
ACCESS TO JUSTICE FOR WOMEN IN INDIA

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ABSTRACT

In postcolonial nations, the Law has a unique place. On the one hand, it maintains the role of the colonizer's tool, sustaining marginalization and oppression, but on the other, it schizophrenically nourishes the hope of changing a profoundly unjust and unequal society. As a result, it serves as a two-edged sword, supporting and institutionalizing privilege and hierarchies on the one hand while also emancipating and bringing justice to the disadvantaged. Hence, securing women's access to justice is essential to the cause of their liberation and empowerment, as well as to the protection of their human rights and sense of dignity. In addition to attempts to mainstream women in society, the legal mainstreaming efforts which involve integrating women into the legal system must also be pursued along with the government initiatives which intend to change the mindset of the societies. Legal empowerment measures can aid in developing a "culture of justice" among women and ensuring that equality principles are put into action. It consistently urges nations to end discriminatory practices through awareness and education raising efforts in its jurisprudence. This chapter emphasizes upon the access to justice with the brief overview with regards to globalized world as well as in India and especially contending the access to justice for women since ancient, medieval and modern India and concluding with the suggestions as to the gender sensitizing world.

Keywords: Woman Empowerment, NALSA, Human Rights, Gender Sensitization

Introduction

Access to justice is a fundamental right that all individuals are entitled to, regardless of their gender, race, or social status. The United Nations defines access to justice as "the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances and injustices suffered." This includes access to legal aid, court systems, and other mechanisms for resolving disputes. The United Nations has recognized the importance of women's access to justice and has made it a key priority in its efforts to promote gender equality and women's rights. Women's access to justice, therefore, refers to their ability to seek and obtain redress for any harm or wrongdoing they have experienced, including gender-based violence, discrimination, and violations of their human rights. However, women around the world face significant barriers in accessing justice systems, which can leave them vulnerable to discrimination, violence, and other injustices and hence the methodology of gender analysis must be followed. Gender analysis investigates the disparities between the lives of men and women, including those that result in social and economic inequity for women, and applies this knowledge to the development of policies and the provision of services. It is also concerned with the root causes of these inequities and seeks to bring about positive change for women. Gender analysis investigates the disparities between the lives of men and women, including those that result in social and economic inequity for women, and applies this knowledge to the development of policies and the provision of services. It is also concerned with the root causes of these inequities and seeks to bring about positive change for women.¹

Women's access to justice is particularly important in cases of gender-based violence, which is a pervasive and widespread human rights violation that affects women and girls around the world. When women are able to seek justice for gender-based violence, it not only provides them with a remedy for the harm they have experienced, but it also sends a powerful message that violence against women will not be tolerated. The importance of women's access to justice cannot be overstated. It is not only a matter of individual rights, but also a crucial factor in achieving sustainable development, peace, and security. When women are able to access justice, they are more likely to participate fully in society, contribute to the economy, and advocate for their own rights and the rights of others. Ultimately, promoting women's access to justice is essential for building more just and equitable societies for all. Efforts to promote

¹Birks Stuart, *Gender Analysis and the Women's Access to Justice Project*, Centre for Public Policy Evaluation, College of Business (Year).

women's access to justice must be multifaceted and involve a range of stakeholders, including governments, civil society organizations, and international organizations. Governments must ensure that laws and policies are in place to promote gender equality and protect women's rights, while also providing resources and support to help women navigate the justice system.

Access to Justice in the Globalized World

Access to justice is "a core human right as well as a vital method to combat poverty, prevent and resolve disputes," according to the United Nations Development Programme (UNDP). States are required to take proactive measures to ensure that everyone has access to justice in accordance with international human rights law. Justice was not specifically mentioned in the Millennium Development Goals (MDGs) framework, despite the fact that it was crucial. With the adoption of the Sustainable Development Goals (SDGs) by the UN General Assembly in September 2015, the international community made a commitment to advance sustainable development and guarantee access to justice for all by the year 2030.² In a globalized world, where people, goods, and services move across borders, access to justice becomes even more critical. Legal disputes often involve multiple jurisdictions and legal systems, making it difficult for individuals to navigate the legal process. For example, a person who has suffered harm from a product manufactured in one country, sold in another, and causing injury in a third may face difficulties in seeking legal redress. They may have to navigate different legal systems, languages, and cultural differences to seek justice. *Global Insights on Access to Justice 2019* is the first time comparable data on legal needs and access to civil justice have been collected globally, representing the voices of more than 100,000 people in 101 nation.³ The World Justice Project's (WJP) Rule of Law Index 2020, which measures the performance of countries' rule of law systems, shows that many countries in the developing world score poorly in terms of access to justice, particularly in terms of effective enforcement of civil justice, criminal justice, and fundamental rights. In order to develop coordinating tactics that are both legal and extra-legal, lawyers and legal academics have collaborated with civil society organizations like as universities, human rights NGOs, and the media.

Technology can play a crucial role in increasing access to justice by providing people with more affordable and efficient ways to seek legal remedies. For example, online dispute

²Satterthwaite, M.L. & Dhital, S., Measuring Access to Justice: Transformation and Technicality in SDG 16.3, 10 Global Policy 96 (2019).

³ World Justice Project, *Global Insights on Access to Justice 2019* (2019).

resolution (ODR) platforms can offer a cost-effective and efficient way to resolve legal disputes. ODR can help to reduce costs, increase access to legal services, and improve the efficiency of the legal system. Also, the use of alternative dispute resolution (ADR) mechanisms such as mediation and arbitration, can be used to resolve disputes without going to court. ADR can be more cost-effective and less time-consuming than going to court, making it a more accessible option for many people.

It is true that the advancement of security, public services, and access to justice matters to everyone on a global and national scale, in domestic laws and policies as well as international law. The pandemic has led some courts to close entirely, while others (like as the European Court of Human Rights) have temporarily reduced their workload by only taking "essential" or "high-priority" cases. Several jurisdictions have different definitions of what an essential case is. For instance, in England and Wales, the Royal Courts of Justice defined essential cases as which needed to be decided within a week and were "important in the interests of justice." Many courts have been able to continue working, maintaining the right of access to justice in these urgent instances, by adopting the use of technology and prioritizing cases based on "immediacy".⁴

Moreover, the development of international legal frameworks can also help to increase access to justice in a globalized world. International treaties and conventions can establish common standards for human rights and create mechanisms for legal redress e.g. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights provide a framework for protecting human rights and seeking legal redress. The Hague Conference on Private International Law has developed several conventions and model laws to facilitate the resolution of cross-border disputes, such as the Hague Convention on Choice of Court Agreements and the Hague Principles on Choice of Law in International Commercial Contracts. Such frameworks can provide clarity and consistency in cross-border disputes, reducing costs and uncertainty for those involved. The UN system works with international allies to create national strategic plans and programmes for service delivery and justice reform with the goal of enhancing access to justice. Monitoring and evaluation, enabling those who are oppressed and poor to look for solutions to injustice, enhancing legal protection, legal awareness, and legal aid, improving civil society and parliamentary oversight, and to promote

⁴ Sourdin, T., Li, B. & McNamara, D.M., Court Innovations and Access to Justice in Times of Crisis, 9 Health Policy and Technology (2020).

justice by tackling issues in the justice system include police brutality, terrible prison conditions, extended pretrial detention, and impunity for individuals who commit sexual and gender-based crimes.⁵

Access to Justice in India

Access to justice has been a fundamental aspect of Indian civilization for millennia. Ancient India had a well-developed system of justice, with laws and regulations designed to ensure fair and equal treatment for all members of society. This system of justice was based on the principles of dharma, which emphasized the importance of ethical and moral behavior, and was enshrined in religious texts such as the Vedas and the Manusmriti. The ancient Indian legal system was complex and multifaceted, with different rules and procedures for different types of disputes. There were separate courts for criminal and civil cases, and judges were often appointed on the basis of their expertise and reputation. The ancient Indian social structure was built on the idea of a tranquil existence underpinned by Dharma (virtuous) values.⁶ They were well-versed in the legal and judicial systems. They valued having courts in a certain order, such as Kula, Sreni, Gana, Adhikrita, and Sasitha.⁷ There were specific laws and regulations designed to protect the rights of marginalized and vulnerable communities, such as women, children, and the elderly. For example, the Manusmriti outlines the rights and responsibilities of women, and includes provisions for protecting them from abuse and exploitation.

In addition to these formal legal structures, ancient India also had a rich tradition of informal dispute resolution mechanisms. For example, the concept of panchayats, or village councils, was a common feature of rural life. These councils were responsible for resolving disputes and maintaining law and order in their communities. They were composed of respected members of the community and were empowered to make decisions on a wide range of issues, from minor disputes between individuals to larger issues affecting the entire community. Access to justice was an essential aspect of ancient India, where the legal system was founded on principles of equity and fairness. The legal system in ancient India was well-developed and had a rich history that spanned over several centuries. This system was shaped by the contributions of several great legal minds and was guided by various codes and texts.

⁵United Nations, *Access to Justice - United Nations and the Rule of Law* (2015).

⁶Sondhi, S., *Aspects of Dharma: Ethics, Law, and Action in Indian Tradition*, HAL Archives Ouvertes (Aug. 1, 2023).

⁷ Ahmad, W. Suhail, *Concept of Legal and Judicial Administration in Ancient India*, 5 *Int'l J. Mgmt. & Soc. Sci.* 248 (2014).

India has a vast population, with a diverse range of cultures, languages, and socioeconomic backgrounds, which poses unique challenges for ensuring access to justice for all. It is a crucial aspect of democracy and essential for the promotion and protection of individual and collective rights, as well as for the rule of law. According to a study by the Centre for Civil Society, the average cost of a legal case in India is around INR 500,000 (approximately USD 6,800). This cost is far beyond the means of most people in India, where over 50% of the population lives on less than INR 150 (approximately USD 2) per day.⁸ According to a report by the World Justice Project, India ranks 110th out of 126 countries in terms of accessibility and affordability of civil justice. The report notes that the cost of filing a civil case in India can be up to 75% of the average annual income, making it difficult for many people to afford legal representation.

Meanwhile in the present era, it is the cornerstone of the rule of law and a fundamental human right. In India, the Constitution recognizes the right to access to justice as a fundamental right, and this right has been further enshrined in several laws and regulations. The Indian government has made significant strides towards providing better access to justice to its citizens. One such initiative is the National Legal Services Authority (NALSA), which was established in 1987 to provide legal aid to those who cannot afford it.⁹ NALSA operates through various legal services authorities at the district, state, and national levels and provides free legal aid to disadvantaged and marginalized populations. Additionally, NALSA runs legal literacy camps, seminars, and workshops to raise awareness and educate people on their legal rights and obligations. The Supreme Court of India has issued several guidelines and directives to reduce the backlog of cases and expedite the legal process. One such directive is the use of technology in courts, such as video conferencing and e-filing and the establishment of fast-track courts. These courts were set up to expedite the hearing of cases and ensure speedy justice. They were established to deal with cases related to heinous crimes against women, children, and other vulnerable sections of society. The e-Courts project, launched in 2007, aims to computerize the court system and make it more efficient. The project includes the use of electronic filing of cases, online payment of court fees, and the provision of online case status updates. This initiative has helped to reduce the time and cost of litigation and has made the justice delivery system more accessible to the public.¹⁰ The legal profession in India has also

⁸ Centre for Civil Society Research, (ccs.in), <https://ccs.in/research> (last visited Feb. 18, 2023).

⁹ National Legal Services Authority, National Legal Services Authority!, (nalsa.gov.in), <https://nalsa.gov.in/> (last visited Feb. 18, 2023).

¹⁰ E-Committee, Supreme Court of India, E-Courts Mission Mode Project, Official Website of E-Committee, Supreme Court of India, <https://ecourts.gov.in>

undergone significant reforms to improve access to justice. The Bar Council of India has introduced several measures to ensure that lawyers provide better services to their clients. These measures include the introduction of the Advocate's Act, which lays down the code of conduct for lawyers. The act also establishes the Bar Council of India, which regulates the legal profession in the country.

Access to Justice in context of women in India

(1) Ancient India

Women in ancient India played an important role in society, with many enjoying a high status and degree of autonomy. While gender roles and expectations varied depending on the region and time period, women in ancient India were often involved in economic activities and had access to education and healthcare. However, access to justice for women in ancient India was not always easy, as cultural norms and religious practices often limited women's ability to assert their rights. In ancient India, women had a significant role in the legal system. The Manusmriti, one of the earliest legal texts in India, provided a framework for the legal rights and duties of women in society. According to the Manusmriti, women had the right to inherit property, and were entitled to equal protection under the law. In addition, women were allowed to participate in legal proceedings, and could serve as witnesses and jurors.

Despite the legal protections provided to women, access to justice in ancient India was not always straightforward. Patriarchal norms and customs often limited women's ability to assert their legal rights. For example, in many parts of India, women were expected to conform to strict gender roles, and were not encouraged to participate in legal proceedings or assert their rights in public. In some cases, women who did assert their legal rights were subject to discrimination and ostracism. Religious practices also played a significant role in limiting women's access to justice in ancient India. The caste system, which was deeply ingrained in Indian society, often relegated women to lower status and limited their opportunities for social and economic mobility. In addition, the practice of sati, in which widows were expected to immolate themselves on their husband's funeral pyre, was widespread in ancient India, and often prevented women from asserting their rights in cases involving property or inheritance.

Despite these challenges, there were women in ancient India who were able to assert their legal rights and gain access to justice. For example, the story of the young widow Rani of Sirmur, who successfully challenged her father-in-law's attempt to seize her late husband's property, is

a testament to the resilience and strength of women in ancient India. Rani was able to navigate the legal system and assert her rights, despite the challenges and obstacles she faced.

In conclusion, access to justice for women in ancient India was complex and multifaceted. While legal texts provided some protections for women, cultural norms and religious practices often limited their ability to assert their rights. Despite these challenges, there were women who were able to navigate the legal system and assert their rights, and there were also movements and organizations that worked to improve access to justice for women. The legacy of these women and movements is an important part of India's history, and serves as a reminder of the ongoing struggle for gender equality and justice.

(2) Medieval India

In medieval India, women faced significant challenges in accessing justice. Women's legal rights and status varied widely depending on the region and time period, and many women were subject to systemic discrimination and violence. There were legal protections in place for women in medieval India. Dharmashastras, a set of legal texts that emerged during this period, provided a framework for the legal rights and duties of women in society. According to these texts, women had the right to inherit property, and were entitled to equal protection under the law. In addition, women were allowed to participate in legal proceedings, and could serve as witnesses and jurors.¹¹ However, there were also movements and organizations that worked to improve access to justice for women and many women were able to assert their legal rights and gain access to justice through these efforts. One such movement was the Bhakti movement, which emerged in medieval India as a devotional movement that challenged traditional social norms and practices. Many of the women associated with the Bhakti movement were able to assert their legal rights and gain access to justice through their involvement in the movement.

One example of a woman who was able to assert her legal rights through the Bhakti movement was the poet-saint Mirabai. Mirabai was born into a high-caste family in Rajasthan, and was married at a young age to a prince. However, she rejected the traditional expectations of a royal wife and devoted herself to the worship of Krishna. When her husband died, she faced pressure to commit sati, but was able to avoid this fate through her legal rights as a widow. She was also able to navigate the legal system and assert her rights to her husband's property. Another

¹¹Madni, A. & Zulfiqar, R., Administration of Justice in Medieval India: An Analytical Study of Legal Systems of Salateen of Delhi, V. No. II J. Hist. Stud. 133 (2019).

example of a woman who was able to assert her legal rights in medieval India was Razia Sultana, the first and only female ruler of the Delhi Sultanate. Despite facing significant opposition and discrimination from the male-dominated political establishment, Razia was able to assert her authority and implement policies that improved the status of women in her kingdom. In addition to these individual stories, there were also organizations and institutions that worked to improve access to justice for women. For example, the Sati Regulation Act of 1829, passed during the British colonial period, outlawed the practice of sati and provided legal protections for women who were widowed.

(3) Modern India

Access to justice for women in modern India is a complex issue that encompasses a range of legal, social, and cultural factors. Despite significant progress in recent years, women continue to face systemic barriers to accessing justice, particularly in cases of violence and discrimination. According to the National Crime Records Bureau, there were over 33,000 reported cases of rape in India in 2018, and over 90,000 cases of crimes against women.¹² Many women who experience violence face significant obstacles in reporting these crimes and accessing legal remedies. These obstacles include social stigma, lack of awareness of legal rights and resources, and the slow and often opaque nature of the legal system.

In recent years, there have been several legal and social initiatives aimed at improving access to justice for women in cases of violence. One of the most significant legal changes in this regard was the 2013 amendment to the Indian Penal Code, which expanded the definition of rape and increased penalties for sexual assault. The amendment also introduced new measures to protect the privacy and safety of survivors during legal proceedings. In addition to these legal changes, there have also been several social initiatives aimed at improving awareness of women's legal rights and resources. One such initiative is the One Stop Centre (OSC) program, which was launched in 2015 by the Ministry of Women and Child Development. OSCs provide a range of services to women who have experienced violence, including medical care, legal assistance, and counseling. As of 2021, there were over 700 OSCs operating across India.¹³

Despite these legal and social initiatives, there are still significant gaps in access to justice for

¹² National Crime Records Bureau, Crime Against Women (States/UTs)-2020, (ncrb.gov.in), <https://ncrb.gov.in/en/node/3413> (last visited Feb. 18, 2023).

¹³ Press Information Bureau, One Stop Centres, (pib.gov.in), <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1706000> (last visited Feb. 18, 2023).

women in modern India. One of the key factors contributing to these gaps is the under-representation of women in the legal profession. According to the Bar Council of India, only around 30% of lawyers in India are women, and women are underrepresented in higher levels of the legal profession. This under-representation can have a range of negative impacts on access to justice for women. Women who seek legal assistance may not feel comfortable working with male lawyers, particularly in cases of gender-based violence.¹⁴ In addition, women may not have access to female lawyers who understand their experiences and can provide culturally sensitive legal support. To address this issue, there have been several initiatives aimed at increasing the representation of women in the legal profession i.e., Women in Law initiative, launched by the Indian National Bar Association in 2016. The initiative provides mentorship and networking opportunities for women lawyers, as well as training and advocacy on issues related to gender equality in the legal profession. Gender Sensitization and Sexual Harassment Prevention Committee, which was established by the Supreme Court of India in 2013. The committee is responsible for developing policies and training programs aimed at increasing gender sensitivity among legal professionals.

One person, one vote is the foundation of democratic growth, but it also implies that all residents of a given area should be treated with respect and dignity as equal human beings. Law is not just a tool for governing; it is also a way for people and organizations to demand affirmation of their right to a dignified and respectable existence. Therefore, women's rights to democratic progress entail the right to equal protection under the law.¹⁵

Conclusion

Women's access to justice is a fundamental human right tied to human dignity, not a luxury. No one will be treated fairly if there is no justice for women, said Irene Khan, director general of IDLO. The equality principle i.e., equal protection and equal rights is the cornerstone of the rule of law. Justice is all about making things right. If women's trust in the legal system can be maintained, true access to justice can only be guaranteed. Without addressing both substantive and procedural issues, this is impossible to attain. To protect the ideal of equality, a nation's judiciary must step up and interpret the laws. It is necessary to alter the prevalent laws that prevent women from having a voice in decision-making and from taking advantage of all of life's opportunities in order to empower the status of women in our society. The social,

¹⁴ Goel A, 'Gender Violence in India and the Laws: An Analysis' (www.cceol.com) 5

¹⁵ Bahdi, R., Women's Access to Justice: Texts and Contexts, [2010] SSRN Elec. J.

economic, and educational empowerment of women must be a focus of government initiatives, including programmes, schemes, finances, and welfare policies. A change in society's mentality needs to be affected by such initiatives. Hence, scholars and decision-makers working in this sector need to give the issue more thought in order to achieve a proper balance between the employment of other low-cost alternatives to justice, such as mediation, and expanded availability of legal assistance. The last but not the least suggestion, however, is to employ NGOs to divert unused government legal aid funds in order to improve women's access to justice in the face of the continuous dearth of legal help. In light of the limited government budget, better coordination between the government and NGOs may enable more effective use of the limited legal aid fund and enhance the well-being of women.