

THE ROLE OF THE JUDICIARY IN ENSURING ACCESS TO JUSTICE

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ABSTRACT

A basic inquiry into the role of the judiciary in ensuring access to justice requires a prior clarification of its conceptualization of justice itself. To initiate this, I have turned to the Indian Constitution. After examining the Constitution, I aim to articulate the implications made in the Constitution for the judiciary's understanding of its role in facilitating access to justice. A pivotal role is played by the judiciary in ensuring access to justice, which is fundamental to the rule of law and the act of safeguarding rights in a democratic society. This article explains how the judiciary, as an impartial and independent body, acts as the guardian of justice by enforcing and interpreting laws that protect individual freedoms and rights. The paper delves deeply into judicial mechanisms of a significant nature, such as judicial review.

Keywords: Judicial Review, Marginalized Groups, Equitability, Fundamental Rights, State Actors.

INTRODUCTION

The judiciary, as envisioned by the framers of the Constitution, is the pivotal point in ensuring social justice, which is evidently seen in Article 32. This article allows individuals the prerogative to approach the Supreme Court for the enforcement of their fundamental rights, which are foundational in nature. Dr. B.R. Ambedkar, a distinguished figure in Indian Constitutional Law, rightly referred to Article 32 as the “soul of the Constitution.”¹

The eminent role of the judiciary in securing and ensuring social justice goes beyond merely enforcing fundamental rights. These rights are open-ended prerogatives, and their specific content is adjudicated through interpretation, which is largely undertaken by the judiciary. By interpreting fundamental rights broadly, the judiciary creates effective tools for securing socio-economic and political justice.

One crucial aspect of the judiciary's role is to enunciate norms that validate access to basic

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¹ B.R. Ambedkar, The Constitution of India (Dr. Ambedkar Foundation 2014).

human needs. When legal and social norms limit marginalized or underprivileged groups' ability to fulfil their basic needs, access to justice in any domain of life becomes tangential to the struggle for survival. Hence, securing socio-economic entitlements to basic human needs and transforming those entitlements from vague norms into solid realities is essential for creating a just social order.

BACKGROUND

The Constitution of India gives paramount importance to justice, envisioning a society where social, economic, and political discrimination is eliminated, and equality exists in all aspects of life. This broad understanding of justice is outlined in the Preamble and reiterated in Article 30(1),² which emphasizes the state's responsibility to establish a social order grounded in justice. Dr. B.R. Ambedkar stressed the importance of transforming the “not-so-just” social reality into a just social order with the help of the constitutional framework.³ The Constitution protects fundamental rights that promote political justice and create favourable conditions for achieving social and economic justice.

The Constitution's emphasis is not merely a theoretical objective but a practical guide for governance. It lays down a framework for ensuring that the state acts fairly and equitably, promoting the welfare of every individual. By recognizing the connections between social, economic, and political justice, the Constitution seeks to create a society where every individual has equal opportunities to thrive and fully participate in the democratic process.

ACCESS TO JUSTICE AND THE JUDICIARY

The judiciary plays a crucial role in shaping a just and equitable society by interpreting and enforcing laws in a manner that ensures access to justice for all. When rights are viewed as instruments of justice, the judiciary can mold them to create a society where discrimination is minimized, and inclusivity and fairness prevail. This includes ensuring that the underprivileged and disenfranchised groups have access to basic human needs and can meaningfully participate in public life.⁴

The judiciary can accomplish this by enunciating norms that identify and protect fundamental

² Constitution of India 1950, art 30(1).

³ Ibid.

⁴ Deborah L. Rhode, Access to Justice (OUP 2000).

rights such as the right to life, dignity, and equality. By doing so, the judiciary can challenge harmful practices and work towards creating a more inclusive and fair society. The Vishaka case, for instance, recognized sexual harassment as a violation of fundamental rights,⁵ leading to the de-normalization and de-legitimization of this harmful practice.

The judiciary also serves as a platform for individuals to seek redress for violations of their rights, empowering victims and holding perpetrators accountable. By doing this, the judiciary promotes societal change and fosters justice and equity.⁶ Access to justice, therefore, extends beyond individual cases and includes questioning systemic injustices and promoting societal transformation. The role of the judiciary in advancing social justice goes beyond individual cases; it can also spur public discourse by interpreting laws that challenge harmful stereotypes and promote inclusivity.

For example, by interpreting gender equality laws progressively, the judiciary can dismantle gender-based discrimination and foster a more equitable society. The major areas where the judiciary's role is of vital importance are as follows:

1. Enunciating Norms For A Fair Social Order

- The judiciary must interpret and implement the laws in such a way that it promotes a fair and equitable society
- It incorporates identifying and safeguarding fundamental rights such as the right to life, liberty, and dignity.
- Enunciation of new rights. For example, the right to food, as an essential component of existing rights can also be done by the judiciary.

2. Magnifying Responsibility And Accessibility Of State Organs

- The judiciary can set standards and affirm them. That makes sure the other branches of government are responsible for the law.
- For instance, it can elucidate laws to require that individuals have a predicative to be heard before severe actions are taken against them by the state authorities.
- This can help prevent the arbitrariness on the part of the authority.

⁵ Vishaka v. State of Rajasthan AIR 1997 SC 3011.

⁶ Ibid.

3. Limiting The Immunity Of The State Actors

- Outdated legal concepts like sovereign immunity can be replaced by the judiciary with concepts that are applicable in contemporary society like ones that hold state actors responsible for their actions
- This helps to make sure that the government is not above the law.

4. Expedite Access To Justice

- The judiciary can come up with procedural rules that make it seamless for the people to access the courts and seek remedies for the violation of the rights given to them.
- This includes relaxing technical requirements, for example, locus standi, which determines, who can bring a lawsuit.
- By making the courts more fathomable as well as accessible, the judiciary can provide to make sure that justice is available to everyone.

5. Making A Just And Equitable Court

- The judiciary must endeavour to make a court system that treats all the litigants in a just manner.
- This involves the provision of important services, for example, legal aid to those who cannot afford a lawyer for themselves.
- By ensuring that everyone has a just opportunity to present their case, the judiciary can play a role in preventing injustice.

REVIEWING JUDICIAL PRACTICES FOR FAIR ACCESS TO JUSTICE

The Supreme Court of India has acknowledged that accessibility to justice goes beyond merely removing the hindrances to accessing courts.⁷ While access to court is of crucial importance, it is not the only factor.

Some judicial reform measures aimed at promoting access to justice include:

1. **Legal Aid:** This consists of legal services authorities, paralegals, and law school clinics

⁷ Supreme Court of India, 'Ensuring Access to Justice' (SC Website) <https://supremecourt.gov.in> accessed 20 October 2024.

providing legal assistance, aid, and awareness to those seeking help.⁸

2. **Reducing Delays and Arrears:** This involves diverting cases to alternative dispute resolution mechanisms, developing the court framework and infrastructure, implementing case management techniques, and using data to address delays.⁹
3. **E-justice:** Incorporating technology into the judicial process, such as through electronic courts and online case status updates.¹⁰
4. **Training of Judges:** Training judges in managing court proceedings and addressing access to justice issues, especially for marginalized and underprivileged communities.¹¹
5. **Tribunals for At-Risk Witnesses:** Establishing a safer and more comfortable environment for victims and witnesses.¹²
6. **Access to Higher Courts:** Facilitating access to higher courts for violations of rights, particularly through Public Interest Litigation (PIL).¹³

CONSTITUTIONAL POWERS OF THE SUPREME COURT AND THE HIGH COURTS IN INDIA

JUDICIAL ACTIVISM IN FOCUS

Judicial activism is a doctrine that empowers courts to review actions taken by the legislative and executive branches of government. It involves courts actively interpreting and implementing constitutional provisions to strike down laws or actions that are deemed unconstitutional.¹⁴

In India, the foundation of judicial activism lies in Article 13, along with Articles 32 and 226 of the Constitution.

- Article 13 declares that laws inconsistent with fundamental rights shall be void. This provides courts with the power to evaluate the constitutionality of laws.¹⁵
- Article 32 guarantees the right to constitutional remedies, allowing individuals to

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Supreme Court of India, 'Tribunals for Witness Protection' (SC Website) <https://supremecourt.gov.in> accessed 20 October 2024.

¹³ Ibid.

¹⁴ Constitution of India 1950, arts 13, 32, and 226.

¹⁵ Ibid, art 13.

approach the Supreme Court directly for enforcement of fundamental rights.¹⁶

- Article 226 grants High Courts the power to issue writs for the enforcement of fundamental rights and other legal rights.¹⁷

JUDICIAL REVIEW AS A CORE ELEMENT

The power of judicial review has been recognized as a fundamental feature of the Indian Constitution's basic structure. This means it is an essential aspect that cannot be altered or replaced without affecting the Constitution's core identity. The Supreme Court has consistently affirmed the importance of judicial review in protecting individual liberties and upholding the rule of law.¹⁸

Judicial activism in India allows courts to ensure that the government functions within the framework of the Constitution, respecting fundamental rights. By reviewing legislative and executive actions, courts can invalidate unconstitutional measures and uphold democratic principles.¹⁹

Under Article 142, the Supreme Court has the extraordinary power to issue any order or decree necessary to ensure justice in any matter before it.²⁰ This provision gives the Court the authority to fill legal gaps temporarily, while Parliament is responsible for enacting permanent legislation.²¹

LANDMARK CASES

1. **Vishaka v. State of Rajasthan (1997)**²²

In this case, the Supreme Court laid down guidelines to protect women from sexual harassment in workplaces, exercising its power under Article 142.

2. **Golak Nath v. State of Punjab (1967)**²³

The Court observed that all branches of government must operate within their constitutionally prescribed limits.

¹⁶ Ibid, art 32.

¹⁷ Ibid, art 226.

¹⁸ Kesavananda Bharati v. State of Kerala AIR 1973 SC 1461.

¹⁹ Minerva Mills Ltd. v. Union of India (1980) 3 SCC 625.

²⁰ Constitution of India 1950, art 142.

²¹ Supreme Court of India, 'Article 142 and Complete Justice' (SC Website) <https://supremecourt.gov.in> accessed 20 October 2024.

²² Vishaka v. State of Rajasthan AIR 1997 SC 3011.

²³ Golak Nath v. State of Punjab AIR 1967 SC 1643.

3. **Ram Jawaya Kapoor v. State of Punjab (1955)**²⁴

This case reaffirmed that while India does not adhere to a rigid doctrine of separation of powers, it does sufficiently differentiate the functions of the government's various branches.

DOCTRINE OF SEPARATION OF POWERS AND ITS RELEVANCE

Separation of powers can be defined as the division of the judicial, executive and legislative functions of the government among independent bodies or separate bodies. Making the laws is done by the legislature while the executive is responsible for putting those laws made by the legislature into effect and the judiciary renders justice by interpreting those laws while ensuring that the law is upheld. The main objective of separation of power is to put a bar on the possibility of arbitrary excesses by the government. It also prevents the act of misusing the power or accumulation of power in a few hands, this protects the society from arbitrary and irrational power of the state

JUDICIAL PRONOUNCEMENTS

Golak Nath vs. the State of Punjab (1967)-in this specific case, it was observed by the judges that all the organs of the government are expected to carry out their functions within the prescribed limit or bar, and it has to be kept in mind as well certain encroachment assigned by the Constitution.

Ram Jawaya Kapoor vs. the State of Punjab (1955)- in this case, it was held that the Indian has not indeed identified the doctrine of separation of powers, in its absolute rigidity, it has just sufficiently differentiated the functions and the role of the different parts or branches of the government.

CONCLUSION

In conclusion, the judiciary plays a pivotal role in ensuring access to justice by acting as the guardian of individual rights and upholding the rule of law. Through its interpretation of constitutional provisions, legal statutes, and its own precedents, the judiciary has consistently ensured that justice is not denied to any individual, particularly the marginalized and vulnerable

²⁴ Ram Jawaya Kapoor v. State of Punjab AIR 1955 SC 549.

sections of society.²⁵ By enforcing principles of fairness, equality, and due process, the courts have expanded the scope of access to justice, reinforcing the idea that justice must not only be done but also be seen to be done.²⁶

The judiciary's role in guaranteeing access to justice is evident through various landmark judgments that have expanded legal remedies, procedural safeguards, and public interest litigation, thus democratizing the legal process.²⁷ Initiatives such as the creation of specialized tribunals, legal aid services, and the simplification of procedural laws further attest to its commitment to making justice more accessible.²⁸

However, challenges remain in the form of judicial delays, high litigation costs, and limited resources, which impede swift access to justice. Therefore, while the judiciary continues to act as a beacon of hope for many, systemic reforms are essential to make justice more inclusive, efficient, and timely. In this context, the judiciary, in collaboration with the legislature and executive, must ensure that its institutions are strengthened and its processes streamlined to meet the growing needs of justice in a rapidly changing society.²⁹

In essence, the judiciary's role is not limited to adjudicating disputes but extends to safeguarding the very foundation of democratic governance—access to justice for all.³⁰ The continued evolution of judicial systems to address contemporary challenges will determine the extent to which justice can truly be accessed by every individual in society, regardless of their socio-economic status.³¹

²⁵ Kesavananda Bharati v. State of Kerala AIR 1973 SC 1461.

²⁶ Minerva Mills Ltd. v. Union of India (1980) 3 SCC 625.

²⁷ Vishaka v. State of Rajasthan AIR 1997 SC 3011.

²⁸ Supreme Court of India, 'Ensuring Access to Justice' (SC Website) <https://supremecourt.gov.in> accessed 20 October 2024.

²⁹ Ibid.

³⁰ Minerva Mills Ltd. v. Union of India (1980) 3 SCC 625.

³¹ Supreme Court of India, 'Article 142 and Complete Justice' (SC Website) <https://supremecourt.gov.in> accessed 20 October 2024.

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