**‘ACCESS TO JUSTICE’**

The doctrine of Access to Justice, finds its origin through a confluence of several other concepts, most prominent of them being the principles of *Ubi jus ibi remedium* and the Equality before Law.

The age-old principle of *Ubi jus ibi remedium*, simply means where there is a right, there is a remedy. Thus, every right when it is breached must be provided with a right to a remedy. As and when a person’s right is violated, it is the obligation of the State to make available, to him or her, the means to get the violation rectified and thereby claim justice.

The second important foundational principle of the right to Access to Justice is Equality before the law. This principle can be best explained in the words of Mr. Thomas Fuller, who over three hundred years ago said:

*‘Be ye never so high, the law is above you.’*

Thus, any and every citizen of the country, however powerful, is equal before the Law. This principle, is enshrined in Article 14 of the Constitution of India. As per this principle every person shall have access and recourse to justice and no one shall be subjected to any kind of discrimination to avail justice.

Justice-social, economic and political, is a preambular precept under the Constitution of India. The guarantee of equality of law and equal protection of law lies at the very kernel of our democratic set up. In fact, it had been recommended by the Commission to Review the Working of the Constitution to incorporate Access to Justice as an express fundamental right as done in the South African Constitution, 1996 by virtue of Article 34 of the South African Constitution and accordingly, insertion of Article 30-A titled ‘Access to courts and tribunals and speedy justice’ was proposed by the Commission, for lifting the right to Access to Justice to the pedestal of Fundamental Rights.

As of today, the recommendation has not yielded effect, as the proposed Article 30-A has not been inserted. But, that has not stopped the Supreme Court of India from acknowledging the Right to Access to Justice as a part of the right to life under Article 21 of the Constitution of India.

The fundamental right to life enshrined under Article 21 of the Constitution of India encapsulates the essence of all rights and liberties. It has been universally recognized and iterated repeatedly by the Supreme Court of India that timely justice and speedy trial is a facet of the right to life.

The Supreme Court has interpreted the word ‘life’ appearing in Article 21 of the Constitution to mean a bundle of rights which are considered to be incidental or integral to the right to life so as to make life worth living.

The Supreme Court of India in ***Tamilnad Mercantile Bank Shareholders Welfare Assn. v. S.C. Sekar[[1]](#footnote-1)*** has held that an aggrieved person cannot be left without the remedy and that Access to Justice is a human right and in certain situations even a fundamental right.

Speaking in the same tone and tenor the Apex Court in ***Brij Mohan Lal v. Union of India[[2]](#footnote-2)***, ruled that the right to life under Article 21 guarantees to its citizens the right to Access to Justice. The Court observed thus:

*“Article 21 of the Constitution of India takes in its ambit the right to expeditious and fair trial. Also, Article 39-A of the Constitution recognizes the right of equal justice and free legal aid. To put it simple terms, it is the constitutional mandate of the State to provide the citizens with such judicial infrastructure and mechanism where means of Access to Justice can easily be retrieved every person and trail should be expeditious, inexpensive and fair. The plea of financial limitations cannot be justified as a valid ground to avoid performance of the constitutional duty, more specifically, when such rights are enumerated as basic and fundamental to the human rights of citizens.”*

The Apex Court, speaking through a five-Judge Constitution Bench in ***Anita Kushwaha v. Pushap Sudan[[3]](#footnote-3)*,** went further ahead when it stated that Access to Justice is not only a facet of right to life guaranteed under Article 21 but also a facet of the right contained in Article 14 of the Constitution, for a citizen's inability to access courts or any other adjudicatory mechanism established for determination of rights and obligations is bound to result in denial of the guarantee contained in Article 14 both in relation to equality before law as well as equal protection of laws.

The inclusion of Access to Justice for the Indian citizenry within the Directive Principles of the State Policy, by virtue of Article 39A of the Constitution which was engrafted by the 42nd Amendment to our Constitution, is one of the most laudable constitutional endeavour, for it infused, within all the organs of the State, a moral obligation to make Access to Justice a reality. The contemporary importance of Article 39A shall be discussed a latter stage of this Article.

It needs no emphasis that timely delivery of justice, keeps alive the faith of the citizenry in the Rule of Law and the democratic setup of the nation. In fact, both, the edifices of Democracy and Rule of Law have, within themselves, the right to Access to Justice deeply ingrained. The Supreme Court of India in ***Noor Mohammed v. Jethanand[[4]](#footnote-4),*** while delineating upon the significance of the right to Access to Justice and the catastrophic effect which ‘delay’ causes in eroding this right observed thus:

*“In a democratic set-up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly. Fragmentation of faith has the effect-potentiality to bring in a state of cataclysm where justice may become a casualty. A litigant expects a reasoned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the altar of reasons.”*

However, in a fast developing country like India, where increased prosperity, literacy and awareness leads to an uptick inflow of litigation in courts, every day, the right to access to speedy justice is becoming a utopian concept with each passing day, as the Indian Judiciary is finding it difficult to address the challenges of docket explosion and pendency. Thus, the goal of Access to Justice for all is fraught with multiple constraints - financial, spatial, qualitative and time.

It is precisely here, that it becomes imperative for all the three organs of the State to earnestly commit themselves in removing every such impediment so that the noble goal of Access to Justice for all no longer remains illusory but becomes a reality.

The Constitution Bench in ***Anita Kushwaha*** (supra)while delineating on the concept of Access to Justice, specified the main facets constituting the essence of this concept as:

*(i) the State must provide an effective adjudicatory mechanism;*

*(ii) the mechanism so provided must be reasonably accessible in terms of distance;*

*(iii) the process of adjudication must be speedy; and*

*(iv) the litigant's access to the adjudicatory process must be affordable."*

If one embarks upon the exercise of minutely analyzing and studying the main ingredients of the right to Access to Justice as laid down by the Supreme Court, it shall become manifestly clear that the onus of making Access to Justice an actuality, does not merely rest upon the judiciary, alone.

Making available an effective adjudicatory mechanism lies in the domain of the legislature by enacting laws, which are in-tune with the needs and demand of the time. It is not that the legislature is not doing their bit in the collective aim of achieving the constitutional goal of Access to Justice. Rather, in the recent time, several legislations have been brought into force, which if implemented properly, have the effect-potentiality of taking India closer to the targeted destination.

As for instance, the enactment of the Insolvency and Bureaucracy Code, 2016 (IBC) has turned out to be a watershed moment, not only for the Indian legal profession but also for the entire Indian citizenry. The said statute has given a huge thrust to foreign investments in the Indian Economy and thereby has paved the way for executive arm of the State to reap greater financial perks at its end and thus, be better equipped in terms of finances for playing a more robust role in augmenting the mechanism founded by the legislature by provisioning and providing better court infrastructure.

Further, with the shorter time-lines and establishment of a faster resolution process for insolvent companies under the IBC, the access to speedy justice has got a boost, like never before, particularly involving Companies.

Another shinning example of a beneficial legislation, which bolsters the right to Access to Justice, especially for differently-abled citizens, is the Right of Persons with Disabilities Act, 2016, which contains express provision in the form of section 12 of the said Act which itself is titled as ‘Access to Justice’.

The Apex Court while speaking through a three-Judge bench in ***Justice Sunanda Bhandare Foundation v. Union of India[[5]](#footnote-5)*,** noted with satisfaction that more rights have been conferred under the said statute for differently abled persons with the objective to march forward with regard to specially abled persons.

Similarly, the recent legislative amendments to the Arbitration and Conciliation Act, 1996, and the introduction of the Commercial Courts Act, 2015 by the legislature in its wisdom clearly demonstrate the zealous approach to adopt the international best practices for enabling India to realize the cherished ideal of access to speedy justice in the realm of commercial disputes having a pre-existing arbitration agreement.

It is pertinent to mention that promotion and increased adoption of other Alternative Dispute Resolution (ADR) methods such as mediation, negotiation and conciliation shall go a long way in enabling our nation in achieving our goal of Access to Speedy Justice and Justice for all. While private business players have been quick to rely on methods such as commercial arbitration, the ordinary litigant is often unaware of the advantages of arriving at ‘out of court’ settlements.

We cannot help but notice that in many social settings where litigating parties have long-standing relations, resorting to civil litigation is seen as a means of confrontation and harassment rather than problem solving.

The next essential facet of the doctrine of Access to Justice, as laid by the Supreme Court in ***Anita Kushwaha’s case*** is the need to ensure that the adjudicatory apparatus is accessible to the populace in terms of distance. This duty falls within the sphere of the executive. The executive branch of the State is required to provide accessible forums/Courts where disputes can be adjudicated, for under our constitutional scheme, it is the executive who is in-charge of the wallet, that is, the finances. At the root of the right of Access to Justice lies the right and ability of the litigants to be able to easily access and contest their disputes before the appropriate forums.

It is heartening to note that over the past six decades or so the number of courts established in the country has increased manifold in comparison to the number that existed on the day the country earned its freedom. However, the increase in literacy, awareness, prosperity and proliferation of laws has made the process of adjudication slow and time-consuming, primarily, on account of the overworked and understaffed judicial system, which is crying for creation of additional courts with requisite human resources and infrastructure to effectively deal with an ever-increasing number of cases being filed in the courts.

Infrastructure for court complexes has remained a concern, which has been hampering the march of right to Access to Justice. In ***All India Judges Assn. v. Union of India[[6]](#footnote-6)*,** the Supreme Court ruled that raising the infrastructure standards in the court complexes is the need of the hour as it is the basic requirement for the courts in the twenty-first century. The Court categorically observed that a court complex is not just a building; rather it is a building of justice, which breathes and infuses life into the exalted and sublime ideals of justice. The widening gap between the ideal and the real and between the vision and the pragmatic realization of justice has to be bridged by proper Access to Justice for all.

The Court noted that it is the constitutional duty of the Government of the day to provide court infrastructure and the principle of Access to Justice that does not accept the excuse of the Government as regards financial limitation. The court in the said case while passing a slew of directions to the executive for making available various amenities in court complexes stated that:

*“The consumers of justice expect prompt and effective delivery of justice in an atmosphere that is acceptable. Therefore, infrastructure enhancement will go a long way in strengthening functioning of the court and would improve the productivity in the justice delivery system.”*

Now, we must discuss the third essential element of the doctrine of Access to Justice, which stipulates that the process of adjudication must be speedy. This facet of the right to Access to Justice, primarily, casts a duty on the judicial arm of the State. In ***Indian Young Lawyers Assn. v. State of Kerala[[7]](#footnote-7),*** the Apex Court has stated thus:

*“Access to Justice cannot be dented by any authority or any person. It can only be controlled by a court of law within the parameters of law. Individual whim or fancy or perception has no room.”*

It is axiomatic that if the process of administration of justice is so time-consuming, indolent and frustrating for those who seek justice that it dissuades or deters them from even considering resort to that process as an option, it would tantamount to denial of not only Access to Justice but justice itself.

The right of Access to Justice does not merely comprehend Access to Courts. A more important element of this right is the adjudication and resolution of the grievances in a time bound and effective manner. Every *lis* must reach its definitive end, but it is more important to reach the outcome without leaving the parties frustrated by inordinate and prolonged delays, which is currently stigmatizing the present judicial system.

The Apex Court has declared in a catena of decisions that speedy trial as a facet of right to life, for if the trial of a citizen goes on endlessly his right to life itself is violated. Again in ***Noor Mohammed*** (supra) the Supreme Court observed thus:

*“…The foundation of justice, apart from other things, rests on the speedy delineation of the lis pending in courts. It would not be an exaggeration to state that it is the primary morality of justice and ethical fulcrum of the judiciary. Its profundity lies in not allowing anything to cripple the same or to do any act which would freeze it or make it suffer from impotency...”*

Similarly, one may fruitfully refer to the observations of the Supreme Court in ***Rattiram v. State of M.P.[[8]](#footnote-8)*,** where the court highlighted the need to strike a balance between the right to fair trial and delay in completion of criminal trials, where the court observed that:

*“… delay in conclusion of trial has a direct nexus with the collective cry of the society and the anguish and agony of an accused (quaere a victim). Decidedly, there has to be a fair trial and no miscarriage of justice and under no circumstances, prejudice should be caused to the accused but, a pregnant one, every procedural lapse or every interdict that has been acceded to and not objected at the appropriate stage would not get the trial dented or make it unfair. Treating it to be unfair would amount to an undesirable state of pink of perfection in procedure. An absolute apple-pie order in carrying out the adjective law, would only be sound and fury signifying nothing.”*

Jurisprudentially, no difference between denial of speedy trial in a criminal case, on the one hand, and civil suit, appeal or other proceedings, on the other, for at civil disputes can at times have an equally, if not more, severe impact on a citizen's life or the quality of it. Access to Justice would, therefore, be a constitutional value of any significance and utility only if the delivery of justice to the citizen is speedy, for otherwise, the right to Access to Justice is no more than a hollow slogan of no use or inspiration for the citizen.

Further, it needs to be underscored that Access to Justice also includes ‘access to just treatment in courts’ and ‘access to just decisions’. This aspect is essentially critical, for if the justice provided to the citizens is not apt and equal then positive steps taken in all other directions, be it infrastructural developments or time bound disposal have very less meaning.

In this regard one may profit with the observation of the Supreme Court in ***Imtiyaz Ahmad* v. *State of U.P[[9]](#footnote-9),*** where the Court opined thus:

*“It may not be out of place to highlight that Access to Justice must not be understood in a purely quantitative dimension. Access to Justice in an egalitarian democracy must be understood to mean qualitative Access to Justice as well. Access to Justice is, therefore, much more than improving an individual's access to courts, or guaranteeing representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and inequitable.”*

Thus, the Judicial System must remain conscious to the vulnerability of the marginalized and socio-economically weaker sections and a delicately balanced approach must be adopted so that the said community is not left with a sense of alienation by the system. The natural presumption that Courts are Just Institutions would fall to the ground if the rights of this section are not safeguarded and protected.

Courts are generally viewed, by the vulnerable sections of the society, as a tool of disempowerment and unless this notion is shed away entirely, true realization of the right to Access to Justice shall remain an unachievable target.

In this context, the role of subordinate judiciary attains utmost significance, for it is here that the litigants have their first interface with the judicial system. Every positive effort in the right direction shall go a long way in disrupting and displacing the pre-conceived notions persisting in the minds of the vulnerable sections, however at the same time a single negative step, in form of an unjust decision, would forever reinforce the said perceptions.

Again the duty of rendering quality justice rests upon the shoulders of the judiciary. Any efforts by the Executive and Legislature would be rendered futile and ineffective if the Judiciary, being the ultimate dispenser of Justice and the cornerstone for realizing the right of Access to Justice, does not assiduously render its services in the manner as envisioned by the Constitution.

It needs to be noted that the judiciary constantly undertakes substantial measures for improving the quality of justice. The state judicial academies conduct regular training programs for judicial officers in relatively newer areas of litigation and “case management” techniques. The role of these academies is of immense importance since Judges at all levels are confronting litigation dealing with new areas that they are not familiar with. There is also a new-found focus on Sensitization Programmes and Workshops conducted by the Academies which shall go a long way in in sensitizing our Judicial Officers with respect to the ground realities which exist in our country.

Another area of concern pertaining to the quality of justice delivery is linked with judicial accountability. Put another way, corruption in judiciary mars the quality of justice. However, it can be said with certain degree of confidence that the problem of corruption, to draw an analogy with the ongoing coronavirus has not assumed the character of community transmission in the country and is only a localized issue. Meaning thereby, there are a few hotspots only, which if dealt harshly by the respective vigilance cell of each High Court so as to contain or seal the menace of corruption in judicial corridors.

Adverting to the last, however, not the least ingredient of the right to Access to Justice, which stipulates that adjudication process, must be pocket friendly for the litigants. Of course, it goes without saying that pocket sizes of the litigants vary with one and another. A common litigant cannot be expected to shell a fortune in the quest for justice, whereas a Multinational Company may find no difficulty in pursuing litigation round after round.

Now, it must also not be forgotten that Justice comes with a price, but the important question remains, at what price? The Court halls may be constructed, sufficient number of judges robed and the corridors wide open to welcome the litigants, but unless the common litigants are represented by lawyers they would, yet, remain hesitant in approaching the Courts.

It is here that Article 39-A and consequent legislation in form of the Legal Service Authority Act, 1987 comes to the aid and rescue of the common litigant. The right to free legal aid has been enlisted under Article 39-A of the Constitution of India. Exercise of judicial engagement which began its journey from the ***Hussainara Khatoon v. State of Bihar[[10]](#footnote-10)*** and eventually culminated into the inception of the National Legal Services Authority (NLASA) by the virtue of the Legal Services Authority Act, 1987 can be considered as a landmark juncture in annihilation of the apathy of the masses.

The statement of object and reasons of the 1987 Act reads as:

*“An Act to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organise lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.”*

NALSA, which was set up under the aegis of the Supreme Court, has proved to be a boon for the right to Access to Justice as it has enabled the justice to reach at the doorsteps of indigent and poor people. Access to Justice now no more remains a text in the books and is accessible by poor and marginable people of society. It has been made possible only through the combination of the legislative will, the judicial activism and the executive commitment which forged it to become the world's largest free legal aid service provider.

The NALSA and the various State and District-level authorities under it have been discharging the mandate of organising Lok Adalats at different levels and have also been conducting legal literacy camps all over the country. It is heartening to note that with the passing of each year, more and more members of the Bar are volunteering for “legal aid” programs and also acting as *amicus curiae* in pending cases.

Thus, Affordability of Access to Justice has been, to an extent, taken care of by the State-sponsored legal aid programmes under the 1987 Act. Legal aid programmes have been providing the much-needed support to the poorer sections of the society in accessing justice in courts.

That apart, Section 304 Cr.PC also protects the right of the accused who, owing to financial constraints, cannot engage a lawyer of his own, by making a provision for pleaders to represent such accused persons at the cost of the State. The reason for having a distinct and separate provision of legal aid for accused in criminal cases is due to the fact that in all such cases the Fundamental Right to Life and Liberty enshrined under Article 21 of the Constitution is at jeopardy and any accused person should be provided with every form of opportunity to protect this Fundamental Right.

In a rather recent decision the Supreme Court in ***Swapnil Tripathi v. Supreme Court of India[[11]](#footnote-11)*,** recognizedthe right of Access to Justice would become more meaningful, if through live streaming of court proceedings, the public gets access to the proceedings of cases which are of constitutional and national importance. While paving way for live streaming of Supreme Court proceedings for the first time in independent India, the court further strengthened the right to Access to Justice. The relevant observations of the Court are:

*“…technological solutions can be a tool to facilitate actualisation of the right of Access to Justice bestowed on all and the litigants in particular, to provide them virtual entry in the court precincts and more particularly in courtrooms. In the process, a large segment of persons, be it entrants in the legal profession, journalists, civil society activists, academicians or students of law will be able to view live proceedings in propria persona on real time basis.”*

Ultimately, we can arrive at an irrefragable conclusion the right to Access to Justice has, with the efflux of time advanced at substantially recognizable stage in the Indian body-polity. However, this right can be fully ripened only by the requisite and arduous commitment of all concerned, for the said right is so basic and inalienable that no system can possibly neglect its importance, or can afford to deny the same to its citizens.

Therefore, it is for each and every member of the legislature, the executive, the judiciary, the present members of the Bar, to exhibit an unflinching allegiance to the cause of right to Access to Justice and thereby sincerely play their role in the justice-dispensation system of the nation.

1. (2009) 2 SCC 784 [↑](#footnote-ref-1)
2. (2012) 6 SCC 502 [↑](#footnote-ref-2)
3. (2016) 8 SCC 509 [↑](#footnote-ref-3)
4. (2013) 5 SCC 202 [↑](#footnote-ref-4)
5. (2017) 14 SCC 1 [↑](#footnote-ref-5)
6. (2018) 17 SCC 555 [↑](#footnote-ref-6)
7. (2016) 16 SCC 810 [↑](#footnote-ref-7)
8. (2012) 4 SCC 516  [↑](#footnote-ref-8)
9. (2012) 2 SCC 688 [↑](#footnote-ref-9)
10. (1980) 1 SCC 81 [↑](#footnote-ref-10)
11. (2018) 10 SCC 639 [↑](#footnote-ref-11)