

## ROLE OF EQUALITY & NON-DISCRIMINATION IN ACCESS TO JUSTICE

*Author: Kajal Jitendra Shende, II Year of B.A.,LL.B.(Hons.) from Maharashtra National Law University Nagpur.*

### **List of Statues**

42<sup>nd</sup> Amendment Act 1976

Code of Criminal Procedure 1891, s. 491

Defense of India Act 1939

Schedule Cast and Schedule Tribes (Prevention of Atrocities) Act 1989, s. 15

Prisoners Act 1948

### **List of Cases**

Bremen Vulkan Schiffbau und Maschinenfabrik v. South India Shipping Corp

Golaknath v. State Of Punjab

Hussainara Khatoon v. State of Bihar

Kesavananda Bharati v State of Kerala

Maneka Gandhi v. Union of India

M.H. Hoskot v State of Maharashtra

P.K. Tare v. Emperor

Re: Llewelyn Evans vs. Unknown

### **Statement of Problem**

Since, Indian independence, the role of equality and non-discrimination is often taken as an issue. The Indian Constitution guarantees possible equality but in present times we have inequality and discrimination in society which directly affects the individuals expectations from judiciary for justice. Many social and administrative elements are responsible for this, the research try to find out the positive and negative effects as to say role of equality and non-discrimination in the path of justice and also tries to find out certain important barriers in its path.

**Objective of the study**

The paper try to understand the role of equality and non-discrimination in “access to justice” and how inequality and discrimination in the society acts as a stumbling blocks in path of “Social Justice” through access to justice.

**Research Questions**

- How did the concept of “access to justice” evolve?
- What is the role of equality and non-discrimination in access to justice?
- How it affects the social justice motto of constitution through “access to justice”?
- Which are the stumbling blocks which acts a wall between society and justice?

**Research Methodology**

The research methodology used in this research paper is Doctrinal research methodology. The information for this paper is referred from case laws, books, reports of government and non-government organizations.

**Scope and Limitations**

The topic ‘Role of Equality and Non-discrimination in access to justice’ is a research, summarizing, the development of concept ‘access to justice’ at national and international level. The research studies the role of equality and non-discrimination in access to justice in Indian perspective.

My research on the topic limits to the Indian perspective, justice delivery to their citizens and barriers in its path.

**Abstract**

Equality and Non-discrimination is the fundamental and basic right of every citizen of India. Since independence and before independence to, our fathers of the nation had dreamt of a society where every individual can enjoy their freedom with equal rights without any discrimination based on caste, religion, sex, place of birth etc. This vision is purely reflected in the Constitution of India in Part III as 'Fundamental Rights' which includes equality and non-discrimination. Whenever any individual face such a situation where he/she is not getting equal treatment and discriminated on the basis of caste, religion, sex, place of birth etc., then they can knock the doors of judiciary for getting justice.

The Indian Government and judiciary tried to eradicate these social evils i.e. inequality and discrimination with the help of various policies, Public Interest Litigation, Free legal aid and so on. But still in society, these evil concepts exist which works as a stumbling blocks in the way of those individuals who seek justice from Judiciary. These evil practices in the name of inequality and discrimination, are affecting the individual as well as national development. In this research paper, the author tries to find out such stumbling blocks in the way of access to justice and their consequences thereof.

**Keywords:** The Indian Constitution, Equality and Non-discrimination, Public Interest Litigation, Free legal aid, Fundamental Rights.

**Introduction**

"Access to Justice" is the right of every one which cannot be taken away by anyone except the valid, reasonable statutory power and Constitution itself. The term 'access to justice was first defined in Common Law as a 'Fundamental Human Right. The subject "Role of Equality and Non-Discrimination in access to justice" is very important for Judiciary and every individual in country. The subject immediately stir up in minds the view that every person who seek justice should be provided justice and access to court, equally and without any discrimination. But the subject has a wide meaning. It also refers to the scope and nature of every right and duties, number and role of courts, the quality of justice provided by courts, various policies of government, Public Interest Litigation, Free legal aid and so on.

The Constitution of India had provided and ensured every citizens, “Equality before Law”, “Equal Protection of Laws” and “Justice to all”. Social Justice is not confide with the equal distribution of resources rather it has wide meaning. It means every section of society, every individual should be provided equal justice without any type of discrimination. In our Society, inequality and discrimination can be seen in various aspects or way of life. Since before independence from the ancient times, in our society, many evil practices were continued resulting inequality and discrimination bases on caste, religion, sex, place of birth etc.

These evil practices in the name of inequality and discrimination, are affecting the individual as well as nationals development. Access to Justice refers to providing Social Justice by giving Equal opportunity to every individual in society without any discrimination. These equal opportunities in the form of free legal aid, public interest litigation etc., are provided by the government and the apex court.

There are many stumbling blocks in the way of realizing the constitutional promise of social justice through ‘access to justice’. The Constitutional promise can only be realized when all the three organs of state i.e. legislature, Judiciary and executive and every citizen of country works together.

### **Access to Justice: Common Law History**

Common Law describes access to justice as a basic fundamental human right. In common law, this basic fundamental human right cannot be taken away from any citizens except it can be taken away by the valid exercise of statutory power or by legislature through its constitutional power.

In twelfth century BC, under the reign of Henry – II in England, with the assent of King, a system of writs was established in order to help the litigants belonging to all classes to avail themselves, justice of king. By the establishment to the system of writs, the concept of “Rule of Law” and “Access to Justice” was getting popular among the masses. Soon, King John abused the “Kings Justice” system which led to the Magna Carta which came to known as the initial source of British Constitutionalism. Magna Carta represent the social commitments of Rule of Law and it promised that no one is above the law not even king.

Magna Carta propounded that not only king is duty-bound by law but also the barons, people of lower section of the British society too. The Magna Carta establish the basic for the right to “access to justice” in its three crucial clauses-

“No freeman shall be taken or imprisoned or disseized 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 one 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 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 and peaceably, freely and quietly, fully and wholly, for themselves and their heirs, of us and our heirs, in all aspects and in all places for ever, as is aforesaid. An oath, moreover, has been taken, as well on our part as on the part of the barons, that all these conditions aforesaid shall be kept in good faith and without evil intention – Given under our hand – the above named and many others being witnesses – in the meadow which is called Runnymede, between Wonds or and Staines, on the fifteenth day of June, in the seventeenth year of our reign.”<sup>1</sup>

At Runnymede, by following the Magna Carta, many cases were been decided and disputes were resolved, created precedents and laid down vast principles and this came to be known as “Common Law”. The principles related to the basic human rights experienced in many countries all over the world, entered into the constitution of many countries and the Bill of Rights. There is one Roman maxim, *Ubi Jus ibi remedium* which ensure remedy for every infringement of rights.

The present theory of “access to justice”, a part of common law and further recognized as a part of Constitutional Laws. Lord Diplock, while dealing with the High Courts’ power to control the conduct of arbitrators, also referred to the common law aspect of access to justice. He said in *Bremen Vulkan Schiffban and Maschinenfabrik v. South India Shipping Corp.* (1981 AC 909 = 1981 (1) All ER 289) as follows:

---

<sup>1</sup> ACCESS TO JUSTICE- DELHI HIGH COURT,  
<http://www.delhihighcourt.nic.in/library/articles/Access%20to%20justice.pdf> (Visited December 16, 2020).

“The High Courts’ power to dismiss a pending action for want of prosecution is but an instance of a general power to control its own procedure so as to prevent its being used to achieve injustice. Such a power is inherent in its constitutional function as a court of justice. Every civilized system of government requires that the State should make available to all its citizens a means for the just and peaceful settlement of disputes between them as to their respective legal rights. The means provided are courts of justice to which every citizen has a constitutional right of access in the role of plaintiff to obtain the remedy to which he claims to be entitled in consequence of an alleged breach of his legal or equitable rights by some other citizen, the defendant”.<sup>2</sup>

In the court of law while deciding the case using common laws, in the judgement many judges had referred common law aspect of access to justice. By the views of many judges in their judgements, established that the “access to justice” is a basic human right in the Common Law. Thus it can only be taken away reasonably by the statutory power and legislation.

### **International Human Rights Laws**

In Paris, on 10<sup>th</sup> December 1948, the United Nations General Assembly promulgated “The Universal Declaration of Human Rights” (UDHR). This declaration is known as a watershed moment in the history of development of Human Rights all over the world. The UDHR was drafted by many representatives of different legal and cultural background from different countries all over the world. The UDHR gave recognition to the human rights which also includes right to “access to justice”. The UDHR also promoted “Social Justice”. Some are given as follows:

Article 6 – Everyone has a right to recognition everywhere as a person before law.

Article 7 – All are equal before the law and are entitled without any discrimination to equal protection of the laws. All are entitled to equal protection against any discrimination on violation of this declaration and against any incitement to such discrimination.

Article 8 – everyone has a right to effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

---

<sup>2</sup> *Id.*

Article 10 – 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.

Article 21 (1) – Everyone has a right to take part in the government of his country directly or through freely chosen representatives.

(2) – Everyone has right to equal access to public services in the country.

### **The Human Rights in India**

In India, Since the Ancient times the Judicial System was developed and focused on justice delivery to everyone. Since the Ancient India, citizens had been given opportunity to direct access to Kings Justice and many law sources like Dharma Shastra, Vedas, Artashastra, Smritis, etc. all are talking about the Judicial System and Justice delivery system for everyone.

Since before our Constitution came into force on 26<sup>th</sup> January 1950, as we started following the Common law system of England in India, “access to justice” became the part of our law. Even after the Constitution came into force, the existing rights were continued because of Article 372 of the Constitution. In the history of Human Rights in India, there were two cases which arose in the pre-independence era, this cases evokes the development of “access to justice” in India. By these cases the “access to justice” was recognized and accepted by the courts in the country.

The Bombay High Court in case *Re: Llewelyn Evans AIR 1926 Bom 551*, rendered the early decision. In this case, Evan, on the criminal breach of trust charge, was brought to Bombay from Aden. This was the case of access to justice during custodial detention. The legal Advisor of Evan was denied to meet Evan, at the stage of granting remand to the prisoner in police custody. The magistrate, ordered the remand of police custody held that he had no jurisdiction to grant access to meet despite the fact, under the Prisoners Act, 1948 section 40 says, “An unconvicted person, should subject to proper restrictions, be allowed to see his legal advisor in jail.” The issue before the court was that whether this right will be given to the person at stage of police custody or not?

Referring to the report of Rawlinson Committee in England, Justice Fawcett, presided over the bench of Bombay High Court, noted that the right under that provision implied that the prisoner should have a reasonable opportunity “if in custody, of getting into communication with his legal



adviser for the purposes of preparing his defense”. Justice Madgavkar, other judge of the same bench, Justice added that,-

“If the end of justice is justice and the spirit of justice is fairness, then each side should have equal opportunity to prepare its own 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 skilled 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”.<sup>3</sup>

Another case, P.K. Tare\_v. Emperor\_AIR 1943 Nagpur 26. The petitioner was one of the participants of Quit India Movement, 1942, under the Defense of India Act 1939, challenging his detention as he was not allowed to meet his council to seek legal advice or to approach the court. The Government of that time contended that, the right to move the habeas corpus petition under section 491 of Cr.PC 1891 had been taken away by the Defense of India Act 1939. In this case a leading opinion was given by Justice Vivian Bose, he says, notwithstanding the defense of Defense of India Act 1939, right to move to the court will remain enacted.

BRILLOPEDIA

### **Constitutional Protection in India**

The Constitution of India had provided that all are equal before the law and subjected to equal protection of law. Achieving the social justice and equality of status and opportunities without any discrimination on the ground of caste, sex, religion, and language are one of the preambular objectives of our Constitution. By inserting the term “Equality and Non-Discrimination” the Constitution has removed the age old disabilities of so called unfortunate class’s castes of the society for providing Social Justice. The old evil practice which had rooted deep into the Indian society, “Untouchability” had been abolished by the Constitution by providing article 17.

The Constitution has provided every citizens the equal opportunities for establishing Social Justice. Constitution has provided the Fundamental Rights to every citizens which can be taken away only through reasonable statutory power. The Constitution of India had provided

---

<sup>3</sup> ACCESS TO JUSTICE, *supra* note 1.



“reservation” for maintaining Socio-economic Justice for the downtrodden, economically backward sections of our society. The architect of Indian Constitution, Dr. Ambedkar has talked about the inequality and injustice in our society, in speech delivered in the constitution assembly as follows:

“[W]e must begin by acknowledging first that there is complete absence of two things in the Indian society. One of these is ‘equality’. On the social plane, we have in India a society based on privilege of graded inequality, which means elevation of some and degradation of others, on the economic plane, we have a society in which some had immense wealth as against many who are living in utter poverty.....in politics, we have equality and in social and economic life, we have inequality. We must remove this contradiction at the earliest possible moment, or else those who suffer from inequality will blow up the structure of political democracy, which this assembly has so laboriously built up”<sup>4</sup>

In order to achieve the socio-economic equality, the Constitution has provided that the states are directed to impellent various directive principles of the state policy. In India, Supreme Court is the custodian of our Constitution. Though, the constitution had given certain rights to the states for making laws for maintaining social justice in the state, the Supreme Court has the suo motto power of ‘Judicial Review’ to check the validity and reasonability of those laws.

Being the custodian of Indian Constitution, Supreme Court had ensured no violation of fundamental rights of every citizen. In the case, State of Madras v. Champakam Dorairajan, fundamental rights were violated. The Supreme Court through this case had given a clear strict judgment to the states that states cannot compromise with the Fundamental Rights of citizen for the directive principles of state policy. In Golaknath v. State Of Punjab, again there was violation of fundamental rights by parliament amending laws. In this case, Supreme Court said Parliament cannot make laws which violates the fundamental rights.

In Kesavananda Bharati v State of Kerala, the Supreme Court held that the fundamental rights can be amended but the basic structure of our constitution cannot be altered and if any fundamental right amendment which strikes the basic structure of constitution, that fundamental right cannot be amended.

---

<sup>4</sup> VASANT MOON, DR. BABASAHEB AMBEDKAR WRITINGS AND SPEECHES 184-187 (1982).

**Social Justice Concept**

It will be correct to say, society is full of inequalities. Since the Ancient times, in the History of India inequality and discrimination are deeply rooted in the society. Every man in the society is trapped in fetters of these inequalities and discrimination. The man is chained up by the evil practice in the society which directly affects the development in every walks of life and collectively Nation Development. The binding chain of these evil practice can only break with the hammer of social justice. The term “Social Justice” is not exactly confined with providing equal distribution of resources rather it has wider scope of meaning. In the words of honorable former chief justice of India Justice K. Subbarao, “Social Justice is a compound word. It is formed by Adjective ‘Social’ and verb ‘Justice’. Social relates to the society. Justice means equality in been fair and true.”

The Term “Social Justice” means giving fair justice to every people living in the society, it means is not confined with the distribution of resources between the masses, it is the equality in reasonable requirements of the human body and spirit. Since the Ancient times, our society is divided on the bases of caste, religion, sex, language, place of birth, etc. The Social Justice may demand preferential treatment to some downtrodden and underprivileged section of our society. Social Justice is essential for individual as well as the nation’s development.

  
**BRILLOPEDIA****Equality and Non-discrimination as a basic of “Access to Justice”**

The Indian Constitution had inserted the words ‘Justice’, ‘Liberty’, ‘Equality’, and ‘Fraternity’ in the preamble of our constitution. Our constitution talks about social, economic and political justice; equality of status and opportunities and to promote them all. The makers of our Constitution, by incorporating certain articles has assured social justice.

Article 14 - State or any institution cannot deny anyone in the country, equality before law as well as equal protection of laws.

Article 15 - The prohibition of discrimination on the ground of religion, race, caste, sex or place of birth.

Article 16 - Equality of opportunities in matters of public employment.

Article 17 - Abolition of untouchability and prohibition of its practice.

Thus equality and non-discrimination forms the part of our Constitution of India. Equality and non-discrimination in administration of justice forms a base for the social justice which would eventually leads towards the development of our nation. Equality before law presents the equal participation or opportunity for everyone to present their problem before the court and get justice. There must be equal access to justice. When the substantive laws reflects the equality by fair, reasonable and equitable rules then there will be political, economic and social equality in the society which leads to democracy.

### **Equality and Non-discrimination in “Access to Courts” Includes Rights to Legal Aid and Engaged Council**

The Constitution of India by 42<sup>nd</sup> amendment act 1976, introduced Article 36(A), it provides that “the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”.<sup>5</sup>

The significant steps were taken towards the development of Jurisprudence around the “right to life” under Article 21, the landmark judgement in Maneka Gandhi v. Union of India 1978 (1) SCC 248. The link between article 21 and right to free legal aid was build up in the judgement in the case Hussainara Khatoon v. State of Bihar (1980) 1 SCC 8. The Supreme Court was shocked to notice that various under trials were languishing in the Bihar Jails for more than three to ten years awaiting for trails and they were not even represented by lawyers.

The Court in the judgement said that, "No procedure which does not ensure a reasonably quick trial can be regarded as Reasonable, fair and just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of fundamental right to life and liberty enshrined in Art 21".<sup>6</sup> The Supreme Court call attention towards Article 39 (A), which provides that Free Legal Service is the imprescriptible components of “reasonable, fair and just” procedure and in article 21 the right to free legal service is implicated.

<sup>5</sup> ACCESS TO JUSTICE, *supra* note 1.

<sup>6</sup> Hussainara Khatoon & Ors vs Home Secretary, State Of Bihar, 1979 AIR 1369, 1979 SCR (3) 532.

Justice Bhagwati declared: “legal aid is really nothing else but equal justice in action. Legal aid is in fact the delivery system of social justice. If free legal services are not provided to such an accused, the trial itself may run the risk of being vitiated as contravening Article 21 and we have no doubt that every State Government would try to avoid such a possible eventuality”. The other landmark judgement was taken in the case *M.H. Hoskot v State of Maharashtra*, 1978 AIR 1548, 1979 SCR (1) 192 stating the Article 39-A as follows:

“Equal Justice and free legal aid. The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. (Emphasis added). This article is an interpretative tool for Art”.<sup>7</sup> The court further emphasized on free legal service as, “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 for such imprisoned individual for doing complete justice”.<sup>8</sup>

In India, because of the economic backwardness many people cannot avail the cost to access to courts and the expenses of consulting the lawyers and does deprive of justice. Our Constitution had taken many steps to ensure equality and non-discrimination in providing free legal services as the part of “access to justice”. Many government and non-government councils and committees are engaged in providing legal aid and free legal services to the needy people to promote equality in access to justice.

### **Equality and Non-discrimination in access to justice: Alternative Dispute Resolution**

Our Constitution of India had promised to provide, “Justice to all” and thus set up the systematic judicial setup for providing Social Justice. We have Supreme Court which is considered as the custodian of our constitution, High Court at state level, Central administrative tribunals, State administrative tribunals, Administrative quasi-judicial tribunals, specialized courts, District court and Gram Nayayalays at village level.

---

<sup>7</sup> *Madhav Hayawadanrao Hoskot vs State of Maharashtra*, 1978 AIR 1548, 1979 SCR (1) 192.

<sup>8</sup> *Id.*

In present scenario, it is not possible to move to courts for minute problems and for the courts too, it's not possible to handle such plenty cases. Many people in the society, are not able to move to courts due to economic or social problems. Therefore for dealing these issues, we have Lok Adalat or mediation, conciliation organized by Supreme Court, High court and taluka court legal services, State-Sponsored Alternative Dispute Resolution and NGO's and other ADR forums. These are providing Social Justice to all sections of our society. They are providing free legal services, various ADR forums are providing speedy case resolution which saves the time of courts.

These ADR forums are promoting equality and non-discrimination and providing justice to people. According to the Law commission report –

“Justice in all its facets - social, economic and political - is required to be rendered to the masses of this country without any further loss of time - the need of the hour. The new strategy consists in dispute-resolution by conciliation, mediation and negotiation. The constitutional promise of securing to all citizens justice, social, economic and political, as promised in the Preamble of the Constitution, cannot be realized unless the three organs of the State, i.e., the legislature, the executive and the judiciary join together to find ways and means for providing to the Indian poor equal access to the State's justice system”

In addition, we have designated officers under state-sponsored ADR forums, who goes to villages and gave authoritative advice at gramin/village level, refer appeal to district court in some instance. “For example, the Mobile Legal Services (“MLS”) initiative of the Maharashtra State Legal Services Authority (“MSLSA”) is comprised of a coalition of judicial officers (retired or serving), lawyers, social activists, NGO workers, law students, and law professors who travel to remote areas to create awareness on new laws through written and visual materials in the [community's] local language.”<sup>9</sup>

### **Equality and Non-discrimination: Public Interest Litigation**

Public Interest Litigation is considered as the greatest gift given by the Supreme Court of India to the people. Public Interest Litigation may be defined as, “litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, 'diffused' rights and

<sup>9</sup> JAYANTH K. KRISHNAN ET AL., “GRAPPLING AT THE GRASSROOTS: ACCESS TO JUSTICE IN INDIA'S LOWER TIER'S (2014).

interests or vindicating public interest".<sup>10</sup> In our country, though Indian Constitution has promised Equality before law and equal protection of laws, we have inequality in practical level in society.

In our society, we find rich people and economically backward ones. Rich people can afford to go through expenses of court and lawyers for justice. But, for common man who are not economically strong enough for expenses of court and lawyers, remain deprive of justice. Law is creating new economic and social rights in pursuance to the Directive Principles of State Policies. Amongst these social and economic rights are freedom from indecency, ignorance and discrimination as well as the right to a healthy environment, to social security and to protection from financial commercial, corporate or even governmental oppression.<sup>11</sup> Public Interest Litigation is standing as an effective device to enforce such rights to the society.

The Supreme Court of India has very boldly and unequivocally declared that public Interest Litigation is a strategic arm of legal aid movement and is intended to bring justice within the Reach of poor masses, who constitute the low visibility area of humanity.<sup>12</sup> Under the Public Interest Litigation, a simple letter given to the court for infringement of fundamental right are considered as a writ petition. The Supreme Court of India and other subordinate courts had now given permission to the third party on behalf of aggrieved person to move the petition. The Indian courts had also declared right to speedy trial as valuable right. Thus, through Public Interest Litigation, the courts are trying to stand on promise of equality in social justice by Constitution.

---

<sup>10</sup> S.P. Gupta vs President of India and Ors, AIR 1982 SC 149, 1981 Supp (1) SCC 87, 1982 2 SCR 365.

<sup>11</sup> *Id.*

<sup>12</sup> People's Union for Democratic Rights and Others vs Union of India and Others, 1982 AIR 1473, 1983 SCR (1) 456.



**Equality and Non-discrimination as barrier to “access to Justice”**

The Constitution of India had promised all the people, “Equality before Law” and “Equal Protection of Laws”. In practical present scenario, we have a society full of inequality and discrimination. There are many barriers which daunt the weaker sections of our society from moving the court of law for justice. In an equal society, the ultimate result of litigation should depend upon the relative legal merits of the opposing positions but in practice the factors extraneous to legal merits play a very effective role in assertion and vindication of legal rights.<sup>13</sup>

Following are some stumbling blocks in the path of Access to Justice where Inequality and Discrimination are reflected.

**Poverty Barrier**

The courts litigation is generally expensive. Though we have a good machinery provided by our government which are helping the litigants financially but the litigants had to bear other cost such as Lawyers fee, stamp fee and other court fee. Only rich people or the persons who can afford such expenses, fight for their rights. The poor or economically backward people or section of society had no power to afford such expenses and thus prefer to forgo their rights. The risk of losing the case operates as a great barrier to the access to justice because the plaintiff or appellant will not be able to estimate how much it will cost him to lose and so the indigent chooses not to pursue His right of which he is not very sure, though in litigation none can be sure about the result of the case.<sup>14</sup>

The economically backward or poor people cannot afford the expenses and thus get deprived of justice and thus economic inequality becomes the barrier between justice and people in society. The other reason, people working on daily wages cannot afford to go off their daily wages to appear in the court. In an interview of Himachal Pradesh litigant, he said,

“We earn 3,000 rupees [USD 60] in a month, and our [initial] court date costs between 500 [USD 10] to 1,000 rupees, during court days, one has to be sitting at court for the whole day. We wait for our number to be called and no one knows when that will be. We cannot go to eat or go to the washroom as our case may be called at any moment. We can’t even

<sup>13</sup> P.C. JUNEJA, EQUAL ACCESS TO JUSTICE IN INDIA 36-37 (1986).

<sup>14</sup> *Id.* at 37.



[go to] drink water just in case we will be called. There are no facilities for the poor people in the court and it is only . . . the rich people [who can afford to deal with this system]”<sup>15</sup>

Under a constitutional system which promises social equality and social justice to all its citizens, the deprivation of liberty for the reason of financial poverty only, is an incongruous element in a society aspiring to the achievement of these constitutional objectives.<sup>16</sup>

### **Gender and Cast Discrimination**

Though our Constitution has promised everyone equality before law and equal protection of laws, but in present scenario, we find caste and gender discrimination in our society. We have laws, rules against any discrimination but those laws sometimes only appear on piece of paper, not in practical action. We find gender and caste discrimination especially in the lower tier forums. Women litigants and women lawyers biases in the path towards justice. Lack in infrastructure of court, lack of security to protect them from harassment, not available clean washrooms, lack of seating areas for women’s, gender biases in verbal prejudice are some of the problems. Female litigants are frequently facing poor treatment from opposite council and courtroom staff too.

Caste discrimination is often seen in the courts and outside court, some vulnerable section of our society especially SC/ST’s are facing discrimination because of their caste. The Indian Constitution through, under section 15 of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989, provides Special Public Prosecutor (SPP) for conducting caste based cases impartially. But SPP’s are dilating their duties and many are going impartial towards SC/ST’s people. According to the report of Swadhikar —National Campaign on Dalit Human Rights, “Access to justice for Dalits in India-2015” following some of the observations on discrimination with SC caste, were taken into consideration,-

“Caste bias against the SC victims leads them to believe they are bringing false cases to trial. The SC victims and witnesses are not allowed to enter into their chambers while the accused and defense advocate are allowed to enter.

---

<sup>15</sup> JAYANTH K, *supra* note 9, at 171.

<sup>16</sup> P.C. JUNEJA, *supra* note 13, at 58.

Fee is charged from the victims for each court hearing despite drawing a fee/salary from the government.

The SC victims and witnesses are denied briefing on their case (status) and court processes; and guidance on deposing before the court.

The victims and witnesses are coerced to compound the cases or turn hostile in the court.

Use of abusive and rough words with the victims and witnesses in the courtroom.”<sup>17</sup>

### **Corruption and Delay in Cases**

The protection of Judiciary and providing social justice are one of the responsibility of Judges in courts. Many Judges and Lawyers are engaged or addicted to mal-practices. The Supreme Court of India, Government is providing free legal aid, financial aid is provided to the courts for the distribution to the needy litigants who are financially not capable to afford the expenses of the court. But the financial aid is not provided to the needy litigants and taken by the law officers. The underprivileged, economic backward or SC people, they are sometimes threatened by the police offices and opponents. When the opponent are economically powerful, they give bribe to the lawyers and sometimes judges too. This type of corruption leads to inequality and injustice towards the financially backward litigants.

“A litigant in Himachal Pradesh seeking to schedule an administrative hearing regarding dam construction affecting his residential property explained his experience:

“We asked the reader [if] there were two possible dates within a month . . . . The reader said that it was possible if they were provided with some service ..... [W]hen we offered some refreshments to him, such as eggs or liquor, then we got the two dates within the month.”<sup>18</sup>

Many Judges and Lawyers are concerned about many lawyers and corrupted people who engage in such malpractices, deliberately delaying proceedings or intentionally providing inadequate information to these litigants. These lawyers are taking undue advantages of underprivileged people.

---

<sup>17</sup> NALORI DHAMMEI CHAKMA, ACCESS TO JUSTICE FOR DALITS IN INDIA 48 (Swadhikar National Campaign on Dalit Human Rights 2015).

<sup>18</sup> JAYANTH K. *supra* note 9, at 176.

### **The Unresponsiveness of Politicians and Bureaucratic Officials**

We often read in newspaper, where ever there is case related to the SC/ST's or underprivileged people, there is the presence of some or the other politicians. When there is a civil or criminal case against any Dalit person or group of dalit people, the politicians always try to take advantage of it for self-interest. Some MLA's and MP's are helping only those people who are associated or the supporter of their party. We often see rape victim's cases and especially dalit rape victims, many politicians, MLA's and MP's meet the family members and assure them financial support for fighting case. They only use this as a publicity stunt.

They often try to gain publicity in the name of support and when they didn't get publicity or media attention then they refuse or neglect the victims support. For example, The Hatras rape case, many political parties, MLA's and MP's tried to take undue advantage to burst on the ruling government. In the courtroom too, cases against any politician, they often try to show their power on court judges, lawyers of the plaintiff or appellant. Sometimes, due to the fear to such politicians, the litigants forgo their case and rights. This become the barrier between the common men and Justice. It affects the Constitutional promise of Social Justice to all. A trade union activist explained:

“Political leaders somehow find a method of [only] intervening in labor disputes which are hyped by the media. If they realize they aren't becoming popular, then they use their petty power to extort money—usually from the employer and sometimes from the employees as well. In the latter instance, we are left to fight two battles—one with the employer and another with the politicians.”<sup>19</sup>

### **Conclusion and Suggestions**

The constitutional promise to all the citizen equality before law, equal protection of laws and justice can be realized only when the three respective organs of state i.e. Legislative, Executive and Judiciary work together for providing “Social Justice” to all. Nearly 60- 70 % population of India is below poverty line. The Fundamental Rights given by the Indian Constitution has no meaning to them. Many people not even know that they have fundamental rights, privilege laws and certain guaranteed rights given by our constitution. Nearly, more than half of the population don't have the knowledge of various welfare schemes and welfare laws.

---

<sup>19</sup> *Id.* at 157-158.

In Judicial System, “the poor generally loses in litigation because he cannot engage a good lawyer; he cannot be released on bail because due to poverty he cannot give pecuniary guarantees; he is discriminated in sentencing because he has to undergo jail. Due to his inability to pay fine; whereas the rich person can purchase his liberty.”<sup>20</sup> In present scenario, due to many judgements by the Supreme Court judges had changed the direction of judicial thinking in India. The Supreme Court is providing many benefits and trying to reach the justice to the economically backward section of society. The Supreme Court had given a special gift to all the masses, now a single letter written to court of infringement of legal fundamental right is treated as a writ petition.

The Supreme Court and other subordinate courts are providing lawyers and legal aid to the financial backward litigants. The Public Interest Litigation section of the court are getting thousands of letters and had a huge staff officers to sort out the letters containing more grievous case of infringement of legal and fundamental rights. These letters are presented before the judges of the court followed by the establishing a committee to look after verification and providing relief to the victims. Now, the courts also allows, the third person to move on the litigation, case on behalf of the victim ignorant person. Though, Public Interest Litigation is working very effectively, the courts has to look after the cases approaching the court are true and the person sending them, not working in self-interest.

It is not possible for the Judiciary alone to remove such inequality and discrimination stumbling blocks, it can only be removed by the collective efforts of legislature as well as execution. It has to be a big moment collectively initiative by the advocates, judges, students, government and non-government organization, spreading awareness about legal rights, welfare laws, and various schemes for the unprivileged section of society and to provide legal aid to the needy. Thus to ensure “Social Justice for all”. The duty does not lie only on the governments and judiciary, it’s the duty of all the educated people to spread awareness legal and fundamental rights. It’s our responsibility, to help the Constitution of India to fulfil the promise.

---

<sup>20</sup> P.C. JUNEJA, *supra* note 13, at 511.

**References**

## I. Printed Source

## 1. Books

- (1) Vasant Moon, DR. BABASAHEB AMBEDKAR WRITINGS AND SPEECHES.
- (2) P.C. Juneja, EQUAL ACCESS TO JUSTICE IN INDIA.

## II. Electronic Sources

## 1. Reports and Reviews

- (1) M. Jagannadha Rao, "Access to Justice".
- (2) Jayanth K. Krishnan et al., "Grappling at the Grassroots: Access to Justice in India's Lower Tier's, 27 HARV.L.R 162 (2014).
- (3) Swadhikar National Campaign on Dalit Human Rights, "Access to Justice for Dalits in India", 2015.
- (4) GoI-UNDP Project, "Increasing Access to Justice for Marginalized People."
- (5) Minority Rights Group International (MRG), "contribution to the General Discussion on access to justice.



BRILLOPEDIA