularly in the aftermath of the Second World War. It is indeed during this period the concept of legal aid came to be recognized as a fundamental human right. Subsequently, the concept was widened and brought into contours all the vulnerable groups of the society- the poor, weak, illiterate, and down trodden who are coming to the court of law to seek justice. In this process, some enlightened lawmen were united to come to the rescue of these vulnerable groups of the society by providing the required legal assistance free of cost. Subsequently, it became a movement and the legal community came forward to hear these poor litigants who have been deprived of justice.

Legal aid is an essential part of the administration of Justice. "Access to justice for all" is the motto of Legal Services Authorities. The goal is to secure justice for the weaker section of society. Particularly to the poor, downtrodden, socially

[2] 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.

[3] Sangita Dhingra Sehgal, *Commentary on The Legal Services Authorities Act* 45 (Universal Law Publishing, New Delhi- India 2016).

backward, women, children, handicapped etc. Most social evils are 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.[4] Therefore, the suffering of being so many, it is not possible for the legal system to remove even a few of such problems. Vulnerability is the creation of unjust institutions and unjust society. In a country like India, vulnerable people are effective socially as well as economically. The only way that the vulnerable group can be empowered is through radical revamping of the socio-economic structure. Thus, the legal aid programme aimed at revamping the socio-economic structure by way of removing socially unjust institutions and creating a new order based upon the ethos of human liberty, equality and dignity of mankind. Legal Aid in its common sense conveys the assistance provided by the society to the vulnerable groups in their effort to protect their rights and liberty. Broadly speaking, it means and includes providing legal aid, arbitration, counselling and making available lawyers to those who were unable to pay for the legal services and also to some special categories of the society who are normally treated as less privileged.[5] It also means the creation of legal awareness among people about their rights, duties and obligations, right of the underprivileged, poor neglected and indigent. However, legal aid, in its common sense, convey the assistance 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 mighty and muscled members of the society. Therefore, legal aid to the needy has been recognized as one of the facets of access to justice in Madhav Hayawadanrao Hoskot vs. State Of Maharashtra[6] where this court observed:

> *"If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the Court under Art. 142 read with Arts. 21 and 39A of the Constitution, power to*

[4] *Id*. at 16.
[5] *Id*. at 13.
[6] (1978) 3 SCC 544.

*assign counsel for such imprisoned individual for doing complete justice. This is a necessary incident of the right of appeal conferred by the Code and allowed by Art. 136 of the Constitution. The inference is inevitable that this is a State's duty and not the government's charity. Equally affirmative is the implication that while legal services must be free to the beneficiary, the lawyer himself has to be reasonably remunerated for his services."*

Similarly in ***Sukh Das v. Union Territory of Arunachal Pradesh***7, It was held that *"Free legal aid at the State's cost is a fundamental right of a person accused of an offence. This right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21."* In this context, the emergence of the concept of legal aid came as a ray of hope for these poor people. Subsequently, the initiation was taken by the legal professionals not on saved from exploitation but also made them feel that legal rights and interests are protected. In **Centre of Legal Research v. State of Kerela,**[8] the Apex Court directed that voluntary organizations and social actions groups engaged in Legal Aid Programmes must be encouraged and supported by state.

However, Legal aid becomes a legal service in a real sense when it becomes accessible to the subjects of its objects and when they get benefit by taking advantage of impartiality and integrity of the system of administration of justice.[9] Legal aid is no doubt an important element in ensuring equal opportunities for access to justice are available to all persons irrespective of their social or economic position. The mere provision of legal aid facilitates is, however, insufficient to ensure access to justice. It has been rightly pointed out: "true access to justice is achieved only when no person is deterred by financial, psychological or physical barriers from seeking a legal solution for the assertion of a right, for making a claim or for defending a claim or criminal charges. While the ultimate realization of this goal may indeed be utopian, it can be practically achieved by making the path to the court, the normal dispenser of justice, easier for the underprivileged, by ensuring equality before the court, or by creating a new method of dispute resolution that do not embody the inequalities

[7] AIR 1986 SC 99.
[8] AIR 1986 SC 1322.
[9] *Id*. at 48.

inherent in the adversarial court structure."[10] It is therefore, essential to provide adequate legal advice and representation to all those threatened as to their life, liberty, property or reputation, who are not able to pay it[11]

## 5.3 MEANING OF LEGAL AID:

Legal aid means legal advice, assistance and/or representation and the provision of it at no cost to the person entitled to it. It is social assistance or helps extended to one facing a legal problem but not affording. One is handicapped by his scares resources and means, to stand equal to his opposite party in his exercise to get justice. **Lord Denning** while observing that legal aid is a system of government funding for those who cannot afford to pay for advice, assistance and representation said: *"the greatest revolution in the law since the post-second world has been the evolution of the mechanism of the system for legal aid. It means that in many cases the lawyer's fees and expenses are paid for by the state; and not by the party concerned. It is a subject of such importance that I venture to look at the law about costs-as it was as such it is and as it should be."* Legal assistance, the fundamental objective of a legal aid programme, may be said to be two- fold to sensitize the poor with basic legal know how and to make equal access to law and courts for the poor as is for the rich. In fact legal aid is privilege as well as an opportunity to law men to rout legal ignorance of the poor and pragmatically help them in securing justice free of cost, without quid pro quo.[12]

In short the aid or assistance of the community making an unequal member have an access to justice on an equal footing with the powerful and privileged is called the legal aid. **Justice Brenon** of the Supreme Court of United Kingdom as stated in his address at the 4th Annual Meeting of **the Monmouth County Legal Aid Society**[13] that:

[10] Fredrick H. Zemans (ed.), *Perspective on Legal Aid - An International Survey*, 10 (Greenwood Press 1979).
[11] Krishna Iyer, *Law and life* 94 (Universal Law Publication, 1972).
[12] S.N. Dhyani, *Law- Morality and Justice: Indian Development*116 ( Metropolitan Book Co. Pvt. Ltd. 1984)
[13] Francis P. McQuade and Alexander T. Kardos, "Mr. Justice Brennan and His Legal Philosophy" 33 Issue 3 *Notre Dame L. Rev.* 346 (1958).

> *"Nothing rankles more in the heart than a brooding sense of injustice. The illness we can put with. But injustice makes up pull things down. When the rich can enjoy the law, as a doubtful luxury, and the poor, who need it most, cannot have it because its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real, because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness*."[14]

In a general sense, legal aid means the professional legal assistance given either free or for a nominal sum, to indigent persons in need of such help. Legal service includes the rendering of services in the conduct of any case and other legal preceding before any court other authority or tribunal and the giving of advice on any legal matter.[15] **John Rawls** first principle of justice is that each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberties for all.[16] Provision for free legal services is an obligation of the state to an accused that is unable to engage a lawyer on account of reasons such as poverty, indigence or in communication the situation.[17] The absence of meaningful free legal services to the poor would only propagate a sense of injustice amongst the poor and shatter the cherished constitutional and human right to equality.[18] Legal Aid to accused persons is a mandatory constitutional obligation, it is also necessary that such laws should be competent without means in all cases tried by a court of session. Article 39-A of the Constitution promotes a laudable objective of providing legal aid to needy litigants and obliges the State to make access to justice affordable for the less fortunate sections of the society. At present **Article 39-A** was inserted by way of the 42nd amendment in the constitution and placed immediately after article 39 aimed at achieving equality as the product of social and economic justice set forth in the preamble. From the plain reading of this article, we find that promotion of justice

[14] *Ibid.*
[15] Legal Service Authority Act, 1987 Section 2 (1) (a) reads as *"case" includes a suit or any proceeding before a court."*
[16] John Rawls Theory of Justice in Present Scenario by Apoorva Yadav- *available at*: www.goforthelaw (last visited on November 13, 2021).
[17] *M.H Hoskot* v. *State of Maharashtra,* (1978) 3 SCC 544.
[18] Supriyo Routh "Providing Legal Aid: Some Untried Means" 375 *JILI,* 50, (JULY-SEPTEMBER 2008).

with the instrument of the legal system and couched upon the equality of opportunity is the preamble's objective sought to be accomplished.[19] And legal aid has been devised in this directive as a remedy capable of grappling with an impediment in the name of economic and other disabilities obstructing the equal opportunities for securing justice. The inclusion of the right to legal aid as a directive principle does not necessarily dilute its importance or its enforceability. The directive principles, in **Part IV** of the Constitution, are not too viewed as being non-enforceable per se. A comparison could be made with similar rights guaranteed under the **International Covenant on Economic Social and Cultural Rights (ICESCR)** adopted by the United Nations General Assembly in 1996. **Under art. 2 (1) ICESCR** each state party, undertake a two-fold obligation- an obligation of conduct, where the state uses 'all appropriate means' including 'the adoption of legislative measures' and an obligation of result were under the progressive realization of the ESC right is to be achieved. The Supreme Court has used the directive principle of state policy to expand the ambit and scope of the right under art 21 of the Constitution. The right to legal aid recognised as forming part of the right to life under art. 21,[20] gets further strengthened by the inclusion of art 39-A directive principle of state policy.[21]

### 5.3.1 The Concept of Free Legal Aid for Vulnerable Group:

Legal aid becomes a legal service in a real sense when it becomes accessible to the subjects of its objects and when they get benefit by taking advantage of impartiality and integrity of the system of administration of justice.[22] Legal aid is no doubt an important element in ensuring equal opportunities for access to justice is available to all persons irrespective of their social or economic position. The mere provision of legal aid facilitates is, however, insufficient to ensure access to justice. It has been rightly pointed out: "true access to justice is achieved only when no person is deterred by financial, psychological or physical barriers from seeking a legal solution for the assertion of a right, for making a claim or for defending a claim or criminal charges. While the ultimate realization of this goal may indeed be utopian, it

[19] Sujan Singh, *Legal Aid: Human Rights to Equality*, 142 (Deep and Deep Publications, 1997).
[20] *MH Hoskot* v. *State of Maharashtra* (1978) 2 SCC 544.
[21] *State of Maharashtra* v. *MP Vashi* (1995) 5 SCC 730.
[22] Sangita Dhingra Sehgal, *Commentary on The Legal Services Authorities Act* 48 (Universal Law Publishing, New Delhi- India 2016).

can be practically achieved by making the path to the court, the normal dispenser of justice, easier for the underprivileged, by ensuring equality before the court, or by creating a new method of dispute resolution that do not embody the inequalities inherent in the adversarial court structure."[23] It is therefore, essential to provide adequate legal advice and representation to all those threatened as to their life, liberty, property or reputation, who are not able to pay it[24]

### 5.3.2 Historical Development of Legal Aid services in India:

The idea of legal aid originated in the medieval period. The legal aid, however, was considered to be hybrid in some form of political rights or charity from the rich to the poor initially. In the fact of changing social-economic conditions, this view was not found acceptable. In modern society, legal aid cannot be placed on the lower side. If the law has to play, a purposeful and significant role in a democratic order for the socio-economic reconstruction of the society, legal aid must be meaningful and substantive education to the poor about law and their rights and provide a solution to their legal problems.[25]

After coming into force of the constitution of India, to implement the basic fundamental rights of the citizens and give effect to the constitutional mandate of the rights of life and liberty especially in the case of poor and downtrodden people of the country, the government started doing ground work for providing free legal aid to deserving persons and in this regard, some discussion took place in the various conference of law ministers and law commissioners but no effective proposal could come forward.[26] In different states legal aid schemes were floated through Legal Aid Boards, Societies and Law Departments.

In providing legal aid in the pre-independence phase was by the **Bombay Legal Aid Society (BLAS)** formed in 1921, BLAS has among its objective- making justice accessible to the poor and reducing the costs of litigation; providing lawyers to the poor on the basis of need; rendering legal aid gratuitously and to make provision

[23] Fredrick H. Zemans (ed.), Perspective on Legal Aid - An International Survey, 10 (Greenwood Press 1979).
[24] Krishna Iyer, *& And Life* 94 ( Universal Law Publication, 1972).
[25] Sangita Dhingra Sehgal, *Commentary on The Legal Services Authorities Act* 7 (Universal Law Publishing, New Delhi- India 2016).
[26] *Ibid*.

for payment of court fees. To quality legal aid, an applicant had to satisfy the means test and to have a bona fide case. The government, the High Court of Bombay and other courts soon developed a practice of referring persons in need of legal assistance to BLAS.[27] The society held a conference in 1949 and 1955, brought out pamphlets titled ***'Justice and Poor'*** and also moved both the courts and the government for making amendments in the practice and the procedure of the courts. It was the BLAS that initiated the move both the courts and the government of Bombay constitute a committee to make a recommendation for formulating a scheme of state-sponsored legal services.[28]

**5.3.2.1 The Bombay Committee:**

On 23rd March 1949, the government of Bombay appointed a committee under the chairmanship of **Justice N.H.** Bhagwati. The Bombay committee, however, was clear that "*the problem of legal aid is under the modern conception of the obligation of the state to be treated on par with other social insurance schemes like old age pension, free education, free medical relief… and, therefore, the state must take upon itself the responsibility of providing legal aid to poor persons of limited means.*" Adequate publicity had to be given about the availability of legal aid. Every notice and summons issued by the court would inform the recipient about legal aid. Notice board would also be put at the police station to inform people picked up in connection with a criminal investigation about the availability of legal aid were the suggestions of committee. Legal aid was seen as forming part of the court system which was inherently litigation-oriented. The limiting of the availability of legal representation to cases involving offences punishable with a substantial sentence of imprisonment was an attempt at balancing the state's financial capacity against the right of the accused to a fair trial in all criminal proceedings involving loss of liberty. The emphasis on the standards was evident in the prescription of a minimum qualification of the lawyer to be empanelled.

[27] Law Commission of India "14th Report on Reform in the Administration of Justice, 621" (Appendix IV1958).
[28] *Ibid.*

**5.3.2.2 Trevor Harries Committee in West Bengal**:

Simultaneous with the Bombay committee in Calcutta, there was a committee constituted by the Government of West Bengal under the chairmanship of **Sir Arthur Trevor Harries**, to examine the question of the availability and administration of legal aid service in that state. This committee like the Bombay committee recommended a three-tier institutional structure for delivery of legal aid services and restricted its availability to cases where the accused was charged with an offence punishable with a minimum sentence of imprisonment of 5 years or more or with a death sentence.[29] However, it took a different view than on other significant aspects. Persons who acted bona fide in the exercise of the right of private defence and complainants whose case had not been taken by the police were also entitled to legal aid. In the committee suggestions, the question of legal awareness was also not addressed. Legal aid itself was viewed as being limited to providing representation in the courts.

**5.3.2.3 Kerala Rules:**

In the post-independence era, Kerala was the first state to formulate a policy on legal aid. In 1958 the Government of Kerala adopted the Kerala Legal Aid (to the Poor) Rules that extended assistance of the lawyer to the poor through the courts.30 The Governments of -Maharashtra and Tamil Nadu came up with similar schemes during the late 50s and early 60s that provided legal assistance to the scheduled castes, scheduled tribes and other backward classes of people and poor in civil and criminal cases.31 That the focus of the 1957 Rules was the inequality encountered by socially and economically disadvantaged sections in accessing the justice system was made explicit in the preamble which acknowledged that the "*in the administration of justice in both criminal and civil court the member of the scheduled caste and schedules tribes and other people who are poor are, in most of their cases, not in a position to engage counsel to appear and plead for them.*"[32]

[29] The Recommendations Of The Trevor Harries Committee are Set Out In 14th Report, Appendix II, P 611.
30 Law Commission of India "14th Report on Reform in the Administration of Justice, 335" (Appendix IV1958).
31 *Ibid.*
[32] As quated in S. Sreekumar, implementation of legal aid in Kerala, p 57.

### 5.3.2.4 14th Report of Law Commission Report (1958):

The government of India set up the 14th Law Commission under the chairmanship of **Mr M.C. Setalvad,** then Attorney-General of India who investigated various aspects of the system of judicial administration of the country. The Commission suggested prominent changes to make the judicial system speedier and less expensive.[33] This Commission dealt with the issue of legal aid. The Commission was conscious of the fact that unless provisions are made for assisting the poor person for providing court fees, lawyer fees and other incidental charges of litigation. That denied the equal opportunity of seeking justice. Legal aid to the poor is not a minor procedural law problem but is a question of a fundamental character. The Commission further held that it is the obligation of the state to provide legal aid. It also rejected the plea that providing legal aid would make people more litigious, would increase litigation, put an extra-financial burden on the budget and would invite dishonest and unscrupulous persons to misuse this facility. The commission further requested the lawyers and legal fraternity to take some moral and social responsibilities for implementing the scheme of providing free legal aid to the poor as they have to conduct their case in the court of law. But the commission opposed the putting force and compulsion of doing this work. The Law Commission had noticed the formidable backlog of a criminal cases in many of which those facing trial needed legal assistance. However, it does not make the linkage between legal aid and the need to provide access to a fair and speedy trial.

The government response to the 14th Law Commission Report, however, was disappointing. It would take the government 15 years to implement the suggestions contained in it.[34]

### 5.3.2.5 Gujarat Committee (1970):

Another major step towards providing free legal aid took place when the government constituted a Gujarat Committee under the chairmanship of **Justice P.N. Bhagwati**, Judge Supreme Court of India who observed "*even while retaining the adversary system some changes may be effected whereby the judge is given a greater*

[33] Submitted to Government of India on 26-9-1958.
[34] S. 304 of Cr.P.C. went only as for as giving effect to the recommendation of the 14th and 41st Reports.

*participatory role in the trial so as to place poor, as for as possible on a footing of equality with the rich in the administration of justice… Legal aid means providing arrangement in the society so that the machinery of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement of the rights given to them by law".*[35] In such an arrangement **Justice P.N. Bhagwati** emphatically observes*, "the poor and the illiterate should be able to approach the courts and their ignorance and poverty should not be an impediment in the way of their obtaining justice from the court"*.[36]

The committee approach is Legal aid and advice should be regarded not as a matter of charity or bounty but as a matter of right. It is a part of social security programme just as much as medical aid is. Responsibility of the state was fixed for providing legal assistance to the poor and indigent by stating that this obligation is not merely, socio-economic or political but is constitutional by reason of Articles14 and 22. The committee wanted that the state should make rules and legislation while taking into consideration socio-economic conditions prevailing in the country. It also emphasised that legal aid programmes and the organizations implementing the same must be responsive to the poor in giving legal service and must not be mechanical and wooden in its approach and even after the introduction of such programmes. There must be continuing examination of its utility and responsiveness to the poor. The report in detail stated the constitution of different Legal Aid Committee such as (a) The **Taluka Legal Aid Committee**, (b) The **District Legal Aid Committee** (c) The **State Legal Committee**. It is recommended that the legal service programme be implemented in its entirety but in a phased manner at three stages. Justice P.N. Bhagwati is widely regarded as the originator of India's legal aid programme, including setting up legal aid camps in rural areas, working with NGOs, establishing legal aid clinics etc.[37]

The Gujarat Committee was strong on developing the philosophy of legal aid as a tool to achieve social objectives. In attempting bail reform, in opening up prison, in providing duty counsel and in recommending test litigation and class action, it

[35] Government of Gujarat, "Report Of Legal Aid Committee" (1971).
[36] *Ibid.*
[37] Dr J.S.Singh; "Right to Legal Aid. A Human Right Perspective" 32-33 *Naya Deep Vol. VIII Issue*-3, (2007).

sought to unshackle legal aid from the framework of the traditional legal services programme.[38]

**5.3.2.6 Expert Committee on Legal Aid: Processual Justice to the Poor (1973):**

By a notification dated 27th October 1972, the Ministry of Law and Justice, Government of India, appointed an Expert Committee on Legal Aid with **Justice Krishna Iyer** as chairman to examine the matter of making legal aid and advice available to the community.[39]**Justice Krishna Iyer** in his 275 pages report submitted on 27th May, 1973 spoke highly in favour of the concept of Public Interest Litigation and emphasized the need for an active and widespread legal system that enable the law to reach the people, rather than requiring people to reach the law.[40] According to **Justice V.R. Krishna Iyer,** *"legal aid is an integral part of the legal system, not a matter of charity or confined to the four walls of the court building. the spiritual essence of a legal aid movement consists in inviting law with a human soul; its constitutional core is the provision of equal service as much to the weak and in want as too strong and affluent and the dispensation of social justice through the legal order."*[41]

**The terms of reference of the Expert Committee were:**

a) To consider the question of making available to the weaker section of the community and person of limited means in general, and educationally backward classes in particular, facilities for:
    i. Legal advise so as to bring among them an awareness of their constitutional and legal right and just obligation and for the avoidance of vexatious and unnecessary litigation: and
    ii. Legal aid proceeding before civil, criminal, and revenue courts so as to make justice more easily available to all sections of the community;

[38] The Gujarat Committee expected that court fees generated enough to meet the costs of legal aid and that in any event; this was not a ground to deny legal aid to the needy.
[39] Notification dated 27th October 1972 of the Government of India, Ministry of Law And Justice.
[40] *Available at:* www.legal service India. com( last visited on October 21, 2021).
[41] Government of India, Ministry of Law, Justice and Company Affairs, Department of Legal Affairs "Report of the Expert Committee on Legal Aid: Processual Justice to the People" (May 1973).

b) To formulate having regard to the resources available a scheme for legal advice and ad for the purpose aforesaid; and

c) To recommend the time and manner in which the scheme may be implemented.

**The Expert Committee** noted that "*legal aid is not just sending the poor man's brief to a lawyer with a cheque on the public exchequer but simulating those reflexes in the profession which will bond their skill to the sorrow of the poor and wean them away from the tempting of the proprietary."* Like the 1971 **Gujarat Report**, the Expert Committee pitched for a public sector in the legal profession, which should be manned by competent and efficient lawyers who are imbued with a sense of social service. The 1973 Report legal aid's clients as the geographically deprived, villagers, agriculture labour, industrial workers, women, children, Harijans, minorities and prisoners. **The Expert Committee** while discussing each group, paid attention to their nitration with the justice system. The committee somehow blamed the attitude of the judiciary in the country and professed the resolution of the dispute at the grass-root level Village Panchayats.[42] . Further, the report has also recognized the need of providing legal aid services to the poor to deal with the nexus between law and poverty. [43]

**5.3.2.7 Juridicare Committee Report (1977):**

Another committee of two judges **Justice P.N. Bhagwati** and **Justice Krishna Iyer** was set up for providing adequate legal service programmes in all the states on a uniform basis. This committee in its final report popularly known as ***"Report On National Juridicare: Equal Justice-Social Justice"*** submitted in the year 1977 stressed the need for a new philosophy of legal service programme to be framed in the light of socio-economic conditions prevailing in the country. It also opined that the traditional legal service programme, which is essentially court and litigation-oriented, cannot meet the specific needs and the peculiar problem of the poor in our country. Though the committee was in favour of regular arrangements for aid and advice to the under trials but was not in favour of habitual offenders or cases

[42] Committee on Legal aid titled as "Professionals Justice to Poor" (1972).
[43] Government of India, Ministry of Law, Justice and Company Affairs, Department of Legal Affairs "Report of the Expert Committee on Legal Aid: Processual Justice to the People" (May 1973).

involving the private claims. The report encourages the involvement of law students in legal aid schemes, particularly for preventive legal service. This report focused on the orientation of the different actors who would be the participants in the program which include members of the judiciary, law universities, law students, voluntary agencies and social workers. The clearly stated that the funding of the legal aid programme was the state responsibility and for this identified sources such as court fees collected from the litigants, legal aid steps, levy of a special case, donations and many more for the purpose of funding the legal aid programme and so on.[44]

The *National Jurisdiction Committee* rightly wanted the legal aid programme to revolve more around conciliation and compromise than equipped to fight to long-drawn litigation. The institution of *Lok Nyayalayas* was a unique contribution of the committee. The report desired the *Lok Nyayalaya* not to adjudicate but concentrate on the conciliation instrument of preventive justice. The *National Jurisdiction Committee* identified members belonging to the schedule caste, schedule tribe, the women, workers and those belonging to minority communities as per special class requiring the benefits of legal aid. One of the most important recommendations of the committee was that the legal service to weaker sections should be included in the National Plan. However, the most important development in this area, which flew out of the report, was the constitution of a central *Committee for Implementing Legal Aid Schemes.* **The 1977 Report** first focussed on the infrastructure of the legal services organisation which it is clear, would not be a department of the government but an autonomous institution headed by sitting or retired judges of the Supreme Court of India.[45]

The **1977 Report** was an amalgamation of the Gujarat Report and the 1973 Report in many respect, but the absence of certain aspects of the legal service programme was conspicuous. For instance, both the 1971 Gujarat Report and the 1973 Report had dealt with the issues arising from the criminal justice system separately. Reform of monetary bail system, providing representation at every stage of the criminal justice process, legal aid to prisoners within the jail and providing assistance to the victim of crime had been dwelt upon. Even the programmatic content

[44] Article of Varun Pathak *available at:* www.legal service India. Com (last visited on October 21, 2021).
[45] Committee on Legal aid titled as "Professionals Justice to Poor" (1972).

of the earlier reports was not adverted to. Expert says that it was a continuation of the earlier reports, the 1977 Report made no difference.

**5.3.2.8 Committee for Implementing Legal Aid Schemes:**

The central government on 26 September 1980 constituted another high powered committee for implementing a legal aid scheme to monitor and implement the comprehensive legal programme and to work out mechanisms which could operate and work out satisfactory at all levels i.e., National, State, District as well as Taluk levels on uniform basis. The said committee is titled **"Committee for Implementing Legal Aid Schemes" (CILAS).** The said committee was assigned the task to monitor the implementation of the legal aid programme on a uniform basis in all the State and Union Territories and to fulfil the objective of providing free legal aid. CILAS evolved a model scheme for legal aid programmes applicable throughout the country by which several Legal Aid and Legal Advice Board were set up in the State and Union Territories. The CILAS was funded by grants from the Central Government. The introduction of Lok Adalats added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum to the litigants for conciliatory settlement of their dispute. Social interest litigation is also encouraged by this implementation committee. Education is undoubtedly the more important task of this committee. In short, it can be said that CILAS has helped in extending the legal aid benefits to nooks and corners of India and has been emphasising the need for statutory support for this welfare programme.

**5.3.3 The Statutory Parameters of Free Legal Aid Services in India:**

Legal aid is the provision of assistance to people otherwise unable to afford legal representation and access to the court system. Legal aid is regarded as central in providing access to justice by ensuring equality before the law, the right to counsel and the right to a fair trial. A number of delivery models for legal aid have emerged, including duty lawyers, community legal clinics and the payment of lawyers to deal with cases for individuals who are entitled to legal aid. Legal aid has a close relationship with the welfare state and the provision of legal aid by a state is

influenced by attitudes towards welfare.[46] Subsequently, there is a number of statutory parameters of free legal aid services in India are given below:

**5.3.3.1 The Criminal Procedure Code, 1973:**

According to Section 304[47] of the Cr PC, an indicted person must be provided with legal services of a legal profession at the expense of the state. It is an obligation upon the state to ensure the compliance of the provision during the pendency of cases before the Court of Session. The state has the discretion to extend the application of the provision to any class or trial before other courts in the State. In case of violation of the provision under Section 304, the decision, delivered by the court, shall be declared null and void. The Supreme Court of India in **Khatri and Ors (II) v. State of Bihar**[48], while examining the nature and scope of Section 304 of Cr P C, observed that:

> *"The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of the indigent and whatever is necessary for his purpose has to be done by the State. The State may have its financial constraints and its priorities in expenditure… the law does not empower any Government to deprive its citizens of constitutional rights on a plea of poverty" Moreover, this constitutional obligation to provide free legal services to an indigent accused docs not arise only when the trial commences but also attaches when the accused is for the first time produced before the magistrate. It is elementary that the jeopardy to his personal liberty arises as soon as a person is arrested and produced before a magistrate, for it is at that stage*

[46] N.R.Madhava Menon, Dr.A.C.Pal and Mrs. Rupa Mehta, "Social Justice and the Indian Legal System" *Civil and Military Law Journal* Vol-41, (2005).

[47] The Code of Criminal Procedure 1973, Sec. 304, reads as *"Legal aid to accused at state expense in certain cases: (1) 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. (2) the high court may, with the previous approval of the state government make rule providing for- (a) the mode of selecting pleaders for defence under sub-section (2); (b) the facilities to be allowed to such pleaders by the courts; (c) the fee payable to such pleaders by the government, and generally, for carrying out the purposes of sub-section (1). (3) the state government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other courts in the state as they apply in relation to trials before the courts of session."*

[48] (1981) 1 SCC 635.

*that he gets the first opportunity to apply for bail and obtain his release as to resist remand to police or jail custody. That is the stage at which an accused person needs competent legal advice, representation and no procedure can be said to be reasonable, fair, and just, which denies legal advice and representation to him at this stage. We must, therefore, hold that the State is under a constitutional obligation to provide free legal services to an indigent accused not only at the stage of trial but also at the stage when he is first produced before the magistrate as also when he is remanded from time to time"*[49]

**5.3.3.2 The Civil Procedure Code, 1908:**

**Order 33** of the **Civil Procedure Code** enables an indigent person to institute suits, before a civil court, without requiring such a person to pay the court fees.[50] Further, where the person is unable to make such arrangements due to various reasons, the civil court has the discretion to assign a legal practitioner to such an indigent person.[51]

**5.3.3.3 The Legal Services Authorities Act, 1987:**

Further, in order to accomplish the objectives encompassed in **Article 39A** of the Constitution of India, the LSA was implemented.[52] The Legal Services Authorities Act, 1987, as amended by the Act of 1994, which came into force on 9 November 1995, aims at establishing a nationwide network for providing free and comprehensive legal services to the weaker sections. It makes it obligatory for the State to ensure equality before the law and a legal system, which promotes justice on a basis of equal opportunity to all. Legal aid strives to ensure that the constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of society. The LSA provides for the creation of

[49] *Ibid.*
[50] The Code of Civil Procedure, 1908, Order 33 Rule 17.
[51] The Code of Civil Procedure, 1908, Rule 9A reads as *"Court to assign a pleader to an unrepresented indigent person (1) where a person, who is permitted to sue as an indigent person, is not represented by a pleader, the court may, if the circumstances of the case so require, assign a pleader to him. (2) the high court may, with the previous approval of the state government, make rules providing for— (a) the mode of selecting pleaders to be assigned under sub-rule (1); (b) the facilities to be provided to such pleaders by the court; (c) any other matter which is required to be or may be provided by the rules for giving effect to the provisions of sub-rule (1)."*
[52] Act No. 39 of 1987; w e f October 11, 1987.

some legal services authorities for making available, free and competent services of the empanelled legal practitioners, to the disadvantageous strata of the society. The basic objective of the Act is to secure social justice for those who are not in a position to approach judicial/administrative authorities due to legal, social, economic, or other disabilities. Free legal aid services are provided before the judicial and quasi-judicial authorities, at different levels such as tribunals subordinate courts, high courts and the Supreme Court, by the specified agencies under the LSA.

According to Section 2(1) (a) of the Act, legal aid can be provided to a person for a 'case', which includes a suit or any proceeding before a court. Section 2(1) (a) defines the 'court' as a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions. As per Section 2(1)(c) 'legal service' includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter. The National Legal Services Authority is a statutory body, which has been set up for implementing and monitoring legal aid programs in the country. The Supreme Court Legal Services Committee has also been constituted under the Act. In every High Court also, The High Court Legal Services Committees are being established to provide free legal aid to the eligible persons in legal matters coming before the High Courts. The Legal Services Authorities Act, 1987 also provides for the constitution of the State Legal Services Committees, High Court Legal Services Committees, District Legal Services Committees and Taluk Legal Services Committees.[53]

**5.3.3.3.1 National Legal Services Authority (NALSA):**

National Legal Services Authority was constituted on 5 December 1995. According to Section 3 (1) under the Chapter II of the Act, the Central Government is instructed to constitute a body at the National level known as the National Legal Services Authority, to exercise powers and perform functions conferred on it or assigned to it under the Act. The National Legal Services Authority is a statutory body, which has been set up for implementing and monitoring legal aid programs in the country. The legal aid program adopted by 'NALSA' includes promoting legal

[53] Justice T .Mathivanan, Judge, *Legal Aid Issues, Challenges and Solutions: An Empirical Study*, 8 (National Law University, Delhi 2017).

literacy, setting up legal aid clinics in universities and law colleges, training paralegals, and holding legal aid camps and Lok Adalats. National Legal Services Authority is the apex body constituted to lay down policies and principles for making legal services available under the provisions of the Act and to frame the most effective and economical schemes for legal services. It also disburses funds and grants to State Legal Services Authorities and NGOs for implementing legal aid schemes and programs.

**5.3.3.3.2 Supreme Court Legal Services Committee:**

The Supreme Court Legal Services Committee has been enacted under the Legal Services Authorities Act, 1987 for the effective rendering of justice in the apex court. If a person belongs to the poor section of the society having an annual income of less than Rs. 1.25Lac or belongs to Scheduled Caste or Scheduled Tribe, a victim of natural calamity, is a woman or a child or a mentally ill or otherwise disabled person or an industrial workman or is in custody including custody in protective home, he/she is entitled to get free legal aid from the Supreme Court Legal Aid Committee. The aid so granted by the Committee includes the cost of preparation of the matter and all applications connected therewith, in addition to providing an Advocate for preparing and arguing the case. Any person desirous of availing legal service through the Committee has to make an application to the Secretary and hand over all necessary documents concerning his case to it. The Committee after ascertaining the eligibility of the person provides necessary legal aid to him/her.

**5.3.3.3.3 State Legal Services Authority (SLSA):**

In every State, State Legal Services Authority has been constituted to give effect to the policies and directions of the NALSA and to give free legal services to the people and conduct Lok Adalats in the State. Hon'ble the Chief Justice of the respective High Court who is the Patron-in-Chief of the State Legal Services Authority heads the State Legal Services Authority. A serving or retired Judge of the High Court is nominated as its Executive Chairman.

### 5.3.3.3.4 District Legal Services Authority:

DSLA In every District, District Legal Services Authority has been constituted to implement Legal Services Programmes in the District. The District Legal Services Authority is situated in every District and chaired by the District Judge of the respective district. 70 District Legal Services Authorities have been created in the State of Uttar Pradesh to regulate legal aid services.[54]

### 5.3.4 Eligibility criteria under the Free Legal Aid Scheme:

Free legal services under the provisions of the LSA, to the eligible people, are provided for filing or defending a case.[55] These benefits are available to some specific sections of society such as a person belonging to Schedule Tribe and Schedule Caste; women, children, victims of human trafficking, disabled person,[56] industrial workman, and person in custody in a protective home.[57] Legal aid services can also be approved in cases of public importance.[58] According to the provisions of Section 12 of the LSA, and the Regulations, that have been framed by the Supreme Court, the pecuniary limit, for availing legal aid services, before the Supreme Court, has been fixed at rupees one lakh twenty-five thousand.[59]

The National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010[60] provides the process for claiming legal aid benefits. The Regulation stipulates that any person, who fulfils all requirements, can make an application under **Regulation 3** in a specific format as prescribed[61] and should submit

[54] *Available at:* https://www.india.gov.in (last visited on October 11, 2021).
[55] Legal Services Authorities Act, 1987, s. 12.
[56] Disabilities (Equal Opportunities, Protection of Right and full participation) Act, 1995, s. 2 (1).
[57] Immoral Traffic (Prevention) Act, 1956, s. 2 (2) or in a juvenile home under the meaning of Section 2 (J) of the Juvenile Justice Act, 1986, or in a psychiatric hospital or psychiatric nursing home under the Section 2 (2) of the Mental Health Act, 1987.
[58] SCLSC Regulations, 1996, Regulation 15.
[59] The SCLSC Regulations, 2000.
[60] Regulations have been framed under the authority of section 29 of the LSA, 1987 (39 of 1987) and applicable to all legal services authorities established under the LSA.
[61] The National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 Regulation 5: reads as "*Proof of entitlement of free legal services (1) an affidavit of the applicant that he falls under the categories of persons entitled to free legal services under section 12 shall ordinarily be sufficient. (2) the affidavit may be signed before a judge, magistrate, notary public, advocate, member of parliament, member of legislative assembly, elected representative of local bodies, gazetted officer, teacher of any school or college of central government, state government or local bodies as the case may be. (3) The affidavit may be prepared on plain paper and it shall bear the seal of the person attesting it."*

it to the designated authority. In case a person is not able to make an application due to some disability such as illiteracy or otherwise, the designated authorities may make some arrangements for filing such an application before the appropriate authorities for legal aid services.[62]

### 5.3.5 Amplitude of the Free Legal Aid Services:

Legal aid services have been provided to eligible people in various modes under the relevant primary and secondary legislations in India. Legal aid services under the scheme may be in the form of payment of court fees, process fees and all other charges which may be incurred in connection with any legal proceedings and charges for drafting, preparing and filing of any legal proceedings and representation by a legal practitioner in legal proceedings[63] . The services also include the cost of obtaining and supplying certified copies of judgments, orders and other documents in legal proceedings and the cost of preparation of paper book (including paper, printing and translation of documents) in legal proceedings.[64] There are some offences that are not covered under the ambit of the free legal aid scheme. According to **Regulation 14** of the **SCLSC Regulation**,[65] the legal aid services shall not be available to an accused, in cases of defamations, malicious prosecution, contempt of court proceedings, election-related issues, offences involving a fine not exceeding fifty rupees, and economic offences and offences against social laws under the **Protection of Civil Rights Act, 1955** and the **Immoral Traffic (Prevention) Act, 1956**. A victim is not prohibited from availing free legal aid services in above-mentioned

[62] Legal Services Authorities Act, 1987, s. 13, reads as "*Entitlement to legal services (1) persons who satisfy or any of the criteria specified in section 12 shall be entitled to receive legal services provided that the concerned authority is satisfied that such person has a prima-facie case to prosecute or to defend. Requests received through e-mails and interactive on-line facility may be considered free legal services after verification of the identity of the applicant and on ensuring that he or she owns the authorship of the grievances projected. Persons who satisfy any of the criteria shall be entitled to receive legal services. However, the concerned authority should be satisfied that such person has a prim facie case to prosecute or to defend. A person as to satisfy the requisite limit of income or other conditions, as specified in the Act should make an affidavit. Subsequently the appropriate authority has the discretion to confirm on the aid (2) An affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this act unless the concerned authority has reason to disbelieve such affidavit."*

[63] *Ibid.*

[64] SCLSC Regulations, 1996, Regulation 13; similar provisions are also available under the DLSA Regulation, 2002, see also NALSA (Free and Competent Legal Services) Regulations, 2010.

[65] *Ibid.*

cases.[66] It is very important to mention that legal services, provided under the Regulations[67] and the LSA, may be withdrawn in some contingencies by the designated authorities. Legal aid may be terminated in cases where the person had sufficient means, obtained services by misrepresentation or fraud, material change in the circumstances of the aided person, misconduct, misdemeanour or negligence on the part of the aided person in the course of receiving legal service, an aided person not co-operating with the Committee, engaging a legal practitioner other than the one assigned by the Committee and in case of abuse of the process or legal services under the legal aid schemes. Legal services can be terminated if the aided person dies, except when the right or liability survives in civil proceedings.[68] Illiteracy, lack of financial resources, social backwardness, and lack of committed and competent legal professionals are the major factors that hinder people from getting access to the free legal aid services which ultimately results in denying access to judicial/ quasi-judicial authorities for seeking justice. Disadvantageous strata of society lack the courage to exercise their legal rights due to scarcity of resources and other social and legal reasons, which expose these vulnerable people to all types of exploitation at the hands of exploiters.

### 5.3.6 National Mission of Justice Delivery and Legal Reforms in India:

Before initiating a discussion on a new area, the existing regime requires to be carefully analysed. In this context, the immediate task is to locate the right or provision to legal aid in the legal framework of the country and peep into its jurisprudential basis. The traditional legal service programme also suffers from the vice of passive acceptance of the fact of poverty and consequent total absence of, or at best inadequate, socio-economic analysis of the nature of poverty and its concomitant injustices.[69] It gazes upon the vulnerable groups as simply traditional clients without money. It accepts a static view of the law. It regards law as a given dictum which the

[66] *Ibid.*
[67] *Ibid.*
[68] SCLSC Regulations, 1996, Regulation 18, reads as *"Legal service shall not be withdrawn without giving due notice thereof to the aided person or to his legal representatives in the event of his death, to show causes as to why the legal service should not be withdrawn. Where the legal services are withdrawn on the grounds set out above, the Committee shall be entitled to recover from the aided person the amount of legal service granted to him."*
[69] *Available at:* http://14.139.60.153/bitstream/123456789/7618/1/Initiating%20Legal%20Literacy%20Programmes_G2708.pdf( last visited on October 11, 2021).

lawyer has to accept. Upon which he has to work, regards the poor as beneficiaries under the programme rather than as participants in it. All programmes are confined in their operation to problems of corrective justice and are blind to the problems of distributive justice. Therefore, it cannot be effective in bringing about real change in the living conditions of the deprived and vulnerable groups of the community. What we need is a legal aid service programme that is designed to change instead of merely uphold existing law and social structures. Particularly, it is only for the distribution of power within society. Because these may be the factors that effectively prevent the poor from fully sharing in the processes and benefits of development.

Legal aid programme in its generic meaning is no more limited to the assistance or services provided during the litigation. In its modern understanding as is evident from the policy formulations of the different schemes. It includes the following aspects: "(a) representation by a lawyer in civil, criminal and administrative proceedings; (b) educating the poor of their rights and entitlements under the law; (c) organizing the poor and mobilizing voluntary social action groups to assert the rights and entitlements on behalf of the poor; (d) seeking reforms in the law to remove the disabilities of the poor and to provide affirmative state action to achieve effective equality; (e) monitoring welfare administration and making socio-legal surveys to highlight the problems of the poor for a legal solution; (f) conducting public interest litigation and innovating new strategic tools for cheap, expeditious justice to classes of poor."70 Thus, though the court oriented traditional method of provision of legal assistance is no more the sole aspect of legal aid, but, perhaps, it is still the most important aspect of any legal assistance scheme. It is through the representation in the court of law that the actual realization of the right to legal aid in securing the 'rights' of the indigent takes place. Realistically speaking, in a country like India where the greater chunk of the people is still 'not meaningfully educated' and who struggle to make the ends meet, the scope of preventive measures through awareness and education to secure civil and political rights is very limited. Under such circumstances, it becomes immensely necessary to emphasise the curative mechanisms of legal services. Hence, legal aid in and through courts should be well formulated and passionately executed.

70 Upendra Baxi (ed.), *Law and Poverty - Critical Essays* 377 ( N.M. Tripathi, 1988).

Department of Justice in collaboration with the United Nations Development Programme started a pilot project in 2006, on 'Access to Justice (A2J) for the Marginalized People'. The project was implemented on a full scale, from 2009-2012 in the seven states of Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Odisha, Rajasthan and Uttar Pradesh. The Project sought to (1) empower the poor and the disadvantaged sections of the society to seek and demand justice and (2) improve the institutional capacities of the key justice service providers so as to enable them to effectively serve the poor and the disadvantaged. The project was implemented in its second phase from 2013-2017. Maharashtra was included in the second phase of the project.

In its 2nd phase, 2013-17, the A2J project was structured and planned around strategies seeking to strengthen the legal services institutions and processes, including support for the Legal Services Authorities, support for specific selected initiatives under the National Mission on Justice Delivery and Legal Reforms and initiatives to support empowerment of the vulnerable. The activities under this phase included training of Para Legal Volunteers, Panel Lawyers and other legal literacy initiatives besides establishing institutional collaborations to achieve the goals of facilitating access to justice.

The evaluation report of the project, in 2017,[71] recommended building strategic institutional partnerships across various ministries in the central government that implement welfare programs for the poor and the socially vulnerable. The recommendations also included increasing engagement with NALSA for capacity building of panel lawyers, PLVs and partnerships with SRCs and SIRDs across states; expanding opportunities for legal literacy training and scope for service delivery at CSCs; exploring scope for engaging with Panchayati Raj Institutions; targeting vulnerable groups such as children in conflict with law and tribal communities; refining legal information hub/kiosk model; exploring possibility of development of mobile application; sustaining partnership with NMJDLR; continuing support to research studies; increasing engagement with the State Biodiversity Board (SBB); capacity building of law enforcement

[71] Access to Justice for Marginalized Persons-Evaluation and Documentation, Final Report, 18th MAY 2017 by Sutra Consulting, for UNDP. *available at:* https://doj.gov.in/other-programmes/access-justice-marginalized/access-justice-marginalized( last visited on October 9, 2021)

A2J Project is in its second phase stared from 2013 and over the past seven years has endeavoured to address some of the pertinent issues regarding the justice sector in India. It is a collaborative effort for the welfare of the vulnerable groups, between the UNDP and the Department of Justice. The project comprises multiple components including legal research and evidence gathering to strengthen policy, systematic analysis of data on crucial aspects of the judiciary to influence policy, strengthening of the justice delivery through capacity building of Legal Aid Services, imparting legal literacy through strategic institutional partnerships, conducting innovative pilots to raise legal awareness and generating demand from the grassroots.[72] It has had a special focus and concern on working with marginalized groups belonging to Dalit and Adivasi communities, women and children. The pilot efforts have led to significant learning and promise to bring in deep-seated change and development if pursued over a while. The main components of the A2J project were:

**5.2.6.1.1 Strengthening Capacities of Legal Services Authorities**:

The project aimed to conduct training for panel lawyers and paralegal volunteers to provide an integrated model of delivery of legal aid services.[73] The outcomes of these training have been effective as panel lawyers were updated on legislations related to marginalized sections. Therefore, reported having improved their skills engendering these special foci and concern on working with marginalized groups belonging to Dalit and Adivasi communities, women and children. The pilot efforts have led to significant learning and promise to bring in deep-seated change and development if pursued over a while. The main components of the A2J project were:

- **Legal awareness-**

Today the position is that the entire legal system has failed to inspire confidence in the poor because the poor in their contest with the legal system have always been on the wrong side of the line. They have always come across the "Law for the Poor" rather than the "law of the poor". The law is regarded by them as a negative and restraining force. Something is deeply mysterious and forbidding and not a positive and social device. If we may quote **Robert F. Kennedy**: "To the poor man,

[72] *Ibid.*
[73] *Available at*: https://doj.gov.in/sites/default/files/UNDP%20Final%20report_18May2017.pdf (last visited on October 9, 2021).

'legal' has become a synonym neither simply for technicalities and obstruction nor for that which is to be respected.[74] The poor man looks upon the law as always taking something away". This attitude of the poor towards law is, to a considerable extent, due to their ignorance of the law, their lack of experience with the beneficial aspects of law and their consequent lack of use of it for the protection and furtherance of their interests. This lack of confidence is highly dangerous because it would seriously impair the efficacy of the legal system and corrode the foundations of the rule of law. Legal awareness of the poor would, therefore, bring a further advantage of increasing the viability and effectiveness of the legal system by creating confidence in the poor and enabling them to make conscious use of law as an agent or instrument to further their interests. It is through awareness of their rights and benefits that they will become strong and self-reliant.[75] The social action groups must therefore undertake a massive programme of creating legal awareness amongst the poor. The programme should be wholly functional and oriented towards the solution of the legal problems of the poor. It must be calculated to promote group consciousness, group dialogue and group action. The educational campaign must be aimed at advertising broader meanings of the actual or putative case load of the legal service programme aimed at producing a political dialogue and not simply a technical dialogue about legal rights.[76]

- **Technical Support to National Mission on Justice Delivery and Legal Reforms**:

The main targets of the NMJDLR were to reduce pendency increase accountability, reduce pendency and improve standards and capacities of the judiciary. Technical support was provided by UNDP by way of rigorous research and systemic analysis of data. That should contribute towards strengthening several aspects including data systems maintained by the Legal Aid Camps constitute a complete package of aid and advice at the doorstep of the village community developing institutional links and communication channels between the people and the administration. Every year hundreds of camps are held in different States some

[74]Prof. N .R. Madhava Menon *Legal Aid; Concept, Policies and Delivery System Initiating Legal Literacy Programmes* 6 (Indian University Association for Continuing Education New Delhi 1986).
[75] *Ibid*.
[76] *Available at:* http://14.139.60.153/bitstream/123456789/7618/1/Initiating%20Legal%20Literacy%20Programmes_G2708.pdf( last visited on December 11, 2021)

extending for more than a day even in remote villages and tribal areas settling a variety of disputes and organizing the poor to assert their rights through legal channels.[77]

- **Legal Empowerment**:

This component consisted of numerous pilots which targeted to work with grassroots to generate demand. It included developing simplified, yet technically sound literacy content that was mainstreamed and disseminated through strategic institutional partnerships such as the SIRD and SRCs.[78] It also led to the creation of a trained pool of resource persons within the community who imparted legal literacy.

## 5.4 PUBLIC INTEREST LITIGATION AND THE LEGAL AID MOVEMENT:

The legal aid movement and public interest litigation seeking to bring justice to these forgotten specimens of humanity. Who constitute the bulk of the citizens of India and who are actually and truly the "People of India" who gave to themselves this magnificent Constitution. Pendency of large arrears in the courts cannot be any reason for denying access to justice to the poor and weaker sections of the community.[79] That would be the destruction of the rule of law which forms one of the essential elements of public interest in any democratic form of government.[80]The change was brought about by the Supreme Court by liberalising the doctrine of *locus standi.*[81] Explaining the progress the formal chief Justice if India P**.N. Bhagwati,** who also prefer PIL as SAL, wrights:

> *"The Supreme Court of India has taken the view that though ordinary according to Anglo-Saxon system of jurisprudence, it is only a person to whom legal injury is caused and who has, therefore, a cause of action, who can approach a court of law for judicial redress but where poor people are*

[77] *Ibid*.
[78] Access to Justice for Marginalised Persons Evaluation and Documentation FINAL REPORT 18th MAY 2017 *available at:* https://doj.gov.in/other-programmes/access-justice-marginalized/access-justice-marginalized.
[79] *People's Union for Democratic Rights and Others* v.*Union Of India,* 1982 AIR 1473.
[80] Shailja Chander, *Justice V.K. Krishna Iyer on Fundamental Rights and Directive Principles,* 223 (Deep And Deep Publication, New Delhi, 1992).
[81] *Nakara* v. *Union of India*, AIR 1983 SC 1473.

*involved and legal injury is caused to a person or class of persons who by reason of poverty or disadvantaged position cannot approach the court, any member of public acting bonafide can bring an action before the court for judicial redress. It would not be necessary for such public-spirited individual or organisation to file a regular written petition in the court but he can move the court by just addressing a letter to the court because it would not be fair to expect him to incur expenses out of his pocket for approaching the court in a formal way. This has developed in the Supreme Court of India what I would call epistolary jurisdiction."*

Public interest litigation is a strategic arm of the legal aid movement. That is also intended to bring justice within the reach of the vulnerable groups, who constitute the low visibility area of humanity. PIL is a different kind of litigation from ordinary traditional litigation. It is essentially of an adversary character. Where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public Interest Litigation departs from typical Indian lawyering in its pro-activity and its orientation to large questions of policy. Particularly, it is justification by the government for its commitments to welfare and the relief of the oppressed. Although PIL is broader in scope than typical legal aid schemes. In crucial ways, it replicates the prevailing atomistic style.

PIL is brought before the court, not to enforce the right of one individual against another as happens in the case of ordinary litigation. However, it is focused to promote and indicating social justice. Social justice demands that violations of constitutional or legal rights of a large number of people. Those who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would also be destructive of the Rule of Law. Which is form one of the crucial elements of public interest in any democratic form of Government. The Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of

enforcement of their civil and political rights.[82] The Committee for Implementing Legal Aid Schemes Commissioned a plan for institutionalising public interest litigation as a major strategy of legal aid to the poor. The plan submitted by a law teacher contained the following observations:[83]

> *"A legal service programme for PIL should begin from below rather than be engineered from the top. For this, it is required to assist social mobilization to find its way against a maze of antagonistic forces including some agencies of the State .....Lawyers are too mal-distributed both vertically and geographically to be relied upon as the spearhead of socio-legal mobilization. The essential strength of legal mobilization therefore will stem from voluntary groups... Legal Aid schemes are inadequate to constitute the basic thrust of a strategic legal mobilization movement. The legal aid programmes should be expanded to meet some of the demands of public interest litigation. It should fund such litigation... Attempts at legal mobilization need (a) backward linkages with and in the community they serve, and (b) forward linkages to have links, resources capabilities to use law and legal institutions to advantage. Backward linkages include spreading legal literacy, taking up 37 cases, holding camps, training barefoot lawyers, etc. The forward linkages consist of preparing cases, giving advice, working out a strategy and hiring lawyers to argue the cases."*

The vulnerable group to have civil and political rights and the Rule of law is meant for them also. Though, today it just exists only on paper and not in reality. Large numbers of men, women, transgender and children who constitute the bulk of the population are living today a sub human existence in conditions of object poverty; utter grinding poverty bas broken their back and sapped their moral fibre.[84] They have no faith in the existing social and economic system. Nor can these poor and deprived sections of humanity afford to enforce their civil and political rights. The only solution of making civil and political rights meaningful to these large sections of

[82] *Supra* note 16.
[83] *Available at:* http://14.139.60.153/bitstream/123456789/7618/1/Initiating%20Legal%20Literacy%20Programmes_G2708.pdf (last visited on October 11, 2021).
[84] *Supra* note 16.

society would be to remake the material conditions and restructure the social and economic order. So, they may be able to realise the economic, social and cultural rights. Of course, the task of restructuring the social and economic order so that the social and economic rights become a meaningful reality for vulnerable groups, however, the mere initiation of social and economic rescue programmes by the executive and the legislature would not be enough. It is only through multi-dimensional strategies including public interest litigation that these social and economic rescue programmes can be made effective.

The time has now come when the courts must become the courts for vulnerable groups in this country. They must be alerted to the need of doing justice to the large masses of people. To whom justice has been denied by a cruel and heartless society for generations. The realisation must come to them that social justice is the signature tune of our Constitution. It is their solemn duty under the Constitution to enforce the basic human rights of vulnerable groups of the community. It also actively helps in the realisation of the constitutional goals. This new change has to come if the judicial system is to become an effective instrument of social justice otherwise, it cannot survive for long. Fortunately, this change is increasingly taking place and PIL is playing a large part in bringing about this change.

## 5.5 NGO's ROLE FOR ACCELERATING ACCESS TO JUSTICE:

Non-Governmental Organizations play a significant, dynamic and tremendous role in imparting justice to thousands of poor, weak, exploited and downtrodden people. Especially those who are undertrial, prisoners or accused persons, through its dynamic and dedicated approach towards the protection of fundamental rights of these persons. The United Nations Principles and Guidelines provide that lawyers are the "first" providers of legal aid, but that States may involve a wide range of stakeholders as legal aid service providers such as non-governmental organizations (NGOs), community-based organizations, charitable organizations, professional bodies or associations, and educational institutions. They have emerged as a powerful protective shield of assistance in the field of legal battle to these needy persons. These voluntary organizations are providing justice to the under trial prisoners or accused persons through free legal aid. Its strategic arms like public internet litigation, Lok Adalat, etc.

NGOs have functioned as the conscience of the national public in the field of human rights by taking prompt action. It also investigates the instances of human rights violation by undertaking studies and observations publication.

In the Indian context, the current Non-Governmental Organizations movement towards human rights activism owes its source to the emergency era. It has inherently to some of the leading events such as increasing weakness in professional efficiency of the State apparatus and many of the democratic institutions.[85] The emergency was a period characterized by the restriction of civil liberties. Through amendments to the Constitution to clamp down on the right to enjoy the fundamental rights enshrined within it. The promulgation of ordinances have legitimized the actions of government. Such as arresting people on the pretext of preventive detention as well as the establishment of new intelligence outfits, such as the CBI and RAW, which assisted the government with its agenda. As a result of the severe repression of civil liberties by the government, several individuals and organizations came to the forefront, as champions of human rights.[86] The most prominent among these were socialist **Jayaprakash Narayan"s People's Union for Civil Rights**. A similar organization that was established as the **People's Union for Democratic Rights**. The importance of these organizations was that they were autonomous of the government and critical of its actions.[87] NGOs work towards the release of prisoners by writing letters to prison officials, judges, and various government officers of the State. The Supreme Court of India and NHRC has taken action on numerous human rights violations complaints relating to accused person mainly reported by NGOs from different parts of the nation. An accused person is also a human being. He also has fundamental human freedoms in all circumstances. So it must be protected. The accused person has certain substantive rights in the criminal investigatory process. That is against legally unwarranted investigations as well as legally unwarranted arrest and pre-arrest illegal detentions and confinements. The Executive Chairman of an NGO called Legal Aid Services, West Bengal, **Sri. D K Basu** brought to the cognizance of the Supreme Court of India regarding deaths in police lock-ups and custody. By writing, a letter to

[85] *Available at:* http://ijlljs.in/wp-content/uploads/2017/04/Full_paper-Human_Rights-NGOs-word_97.pdf (last visited on December 11, 2021).

[87] Dr. Kaushlendra Mishra, *NGO's In The Human Rights Movement* 23 (Navyug Publisher & Distributers,2008).

the Chief Justice of India with regards to deaths in police lock-ups and custody. It was requested that the letter along with the news items be treated as writ petitions under the public interest litigation category. It has been accepted as a Writ petition. **Justice Kuldeep Singh** and **Dr A.S. Anand, JJ**. has observed that "*any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution whether it occurs during investigation, interrogation or otherwise. 'Custodial torture' is a naked violation of human dignity and degradation.*" That destroys to a very large extent, the individual personality. Custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law. The Supreme Court of India also noticed out in **Neelabati Bahera case**[88] that convicts, prisoners, detainees or undertrials are not denied of their fundamental rights under Article 21. It is only such restrictions as are permitted by law. That can be imposed on the enjoyment of the fundamental rights of arrestees and detainees. The president of a famous NGO, a Citizen for Democracy" **Mr. Kuldip Nayar**, an eminent journalist, brought it to the notice of the Supreme Court of India through a letter that the seven TADA detainees lodged in the hospital in the State of Assam were handcuffed and tied with a long rope to check their movement. Security guards were also posted outside the hospital. The Court treated the letter as a petition under Article 32 of the Constitution and held that handcuffing and in addition tying with ropes of the patient-prisoners who are lodged in the hospital is inhuman and a violation of human rights guaranteed to an individual under international law and the law of the land.[89] The Supreme Court of India expressed serious concern over the violation of the law laid down by that Court in **Prem Shankar Shukla's** case[90] against handcuffing of under trial or convicted prisoners by the police authorities. Handcuffing should be resorted to only when there is a clear and present danger of escape breaking out the police control and for this, there must be clear material, not merely an assumption. With the intervention of Citizens for Democracy, a human rights group; Sunil Batra, a convict under sentence of death challenged his solitary confinement and put forwarded the realities for the first time in history which made the Chief Justice of India and other Judges visit Tihar Jail on 23rd January 1978 to ascertain the existing conditions.[91]

[88] *Neelabati Bahera* v. *State of Orissa* (1993) 2SCC 746.
[89] *Citizen for Democracy* v. *State of Assam*, (1995) 3SCC 743.
[90] *Prem Shankar Shukla* v. *Delhi Administration* AIR 1980 SC 1535.
[91] *Sunil Batra* v. *Delhi Administration*, AIR 1978 SC 1675.

**The Free Legal Aid Committee, Hazaribagh** brought to the notice of the Court through a letter about the illegal detention of certain prisoners in the Hazaribagh jail for two or three decades without any justification. **The Petitioner, Peoples Union for Civil Liberties**, filed a writ petition under Article 32 of the Constitution for issuing appropriate directions for instituting a judicial inquiry into the fake encounter by Imphal police in which two persons were killed. A writ petition was filed to direct appropriate action to be taken against the erring officials and to award compensation to the members of the family of the deceased. The police authorities denied the allegation of "fake encounter". The Supreme Court of India held that the killing of two persons in a fake encounter by the police was clear violations of the right to life guaranteed in Article 21 of the Constitution. The defence of Sovereign immunity does not apply in such a case. In the case of **Vishaka & Ors v. State Of Rajasthan & Others**[92] where on behalf of a woman employee who was subjected to sexual abuse by her superior officer. An NGO (Vishaka) filed a petition to draw the attention of the Court, as to the atrocities committed on the womenfolk in workplaces. This case was a landmark decision towards the self-empowerment of women. For the first time, Courts have decided based on an international instrument. Whenever, there was no law specifically in force in India, for matters relating to sexual harassment. The move was based on India's ratification of the international instrument, Convention on the Elimination of all Forms of Discrimination against Women. The role of NGO's nowadays is very crucial and effective for society. The NGO's are coming forward to help the vulnerable groups. Whoever cannot afford Legal Services because of financial, social or other reasons. These NGO's work in coordination with the Legal Services Institutions at the Centre, State, District or Tehsil level to provide free legal services to these poor litigants so that Justice can be secured. The researcher is going to look into some important national level NGOs in India these are:

1. **Ramakrishna Mission Home of Service**: It is an Indian non-governmental organization established in Varanasi, established in 1900 and became a branch of Ramakrishna Mission in 1902. It manages an education program on essential health problems in schools, slums and villages of Uttar Pradesh. To look upon all men, women and children, irrespective of caste, creed, colour or

[92] (1997) 6 SCC 241.

nationality as the veritable manifestations of the lord, as taught by Sri Ramakrishna and worship them as such by trying to remove their wants and sufferings is one of the principles of NGO.

2. **People Union for Civil Liberties:** Veteran leader Jaya Prakash Narayan (JP) founded the *People's Union for Civil Liberties and Democratic Rights* (PUCLDR), in 1976.[93] The idea was to make the PUCLDR an organisation is free from political ideologies. So, that persons belonging to various political parties may come together on one platform for the protection of Civil Liberties and Human Rights. In 1980 after the return of Indira Gandhi to power in the elections, the organisation regained momentum and was retitled as the People's Union for Civil Liberties (PUCL). Its founding conference was held in November 1980. The PUCL supports grassroots movements that focus on organizing and empowering vulnerable groups rather than using state initiatives for change. They have highlighted the cases of bonded labourers, children in prison and violence committed against women under trials. The PUCL has also operated on the issue of the hundreds of people detained by India and Pakistan's governments. Accused of espionage after trivial crimes like minor trespassing, a problem linked to the tension caused by the Kashmir conflict.[94]As a matter of NGO policy, the PUCL does not accept money from any funding agency, Indian or foreign. All the expenditures are met by the members, the office bearers, and the activists.
3. **People's Union for Democratic Rights:** The PUDR was initially formed as Delhi's unit of the People's Union for Civil Liberties and Democratic Rights (PUCLDR) in 1977. However, the PUCLDR discontinued its activities after the Janata Party's success in the elections. While the PUDR continued to work. The national forum (PUCLDR) was later revived in 1980. But in a "new form" and with a new name, PUCL is creating a dichotomous bisection between civil liberties and democratic rights. Later in February 1981, the PUDR opted to function as a separate organisation.
4. **Vishakha:** It is celebrating its 28th year of establishment for right based intervention in the area of education, health, and combating violence against

[93] *Available at:* https://web.archive.org/web/20140222034855/http://www.pucl.org/history.htm (last visited on December 19, 2021).
[94] Available at: https://www.bbc.co.uk/programmes/p00z57wt (last visited on December 19, 2021).

women and girls.[95] In the past two decades that NGO has worked towards the empowerment of girls, women, and vulnerable groups primarily in Rajasthan and other parts of the nation. Vishakha was one of the key litigants in filling a joint PIL in the case where the Supreme Court of India issued the landmark Guidelines for Prevention of Sexual harassment at the Workplace in 1997, popularly known as the Vishakha Guidelines, which became base for the new The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.[96] Vishakha's vision is to re-establish the women's identity as an individual in her own right and to work towards individual and collective empowerment of women, children, youth and communities through securing rights and self-strengthening with joy. To support women in their struggle for justice against discrimination, oppression and violence is one of the objectives of that NGO.

5. **Child Rights and You:** Rights and You (formerly Child Relief and You, till 2005), commonly abbreviated as CRY is a non-profit organization in India.[97] It aims to restore children's rights in India. The organization was established in 1979 by Rippan Kapur who wanted to ensure happier childhoods for India's children. CRY focus on changing behaviours and practices at the grassroots level and influencing public policy at a systemic level – thereby creating an ecosystem where children are made the nation's priority.[98]The organization partners with grassroots Nongovernmental organizations to uplift thousands of Indian children denied basic children's rights. In 2007, its media campaign showed "smiling kids" and asked citizens to partner instead of simple donate. This move was seen as a departure from stereotypical NGO sector advertising in India. CRY participated in the 'Voice Of India' campaign. As a part of the National Alliance for the Fundamental Right to Education (NAFRE), to propose a constitutional amendment for free and compulsory education to all children. This contributed to **the Right of Children to Free and Compulsory Education Act, 2009 (RTE).**

[95] *Available at*: https://vishakhawe.org/about-us/ (last visited on December 19, 2021).
[96] *Ibid.*
[97] *Available at*: https://www.cry.org/ (last visited on December 21, 2021).
[98] *Ibid.*

6. **Bandhua Mukti Morcha:** Bandhua Mukti Morcha (Bonded Labour Liberation Front ) was founded in 1981 by Swami Agnivesh a highly evolved being, who threw away the glamour and comforts of a coveted Ministerial position in the government of Haryana and set out on the mission of waging a relentless war against the pernicious bonded labour system in India.[99] He has been the recipient of several National and International awards including the Right Livelihood Award (Alternative Nobel Prize) 2004 for his outstanding work. Through various petitions, BMM has been seeking interventions of the court on different issues concerning bonded labourers. This has helped to wake up government machinery and bring them to action mode ensuring that as many as 7, 000 houses were constructed and allotted to the labourers released from bondage in the States of Haryana, Rajasthan, Tamil Nadu, Karnataka and Madhya Pradesh. Non-formal schools and health centres set up by BMM such as Dayananda Shilp Vidyalaya, Garhi in New Delhi, Maharshi Dayananda Vidyalaya, Guna, Madhya Pradesh, Maharshi Dayananda Health Centre, Shivpuri, Madhya Pradesh and Sugam Vedashram in Nagapatnam, Tamil Nadu exemplify BMM's commitment to providing education and health care to the poor and needy in slum areas and tribal belts.[100]

However, the list of NGOs is by no means exhaustive. There are many other organisations working for the cause of human rights. The work of six organisations is reported here by way of illustration only. NGOs have played an important role in the protection of human rights. They cannot succeed in their role unless there is help from the judiciary. The NGOs have fought against the system of bonded labour, fake encounters by police, protection of women children's rights, custodial violence and custodial death, prevention of torture and other human practices. The judiciary has passed appropriate orders and given compensation to the victims on a petition by the NGOs. The NHRC encourages NGOs in human rights. The NGOs also take up cases of violation to the NHRC and state human rights commissions.

[99] *Available at* http://bondedlabour.org/ (last visited on December 21, 2021).
[100] *Ibid.*

## 5.6 CONCLUSION:

In this chapter, the researcher has come to the conclusion that we have a long way to go. We have to wipe the tears from the eyes of the starving millions of our country. We have to redeem the pledge we gave them when we enacted our Constitution. This pledge has to be redeemed through the process of law; the law which is not static but dynamic; the law which does not stand still but moves on; the law which draws its sustenance from the past and yet looks out into the future; the law which is ready to march forward in the service of the weaker sections of the community; law of which **Justice Cardozo** said: *"The inn that shelters for the night are not the journey's end—law like a traveller must be ready for tomorrow*." The legal aid movement has to adopt the major programme for the delivery of justice to the poor. Social mobilization with the help of voluntary groups is well underway through legal aid camps, Para-legal courses and seminars and workshops held periodically at different levels.

# CHAPTER VI

# ACCESS TO JUSTICE FOR VULNERABLE GROUPS DURING COVID-19 PANDEMIC

# CHAPTER-VI
# ACCESS TO JUSTICE FOR VULNERABLE GROUPS DURING COVID-19 PANDEMIC

## 6.1 INTRODUCTION:

Coronavirus is the typical 'Black Swan' event.[1] 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.[2]

The legal system is one of the most essential elements of a free and democratic country. Its proper running ensures that the country does not fall into chaos. In these tough times of an unprecedented crisis, every part of an economy has been hit hard, even the government machinery designed to run a country. The court system has been hit hard by the measures brought to control the pandemic like lockdowns. The global pandemic[3] that has caused lockdowns in numerous nations around the world has disrupted all facets of life for an uncertain period. Social distancing has emerged as the most powerful weapon to curtail the spread of this highly contagious virus in society at large. However, these social distancing directives have reshaped and transformed many industries around the world. The Indian legal landscape has also been disturbed and severely impacted by this pandemic. With the social distancing obligations and the nation under lockdown orders, law firms in India and the Indian

[1] '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.

[2] *Available at*: https://www.unodc.org/documents/Advocacy-Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf (last visited on November 13, 2021).

[3] WHO Director General's opening remarks at the media briefing on Covid 19- 11 March 2020 (WHO) *available at:* < https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020 >(last visited on November 1, 2021).

judicial system have had to once again close their doors to the general public. Nevertheless, considering that a complete shutdown of the Indian justice system is unfavourable, the law firms have implemented work from home policies, whereas, the judicial administrators have embraced technology by conducting hearings through video conferencing.[4]It is interesting to see how the Judiciary and the government are moulding the Indian Legal System in the spread of the COVID-19 pandemic spread all over the world. It can be observed by deep study into the Indian legal system and the current scenario that the judiciary and lawyers work tirelessly to make sure that the law is not led down and the duty of the legal system to render justice is not paused even in such difficult times.

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, bisexual, transgender, and intersex (LGBTI) persons, displaced populations, stateless people, migrants, asylum seekers, victims of human trafficking, day labourers, and people living at or below the poverty line.[5] 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 and isolation measures (e.g. space, access to water and sanitation, etc.). 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. Whether related to housing, employment, legal/residency status, access to health benefits, or other social protection mechanisms.[6] Access to legal services and legal information is critical for empowering people and communities to address these issues. As states around the world adopt emergency measures to address the crisis, they must continue to uphold the rule of law, protect and respect international human rights standards and basic

[4] Varij Sharma and Jyotika Thakur, "Covid-19 And The Revamping Of The Indian Legal System" *available at:* https://www.mondaq.com/india/operational-impacts-and-strategy/1068670/covid-19-and-the-revamping-of-the-indian-legal-system (last visited on November 13, 2021).

[5] 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=Cj0KCQiAi9mPBhCJARIsAHchl1wg_1kgPhCeL9bHBh2ibCe5ff9sLPE3sTGcqfQETlc5sQV660JxefcaAu8xEALw_wcB* (last visited on December 1, 2021).

[6] *Available at:* https://www.unodc.org/documents/Advocacy-Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf (last visited on December 1, 2021).

principles of legality, and the rights to access justice and due process.[7] Emergency powers must be in line with constitutional and national legal frameworks as well as international human rights obligations. Limitations on human rights and fundamental freedoms should be proportionate, non-discriminatory, time bound, strictly related to the containment of the contagion, and subject to review. Legal must be in place to ensure that any derogation or restrictions/limitations of rights does not continue indefinitely, and that states protect and ensure human dignity and the rights of all people.[8] The role of the judiciary, as a check on executive actions and as an upholder of the rule of law, is crucial at this time. Judicial oversight of the implementation of emergency measures by law enforcement and other authorities is necessary to avoid the excessive use of emergency powers, for example, to suppress dissenters, or to target vulnerable or marginalised groups such as street vendors and street children, or members of social, ethnic, or religious minority groups. Further, individuals disproportionately impacted by derogations of certain rights should have access to remedies.[9]

## 6.2 IMPACT OF COVID-19 ON ACCESS OF JUSTICE ON VULNERABLE GROUPS:

Equality and social inclusion is the normative core of access to justice. Promoting equality and inclusion as guiding principles require legal service providers to pay attention to the specific needs and experiences of vulnerable and marginalised groups in their service design.10 It is rightly observed that the face of the Pandemic crisis has not only caused immense harm the world over by not only bringing down the economies but also caused adverse impact on many businesses and professions,11 and the legal profession is no exception. Regarding its impact on justice administration in India, Covid-19 has brought almost the entire world to a near-standstill. India's justice delivery system rarely known for its speed even in the best of times is no different.

[7] UNDP – COVID-19, Emergency Powers and the Protection of Human Rights and the Rule of Law.
[8] *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).
[9] UNDP – COVID-19, Emergency Powers and the Protection of Human Rights and the Rule of Law.
[10] *Available at:* https://www.oecd.org/governance/global-roundtables-access-to-justice/access-to-justice-compendium-of-country-practices.pdf (last vis0ited on September 9, 2021).
[11] Live Law.in, Pandemic (Covid 19) And Nationwide Lockdown Severely Damages Legal Professionals, *available at*: <https://www.livelaw.in/columns/pandemic-covid-19-and-nationwide-lockdown-severely-damages-legal-professionals-158010>, (last Visited on September 9, 2021).

Official data shows that while the institution of new cases, both in the higher judiciary and subordinate judiciary, had come down since the beginning of the nationwide lockdown on 25 March 2020. The disposal rate has also been rigorously affected due to the forced closure of courts. The judiciary has come under immense pressure to innovate during the pandemic to balance public health concerns with access to justice, and "*All courts, including the Supreme Court, high courts and district courts, have been operating in a highly restricted manner. Most courts have already decided to persist with the restricted functioning*".12 Another serious repercussion as a consequence of the COVID-19 crisis in India is equally disturbing and cannot be ignored. The Courts in India at various levels, viz., Supreme Court, High Court and Subordinate or District Court levels through guidelines issued from time to time have been insisting on only virtual hearings in several types of cases during the COVID-19 crisis.

However, the sudden and unexpected onslaught of the COVID-19 crisis has thrown up new challenges in the justice and court administration in the country, including those facing the courts in the aftermath of the lockdown.[13] The pandemic has created much access to justice challenges still to be addressed. The challenges faced by the vulnerable group are:

- What happens to those arrested people if courts are closed? Where do we get information about our rights if legal aid is suspended?
- How and where do we reach out for help in case of fundamental rights violation while in lockdown?

Before analysing these, to put things in proper perspective, we begin by outlining in more detail the major technological initiatives existing in court administration in India before the advent of the COVID-19 crisis, such as court-related apps. No wonder E-judiciary is being hailed as a safer mode of justice administration during the COVID-19 crisis with added efforts for its rapid universalization in the country. However, the move is also throwing up several challenges that need to be addressed as a priority for avoiding unnecessary hardship to

[12] Civils daily. Judiciary in Times of COVID-19 Outbreak, 12 May 2020, *available at:* <https://www.civilsdaily.com/burning-issue-judiciary-in-times-of-covid-19-outbreak/> (last visited on September 20, 2021).
[13] *Available at*: https://www.iacajournal.org/articles/10.36745/ijca.391/ (last visited on September 13, 2021).

lawyers and litigants during this rapid transition period. In India, a majority of the respondents opted to attend online hearings from designated booths on the court premises. The reason is the poor connectivity and the lack of smartphones and/or computers in their homes and offices. Although having booths within the court premises addressed the technological barrier, it raised a fresh set of challenges in the context of the pandemic because it became difficult for court staff to enforce physical distancing.[14]

In such a situation the support of the government is required 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.[15] 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. The negative impact of this pandemic on the vulnerable group is discussed below:

### 6.2.1 Impact of COVID- 19 on Accessibility of Justice to Women:

Because of the mitigating measure of 'lockdown' women are forced to stay under one roof with their abusers. According to the official data published by **National Commission for Women,** there is an increase of at least 2.5 times in domestic violence complaints during the lockdown.[16] Unfortunately, the legal services provided by legal service authorities of different states are not under the ambit of

[14] *Available at:* https://www.hindustantimes.com/analysis/ensure-access-to-justice-in-a-post-covid-world/story-o4OLC4wEa40hSLCJFww0HJ.html (last visited on September 9, 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 September 8, 2021).
[16] Data of domestic violence complaints released by NCW, *available at:* https://www.thehindu.com/news/national/ncw-records-sharp-spike-in-domestic-violence-amidlockdown/article31835105.ece, (last visited on December 1, 2021).

"**essential services"**[17] consequently, the victims of domestic violence are not able to access the legal aid clinics to get legal advice. As they are confined within the precincts it becomes very difficult for them to seek proper legal remedy. In certain circumstances the conditions turn up, so worse that access to justice becomes a matter of **'life or death'**. Due to lockdown, they are unable to attend counselling sessions organised by NGOs. With the inaccessibility of justice, the populace has become powerless in both the public and private sphere. The mitigating measures have restricted physical contact with the outside world, because of which tormented might not be able to communicate their pain. For example, the **UN Secretary-General's Policy Brief**:

> *"The Impact of COVID-19 on Women shows a dramatic increase in domestic violence and child abuse and lack of protection for women and children due to measures requiring people to remain confined to their homes. It is vital that these women and children have access to justice and other necessary social services."*[18]

However, access to justice is an essential ingredient of gender equality and it cannot be denied to any woman or girl during this time of crisis. The COVID-19 pandemic has highlighted the need to examine the impact of the crisis through a gender lens from how lockdowns and stay at home orders can impinge on the rights of women, including increasing the risks of gender-based violence to the economic impact of the crisis on women who are more likely to work in the informal sector and are disproportionately impacted by the economic consequences.[19] For too many women, gaps persist between the promise of justice and realities in communities, in the workplace, and at home. They face legal discrimination, patchy legal protections, and uneven implementation of safeguards. It presents a comprehensive overview of the challenges and opportunities that women face in their quest for justice in the

[17] List of essential services, *available at:* https://mofpi.nic.in/sites/default/files/mha_order_and_guidline_as_on_24.03.2020.pdf, (last visited on December 1, 2021).

[18] UN Secretary-General's Policy Brief: The Impact of COVID-19 on Women. *Available at:* https://www.unwomen.org/en/digital-library/publications/2020/04/policy-brief-the-impact-of-covid-19-on-women (last visited on December 13, 2021).

[19] UN Women, IDLO, UNDP, UNODC, World Bank and The Pathfinders. "Justice for Women Amidst COVID-19." New York, 2020.

context of both **Sustainable Development Goal (SDG)** [20] on gender equality and women's empowerment and **SDG 16** on peaceful, just and inclusive societies. It contextualizes them in the current situation where countries and communities are seeking to address the heightened challenges presented by the COVID-19 crisis and recover from its devastating effects:

### 6.2.1.1 Exclusion of woman from digital services:

At a time when digital access is more important than ever to access life-saving information and services as well as access to justice and government support, many women and girls face large barriers to mobile phone and internet connectivity. A recent **Harvard study** shows that in India how social norms discourage their use by women and girls – such that 2/3 of men in the country own a phone, compared to only 1/3 women.[21] There may also be obstacles in terms of affordability. This creates barriers as remote services are delivered via mobile phone or messaging apps. While technology is playing a transformative role in women's access to justice, a prior digital gender gap is deepening and manifesting as a cause and consequence of gender inequality. Addressing this will require policies and programmes that aim to make technology more accessible to poor women and ensure alternative routes to access justice for those who are digitally excluded. Community-based paralegal organizations play an important role in addressing these needs and gaps by broadening knowledge of law and recourse to justice among such women.

### 6.2.1.2 Growing injustice against women workers:

Many women work informally in occupations that closed down early in the crisis for example, the **Self Employed Women's Association of India** reports that daily domestic workers from Lucknow, Punjab, Madhya Pradesh, Kerala, and several other states in the country are **"facing a lot of trouble"**, as the households where they go regularly for work are not in a position to give them work.[22]

[20] See preparatory IDLO events that informed the forthcoming publication, *available at:* https://www.idlo.int/news/ events/csw63-women-and-customary-and-informaljustice-systems, (last visited on December 13, 2021).
[21] Barboni, G. et al A Tough Call: Understanding Barriers to Mobile Phone Adoption and Use. Evidence for Policy Design. *Available at*: https://epod.cid.harvard.edu/sites/default/ files/2018-10/A_Tough_Call.pdf (last visited on December 13, 2021).
[22] UN Women, IDLO, UNDP, UNODC, World Bank and The Pathfinders. "Justice for Women amidst COVID-19." New York, 2020.

### 6.2.1.3 Recalibrate justice delivery:

There is a need to ensure that justice institutions are fully responsive to the rights and needs of all population groups during this period of crisis. One example can be drawn from the UNODC and **the United Nations Development Programme's (UNDP) Guidance Note on "Ensuring Access to Justice in the Context of COVID-19",** which recommends three-part planning phases consisting of preparation, response, and recovery. Interrelated actions across these phases include the design of business continuity plans, establishing criteria for prioritization of cases, providing equipment and training to enable formal and customary court systems to function virtually, addressing case backlogs, and safeguarding access to social, psycho-social, economic, and legal services. To ensure that gender dimensions are not neglected, gender mainstreaming and women-targeted interventions are necessary to address justice gaps that women face. Substitute full trials with interim orders: In place of full trials, courts can issue interim judicial orders to ensure the immediate safety and well-being of women and children. Examples of interim judicial orders of relevance to women as well as children include protection orders, restraining orders, orders for child maintenance and/or [23] custody, an injunction against evicting widows and children from the matrimonial home, and injunction against the marriage of a child. Full trials can be initiated or adjourned until the end of the crisis period while such interim orders are utilized, enforced, and extended where necessary.

### 6.2.1.4 Need Collective action of women and women's organizations:

Collective action can be a catalyst to inform and educate people about women's rights, provide spaces for women's and girls' groups and campaign for reforms.[24] Grassroots justice actors such as civil society justice defenders, community paralegals, public-interest lawyers, human rights activists, and other community leaders who are involved in providing justice can play a key role. In India, for example, women's groups have taken action to combat the effects of the COVID-19 pandemic by *"meeting shortfalls in masks, sanitizers and protective equipment,*

[23] Peterman, Amber, Alina Potts, Megan O'Donnell, Kelly Thompson, Niyati Shag, Sabine Oertelt-Prigione, and Nicole van Gelder. 2020. "Pandemics and Violence against Women and Children." Center for Global Development. *Available at:* https://www.cgdev.org/publication/ pandemics-and-violence-against-women-and-children (last visited on December 14, 2021).

[24] Brenda Kombo, Rainatou Sow, and Faiza Jama Mohamed (eds.), *Journey to Equality: 10 Years of the Protocol on the Rights of Women in Africa* (New York: Equality Now, 2013).

*running community kitchens, fighting misinformation and even providing banking and financial solutions to far-flung communities,"* and 67 million Indian women comprise membership of 6 million self-help groups.[25] These self-help groups have produced more than 19 million face masks, 100,000 litres of sanitizer, and 50,000 lifters of hand wash, arranged over 10,000 community kitchens across India to *"feed stranded workers, the poor, and the vulnerable"* and disseminated COVID-19 information and messaging to difficult-to-read populations in rural areas.

### 6.2.2 Impact of COVID- 19 on Accessibility of Justice to Children:

Access to justice is more than a legal abstraction it is a prerequisite for protecting and upholding the human rights of all people, including children. It is also a key to achieving the **Sustainable Development Goals (SDGs),** in particular for building peaceful, just and inclusive societies as called for in **SDG 16**.[26] The survey also suggests that many countries have not seen any change or have managed to actually increase the availability, access to, and/or delivery of justice related services. On the other hand, diversion and alternative measures to detention have been less commonly employed by governments. Establishing such processes and programmes typically require a mid to long-term investment. This means that countries that already had such processes or programmes in place prior to the pandemic might have been more easily able to force them quickly when the pandemic hit.

When children encounter the justice system are as alleged offenders, victims, witnesses or as parties to civil or administrative matters. They are entitled to specialized processes and procedures that are consistent with the **United Nations Convention on the Rights of the Child** and other international standards, guidelines and rules.[27] Yet many justice systems are neither child-friendly nor gender sensitive. And often fail to meet the needs or uphold the rights of all children. Disruptions to child protection services and the justice system due to lockdowns can also cause

[25] World Bank, In India, women's self-help groups combat the COVID-19 (Coronavirus) pandemic, April 2020. *Available at*: https://www.worldbank.org/en/news/feature/2020/04/11/ women-self-help-groups-combat-covid19-coronavirus-pandemic-india (last visited on December 14, 2021).

[26] United Nations Children's Fund, The Impact of COVID-19 on Children's Access to Justice, UNICEF, New York, 2021. *Available at*: https://www.who.int/emergencies/diseases/novel-coronavirus-2019/media-resources/science-in-5/episode-22---children-covid-19?(last visited on December 14, 2021).

[27] United Nations Children's Fund, Achieving Justice for Children: Review of innovative data initiatives around the world, UNICEF, New York, 2020.

delays in court proceedings and to legal aid and representation. It may also mean that children face long periods deprived of liberty and separated from their families. For child victims, abuse, violence and exploitation could occur with impunity, as could a child's re-traumatization in seeking justice. Understanding the current status of justice for children is therefore essential to calling attention to immediate and long-term measures.[28] That need to be put in place to ensure the safety and well-being of all children amidst the pandemic's continuing fallout. Increased access to justice can be promoted by working with national child protection systems to ensure that every child who comes into contact with the law can claim his or her rights. This can be achieved by building systems that are more responsive and protective of girls and boys. It entails diverting children from arrest and providing alternatives to detention, utilizing restorative justice approaches, providing post-release support, prioritizing pre-trial processes involving alleged child offenders and child victims, and expanding the availability of legal aid for all children.[29]

In responding to the COVID-19 pandemic, governments and authorities can take a number of concrete steps to ensure that every child deprived of his or her liberty is fully respected and protected.[30] An immediate moratorium should be issued on admitting children to detention facilities, and governments should refrain from arresting and detaining children for minor offences and violation of curfew orders. Governments and other relevant authorities should also release all children who can safely return to their families or provide an appropriate alternative for those who cannot.[31] If sustained, such measures can become steps towards making the justice system more child-friendly and gender-sensitive and thereby fulfilling the rights of every child who comes into contact with the law.

[28] United Nations Children's Fund, The Impact of COVID-19 on Children's Access to Justice, UNICEF, New York, 2021. *Available at:* https://www.who.int/emergencies/diseases/novel-coronavirus-2019/media-resources/science-in-5/episode-22---children-covid-19?(last visited on December 14, 2021).
[29] *Ibid.*
[30] The Alliance for Child Protection and UNICEF, Technical Note: COVID-19 and children deprived of their liberty, May 2020. *Available at: https://*gdc.unicef.org/resource/technical-note-covid-19-and-children-deprived-their-liberty(last visited on December 14, 2021).
[31] United Nations Children's Fund, The Impact of COVID-19 on Children's Access to Justice, UNICEF, New York, 2021.

### 6.2.3 Impact of COVID-19 on Access of Justice to Members of the LGBTQ Community:

There is emerging evidence that the COVID-19 could adversely affect the lives and livelihood of the LGBTQ community at disproportionate rates. OHCHR has highlighted that LGBTQ people face heightened risks during this pandemic and called for specific measures in response plans to address these impacts.[32] Available data suggests LGBTI people are more likely to work in the informal sector, and also have higher rates of unemployment and poverty. Health services particularly relevant for LGBTQ people should continue during this crisis, including, HIV treatment and testing. OHCHR called on States to address misinformation fuelling further stigma and discrimination against LGBTQ people, including narratives blaming LGBTQ people for the pandemic.[33] The LGBTQ community is often ostracized and viewed as someone distinct. With the onset of the unprecedented situation of COVID-19, the already existing stereotypical and biased views towards them have increased. Though the government of India has declared several policies and schemes for different social groups, however, they have failed to include members of the LGBTQ community under the ambit of these policies.[34] Whenever under normal circumstances they approach the legal system they face agitation in the form of hate comments, but if they will access the judicial system in these 'abnormal' situations who can guarantee that they will not be discriminated against?

The history of LGBT persons, like others subjected to discrimination and violence, has been one of suffering, endurance and hope a vital struggle for freedom and equality in the face of singular adversity. During the COVID-19 pandemic, the State authorities must listen to the particular concerns of LGBT persons, respect their expertise over their own lives and communities, and accept their solidarity in the

[32] UN Women, IDLO, UNDP, UNODC, World Bank and The Pathfinders. "Justice for Women Amidst COVID-19." New York, 2020.
[33] "The Lives and Livelihoods of Many in the LGBTQ Community Are at Risk Amidst COVID-19 Crisis; COVID-19 and the human rights of LGBTI people. *Available at:* https://www. ohchr.org/Documents/Issues/LGBT/LGBTIpeople.pdf (last visited on December 15, 2021).
[34] Exclusion of Transgender, *available at:* https://www.deccanherald.com/national/excluded-from-govt-schemes-during-lockdown-transgenders-demand-special-package-830945.html, (last visited on December 16, 2021).

construction of new realities of freedom and equality for humankind.[35] The States should pursue all means necessary including conducting research, adopting legislation, public policy, and ensuring access to justice mechanisms to ensure that this public health emergency will neither exacerbate existing misconceptions, prejudices, inequalities or structural barriers, nor lead to increased violence and discrimination against persons with diverse sexual orientations and gender identities.[36] All stakeholders, particularly States, to urgently implement lines of action designed to sustain and ensure the continuity of the work of civil society and human rights defenders the capacities existing within this sector must not be put in peril. And, the state must meet effectively all these objectives. The States should therefore, to engage with LGBT persons, organizations and communities in the design, implementation and evaluation of the measures adopted to respond to the pandemic.

### 6.2.4 Impact of COVID-19 on Accessibility of Justice to Prisoners:

Each and every individual including detenu has a right to life. With the increasing number of corona cases, there exists a huge possibility that any inmate may come in contact with the corona virus through different sources, thereby exposing them to the exceptional vulnerability of COVID-19, which in turn is endangering their lives. India's prisons have an average 114% occupancy rate, with the "under-trials". People in custody are awaiting investigation or trial constituting nearly 68% of the prison population.[37] One of the major fears of overcrowding of prison is the increased chance of spreading of infection. Consequently, on March 16, 2020, the Supreme Court took a *suo moto* action to **"decongest the jails"**. On March 23, 2020, they issued an order directing the government of every state and union territory to appoint **"High Powered Committees"** to make recommendations about the release of certain under trials and convicts. On April 18, 2020, the committee for Delhi headed by Delhi High Court **Justice Hima Kohli** has decided to grant interim bail to:

[35] *Available at:* https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=25884 (last visited on December 15, 2021).
[36] *Available at:* https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=25884(last visited on December 16, 2021).
[37] Overcrowded prisons, *available at:* https://www.aljazeera.com/indepth/features/india-long-lockdown-ledbreakdown-criminal-justice-system-200602103810110.html, (last visited on December 15, 2021).

> "*those inmates who are kidney cancer and HIV patients, or suffer from tuberculosis and asthma. On May 18, the committee decided to further expand the scope of the 45- day interim bail to include undertrials accused of murder, culpable homicide and theft, among other charges, provided they had spent a certain number of years in jail. On June 20, this was further extended to those undertrials accused of domestic violence and dowry deaths*."[38]

Though the initiative has taken by the judiciary for the protection of the lives of inmates is commendable but it failed to acknowledge the challenges which the released prisoners might face in the society in the form of lack of livelihood and place to live in. Additionally, with the application of mitigation measures like social distancing, jail visits are stopped therefore affecting the prisoner's right to seek fair legal representation. Furthermore, with the usage of **"Vidyo Application"** for virtual hearings, there are chances of privacy infringement of prisoners through data hacking. Later, due to **"unforeseen linkage issues"** other international applications for video conferencing are allowed, which raises the concern of **"sovereignty and security"**.[39] In this regard, an application[40] was filed by **KN Govindacharya**, which says:

> *"A unique situation indeed requires unique solutions, but the same cannot be at the altar of Rule of Law. It is submitted that most of the Video Conferencing Software being used are products of foreign internet companies, with their terms of use mandating transfer of data outside India as well as its commercial exploitation."*

Nonetheless, the biggest challenge to access to justice is how witnesses and litigants has access the internet for video conferencing when possession of mobile phones is considered a luxury in a country like India? People in detention are particularly vulnerable to the pandemic. While respecting the interest of justice and

[38] Why Indian jails remain overcrowded during pandemic, *available at:* https://scroll.in/article/965796/whyindias-jails-remain-overcrowded-during-the-pandemic-even-as-prisoners-are-released-on-parole, (last visited on December 17, 2021).
[39] Unfortunate Opportunity to modernize, *available at:* https://scroll.in/article/958271/the-coronavirus-pandemicis-an-unfortunate-opportunity-for-indias-judicial-system-to-modernise, (last visited on December 17, 2021).
[40] Application filed in Supreme Court for NIC based infrastructure, *available at:* https://www.barandbench.com/news/litigation/application-filed-in-supreme-court-for-provision-of-nic-basedinfrastructure-for-video-conferencing-by-judiciary-and-government-officials, (last visited on December 1, 2021).

ensuring adequate protection of the rights of victims, all efforts should be made to decongest detention facilities, including prisons, police stations and immigration detention centres. Juvenile detainees are particularly vulnerable. Finally, without functioning judicial oversight, persons detained while emergency measures are in place to contain the virus may not be brought before a judge on time. This can reduce the impact of an important safeguard for monitoring and preventing torture and other ill-treatment in detention facilities. The Supreme Court of India has turned a humanitarian eye on the over four-lakh prison population inside overcrowded jails even as the second wave of the pandemic continues its devastating run across the country.[41] *"India has more than four lakh prison inmates. It is observed that some of the prisons in India are overburdened and are housing inmates beyond optimal capacity…. The requirement of decongestion is a matter concerning the health and right to life of both the prison inmates and the police personnel working,"* the bench led by Justice **N.V. Ramana**, and comprising Justices **L. Nageswara Rao** and **Surya Kant,** has stressed.[42]More importantly, because of the Covid-19 crisis, the Supreme Court took into consideration a situation where certain prisoners may be too scared to return home. Although, they are eligible for release on interim bail or parole, owing to their social circumstances or simply because they are afraid they may get infected with Covid-19 while outside.[43] In such belongings, the court ordered proper medical facilities, immediate treatment and regular tests for both inmates and jail staff. It said maintenance of daily hygiene in prisons should be put at a premium. Significantly, the Supreme Court addressed the government, and said: "*the fight against the pandemic is greatly benefitted by transparent administration*".[44]

[41] *Available at:* https://www.thehindu.com/news/national/covid-19-surge-supreme-court-orders-immediate-de-congestion-of-prisons/article34513158.ece/amp/#aoh=16311786274175&referrer=https%3A%2F%2Fwww.google.com&amp_tf=From%20%251%24s (last visited on September 9, 2021).
[42] IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS *Suo Motu* Writ Petition(C) No.1/2020 S SUPREME COURT OF INDIA.
[43] *Available at:* https://www.thehindu.com/news/national/covid-19-surge-supreme-court-orders-immediate-de-congestion-of-prisons/article34513158.ece/amp/#aoh=16311786274175&referrer=https%3A%2F%2Fwww.google.com&amp_tf=From%20%251%24s (last visited on September 9, 2021).
[44] In Re: Contagion Of Covid 19 Virus in Prisons (Suo Motu Writ Petition(C) No.1/2020) Supreme Court Of India.

### 6.2.4.1 Need of Strategies for Reducing Risks of COVID-19 in Detention Centres:

Finally, without functioning judicial oversight, persons detained while emergency measures are in place to contain the virus may not be brought before a judge in a timely manner. This can reduce the impact of an important safeguard for monitoring and preventing torture and other ill-treatment in detention facilities. Emergency measures must therefore include guarantees of due process of law in order to ensure they do not negatively impact the rights of defendants or victims.[45] From reducing rates of pre-trial detention and improving access to fair and effective dispute resolution mechanisms as well as putting in place measures to ensure better representation in the judiciary, evidence-based strategies to ensure more equitable access to justice are crucial, if recovery plans are to truly reach, and secure the rights, of those who are furthest behind.[46] So, it is essential for State to adopt strategies and plan to reduce the risk of COVID-19 in detention. There some strategies which are recognised globally discussed below:[47]

- **Alternatives to imprisonment and alternative sentencing:** Measures to reduce the risk of the spread of COVID-19 in detention facilities may include, for example, reducing the number of new detentions i.e. no detentions for minor, non-violent offences.[48] In the case of children, the use of diversion from the formal justice system and alternatives to detention should be prioritized, upholding the best interests of the child as a primary consideration. Immigration detention should be avoided, and non-custodial alternatives explored.
- **Management of prisons and places of detention:** For those that remain in prison or detention centres, a comprehensive emergency plan should be developed that specifies provisions related to medical isolation and quarantine, referral and care plans for persons deprived of liberty and detention staff, as

[45] Inter-Agency Standing Committee – Interim Guidance COVID-19: Focus on Persons Deprived of their Liberty
[46] *Available at:* https://www.unodc.org/documents/Advocacy-Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf
[47] *Available at:* https://www.unodc.org/documents/Advocacy-Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf(last visited on December 17, 2021).
[48] UN DPO/ UNITAR– Operational Toolbox for COVID-19 Preparedness and Response in Places of Detention.

well as health and safety measures to mitigate the spread of COVID-19 and prevent outbreaks.

- **Identification of criteria for release for persons deprived of liberty:** Due to the exceptional vulnerability to COVID-19 in places of detention, many countries are currently implementing emergency release measures for detainees and prisoners. Criteria for determining the eligibility for such emergency release measures must be based on a careful balancing of vulnerability of individual detainees against public safety and be accompanied by appropriate safeguards to the safety and the rights of witnesses and victims.

  Authorities are also strongly encouraged to release people in immigration detention, in particular where that detention is arbitrary or does not comply with international standards. This includes people in pre-removal detention where deportations have been suspended due to the COVID-19 situation. In many of these cases, the grounds for their continued deprivation of liberty no longer exist. Those convicted and imprisoned for domestic violence, sexual crimes, and other violent crimes should not be eligible for emergency non-custodial measures. Lawyers and legal aid providers can assist authorities to identify potentially eligible persons, ensure their clients are included in these alternative measures, as well as to ensure that those that remain in prison or immigration detention centres receive adequate protection (i.e. sanitation and hygiene) and access to health care.

- **Reintegration plans for newly released prisoners/detainees:** Reintegration measures should be part of decongestion plans. Unfortunately, many released detainees has not had access to safe places or suitable homes for self-isolating or means to support themselves and may not have access to social services or community support. Children have also required particular post-release support and reintegration back into their families and communities such as educational support in a context where schools are closed.[49] Support to national authorities to develop reintegration plans that provide comprehensive services, which can involve legal aid providers, health services, and other

[49] UNODC – Protecting Children Deprived of Liberty During the COVID19 Outbreak.

service providers, is needed to manage Access to Justice & COVID-19[50] the release of detainees in a manner that is consistent with their human dignity and well-being as well as public interest. The development of communications strategies to ensure communities are sensitized to the release of detainees is also important to support reintegration steps and avoid stigma and discrimination against detainees.

### 6.2.5 Impact of COVID-19 on Accessibility of Justice to Migrant Workers:

The COVID-19 crisis has highlighted the precarious and pathetic condition of migrant workers. With nationwide lockdown imposed in the third week of March, many migrant workers lost their source of livelihood, which is considered as an essential facet of the right to life.[51] Under the **Migrant Labour Act**, all migrant labourers including daily wage workers are required to be registered but due to lack of information, they are not able to comply with the statutory requirement. Since there are no exact official statistics pertaining to inter-state migrants in the country, some estimates for 2020 have been made by Professor Amitabh Kundu of the Research and Information System for Developing countries. For the purpose of calculation, he took into account the 2011 Census, NSSO Surveys and Economic Survey of India. In his report he found that: *"There are at least 65 million inter-state migrants. By conservative estimates, 30% of them are casual workers and another 30 per cent work regularly but in the informal sector*."[52] A study by the Centre for the Study of Developing Societies and by Azim Premji University in 2019 estimates that 29 per cent of the population in India's big cities are daily wage labourers. This is the number of which, logically speaking would want to go back to their native states.[53] Because of the minimal source of income and inter-state border closure they are not able to go back to their hometown and are left in afflux without any place to live in,

[50] *Available at:* https://www.unodc.org/documents/Advocacy-Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf (last visited on December 17, 2021).
[51] Unfortunate Opportunity to modernize, available at https://scroll.in/article/958271/the-coronavirus-pandemicis-an-unfortunate-opportunity-for-indias-judicial-system-to-modernise, (last visited on December 17, 2021).
[52] Unfortunate Opportunity to modernize, *available at:* https://scroll.in/article/958271/the-coronavirus-pandemicis-an-unfortunate-opportunity-for-indias-judicial-system-to-modernise, (last visited on December 27, 2021).
[53] COVID 19 and Supreme Court, *available at:* https://www.bloombergquint.com/coronavirus-outbreak/covid19-and-the-indian-supreme-court, (last visited on December 27, 2021).

thereby denial of accommodation, an infringement of article 21.[54] Regarding this deplorable condition of migrant workers catena of petitions was filed however, the statements like: "*If the migrants are being fed why they need money"* shake the common consciousness of the seekers of justice. With the Supreme Court restricting itself to "urgent matters" and adopting "pick and choose policy" for selecting the same, it is very difficult to predict whether the issues relating to migrant workers will fall under the ambit of "important" and "urgent" matters? The courts have given several directions to the state governments and the central government regarding migrant's crisis, testing policies, condition of quarantine facilities, but were these efforts enough remain to be adjudged by future generations.

Being from the poorest and the socially discriminated groups, they are also denied entitlement in the village they belong. Not surprisingly, they have been invisible in policy discourse of their numbers. Data from the **National Sample and the Human Development Survey** (IHDS) show that these migrant labourers are mainly from rural area in poor regions and states, and belongs to the poorest socio-economic classes. Schedule caste and Schedule tribe and other backward classes are over represented among them. They form the largest section of child, bonded and trafficked labour. They predominate in activities that are characterised by three **D**s-dirty, dangerous, and difficult- and consistently face a fourth D- discrimination.

After imposing a nationwide lockdown from March 25, 2020, onwards the Indian Government started allowing resumption of some economic activities from April 20, 2020, onwards in low-risk zones, but due to wide-scale reverse migration of migrant labourers the economic activities continued to remain low. The pandemic further opened doors for labour law violations and exploitation of labourers by the state and employers. Citing a lack of human resources due to the corona crisis, several Indian states amended their labour laws and enhanced the working hours of labourers without any provision for paying overtime to them.[55]The daily working hours were enhanced from eight to twelve to help the industry recover from the pandemic and spur private investment. This was against **the International Labor Organization (ILO)** convention to which India is one of the signatories. ILO expressed its

[54] *Shantisar Build*ers v. *Narayanan Khimalal Totame*, (1990) 1 SCC 520.
[55] Shailendra Kumar and Sanghamitra Chaudhary "Migrant Workers and Human Rights: A Critical Study on India's COVID-19 Lockdown Policy" *Social Sciences & Humanities* Volume 3, Issue 1, 2021.

disagreement with the amendments in labour laws done by the Indian states and advised to hold tripartite talks between the labour unions, employers, and government before applying the amended rules.[56] Exposing its labourers to do 12 hours of rigorous work should not be a norm in a country that claims itself to be socialist and labour-friendly. Gandhi has also observed that the saving of labour of an individual should be the objective and the honest humanitarian consideration, and not greed, the motive.[57] The provision to extend the working hours from ten to twelve was also contrary to **Article 43** of the Indian constitution which directs *"the state to ensure for workers the right to a living wage and good working conditions that includes a decent standard of life and full enjoyment of leisure and social and cultural opportunities."* Though **Article-43** is a non-enforceable part of the Indian Constitution yet it is a part of directive principles that are morally binding upon the state. Many migrants work as frontline staff in different Indian states and amongst them, many of them work for the government but their condition was also not better either. During the lockdown, there are reports that at some places, state government and local bodies had expressed their inability to pay salaries to frontline warriors, causing nurses, doctors, and other staff to go on strike and organise a protest against it. At many places, the frontline warriors protested and even resigned due to the non-availability of the Personal Protective Equipment (PPE) kit.[58] Complaints about the payment of salaries were not just limited to the state governments and the local bodies alone, but many central government-run public sector enterprises also ceased the salary of its employees during the corona crisis.

Even though the Judiciary has no role in policy formulation yet, this debate would be incomplete without examining the role played by the Supreme Court of India during the COVID-19 pandemic. The Supreme Court of India declined at the initial stage to regale any public interest litigation (PIL) on the migrants' plight. It refused to entertain PILs highlighting the condition of workers who were walking

[56] ILO advised India to increase working hours from 8 to 12 only after holding consultations from all stakeholders. *Available at:* https://scroll.in/latest/961977/covid-19-india-should-amend-labor-laws-only-after-consulting-workers-and-employers-says-ilo(last visited on December 17, 2021).
[57] Gandhi's opinion on saving labor published in his newspaper Young India on, 13-11-24, p. 378 *Available at:* https://www.mkgandhi.org/voiceoftruth/machinery.htm (last visited on December 17, 2021).
[58] Non-payment of salary to doctors and PPE kit shortage was widely reported *Available at:* https://www.newindianexpress.com/cities/delhi/2020/may/12/mcd-doctors-not-paid-salaries-for-3-months-2142248.html(last visited on December 17, 2021).

home or were being herded into trucks. It was only after two months of lockdown and constant criticism by activists, activist-lawyers, and even retired judges that the Supreme Court of India decided to take *suo-motu* cognizance of the plight of migrant workers and allowed the opening of transportation for the migrant workers. Moreover, the relief granted by the Supreme Court was "too little" and "too late."[59] From the initial Court's reply, there was a hapless posit discernible that the government is the felicitous judge of the circumstance but in believing so, the Court appears to have overlooked that, in times of crisis, the Law is not obliged to stay silent. Likewise, nothing obviates the Court from directly controlling the condition itself. According to **Ajit Prakash Shah,** former Chief Equity of the High Courts of Delhi and Madras and former Chairperson of the Law Commission of India, "*The Court essentially deprived people the most rudimental right of access to equity, granted under the Constitution, by not providing any assuagement. In doing so, it dismissed millions of migrant workers and has struggled to act congruously as a supreme court".*[60]

The fight against the pandemic can only the built on a vision of a society that is inclusive, equitable and non-discriminatory. India needs a unified labour market and universal social security, safety and dignity to all workers.[61] Pandemic do not recognized artificial walls between living space and work space, and both have to be able provide basic amenities and access to health security to all. However, it seems that current policy responses to the crisis and towards the migrants are still embedded in a short-sighted frame that recognise and reinforces of two India.[62]

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 hearings for restraining and protection orders.[63] Legal aid providers should be supported to ensure the provision of continued and safe access to legal services, including through

[59] *Supra* note 615.
[60] A.P. Shah Failing to Perform as Constitutional Court The Hindu (2020)Retrieved from *Available at:* https://www.thehindu.com/opinion/op-ed/failing-to-perform-as-a-constitutional-court/article31665557.ece(last visited on September 13, 2021).
[61] Editorial Ravi Srivastava "No Relief For The Nowhere People" *The Hindu* May 4, 2020, Lucknow.
[62] *Ibid.*
[63] *Available at:* https://www.undp.org/blogs/changes-and-challenges-justice-time-covid-19 (last visited on September 13, 2021).

helplines and online services. Online services providers should also be equipped with current information on the solutions.

## 6.3 THE COVID-19 CRISIS: THE NEW CHALLENGES BEFORE THE INDIAN JUDICIAL & ADMINISTRATION SYSTEM:

We are in unprecedented times. The Covid-19 pandemic has posed a never-imagined challenge to every sector of the economy and every activity of the nation. 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'.[64] Current times echo the words of **Benjamin Cardozo**:

> "*Existing rules and principles can give us our present location, our bearings, our latitude and longitude. The inn that shelters for the night are not the journey's end. The law, like the traveller, must be ready for the morrow. It must have a principle of growth"*.65

In addition to derailing other sectors, the COVID-19 crisis had also seriously impacted the normal functioning of justice administration in India and threw a spanner in the way of the normal functioning of courts.[66] The Covid-19 pandemic forced the Indian judiciary to adopt digital processes at an unprecedented speed and scale. With a lockdown and the enforcement of physical distancing, courts across India started using video-conferencing to hear cases, accompanied by facilities for e-filing and e-payment, wherever possible. Any move towards the online functioning of courts must account for the digital divide in India. While mobile phones are used widely, access to the internet and advanced digital equipment remains limited to some urban users.[67] Lawyers in semi-urban and rural districts found online hearings challenging because of internet connectivity issues and unfamiliarity with the online mode of working.

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[64] *Available at:* https://www.ibanet.org/article/f1a1e3a6-675f-455b-b190-038306399cbb (last visited on September 5, 2021).
[65] Benjamin Cardozo, *The Growth of the Law, Indian Economy* 19 (Universal Law Publishing Co, 2006).
[66] *Available at:* https://www.iacajournal.org/articles/10.36745/ijca.391/ (last visited on September 8, 2021).
[67] *Available at:* https://www.hindustantimes.com/analysis/ensure-access-to-justice-in-a-post-covid-world/story- o4OLC4wEa40hSLCJFww0HJ.html (last visited on September 6, 2021).

Covid-19 has affected the Indian Legal System like never before. It has cast a harsh light on the outdated way justice is dispensed, the law is taught, and legal services are delivered.[68] Coronavirus has harnessed the potential of under-utilized tools and alternative work models long resisted by the Indian legal industry.[69] Traditional ways of working have been altered and accepted at an astounding speed and with ease. In just a matter of days, law schools had transitioned to online schooling and learning, the Courts had resorted to the Virtual Courts System and law firms are continuing to work from home proving technology to be a lifeline for the Indian legal landscape.

India's spiralling Covid-19 crisis has hit the Indian Legal System in a major way as most of the judicial officers and staff members of various courts test positive for the virus. Unfortunately, many judicial officers have also succumbed to this deadly disease. During these quarantined times and keeping in mind the public health concerns, the Indian Courts are now hearing only extremely urgent matters filed in the year 2021 only at all levels. The cases which do not fall under the aforesaid categories have been adjourned *"en bloc*"[70], depositions have been cancelled or rescheduled, and various deadlines have been extended.[71] In this Virtual Courts System, besides the parties and their respective advocates whose cases are being heard by the Bench, the parties and/or Advocates awaiting their turn are also permitted to join 'virtually' beforehand exactly like in physical Courts.[72] These individuals witness on their screen, the live proceedings of cases taken up by the Bench. Furthermore, a special facility has also been provided to the Media, as representatives of the public, wherein they are permitted to access the Virtual Court Room and can observe all the case proceedings being held by the Bench(s). In light of the pandemic and to prevent the spread of this virulent virus, many criminal Courts in India have granted interim bail

[68] Mark A. Cohen, ' Covid-19 and the Reformation of Legal Culture' (Forbes, 14 April, 2020) *available at:* https://www.forbes.com/sites/markcohen1/2020/04/14/covid-19-and-the-reformation-of-legal-culture/#4b8c3168171d>(last visited on December 23, 2021).
[69] *Ibid.*
[70] Office Order dated April 18, 2021, High Court of Delhi at New Delhi *available at:* < https://delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice_59R6UXN01KB.PDF ) (last visited on December 17, 2021).
[71] Varij Sharma and Jyotika Thakur 'Covid-19 And The Revamping Of The Indian Legal System' *available at:* https://www.mondaq.com/india/operational-impacts-and-strategy/1068670/covid-19-and-the-revamping-of-the-indian-legal-system (last visited on December 17, 2021).
[72] Standard Operating Procedure for Ld. Advocate/Party-in person for Mentioning, e-Filing and Video Conferencing Hearing dated 15 April, 2020, Supreme Court of India *available at:*< https://main.sci.gov.in/pdf/LU/15042020_134922.pdf >(last visited on December 17, 2021).

to undertrials due to congested prisons. Whereas, in child custody and visitation rights cases the Indian Courts have advised that parents substitute physical visits with electronic contact.[73]

### 6.3.1 Role of Indian Judiciary during COVID-19 Pandemic:

The Covid-19 pandemic forced the Indian judiciary to adopt digital processes at an unprecedented speed and scale.[74] Taking the case of the Supreme Court first, several steps were taken at that level to ensure the safety of the lawyers, litigants and the general visiting public.[75] Early enough the Supreme Court has also started taking necessary precautions to counter the threat of the COVID-19 crisis. For instance, the Supreme Court issued a notification in March 2020 and directed that the functioning of the Courts from Monday, 16 March 2020 was to be restricted to urgent matters with such number of Benches as may be found appropriate.[76] Further, no persons except the lawyers who were going to act in the matter, i.e. either for argument or for making oral submissions or to assist along with one litigant only, were to be permitted in the courtroom. Mentioning of matters were to be made before the Mentioning Officer only.[77] While the Indian legal system has many commendable and efficient elements it also has certain backdrops which delay or deny justice in certain cases. Already the Indian Courts were facing issues of pendency of cases and adding to that due to the pandemic, the courts were closed and were unable to work the way they used to before the lockdown.[78] With the rise in pandemic and the increasing number of cases due to the shutdown of all the courts, the Supreme Court declared that it should hear cases on an urgent basis through video conferencing.[79] Thus, the Supreme Court was enthusiastic in approaching the digital world by bringing changes at a faster pace because of the unprecedented arrival of the COVID-19 as well as the

[73] *Vishal Verma* v. *Twinkle Vinayak* 20 May 2021 Delhi High Court.
[74]*Available at:* https://www.hindustantimes.com/analysis/ensure-access-to-justice-in-a-post-covid-world/story-o4OLC4wEa40hSLCJFww0HJ.html (last visited on September 8, 2021).
[75] *Available at:* https://www.iacajournal.org/articles/10.36745/ijca.391/( last visited on September 7, 2021).
[76] *Available at:* https://www.iacajournal.org/articles/10.36745/ijca.391/( last visited on September 7, 2021).
[77]Supreme Court of India. Notification issued by Secretary General, *available at:* <https://scobserver-production.s3.amazonaws.com/uploads/beyond_court_resource/document_upload/384/Hearing_of_only_Urgent_Matters.pdf>, 13 March 2020(last visited on September 21, 2021).
[78] Saloni Chitlangi, "Indian legal system and access to justice during COVID-19" *available at:* https://blog.ipleaders.in/indian-legal-system-and-access-to-justice-during-covid-19/(last visited on December 17, 2021).
[79] *Ibid.*

lockdown measures implemented by the government which was keeping the judges, lawyers, and litigants at their homes.

Therefore, in the exercise of the powers conferred on the Supreme Court of India by **Article 142 (1)** of the Constitution[80] of India to make such orders as are necessary for doing complete justice, and so direct that:[81]

i. All measures that have been and shall be taken by the Supreme Court and by the High Courts, to reduce the need for the physical presence of all stakeholders within court premises and to secure the functioning of courts in consonance with social distancing guidelines and best public health practices shall be deemed to be lawful;
ii. The Supreme Court of India and all High Courts are authorized to adopt measures required to ensure the robust functioning of the judicial system through the use of video conferencing technologies; and
iii. Consistent with the peculiarities of the judicial system in every state and the dynamically developing public health situation, every High Court is authorised to determine the modalities which are suitable to the temporary transition to the use of video conferencing technologies; and
iv. The concerned courts shall maintain a helpline to ensure that any complaint regarding the quality or audibility of feed shall be communicated during the proceeding or immediately after its conclusion failing which no grievance regarding it shall be entertained thereafter;
v. The District Courts in each State shall adopt the mode of Video Conferencing prescribed by the concerned High Court;
vi. The Court shall duly notify and make available the facilities for video conferencing for such litigants who do not have the means or access to video conferencing facilities;

[80] The Constitution of India, art. 142 (1) reads as "*Enforcement of decrees and orders of Supreme Court and unless as to discovery, etc ( 1 ) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe."*
[81] In Re: Guidelines For Court Functioning Through Video Conferencing During Covid-19 Pandemic (SUO MOTU WRIT (CIVIL) NO.5/2020).

vii. Until appropriate rules are framed by the High Courts, video conferencing shall be mainly employed for hearing arguments whether at the trial stage or the appellate stage. In no case shall evidence be recorded without the mutual consent of both the parties by video conferencing. If it is necessary to record evidence in a Courtroom the presiding officer shall ensure that appropriate distance is maintained between any two individuals in the Court.

It is significant to note that in view of the COVID-19 crisis threat, the Supreme Court has decided to use technology more in judicial proceedings. The Supreme Court also directed that for services of notices and summons, pleadings it is realized that it is not possible during lockdown to visit postal offices. So Apex Court permitted that the service of notices and summons may be done by email, fax, or through an instant messenger service.

### 6.3.2 Extension of Limitation Period by the Supreme Court of India:

However, keeping in mind the difficulties due to this pandemic, the Supreme Court of India has extended statutory timelines in all proceedings including the filing of pleadings, irrespective of the limitation period prescribed in general or Special Laws whether condonable or not till further orders.[82] This directive of the Supreme Court of India providing extensions in the limitation periods applies to all Courts and Tribunals in India. The Supreme Court of India has reconsidered the order passed on March 08, 2021, and passed an Order on April 27, 2021. The Supreme Court has taken *suo-moto* cognizance of the 2nd wave of COVID 19 situation in the nation, based on the provisions laid out in **articles 141** and **142** of the Constitution of India. The Supreme Court of India extended the limitation of all judicial or quasi-judicial proceedings.[83] Further, the Supreme Court clarified that the period from 14th March 2021 onwards shall be excluded for computing the periods for various proceedings, till further orders are issued.[84] The Supreme Court issued an Order to extend the limitation period with certain restrictions, on March 8, 2021, The Indian Patent Office, abiding by the Order passed by the Supreme Court of India, extended the

[82] In Re: Cognizance for extension of limitation, Suo Motu Writ Petition (Civil) No. 3/2020, order dated 23 March, 2020.
[83] In Re Cognizance For Extension Of Limitation Miscellaneous Application No. 665/2021 In Smw (C) No. 3/2020 ) Supreme Court Of India.
[84] *Available at:* https://www.mondaq.com/india/trials-appeals-compensation/1093924/extension-of-limitation-period-a-logical-decision-in-the-face-of-pandemic-by-the-supreme-court-of-india (last visited on September 9, 2021).

limitation period of all pending litigations along with certain norms, based on the observation that the country was slowly returning to normalcy.[85]The Controller General of Patents, Designs and Trademarks issued a notice elaborating that:

- The cases whose limitation periods had expired during the period between March 15, 2020, and March 14, 2021, will have an extended period of 90 days. However, if the actual balance period is beyond 90 days, the longer period will apply.
- Further the period from March 15, 2020, to March 14, 2021, shall remain excluded in computing the limitation period for the pending cases in the abovementioned time frame.

The Covid-19 outbreak has also disturbed the liquidation process under the Insolvency and Bankruptcy Code, 2016 (IBC). It has been ordered that the period of lockdown is to be excluded from the calculation of any statutory timelines under the IBC.[86] Moreover, the National Company Law Appellate Tribunal has also ordered that any interim order/stay orders shall continue to operate till the next date of hearing, which may be notified later.[87] Additionally, in the wake of the pandemic, the Insolvency and Bankruptcy Board of India (IBBI) has introduced a Regulation 47A to the Insolvency and Bankruptcy Code, 2016 which states that *"Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for computation of the time-line for any task that could not be completed due to such lockdown, in relation to any liquidation process"*.[88]

Likewise, the alternate dispute resolution mechanisms in India have also been affected by the Coronavirus pandemic. The nationwide lockdown prevents the physical conduct of Mediations and Arbitrations. Most hearings have been postponed or are being conducted virtually through video conferencing. Nevertheless,

[85] *Ibid.*
[86] Varij Sharma and Jyotika Thakur "Covid-19 And The Revamping Of The Indian Legal System" *available at:* https://www.mondaq.com/india/operational-impacts-and-strategy/1068670/covid-19-and-the-revamping-of-the-indian-legal-system(last visited on December 27, 2021).
[87] *Available at:* https://nclat.nic.in/Useradmin/upload/7281701495e81d18e254d0.pdf (last visited on December 5, 2021).
[88] No. IBBI/2020-21/GN/REG060 , INSOLVENCY AND BANKRUPTCY BOARD OF INDIA *available at:* < https://ibbi.gov.in/uploads/whatsnew/4697af9d01b6c12c0816f4be28ea6835.pdf >(last visited on December 27, 2021).

considering the severity of the pandemic and that India is again under curfews and lockdowns, the Supreme Court of India has suspended the limitation period for passing of arbitral award as obligatory in **Section 29A** of the **Arbitration and Conciliation (Amendment) Act, 2015** till further orders.[89]Furthermore, to embrace the new normal and to remain connected to law; many judges and lawyers in the country have been holding webinars, lectures and talks on numerous areas in law.

### 6.3.3. The Courts' Responses to COVID-19 – A Speedier Metamorphosis of E-courts to E-judiciary in the Post COVID-19 Crisis Era:

Prior to the COVID-19 crisis, the E-courts project was one of the National e-Governance projects implemented in all the District/Subordinate Courts in the country. The main aim of the E-courts was to provide a transparent, accessible and cost-effective justice delivery system to all citizens with the help of Information and Communication Technology (ICT) and Internet-enabled courts. Significantly, the E-courts Project had made digital interconnectivity possible among all courts from the District and Taluka level to the apex court.[90] The E-courts project had been earlier conceptualised under the "**National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary –2005"** prepared by the e-Committee of the Supreme Court of India.[91] Approved in 2010, it was saving a lot of time for users besides providing other benefits. As a public convenience, various E-Court services were availed by the concerned citizens through the Judicial Service Centre at a court complex.[92] So, provision already existed in the majority of the courts for e-Service of summons, notices, and warrants through e-mail via the internet. A list of e-cause is available on the court website. As well as, case status, online filing, and orders and judgments in PDF, plus important court information are also provided to the litigant. Such as working days, holidays, names of judges, and so on, which come in handy at the time of pandemic crisis.

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[89] Office Order dated April 18, 2021, High Court of Delhi at New Delhi *available at:* < https://delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice_59R6UXN01KB.PDF ) (last visited on December 27, 2021).

[90] *Available at:* https://www.iacajournal.org/articles/10.36745/ijca.391/(last visited on September 7, 2021).

[91] Govt. of India, Ministry of Law and Justice. "Evaluation Study of eCourts Integrated Mission Mode Project, National Council of Applied Economic Research," (New Delhi, 2015) p. XV, *available at:* <https://www.researchgate.net/profile/Sohini_Paul3/publication/327200189_Evaluation_Study_of_eCourts_Integrated_Mission_Mode_Project_Project/links/5b7f8952299bf1d5a723ca5b/Evaluation-Study-of-eCourts-Integrated-Mission-Mode-Project-Project.pdf>, (last visited on September 11, 2021).

[92] *Ibid.*

However, E-judiciary is a step beyond E-courts. E-judiciary involves not only filing cases online. Also includes, among other things, avenues for online interaction between the judges and advocates, online proceedings, online examination and cross-examination of witnesses and finally passing of online judgements. Before the COVID-19 pandemic, after the success of E-courts, there was no urgency in moving forward and things had been moving at their own bureaucratic pace in the implementation of E-judiciary in India. The Covid-19 pandemic crisis, due to its safety protocol norm of social distancing, started nudging the judicial administration to take a quicker leap from the existing stage of E-courts and jump to the next level, i.e., E-judiciary. In fact, as a direct consequence of the Covid-19 pandemic crisis, after E-courts we are now witnessing a new impetus to leapfrog from E-courts to E-judiciary as a preferred mode of justice administration in courts at various levels, as the following examination of the courts' responses to Covid-19 pandemic illustrates.

So, summarizing broadly, it can be said that the E-courts in India are digitized courts which, using information and communication technologies (ICTs) and the Internet, provide online information to various stakeholders. Such online information may be a one way or two-way communication.[93] One-way information involves the courts providing information online, such as possible information as made available on a court's website. It also includes sending information to a person through any commonly used electronic mode such as SMS or WhatsApp. Whereas two-way traffic, for example, includes online interaction among the litigants and lawyers and the courts.

**6.3.3.1 E-Courts Achievements:**

The present pandemic situation is unpredictable. It is difficult to say for how long the social distancing orders and movement restrictions will remain in force. It is anticipated that these preventive measures will remain for a long time even after the current situation has subsided. The existing circumstances are likely to turbocharge the transformation of the Indian Legal System. It is likely that COVID-19 will drive law into the digital era and restructure its landscape. The judicial directive of introducing the E-Courts to make the justice delivery system accessible to everyone is

[93] *Available at:* https://www.iacajournal.org/articles/10.36745/ijca.391/(last visited on September 10, 2021).

a welcome change. In doing so, Indian courts have sustained the chief principle of the Indian Legal System, i.e., justice must not only be done but seen to be done. In the present circumstances, Arbitration is expected to be the most desired and versatile mode of resolution of disputes.[94]

The challenges in these trying times should be harnessed as an opportunity for the Indian Legal System to revamp and strengthen its operating procedures to mitigate the effects of the Covid-19 pandemic at the earliest. These of the following are division of e-court:

a) **Computerization and WAN connectivity:** 18,735 courts have been computerized with software interoperability. To reduce the connectivity divide, Wide Area Network (WAN) project was given special impetus. 2951 sites (98%) have been commissioned with 10 Mbps to 100 Mbps bandwidth speed and Technically Not Feasible (TNF) sides reduced from 58 in 2019 to 11 in 2021. In the COVID-19 scenario, this WAN connectivity enabled better Video Conferencing facilities and improved access to justice.

b) **COVID Management Software Patch for CIS:** To ensure smooth functioning of Courts even during the COVID-19 pandemic, a new software patch has been developed to help in the smart scheduling of cases. Courts can now hear urgent cases in scheduled time slots and accommodate the convenience of lawyers to prevent conflicting engagements and have proved to be effective in managing overcrowding in court premises.

c) **The National Judicial Data Grid (NJDG):** Case Information Software using Free and Open Source Software has been developed to automate the Court Registry. This has led to NJDG for judicial data transmission. NJDG is providing the world's largest real-time online database of more than 19.16 crore cases of various Courts and 15.15 crore orders/judgments. Three new features have been added:

   **(i)** Open API to Central and State Government to improve monitoring and compliance of pending cases and

[94] Varij Sharma and Jyotika Thakur, "Covid-19 and The Revamping Of The Indian Legal System" *available at:* https://www.mondaq.com/india/operational-impacts-and-strategy/1068670/covid-19-and-the-revamping-of-the-indian-legal-system (last visited on December 7, 2021).

**(ii)** 'Reasons for Delay' column has been added to track delays caused in adjudication,

**(iii)** Land Records Data of 10 States have been linked with NJDG to identify disputed lands.

d) **Virtual Courts:** 12 Virtual Courts have been set up in 9 States/UTs which have tried 86 lakh petty traffic offence cases and collected over Rs.175.35 crore online fines. Delhi High Courts have set up 34 Digital Courts to deal with NI Act related cheque bounce cases.

e) **Video Conferencing:** Hearing through Video Conferencing (VC) emerged as the mainstay of Courts during the COVID period. India emerged as a global leader with District and High Courts virtually hearing nearly 1.26 crore cases and 96,000 cases by the Supreme Court of India. Model Rules for Video Conferencing have been framed by a 5-Member Committee and circulated for adoption by the High Courts.1500 additional VC licenses procured for use of Courts. Funds were released for the setting up of 2506 VC cabins and 14,443 additional VC equipment.

f) **Live Streaming:** Live Streaming of Court proceedings have been started in Gujarat, Karnataka and Orissa High Court. Draft Live Streaming Rules formulated and circulated to all High Courts and placed in the public domain for comments and suggestions.

g) **eFiling:** eFiling is aimed at promoting paperless filing and saving time and cost. The upgraded version 3.0 is being gradually rolled out with advanced features like online submission of Vakalatnama, eSigning, online video recording of the oath, online payment, filing of multiple IAs/applications, Portfolio Management and bilingual mode etc.

h) **eSewa Kendra and eCourt Services:** 235 eSewa Kendras have been funded for roll out in High Courts and District Courts to reduce the digital divide. eCourt services have been created to provide real-time information on case status, cause list, judgment through 7 platforms like SMS Push and Pull, Email, ECourt Mobile App, Judicial Service Centre and Information Kiosks.

i) **Secure, Scalable & Sugamya Website as a Service (S3WAAS):** All court websites are being upgraded from the existing system to the S3WAAS platform which is secure, scalable and accessible. Content published on the

website is accessible so that even Divyang users will be able to access the information using assistive technologies.

j) **Digitization of Records:** The e-Committee of the Supreme Court of India had formed a Sub Committee for the formulation of the SOP on Digitization of Records. The SOP has recently been finalized and circulated to the High Courts for their comments.

k) **Judgment Search Portal:** This portal has been created for the convenience of stakeholders in searching judgments easily.

l) **Information, Education & Communication (IEC):** As part of the IEC campaign several initiatives have been taken to educate the Judicial Officers, lawyers and public about the facilities available under the e-Courts Project, such as:

i. **e-Committee Website:** Launched exclusively for the e-Committee and linked to the website of the DoJ for dissemination of information relating to eCourts Project amongst all stakeholders and to enable High Courts to upload their achievements and best practices.

ii. **Awareness and familiarization of e-filing:** Webinars for Bar Council of Tamil Nadu, Goa, Maharashtra and Delhi were held on 14th June 2020. Manual and Brochure on eFiling is made available on eFiling Portal.

iii. **YouTube Channel:** Under the title 'eCourts Services' for video tutorials on eFiling. 12 help videos in 7 regional languages have been uploaded apart from Hindi and English and circulated for advocates as part of awareness, through the eFiling portal help desk and also on social media through the e-Committee YouTube channel.

iv. **eCommittee Training at National and State level:** Total 30 training and awareness programmes on the ICT conducted between May 2020 and June 2021 covering nearly 2,34,725 stakeholders including Judges of States, Courts staff and Advocates. 25 Master Trainers have been trained in each High Court who in turn has already trained 5409 Master Trainers across the country. These, 5409 Master Trainers have in turn imparted a

training programme on eCourts Services and e-filing in each district of the country for advocates in their regional languages and also identified Master Trainer Advocates.

**6.3.3.2The opportunity in E-court Services App for the Vulnerable Groups:**

Also much before the COVID-19 crisis made its appearance, in 2017, the E-courts Services mobile application was launched. The E-Court Services App provides detailed information related to cases filed in the Subordinate Courts and most of the High Courts in the country. It can be exclusively used for District Courts or High Court or both. The App provides several useful features to digitally assist the lawyer or the litigant, including the provision of search by CNR (Case Number Record). That is a unique number assigned to each case filed in District and Taluka Courts anywhere in India through the Case Information System. So that, simply by entering the CNR one can get the current status and details of the case. In addition to Case Status, search options include Cause List and Calendar.[95] The litigant or lawyer can save all cases of interest, that are shown under a *'My Cases'* tab. E-Court Services App facilitates the creation and management of a portfolio of their cases or personal case diary for future use.[96] Further, the E-Court Services App also provides numerous other services including.[97] Anyone can view the entire case history of a lawsuit through this App; Case status, cause list, next date of hearing and so on. There is also a provision for lawyers and litigants to e-pay court fees.[98] The E-Court Services App provides scanning of QR codes to access the entire case status. The E-Court Services App is also connected with all 18,000 District and Subordinate Courts and 21 High Courts with more than 3.2 crores (more than 30 million) case statuses available on the App. That such digitization initiatives in the judicial system were being well received is

[95] *Available at:* https://www.iacajournal.org/articles/10.36745/ijca.391/(last visited on September 10, 2021).
[96] *Available at:* Computer Cell, Supreme Court of India. Supreme Court of India – Official Mobile App, available at: <https://play.google.com/store/apps/details?id=com.nic.sciapp&hl=en_IN&gl=US> (last visited on September 11, 2021).
[97] *Available at:* E-Court Services: District and Taluka Courts of India, <https://services.ecourts.gov.in/ecourtindia_v6/> and Official W ebsite of District Court <eCourts Services App on Mobile For Checking Case Status./District Court in India | Official Website of District Court of India>, (last visited on September 13, 2021).
[98] *Available at:* Official Website of District Court, <eCourts Services App on Mobile For Checking Case Status./District Court in India | Official Website of District Court of India>, ( last visited on September 23, 2021).

demonstrated by the fact that the App had seen over 17 lakh (1.7 million) downloads within a few months of its launch, recording almost 5,000 downloads a day.[99]

### 6.3.4 Virtual Hearings:

As a result of these measures, court virtual hearings are becoming more and more common by the day. Normally, virtual proceedings were being conducted in the pre-COVID-19 crisis-era generally in criminal cases where the accused could not be produced physically before the court due to security reasons. The use of technology found judicial recognition in the precedent of the Supreme Court in **State of Maharashtra v Praful Desai**.[100] The Supreme Court has held that the term 'evidence' includes electronic evidence and that video conferencing may be used to record evidence. It observed that developments in technology have opened up the possibility of virtual courts which are similar to physical courts. The Court held:

> *"Advances in science and technology have now, so to say, shrunk the world. They now enable one to see and hear events, taking place far away, as they are taking place…Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you i.e. in your presence… In fact, he/she is present before you on a screen. Except for touching one can see, hear and observe as if the party is in the same room. In video conferencing, both parties are in presence of each other… Recording of such evidence would be as per "procedure established by law"*

Even the Supreme Court of India dilly-dallied in its view and did not seem to be sure whether to favour video-conferencing or e-hearings in justice administration or not. More specifically, in the year 2014, a Division Bench of the Supreme Court, while allowing a transfer petition, made observations about the usage of video conferencing facility to hold matrimonial proceedings when both parties were not located within the jurisdiction of the same court.[101] Soon after this judgment was

[99] Thakur, Pradeep, " eCourts app brings reforms in justice delivery system" *Times of India*, March 4, 2019 *available at:* <eCourts app brings reforms in justice delivery system | India News – Times of India>, ( last visited on September 8, 2021).
[100] (2003) 4 SCC 601.
[101] *Krishna Veni Nagam* v. *Harish nagam* 2017 (3) SCALE 471.

pronounced, the Supreme Court took to directing video conferencing in most transfer petition matters. However, this change was short-lived, as a subsequent three-judge bench judgment of the Court in ***Santhini v. Vijaya Venketesh***.[102] Notably, the judgment in Santhini's case was delivered by a 2:1 majority. While the majority (the then Chief Justice **Dipak Misra** along with Justice **AM Khanwilkar**) took the view against video conferencing. Justice **D.Y. Chandrachud** dissented and wrote an opinion in favour of video conferencing,

> *"Appropriate deployment of technology facilitates access to justice. Litigation under 1984 is not an exception to this principle. This court must be averse to judicially laying down a restraint on such use of technology which facilitates access to justice to persons in conflict, including those involved in conflicts within the family. Modern technology is above all a facilitator enabler and leveller. Video conferencing is a technology that allows users in different locations to hold face to face meetings. Video conferencing is being used extensively the world over (India being no exception) in online teaching, administration, meetings, negotiation, mediation and telemedicine among myriad other uses. Video conferencing reduces cost, time, carbon footprint and the like."*

However, on the infrastructure front, with the COVID-19 pandemic dangers in view, the Government is also speedily providing video-conferencing rooms in courts across the nation.[103] To make facilitates the E-judiciary mode of justice administration during the COVID-19 crisis period for vulnerable groups of India. Ironically, under the changed circumstances the Supreme Court has started playing a different tune concerning video conferencing, 'In fact, the Supreme Court has fast-forwarded that which was in the pipeline for a few years now – court hearings through video conferencing.'[104] The Supreme Court now appears to be going full steam and

[102] (2017) 4 SCC 150.
[103] The Tribune, Chandigarh, 2.5K courts to be equipped for online hearing, 7 December 2020, *available at:* https://www.tribuneindia.com/news/nation/2-5k-courts-to-be-equipped-for-online-hearing-180764 (last visited on September 24, 2021).
[104] Bar and Bench. The Supreme Court is online: Pros, cons and the way forward for hearings by video conferencing, 20 April, 2020, *available at*: <https://www.barandbench.com/columns/the-supreme-court-is-online>, (last visited on September 9, 2021).

encouraging e-hearings in E-judiciary but hastened by the COVID-19 crisis, it took six years for that metamorphosis to happen in justice administration in India.

### 6.3.4.1 Challenges Concerning Virtual Court Hearings:

**Justice S. A. Bobde**, credited with ensuring Supreme Court's quick transition to technology during the unprecedented COVID-19 pandemic, referred to a new kind of "equality and inequality" in virtual hearings, saying now *"access to justice depends on access to technology"*.105 He further said "*the pandemic required the Supreme Court to learn new things about communications, and it was decided that the video conferencing was the way forward. He pointed out that the circumstances are such that we can acquire all the devices and technologies necessary."* Virtual court hearings are chosen by the Supreme Court to start hearing and resolving matters, where litigants and parties to the matters can present and argue before the court through videoconferencing. It is not the first time in the history of the legal system of India that this kind of hearings has taken place. It was first in the year 2002 that the Apex Court allowed audio-visual equipment to be used in civil cases. After which video-conferencing was taken up by the Supreme Court in the evidence stage of criminal cases. Some of the jails also got equipped with video-conferencing in 2014.[106] In between the year, 2017 to 2019 various family courts and jails started having video-conferencing setup.

The noble objective of the virtual court hearing was to render justice in the difficult times of pandemic all over the globe and not only the Indian courts but the United States and United Kingdom Courts also adopted the concept of Virtual Courts. However, the courts in India are far from availing these services to everyone and the experiences in relation to the virtual court hearing have brought varied opinions. Justice D.Y. Chandrachud while presiding in a webinar rightly pointed out that *"open courts are considered to be the "spine" of the Indian legal system.*"[107] He also added to this view that virtual courts cannot be a complete substitute to usual

[105] Chief Justice of India (CJI) S. A. Bobde, "Access to justice now depends on access to technology" *The Economic Times* Apr 23, 2021.
[106] Saloni Chitlangi, "Indian Legal System and Access to Justice During COVID-19" *available at:* https://blog.ipleaders.in/indian-legal-system-and-access-to-justice-during-covid-19/(last visited on December 27, 2021).
[107] *Available at:* https://indianlawwatch.com/limited-access-to-justice-through-virtual-courts/(last visited on December 27, 2021).

open courts, the Indian Judiciary has opted for video-conferencing to hear matters only because there was no choice left but to resort to it.

Many lawyers and legal scholars are of the view that unlike the courts of advanced countries, Indian courts are not properly equipped with the technology of video conferencing. Courts in the metropolitan cities like Delhi and Mumbai might have stepped up to the online shift but there are various other cities in which courts are incapable of making the virtual shift due to technical difficulties and network issues. There are around 672 district courts in India from where the foundation of litigation begins. District courts present in tribal and rural areas face serious challenges of accessibility of the internet and broadcast infrastructure. Most of the population around the country don't have access to proper technology to avail of such service as there is still a lot of disparity between the rich and poor. This can lead to discrimination because these kinds of services would only be feasible for the rich and so most of the urgent cases taken by the courts would belong to those who are from influential families. Apart from the situation of courts, it has to be taken into consideration that many of the advocates and litigants do not have proper internet and technological facilities and the knowledge to be well versed with the system of video-conferencing and to do online hearings. [108]

Many advocates have reported the issue that they have been facing in keeping their points and objecting to the opposing counsel's arguments in between the session of hearings, which have led to a loss to them and their clients. There are a lot of times when Judges and advocates are not able to communicate properly due to inaudibility which unfortunately creates confusion and increases the pendency of cases.

It has been rightly pointed out by **Senior Advocate Mr N Hariharan** at the Delhi High Court that due to technical glitches faced in video streaming might affect Fair Trials. In the course of Fair Trials, facial expressions and various other factors are noted to come to a conclusion in a criminal matter which might get overshadowed due to glitches in the usage of technology. The physical dimension of court hearing and arguments cannot be covered by virtual courts until and unless all the courts, lawyers and parties are fully equipped with proper technological equipment.

[108] *Supra* note 666.

Issues related to the privacy of information and documents are being raised as third-party apps are being used by the courts to conduct video conferencing. The question of liability is unanswered as if in any case someone's personal information is used by anyone else while cases are being heard by the Judiciary. Therefore, these views are elucidating the point that the strict procedures that were to be followed according to the law were not being followed during the virtual court hearing.

### 6.3.5 Impact of COVID-19 on the Legal Landscape:

None of the previous downturns has ever weakened the legal business or triggered the prompt implementation of new operational procedures and policies. Coronavirus is the first Black Swan event having a long-lasting and unpredictable impact on the legal landscape of India. As the world is embracing the social distancing measures, the fervour that litigation once professed as the champion of dispute resolution, now seems to be waning.[109] The regular hearings in the Indian Courts are being adjourned or being shifted to the Virtual Court Room System. With the courts of India already overburdened with staggering backlogs, the virus may just be adding to the same.[110] However, the postponement of hearings is not the only difficulty that the legal system is facing. The movement constraints throughout the country are also making the practice of gathering evidence and examining witnesses more challenging.

The shift in the courtroom justice delivery system to virtual hearings has also led to many genuine concerns amongst the advocates and the parties. Many parties fear their safety and privacy under this new video conferencing system. Moreover, several judicial administrators and parties have been facing technical glitches which have also affected the way in which justice is delivered. Furthermore, many cases in India are represented by an army of lawyers assisting their seniors during the arguments. The new procedure of virtual hearings has caused severe hardships to these lawyers who struggle to coordinate with each other during the online

[109] Alok Jain and Dhruv Jain, "Arbitration in the Time of COVID-19" (Bar and Bench, 26 March, 2020) *available at:* < https://www.barandbench.com/columns/arbitration-in-the-time-of-covid-19> (last visited on December 17, 2021).

[110] Varij Sharma and Jyotika Thakur, "Covid-19 And The Revamping Of The Indian Legal System" *available at:* https://www.mondaq.com/india/operational-impacts-and-strategy/1068670/covid-19-and-the-revamping-of-the-indian-legal-system (last visited on December 7, 2021).

proceedings.[111] The impact of coronavirus may also lead to an end of many arbitral seats as the travel restrictions continue and countries struggle to recover from its aftermath.

Lastly, the transformation of the justice delivery system to that of a digital court system may eventually lead to the increased implementation of artificial intelligence. This may hamper the manner in which justice is delivered due to the partial nature and the incomprehensibility of the artificial intelligence structure.

### 6.3.6 Advantages of the Legal Systems' Cultural Reboot:

Having reformed the Indian legal landscape by embracing technology during this unprecedented global crisis, the Indian Legal System has implemented and safeguarded our ancient custom-Justice, at all Costs, Always. Even during these unprecedented times, information technology has ensured that dispensation of justice is not hampered. The Indian legal industry is becoming majorly dependent on IT-enabled virtual systems and communication facilities to minimize the effect of the global pandemic. Nevertheless, despite the challenges of this new system, virtual technology in the Indian legal system is flourishing. Undoubtedly, as the pandemic is going to have a long-lasting effect, more hearings have to conducted virtually. This change in the justice delivery system may be the turning point of the Indian legal landscape as Online Dispute Resolution has be widely executed and adopted. Moreover, with the remarkable reach of the internet in today's times, it has provided access to justice to all while addressing health concerns.

The virus has also transformed the way evidence is collected and transmitted. Reliance on paper documents is expected to drastically reduce as Courts promote e-filing and electronic documents are majorly being relied upon to curtail the spread of this contagious virus.[112] The situation has in turn lead to a reduction in the wastage of paper which is a major environmental concern in India. Moreover, the special facility given to the Media is also leading them to widely report almost all cases and their outcomes. All these are signs that the modernisation of the India Legal System is likely to occur. This pandemic will transform and change the Indian Legal Culture.

[111] *Ibid.*
[112] *Ibid.*

## 6.4 CONCLUSION:

The Indian Legal System is one of the most efficient systems in the world. Our codes, statutes and customary laws form the base of our Legal System. While national spirit and customary values are deep-rooted in our legal system which makes sure that justice is never denied. However, India is a diversified country where the conditions are different from all the nations. Courts, litigants and lawyers in various cities and states deal with different kinds of technological, economic and social advancements. Thus, it has to be realised that a decision taken by the Apex Court or the government has to be in accordance with the disparities. 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 AND SUGGESTIONS

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# CONCLUSION AND SUGGESTIONS

## 7.1 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,[1] 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:[2]

**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.[3] We remain 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

[1] *Available at:* https://www.researchgate.net/publication/338423278_Access_to_Justice_Promoting_the_Legal_System_as_a_Human_Right (last visited on September 8, 2021).
[2] 222nd Report (2009) of Law Commission *available at:* http://lawcommissionofindia.nic.in/reports/report222(last visited on September 8, 2021).
[3] Sangita Dhingra Sehgal, *Commentary on The Legal Services Authorities Act* 17 (Universal Law Publishing, New Delhi- India 2016).

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.[4]

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 exacerbated by their lack of awareness of their rights, entitlements and processes to redress grievances"*.[5] 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.[6] 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

[4] *M.H Hoskot* v. *State of Maharashtra*, (1978) 3 SCC 544.
[5] 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).
[6] *Ibid.*

facilities to prepare their defence, and confidentiality of communication is vital to ensure that individuals can receive necessary legal support.[7] 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 symbolizes the constitutional assurance of equality before the law and has assured great importance in the administration of justice.

Legal aid is now no longer a charity of the Government but a constitutional obligation of the State to provide it to the *bonafide* and eligible persons. **Article 39A** is a part of *"just fair and reasonable procedure"* under **Article 21** of the Constitution and the due process of law.[8] At that space, the State would be obliged to provide such assistance from the moment that not to do so would involve a violation of the right of every citizen to a fair trial. On the matter that involves a severe interference in fundamental rights. In any case, it does not rule out the legitimacy of the creation of enforcement mechanisms for reimbursement of such benefits. Hence, it is necessary to re-emphasise the need to pay special attention to the most vulnerable groups and the obstacles to access to justice they face to guarantee that people look to the

[7] 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).
[8] *Ibid.*

mechanisms provided. So no one can be excluded based on their sex, race, sexual orientation, benefits, culture, or economic capacity.

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.[9] 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.[10] We can help more people reach a destination where they believe their problems have been somewhat resolved. One of the severe

[9] *Available at:* https://cic.nyu.edu/sites/default/files/english_task_force_report_27jun19-min_compressed.pdf(last visited on September 8, 2021).
[10] *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 COVD-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.[11] 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

[11] *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.[12] 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.[13] 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, and struggle; the tireless exertions and passionate concern of dedicated individuals."*[14]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.

## 7.2 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

[12] *Available at:* https://www.undp.org/blogs/changes-and-challenges-justice-time-covid-19 (last visited on September 13, 2021).
[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 8, 2021).
[14] King, M. L., *Where Do We Go From Here? In Stride Toward Freedom: The Montgomery Story* 9 (New York: Harper Collins 1987).

obstacles faced 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 welcomed to 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. Therefore, access to justice reforms should be a part of our process of democratization and development. 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.

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