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## **EQUITABLE LEGAL EMPOWERMENT IN INDIA**

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### **ABSTRACT:**

Justice is essential because it helps us keep our sense of human dignity and strengthens our conviction that the law doesn't favor the wealthy and powerful over everyone else. The great majority of people in India have trouble accessing the courts, and consequently, justice. Three constitutional clauses in the Indian Constitution—Article 39A, Article 14, and Article 21—guarantee that people have the right to receive justice.

Injustice is unchecked all over the nation, and it is impossible for society's marginalized groups to seek justice. This essay basically investigates the barriers that prevent many people from having access to justice. Popular explanations include the lack of knowledge about how the legal system operates in the nation, hefty fees charged by solicitors, and excessively long adjudication times. The article also looks for a methodological connection between the constitutional provisions and how they are used in practice.

The article also addresses a few important rulings that have supported the right to access justice, as well as precedents that have emphasized the importance of legal aid and the State's unquestionable duty to guarantee all its citizens the right to a fair trial. The researchers have attempted to decipher crucial pillars that when implemented can provide excellent, cost-effective legal aid to ensure that people have a good chance at a fair trial.

## **I. INTRODUCTION:**

India Following its independence, India became the nation with the world's longest constitution, offering individual rights and liberties. Despite this assurance, a sizable portion of India's population finds it extremely difficult to access courts to exercise their legal rights. This is due to the typical hourly costs for solicitors, which range from thousands to millions of rupees. Theoretically, if you had a broken arm, you would go to the hospital right away for assistance. You would visit a medical facility if your cough was chronic. But what if you run into legal issues? What if, hypothetically, you received an eviction notice from your landlord or a lawsuit from a coworker? To resolve the situation, your answer would be to seek legal counsel. The main query, though, is whether you would be able to pay for the required legal counsel.

Unfortunately, in India, most people will respond "NO." Self-representation in legal matters can result in stress, bad health, lower legal outcomes, or even giving up and accepting injustice. The marginalized members of society are those who are most adversely impacted by this. They are the ones with the least resources available to them to fight injustice.

Martin Luther King Jr. once said, "Injustice anywhere is a threat to justice everywhere." When justice is not delivered quickly, cheaply, and easily, society loses faith in the judicial system. Maintaining our sense of human dignity and fostering the idea that the law doesn't favour the wealthy and powerful requires being able to speak out against injustice. This serves as the foundation of both our democracy and society.

This essay aims to break down the following elements:

- Reviewing important rulings in which the court addressed issues related to judicial access.
- Examining the definitions of "access to courts" given by the court.

## **II. CONSTITUTIONAL SAFEGUARDS FOR LEGAL ACCESS:**

Through Articles 32 and 226 of the Indian Constitution, everyone has a fundamental right to access Indian courts, which is guaranteed by the constitution. These articles function as a fast-

track mechanism and offer prompt fixes. Through Article 32, a person may directly appeal to the Supreme Court without having to go through the trouble of appealing to a lower court<sup>1</sup>.

Thus, the Constitution ensures and protects our fundamental right to access the courts. Like this, Article 226 of the Constitution gives the High Courts the authority to hear cases involving violations of basic rights as well as other issues. Article 32 is more limited in this regard than Article 226 because it can only be used in situations when a basic right has been violated. However, under to Article 226 any matter (which may not involve infringement of basic rights) may be brought before the High Courts.

Access to justice is fundamentally facilitated by legal aid. The Supreme Court has often supported the Constitution's provision of access to justice as a fundamental right and taken proactive actions to advance it. It has achieved this by employing a dual technique that relaxes both the customary requirements of locus standi and the applicable procedural procedures<sup>2</sup>.

To handle pro bono cases or cases where the party needs representation, the courts have frequently taken the initiative to establish commissioners and expert organizations. To address the complaints of the impoverished and weaker groups in society, the courts primarily employ the Public Interest Litigation procedure. It is a method for airing social grievances when society, rather than a single person, feels wronged<sup>3</sup>.

Along with Article 32 and Article 226 of the Constitution, there are other parts of the document that are construed and read. Articles 13<sup>4</sup> and 14<sup>5</sup> deal with laws that violate or interfere with fundamental rights, respectively, and Article 21<sup>6</sup> refers to the protection of life and personal liberty, directly extending to the right of access to the courts and the ability to seek judicial redress in all circumstances.

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<sup>1</sup> INDIA CONST. art 32.

<sup>2</sup> Access To Courts, HRCR ORG. (Nov, 11, 2018, 10:10 AM), [http://www.hrcr.org/safrica/access\\_courts/India/India.html](http://www.hrcr.org/safrica/access_courts/India/India.html).

<sup>3</sup> Access To Courts, HRCR ORG. (Nov, 11, 2018, 10:10 AM), [http://www.hrcr.org/safrica/access\\_courts/India/India.html](http://www.hrcr.org/safrica/access_courts/India/India.html).

<sup>4</sup> INDIA CONST. art. 13.

<sup>5</sup> INDIA CONST. art. 14.

<sup>6</sup> INDIA CONST. art. 21.

### III. LANDMARK JUDGEMENTS:

The *Hussainara Khatoon v. Home Secretary, State of Bihar*<sup>7</sup> case is well-known for the court's reading of Article 21's right to a speedy trial. In this instance, the court established a legal aid service program, offering free legal assistance to those who are being tried.<sup>8</sup>

The case covered the rights that inmates have in relation to habeas corpus petitions. It was found that the court system in Bihar was operating under alarming circumstances. For many years, men, women, and children were imprisoned while they awaited legal proceedings. Many of these prisoners were shown to have been imprisoned for insignificant infractions, although due to the delay in the start of the trial, they remained behind bars for up to ten years or more. The court in this instance demanded the immediate release of these detainees who had been held without being charged or even having a trial.

In this instance, it was decided that offering free legal aid and services to the poor, disadvantaged, and those in need is a crucial component of what is meant by "reasonable, fair, and just" procedure. Regardless of whether a prisoner is innocent or guilty of a crime, they should have access to legal counsel and be able to take advantage of the legal services that the Constitution offers all its inhabitants.

Article 39A of our Constitution, which also emphasises free legal services, is a significant component. In essence, Article 39A declares that offering free legal assistance is a necessary component of what constitutes a "reasonable, fair, and just" procedure. In the absence of legal help, a person with financial difficulties and other limitations would be denied the chance to obtain justice. So, as a fundamental right, free legal assistance is a crucial component that can be invoked from Article 21 of the Constitution. Every citizen who is charged with a crime and is unable to afford legal representation owing to a variety of circumstances, such as poverty, indigence, or being held incommunicado, is guaranteed this privilege<sup>9</sup>. When circumstances indicate that a person cannot afford legal assistance, the State has a duty to give that assistance.

To guarantee that everyone has the option of accessing courts, it is urgently necessary to implement a crucial, robust, and comprehensive legal aid and legal services programme that is

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<sup>7</sup> *HussainaraKhatoon v Home Secretary, State of Bihar*, (1979) A.I.R 1369 (India).

<sup>8</sup> *HussainaraKhatoon v Home Secretary, State of Bihar*, (1979) A.I.R 1369 (India).

<sup>9</sup> *The HussainaraKhatoon Case 1979*, LAWGIC (Nov. 21, 2018, 12:10 PM), <https://lawgic.info/the-hussainarakhatoon-case/>.

pushed upon the Government of India as well as the State governments. The State cannot evade the Constitution's requirement that it provide services to those in need by offering financial and legal assistance. In addition, the Court has a duty to uphold the accused's fundamental right to a speedy trial by giving instructions to the States in its capacity as a sentinel on the qui-vive.<sup>10</sup> This can be accomplished by taking steps like bolstering the equipment used to investigate cases, establishing new courts in various locations and constructing new courtrooms to ensure that everyone has access to courts, appointing new additional judges, and other measures to ensure that everyone has the opportunity to access courts and that justice is rendered to all.

In paragraph 107 of the ruling, Justice Bhagwati also placed a strong emphasis on the State's responsibility to ensure that every citizen's constitutional right to a speedy trial is upheld and that the State is not permitted to use the excuse that it lacks the financial resources to cover the costs associated with enhancing the administrative and judicial systems in order to improve speedy trial<sup>11</sup>.

The case of *Khatri v. State of Bihar II*<sup>12</sup>, often known as the Bhagalpur blinding case, also stands out in the topic concerning access to courts. The case was initiated by a number of petitioners who used Article 32 of the Constitution to file writ petitions at the Supreme Court to enforce their fundamental rights under Article 21 of the Constitution. They protested that while they were being detained in jail, the authorities had blinded them at the police station. The case focused attention on the constitutional requirement to provide defence counsel to the underprivileged and accused.

The court emphasised that the Constitution requires the State governments to offer free legal services to those who cannot afford them. A trial will be void and the conviction will be overturned if a destitute accused person wasn't provided with legal representation at no cost to the state<sup>13</sup>. Additionally, it is important to provide free legal services to the poor and those in need since they are a crucial component of "reasonable, fair, and just procedure." Access to courts is fundamentally based on legal aid. This destitute people right become applicable the moment the accused is brought before a magistrate. The accused then has the chance to apply

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<sup>10</sup> The HussainaraKhattoon Case 1979, LAWGIC (Nov. 21, 2018, 12:10 PM), <https://lawgic.info/the-hussainarakhattoon-case/>.

<sup>11</sup> Access To Courts, HRCR ORG. (Nov, 11, 2018, 10:10 AM), [http://www.hrcr.org/safrica/access\\_courts/India/India.html](http://www.hrcr.org/safrica/access_courts/India/India.html).

<sup>12</sup> *Khatri V. State of Bihar II*, (1981) SCC (1) 627 (India).

<sup>13</sup> Access To Courts, *supra* note 14.

for bail and thereby be released, after which the accused can seek legal counsel and representation. If the accused is given a sentence by the court and seeks to appeal this ruling, he has the right to request free legal representation.

If the accused cannot afford legal representation due to his or her financial situation, poverty, or indigence, the magistrate and judge also have a legal duty to inform the accused about the possibility of seeking legal advice and hiring a lawyer. The State is obligated to offer this assistance. The Court held that the destitute accused's claim to free legal representation would be illusory unless the trial judge made him aware of it<sup>14</sup>. The Court also took a diversion and argued that it is a constitutional requirement to produce an apprehended individual before a judicial magistrate within 24 hours of their arrest, and that this duty must be completely and meticulously adhered to.

*United Industrial Bank v. Cotton Corporation of India*<sup>15</sup> is a fascinating case that clarified what "access to courts" really means. In this case, the court declared at the outset that everyone, without exception, has a legal right to request remedy from a court of law. The person enjoys unrestricted, continuous access to the legal system. The court went on to say that the term "law courts" is used in this context in a vague and broad sense to encompass all forums where relief may be sought in conformity with local law. Access to justice and access to the courts shouldn't be restricted at any cost, not even by the judicial system.

A person has the right to go to court to seek justice in accordance with the law, and another court of law cannot take away this right or restrict access to justice. This idea is present and in operation in the Constitution, which fundamentally strives to establish a community under the rule of law. The legislation established the rule that the judicial branch generally shouldn't obstruct people's ability to receive justice through the courts. This is a significant and equitable concept outlined in our Constitution that maintains unhindered access to the legal system.

In another important ruling, *Sukh Das v. Union Territory of Arunachal Pradesh*<sup>16</sup>, the court placed a strong emphasis on free legal aid. The appellant was accused in this instance of scaring his assistant engineer into revoking his transfer orders. Due to his financial situation, the appellant was unable to retain counsel. In this, there was no cross-examination. As a result of

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<sup>14</sup> *Khatri V. State of Bihar II*, (1981) SCC (1) 627 (India).

<sup>15</sup> *Cotton Corporation Of India V. United Industrial Bank*, 1983 A.I.R 1272 (India).

<sup>16</sup> *Sukh Das V Union Territory Of Arunachal Pradesh*, 1986 A.I.R 991 (India).

the appellant's lack of counsel, the Supreme Court overturned the conviction. It continued by stating that a person accused of a crime who may put his life or personal liberty in jeopardy has the fundamental right to free legal representation at the expense of the State, and that this right is implicit in the requirement of a reasonable, fair, and just procedure set forth in Article 21<sup>17</sup>.

Therefore, the court in this case affirmed the right to free legal assistance and declared that allowing a poor, uneducated person to request free legal assistance would be a parody of free legal aid. Its goal would be unsuccessful since it would just end up being a paper promise. An accused person's fundamental rights are completely violated if they are not represented in judicial proceedings.

#### **IV. ACCESS TO COURTS ACCORDING TO INDIAN JUDICIARY:**

The judiciary is incredibly important in India. It runs on its own without influence from the Executive or the Legislative. It guarantees and defends our fundamental rights. While all of this is true, the unfortunate truth is that most Indians have a terrible time accessing the courts, and consequently, justice. P. Sathasivam, the Chief Justice of India in 2017, emphasised the necessity for the judiciary to guarantee that ordinary people have simple access to courts and that justice is delivered "early finality of dispensation of justice" to maintain its credibility.

He also stressed that the judiciary is the most reputable institution in the nation and that it should be protected to preserve the high level of public confidence in it. The Supreme Court's Constitution Bench ruled in the case of *Ajay Kumar Pandey v. State of Jammu and Kashmir*<sup>18</sup>. further declared that Articles 14 and 21 of the Indian Constitution guarantees all of its inhabitants access to justice as a basic right<sup>19</sup>. According to the bench in this case, denying someone access to the courts and justice will have a significant negative impact on the quality of their human life. Life is more than simply having a physical body; it also includes a number of rights that make life worthwhile.

#### **V. MEANING OF ACCESS TO COURTS:**

It essentially makes access to justice possible. These are some points that I have traced after

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<sup>17</sup> Sukh Das V Union Territory Of Arunachal Pradesh, 1986 A.I.R 991 (India).

<sup>18</sup> Business Line, Common Man Should Be Assured Of Easy Access To Courts, Speedy Justice, BUSINESSLINE (Nov. 21, 2018, 1:30 AM), , article20649859.ece.

<sup>19</sup> *Ajay Kumar Pandey V. State of Jammu and Kashmir*. (2012) C.P No. 5597 of 2012 (India)

analyzing what "access to courts" entails and using the interpretation of the courts:

- **A judging mechanism:** Having means to enforce the same would be a crucial prerequisite to guarantee access to courts and consequently access to justice. These may include courts, tribunals, commissions, authorities, etc., where a citizen may go to report a conflict or problem that may have been brought on by another person, the State, or any of its agencies. This process needs to demonstrate that it is quick, fair, and efficient. It should uphold fairness and acknowledge the fundamentals of natural justice.
- **All should be able to access courts from a distance:** Courts and other dispute-resolution venues should be reasonably accessible to everyone. This implies that dispute resolution procedures should be available in rural areas. The litigant's capacity to go to the court or appropriate authority is very important for the outcome of the dispute.
- **The dispute resolution process should move quickly:** If the process isn't quick, having access to the courts and to justice will only be a waste and a delusion. A time-consuming, difficult, and frustrating process will cause more and more people to back away from it. The Court specifically upheld and emphasised the value of having a fast trial that will serve as a component of the right to life in the case of *SheelaBarse v. Union of India*<sup>20</sup>. Access to justice would only be worthwhile, significant, and useful if it was delivered quickly. Since there are civil judges and sessions judges in every taluka (village/district), India has long since attained accessibility. However, the procedure is cumbersome, time-consuming, and the courts are understaffed.
- **The parties to the dispute can afford:** The exorbitant prices that are stated for legal services are one of the main reasons why people prefer not to contact the courts when they have a legal conflict. All people should have access to and afford legal services. The system will only exist as an illusion if this is not done.

## VI. CONCLUSION:

The Indian Constitution provides us with a solid foundation for access to the courts and to justice. The Legal Services Authorities Act, the Supreme Court Legal Services Committee, the

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<sup>20</sup> *SheelaBarse vs Union of India*, (1986) 3 SCC 632.



National Legal Services Authority (NALSA), and other laws have all firmly established the right to legal aid. In India, LokAdalats are being established in rural areas and districts to assist those who cannot afford legal representation.

The legal system and the law are too frequently viewed as being distant and out of reach by the public. They assume it has thick walls and heavy doors, much like a castle. Outsiders and anyone without the necessary resources are unable to enter the castle. This must be altered. Everyone should be aware of who to contact if they are having legal issues, and they shouldn't be reluctant to do so. The State has a responsibility to ensure that the public believes that the justice system is fair, and we can assist in achieving this goal by demystifying the law, expanding the pool of people who can provide legal services, and lowering the cost of those services. Since there is no legitimate reason for a modern welfare state to charge for the administration of justice<sup>21</sup>.

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<sup>21</sup> Justice M. Jagannadha Rao, 189Th Report On Revision Of Court Fee, INDIAN KANOON ORG (Nov. 21, 2018, 10:04 AM), <https://indiankanoon.org/docfragment/58259708/?formInput=access%20to%20courts>.