ПРАВО ЗАРУБЕЖНЫХ СТРАН: ПРОБЛЕМЫ ТЕОРИИ И ПРАКТИКИ

LAW OF FOREIGN COUNTRIES: PROBLEMS OF THEORY AND PRACTICE

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PROBLEMS OF ACCESSIBILITY TO JUSTICE AND LITIGATION IN INDIA

The access to justice is one of the most important objects of any democratic country, it means to reach justice easily by legal proceedings in appropriate time. When justice is delivered it must be impartial and non-discriminatory, state should take all necessary steps to provide fair, transparent, effective, and accountable service that promote access to justice for all. Judiciary must be free from biasness and always protect the citizen's fundamental rights, civil, political, social, economic rights through access to justice. The **purpose** of the article is to analyze some problems of accessibility to justice and litigation in India. **Methods:** the research is carried out on the basis of the methods of analysis and synthesis, generalization and description. **Results:** The four facets that constitute the essence of access to justice are determined. It is proposed to adopt the informal modes of access to justice.
Keywords: rule of law; access to justice; litigation; judiciary; adjudicatory mechanism; litigant.

The concept of Rule of law is meaningless unless there is access to justice for the people. Access to justice means to reach justice easily by legal proceedings in appropriate time. When justice is delivered it must be impartial and non-discriminatory, state should take all necessary steps to provide fair, transparent, effective, and accountable service that promote access to justice for all.

The four facets that constitute the essence of access to justice are

– The state must provide an effective adjudicatory mechanism.

While India can still claim to have adequate Courtrooms (access to the same by people in remote areas is highly contested), as per the 87th report before the Parliament, approximately 43 % of Court Halls in various High Courts in India do not have Judges. There has been a continuous inordinate delay in appointment of the Higher and Lower Judiciary which in turn piles up cases and delays the process. As per the Press Information Bureau report 2016, there were 48,418 civil cases and 11,050 criminal cases pending before the Supreme Court as on February 19th, 2016.

Even if we assume that the victim makes it to the courts and manages to hire a decent lawyer, they may never even hear their proceedings. The Supreme Court has, till date, spent Rs. 95 Lakhs to install the latest microphone system for both the bar and the bench but, neither the bar nor the bench uses them.

– The mechanism so provided must be reasonably accessible in term of distance. While the Supreme Court is supposed to be approached only in rare cases, for the poor and the downtrodden, the thought of even approaching it is rare. It makes no logical sense for a poor person whose rights have been trampled to travel all the way to New Delhi from remote places. While the idea of having 5 separate Court of Appeals (East, West, North, South and Central) was once mooted, unfortunately, it has remained just a moot point.

– The process of adjudication must be speedy.

Keeping in mind point (i), that is Courts are understaffed and overburdened, it is patently wrong to assume that the Court would dispense matters quickly. The Civil Procedure Code in our country is over 100 years old and the basic Court practices are tedious and extremely complicated. And yet, there are cases pending before numerous Courts for over 15 years. Recently, the High Court of the state of Andhra Pradesh and Telangana had decided that all old cases must be concluded soon. The Advocate Associations reacted to the news by going on a strike. The advocates contended that they could not be forced to rush the litigation process. So, instead of the matters getting wrapped up quicker, they got further delayed.

– The litigants, access to the adjudicatory process must be affordable.

The question is whether litigation is really affordable? No. As it is said, if it's free, it's probably not good. If it's good, it's probably not free. While the case of Khatri II v. State of Bihar (1981) states that the right to free legal aid is a right covered under Article 21 of the Constitution, the legal aid Lawyer you will get is again overburdened and under-equipped in most cases. Let's assume, as an example, that some big pharmaceutical company has wronged you. Because you can't afford a lawyer, you accept free legal aid, whereas the Company hires the biggest Law firm in India. I know some brilliant lawyers

who work with Free Legal Aid Centers, but it is practically impossible for even them to go against entire truckloads of lawyers on the other side. And that is where the dream of access to justice falls flat.

Everywhere in the world, remedy under law must be paid in the form of the legal expenses of lawyers' fees, Court fees and filing expenses which includes (translation, making copies to serve on other side, process fees, RPAD, Court Stamps etc) and the under-table expenses. Even if you get declared as an indigent, you would not have to pay Court fees and process fees but you would still have to spend money to see the matter reach to its conclusion in a couple of years.

There is nominal costs when it comes to access to justice because the court fess is less. But the lawyers quote hefty amounts based on their professional structure and image. The lawyers are mostly connected to the political or religious ideologies and thus grow indifferently. The lawyer's fees can be from Rs. 10,000 to Rs. 10,00,00 lakhs per appearance and it can be from Rs. 10,000 to 1 crores per case.

Also there is easy money in criminal cases as both victim and accused try to the judgment in their favor which results in paying desired fees to the lawyers. Whereas in civil cases lawyers earn huge amount of money from the people as the trail continues for years.

Further, parties are free to represent themselves, without taking the help of an advocate and there are no formalities like filing of a suit etc. and other such technicalities as followed in the regular courts.

But the major question which arises is that when we are having the formal system of adjudication in the form of courts, why then are the informal modes required? There are many reasons for adopting the informal modes of access to justice: Firstly, it helps to dispose of a large number of cases summarily and thus relieves the burden of regular courts. This is facilitated by the relaxation in rules of procedure and evidence, and as a result the settlement of disputes is not that much expensive. Secondly, cases are decided in a manner more befitting a compromise than adjudication and therefore the antagonism that follows in the wake of litigation is greatly reduced. Thirdly, it is more practical that matters relating to personal laws like property dispute, divorce, maintenance etc. and other non compoundable criminal matters are settled through these means, which turns out in the best interests of both citizens and the state. The informal modes of access to justice include Nyaay Panchayats, lok adalats, Negotiation, Arbitration, Conciliation, Mediation and the Ombudsman.

To achieve the objective of Article 39 A of the Constitution of India, the Legal Services Authorities Act, 1987 was enacted to provide free and competent legal service to the weaker sections of the society to ensure that oppor-

tunities for securing justice are not denied to any citizen by reason of economic or any other disabilities. To achieve this objective, Lok Adalats are being held at various places in the country and a large number of cases are being disposed of with lesser costs.

To setup Nyaay Panchayats, Ministry of Law & Justice has passed a Gram Nyayalayas Bill with an objective to provide justice, both civil and criminal, at the grass-root level to the citizens, which would be the lowest court of subordinate judiciary and shall provide easy access to justice to litigant through friendly procedures, use of local language and mobile courts wherever necessary.

The Preamble of the constitution of India also enshrined justice. It states- social, economic, and political which means provide justice or access to justice to citizens of India in different aspect of social, economic, political.

Article 32 of Indian constitution which is also known as heart of our constitution, provide with the concept of Public Interest Litigation (PIL). It refers to litigation undertaken to secure public interest and demonstrates the availability of justice to socially-disadvantaged parties. The PIL cannot be used in solving disputes of private nature. PIL was evolved with a view to render justice to poor & pauper, depraved, the illiterate and downtrodden who have either no access to justice or had been denied justice. PIL has been evolved by apex court of our country to bringing justice within easy reach of the poor.

State and Central government has also established some authorities to provide free legal service help to people:

– National legal service authority (NALSA);
– State legal service authority;
– District legal service authority;
– Supreme court legal service committee;
– High court legal service committee.

These are the various governmental organization mechanism to provide free legal aids plus speedy trials before court which helps to reach access to justice. Other than these organizations, there are various NGOs which help and provide free legal aid to the needy people.

In India Article 14 of the constitution provides a fundamental right of equality before law. It states that all the citizens are equal before law and have equal protection of law. Even the judiciary and politicians are not spared if their act is against the law. Former Chief Justice of India Ranjan Gogoi was not spared for the court trails when he was accused for sexual harassment by an employee of Supreme Court of India.

Concluding, If followed in a proper way, the above measures would go a long way and ensure that the litigation for a smooth affair for a litigant, as

this is very pertinent to ensure and sustain people's faith in judiciary, and in the last to nullify the very common bar room anecdote 'that in the average Indian litigation winner is the best and the loser is dead'. The access to justice is one of the most important objects of our democratic country. Ordinary people expect from court that they will get justice in the court. Judiciary always play a vital role in democracy when no one listens to people, their court listens. Judiciary is free from biasness and always protects the citizen's fundamental rights, civil, political, social, economic rights through access to justice.

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ПРОБЛЕМЫ ДОСТУПНОСТИ ПРАВОСУДИЯ И СУДЕБНЫХ РАЗБИРАТЕЛЬСТВ В ИНДИИ

Доступ к правосудию – одна из важнейших целей любой демократической страны, он означает беспрепятственное отправление правосудия путем судебного разбирательства в надлежащее время. Правосудие должно быть беспристрастным и недискриминационным, а государство должно принимать все необходимые меры для обеспечения справедливой, прозрачной, эффективной организации доступа к правосудию для всех. Судебная власть должна быть свободна от предвзятости и защищать основные права – гражданские, политические, социальные, экономические – посредством доступа к правосудию. **Цель:** анализ некоторых проблем, связанных с доступом к правосудию и судебным разбирательствам в Индии. **Методы:** анализа и синтеза, обобщения и описания. **Результаты:** определены четыре аспекта, составляющие основу доступа к правосудию. Предлагается также применять неофициальные формы доступа к правосудию.

Ключевые слова: верховенство права; доступ к правосудию; судебное разбирательство; судебная система; судебный механизм; сторона в судебном процессе.