

ACCESS TO JUSTICE: A CONSTITUTIONAL RIGHT

Dr. Gazal Gupta

Former Assistant Professor of Law, Lovely Professional University, Punjab

Law is the means and justice is the end. In order to reach the destination (justice), the means to reach the destination (law and legal system) must be established. It should be familiar and made available to all. Rule of Law recognize and protect the rights which forms the interest of the individuals, as said by the Roman maxim, ubi jus ibi remedium 'wherever there is a right there is a remedy'. Therefore, justice is required and Law offers the remedy whenever the right is exploited or breached even if it is against the State or any other powerful body. To enable the legal disputes or conflicts, which certainly arise in every civilised society, to resolve them in an orderly way, and for the rights of the citizen to be recognized and enforced "access to justice" is a necessity and a demand to settle the legal disputes or conflicts, which certainly arise in every civilised society. Access to justice is a human right which imparts life and meaning to law.

Introduction

The Constitution being the supreme law of our country - entitles everyone living in India to protection of their human rights. Part III, the chapter on Fundamental Rights, which is referred to as the heart of the Constitution, guarantees basic human rights to all. It pledges that the State will safeguard human rights and will protect citizens from undue invasions on their liberty, security and privacy. The Supreme Court has over the years, explained and elaborated the scope of Fundamental Rights. It has strongly opposed intrusions upon it through State agencies, by asserting that the rights and dignity of individuals must always be upheld. The Court has laid down certain directives for law enforcement. We have the Criminal and Civil courts to oversee the functioning of administration of justice but demand of the time is to strengthen the machinery to check the atrocities done to the people. National Human Rights Commission (NHRC) is the authority in India for accessing justice by the people at large. The Commission has been established under a special Act of Parliament to protect and promote the human rights of all people living in India. The Commission addresses violations of human rights by recommending registration of criminal cases against the guilty; disciplinary action against errant officers; and payment of compensation to the victims.

Today the society has nearly succumbed to the syndrome of lawless tensions, psychic penury and miseries of conflict, at individual, domestic, local, national and international levels. The legal mutiny far from salvaging man is gnawing at him from within.

Incarcerational barbarity has been validated by the popular retributive- deterrent philosophy, this is current sentencing coin in many criminal jurisdictions.¹

Access to justice

The term “access to justice” cannot be given any precise meaning. Its meaning is intricately intertwined with the meaning of the term “justice”. On its turn, the definition of justice depends on the context it is being used. For every society the term has a different significance. For some it may be fairness whereas others might term it as advantage of the stronger. The notion of justice evokes the cognition of the rule of law, of the resolution of conflicts, of institutions that make law and of those who enforce it; it expresses fairness and the implicit recognition of the principle of equality.²

The Constitution treats all citizens as being equal and provides them equal protection under the law. Yet, the common person faces barriers to ‘access to justice’. Illiteracy, lack of financial resources and social backwardness are major factors that hinder the common person from accessing justice. There are other invisible barriers: lack of courage to exercise legal rights, the proclivity to suffer silently the denial of rights, and geographical and spatial barriers are examples. Such barriers keep people disempowered and subjected to exploitation by powerful people. This results in their being shoved away from the mainstream, and they become constrained in becoming potential economic factors contributing to the nation’s development.

The Protection of Human Rights Act provides for a machinery to ensure access to justice to all through the institutions of legal authorities and commissions. These institutions are manned by judges and judicial officers. Parliament entrusted the judiciary with the task of implementing the provisions of the Act, as the other pillars of the government were neither inclined nor had the expertise to take up the responsibility to provide access to justice to the weaker sections and vulnerable group.

Guidelines of the National Human Rights Commission are increasingly being subject to positive interpretation by the courts. This means that officers accused of violating human rights may be called upon to explain why these guidelines were not followed. Non adherence to the guidelines is taken to be a sign of malafide intention and breach of good faith. It also invites legal and disciplinary action against the officer concerned. The protection of Section 197 of the Code of Criminal Procedure (CrPC)³ only applies to acts done in the discharge of official duty. Assaulting a suspect during investigation; fabricating a false case; using abusive or threatening language; demanding a bribe; or indulging in

¹ V.R Krishna Iyer : Constitutional Miscellany , ed. 2 Eastern Book Company , Lucknow (2003), p. 149, 151

² J. Rawl: A Theory of Justice, Cambridge University Press, Cambridge (1997), p.11.

³Immunity from prosecution for public servants without prior sanction of the government/ appointing authority for any offence alleged to have been committed in the discharge of official duty.

unruly conduct is not a part of official duty. It is no part of an official's duty to commit an offence and never can be.⁴

There are guidelines issued by the Commission to encounter the complaints of the public against the Police authorities or other authorities who are bound to take appropriate measures and actions but lack the true administration. The Government of India allows torture, so inflicted in police lock-ups, considering it necessary for the administration of justice while providing impunity to the law enforcement officers. Principally, it is believed that the court lock-ups be governed by the judiciary. Although it is seen that even the magistrates are dependent on the police officials for their judicial functions. All the evil lies in enormous judicial powers vesting in the police authorities. Their job begins from the arrest to the conviction of the arrestee. Revelations brought forth that practically the independence of the Judiciary has not been observed. This is taken to be contrary to the tenets of the Constitution and goes against the intention of the Criminal Procedure Code, 1973 that establishes the judiciary to be severed from other parts of the government.⁵

STATE OF HARYANA V. BHAJAN LAL & OTHERS ⁶(Registration of FIR)

The Supreme Court said that the order of the High Court cancelling the FIR was bad both in law and on the facts. They asserted that everyone, whether individually or collectively, must abide by the law and even the judiciary cannot interfere with the investigation process unless police officers improperly and illegally exercise their investigatory powers. However, the Supreme Court cautioned that where a police officer transgresses the circumscribed limits and causes serious prejudice to the personal liberty and the property of a citizen, courts will step in and issue appropriate orders.

Section 154 (1) of the Code of Criminal Procedure, 1973 says that if any information disclosing a cognizable offence is given at the police station, the officer in charge must register it. The Supreme Court asserted that it is not open to the police to question the reasonableness or credibility of the information at this stage. An FIR should be registered immediately and even before proceeding with a preliminary investigation.

STATE OF WEST BENGAL V. SWAPAN KUMAR GUHA & OTHERS⁷

(Basis of Investigation)

The police do not have unfettered discretion to start an investigation. Unlimited discretion, the Supreme Court said is a ruthless destroyer of personal freedom. An investigation cannot be started on mere unfounded suspicion. They emphasised that fundamental principles of justice are based on the logic that the process of investigation cannot be used to harass

⁴ Ratan Lal & Dhirajlal: Code of Criminal Procedure, Wadhwa & Company, Nagpur 2002, page 636

⁵ Barkha Trehan and Neha Trehan, *Custodial Deaths-Bane of Justice*, www.rmlnlu.ac.in/web (last seen 25.5.15)

⁶ AIR 1992 SC 604

⁷ 1982 SCC 561

people against whom no offence is disclosed. Carrying out investigation without a proper basis imperils the personal liberty and property of the individual, which are sacred and sacrosanct. The right of the police to conduct an inquiry must be conditioned by the existence of reason to suspect the commission of a cognizable offence. Such reason can be established only if facts in the FIR point towards an offence being committed. The Supreme Court has laid down that an FIR which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied and cannot form the foundation or constitute the starting point of a lawful investigation.

This case also re-examined the question of 'When the courts can interfere in the investigation processes?' The Supreme Court said, that if after considering all relevant aspects, the courts are satisfied that an offence has been committed they will allow the investigation to proceed without interference. However, if no offence is disclosed, courts are under a duty to interfere and stop the investigation to prevent any kind of uncalled for and unnecessary harassment to an individual.

NANDINI SATPATHY V P.L DANI⁸ (Right Against Self-Incrimination)

Article 20 (3) of the Constitution lays down that no person shall be compelled to be a witness against her/himself. Section 161 (2) of the Code of Criminal Procedure, 1973 casts a duty on a person to truthfully answer all questions, except those which establish personal guilt to an investigating officer. The Supreme Court accepted that there is a rivalry between societal interest in crime detection and the constitutional rights of an accused person. They admitted that the police had a difficult job to do especially when crimes were growing and criminals were outwitting detectives. Despite this, the protection of fundamental rights enshrined in our Constitution is of utmost importance, the Court said. In the interest of protecting these rights, we cannot afford to write off fear of police torture leading to forced self- incrimination.

While any statement given freely or voluntarily by an accused person is admissible and even invaluable to an investigation, use of pressure whether subtle or crude, mental or physical, direct or indirect but sufficiently substantial by the police to get information is not permitted as it violates the constitutional guarantee of fair procedure. The Supreme Court affirmed that the accused has a right to silence during interrogation if the answer exposes her/him into admitting guilt in either the case under investigation or in any other offence.

DELHI DOMESTIC WORKINGWOMEN.S FORUM V UNION OF INDIA & OTHERS⁹ (Rape Victims)

Speedy trial is one of the essential requisites of law, the Court asserted. In rape cases, the course of justice cannot be frustrated by prolonged investigations. They said that it is important that investigations and trials should be carried out expeditiously; otherwise the

⁸ AIR 1978 SC 1025

⁹ 1995 SCC 14

guarantee of equal protection of law under Article 14 and the guarantee of life and personal security under Article 21 of the Constitution are meaningless.

Noting the seriousness of the crime, the Supreme Court said that rape shakes the very foundations of victim's life. For many, its effects are long-term and so sustained that they face difficulty in having personal relationships; their behaviour and values are altered; and they suffer from constant fear and anxiety.

D.K BASU V STATE OF WEST BENGAL¹⁰ (Arrest Procedure, Custodial Violence and Compensation)

The Supreme Court said "Custodial torture is a naked violation of human dignity". The situation is aggravated when violence occurs within the four walls of a police station by those who are supposed to protect citizens. The Court accepted that the police have a difficult task in light of the deteriorating law and order situation; political turmoil; student unrest; and terrorist and underworld activities. They agreed that the police have a legitimate right to arrest a criminal and to interrogate her/him in the course of investigation. However, the law does not permit the use of third degree methods or torture on an accused person. Actions of the State must be right, just and fair; torture for extracting any kind of confession would neither be right nor just or fair.

SHEELA BARSE V STATE OF MAHARASHTRA¹¹ (Treatment of Women and Legal Aid)

The Court expressed serious concern about the plight of prisoners, unable to afford legal counsel to defend themselves. They said that not having access to a lawyer was responsible for individual rights against harassment and torture not being enforced. Stressing the urgent need to provide legal aid not only to women prisoners but to all prisoners whether they were under trials or were serving sentences, the Court said that an essential requirement of justice is that every accused person should be defended by a lawyer. Denial of adequate legal representation is likely to result in injustice, and every act of injustice corrodes the foundations of democracy and rule of law. Expressing serious concern about the safety and security of women in police lock-up, the Supreme Court directed that a woman judge should be appointed to carry out surprise visits to police stations to see that all legal safeguards are being enforced.

NILABATI BEHERA V. STATE OF ORISSA¹² (Compensation)

Article 9 (5) of the International Covenant on Civil and Political Rights, 1966 lays down that anyone who has been the victim of unlawful arrest or detention shall have an

¹⁰ AIR 1997 SC 610

¹¹ 1983 SCC 96

¹² 1993 SCC 746

enforceable right to compensation. This Covenant has been ratified by India,¹³ which means that the State has undertaken to abide by its terms. The Supreme Court asserted that convicts, prisoners or under trials are not denuded of their fundamental rights under Article 21 (Right to Life and Personal Liberty) of the Constitution and there is a corresponding responsibility on the police and prison authorities to make sure that persons in custody are not deprived of the Right to Life. The Court affirmed that the State has a right to recover the compensation amount from the wrongdoers. They said that the purpose of law is not only to civilize public power but also to assure people that they live under a legal system which protects their interests and preserves their rights. Therefore, the High Courts and the Supreme Court as protectors of civil liberties not only have the power and jurisdiction but also the obligation to repair the damage caused by officers of the State to fundamental rights of citizens.

MARIAYAPPAN V STATE OF TAMIL NADU¹⁴ (Custodial Death)

To ensure justice to the oppressed, the High Court in this case directed to initiate criminal proceeding against the police officials and ordered State to pay a compensation of 2 lakhs to the family. Custodial deaths invoke the criminal liability of the officer-in-charge¹⁵, additionally the tortuous liability of the State helps to render adequate justice in such cases.

MOHEELA MORAN V. STATE OF ASSAM¹⁶, PHOOLWATI V. NCT OF DELHI¹⁷, (Custodial Death)

The court gave the verdict upholding the applicability of the doctrine of vicarious liability. Custodial deaths invoke the criminal liability of the officer-in-charge. India is in a position of relativity and is aiming to evolve the new and flawless concepts of law. It is forming an admixture of law, a hybrid idea that is complete in every sense. This law brings the essence of constitutional law in consonance with that of the Tort Law, and helps to strengthen the inherent sense of natural justice reflected in our evolving legal complex. It is almost unexpected that justice remains a dream for masses and the payment of a small amount of compensation to a few oppressed are posed to be a benevolent act rather than a piecemeal gesture by a debased system. Social justice at a higher dimension of penological development can flourish only if a jail milieu and penitential atmosphere is fashioned where

¹³ Though India had expressed reservations to this particular article at the time of ratification, the reservations have ceased to have meaning as an enforceable right to be compensation has come to be accepted as a part of international customary law. Also the Supreme Court in various judgements even before Nilabati Behera's case has upheld the right to be compensated for wrongful acts of State agents. See Rudul Sah (1983) 4 SCC 141; Sebastian M. Hongray (1984) 1 SCC 339; Sebastian M. Hongray (II) (1984) 3 SCC 82; Bhim Singh (1985) 4 SCC 677; Ravikant S. Patil (1991) 2 SCC 373.

¹⁴ 2000 Cri L J 4459

¹⁵ Moheela Moran v. State of Assam (2000) 2 Gau LT 504; Phoolwati v. NCT of Delhi 2000 Cri. LJ 1613; Ajab Singh v. State of U.P (2000) 3 SCC 521; Laxman v. State of Rajasthan (2000) 3 Raj. LW 1469

¹⁶ (2000) 2 Gau LT 504

¹⁷ 2000 Cr L J 1613

society offers scope for the free expression of the full potential of every human inmate and for the gradual lessening of their seething psychic aggressiveness and unresolved inner tensions.¹⁸ However, the Constitution stipulates as one of the directive principles of state's policy to endeavour to foster respect to international law and treaties which are based on principles of natural justice which establishes a progressive society in a quantum leap of creativity and awakened to a high destiny, no longer sick or savage or victim of stress, neurosis and breakdown. What adds to the fury is a repeated refusal of India to ratify the UN Convention against torture and other cruel, discriminate and inhumane acts. It is right to say "Accept what you cannot change, change what you cannot accept", the present problem is the axis of our worries.

Code of Conduct for the Police in India¹⁹

1. The police must bear faithful allegiance to the Constitution of India and respect and uphold the rights of the citizens as guaranteed by it.
2. The police should not question the propriety or necessity of any law duly enacted. They should enforce the law firmly and impartially, without fear or favour, malice or vindictiveness.
3. The police should recognise and respect the limitations of their powers and functions. They should not usurp or even seem to usurp the functions of the judiciary and sit in judgement on cases to avenge individuals and punish the guilty.
4. In securing the observance of law or in maintaining order, the police should as far as practicable, use the methods of persuasion, advice and warning. When the application of force becomes inevitable, only the irreducible minimum of force required in the circumstances should be used.
5. The prime duty of the police is to prevent crime and disorder and the police must recognise that the test of their efficiency is the absence of both and not the visible evidence of police action in dealing with them.
6. The police must recognise that they are members of the public, with the only difference that in the interest of the society and on its behalf they are employed to give full time attention to duties which are normally incumbent on every citizen to perform.
7. The police should realise that the efficient performance of their duties will be dependent on the extent of ready cooperation that they receive from the public. This, in turn, will depend on their ability to secure public approval of their conduct and actions and to earn and retain public respect and confidence.

¹⁸ V.R Krishna Iyer : Constitutional Miscellany , ed. 2 Eastern Book Company , Lucknow, 2003 p. 152

¹⁹ Issued by the Ministry of Home Affairs and communicated to Chief Secretaries of all States/ Union Territories and Heads of Central Police Organisations on July 4, 1985

8. The police should always keep the welfare of the people in mind and be sympathetic and considerate towards them. They should always be ready to offer individual service and friendship and render necessary assistance to all without regard to their wealth and / or social standing.
9. The police should always place duty before self, should maintain calm in the face of danger, scorn or ridicule and should be ready to sacrifice their lives in protecting those of others.
10. The police should always be courteous and well-mannered; they should be dependable and impartial; they should possess dignity and courage; and should cultivate character and the trust of the people.
11. Integrity of the highest order is the fundamental basis of the prestige of the police. Recognising this, the police must keep their private lives scrupulously clean, develop self restraint and be truthful and honest in thought and deed, in both personal and official life, so that the public may regard them as exemplary citizens.
12. The police should recognise that their full utility to the State is best ensured only by maintaining a high standard of discipline, faithful performance of duties in accordance with law and implicit obedience to the lawful directions of commanding ranks and absolute loyalty to the force and by keeping themselves in the state of constant training and preparedness.
13. As members of a secular, democratic state, the police should strive continually to rise above personal prejudices and promote harmony and the spirit of common brotherhood amongst all the people of India, transcending religious, linguistic or sectional diversities and to renounce practices derogatory to the dignity of women and disadvantaged sections of society.

United Nations Code of Conduct for Law Enforcement Officials²⁰

Article 1

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Article 3

²⁰ Adopted by General Assembly resolution 34/169 of 17 December 1979

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Article 4

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Article 5

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 6

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Article 7

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them. Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.²¹

Role of Judiciary

'Judiciary' is where a person has the actual 'access to justice' after moving to the other official authorities. The judicial system in India has from time to time improved with inculcating new mechanism of Legal Aid Services, Lok Adalats and Human Rights Commissions, but still justice delayed is justice denied. There are many factors which have to be brought in the knowledge of the authorities and violation of human rights to be brought to an end.

²¹Mandeep Tiwana, *Human Rights And Policing: Landmark Supreme Court Directives & National Human Rights Commission Guidelines*, www.humanrightsinitiative.org (Last seen 25-5-2015)

Good policies involves respecting human rights and upholding the Rule of Law. This has been strongly emphasised by the Supreme Court and the National Human Rights Commission. Rule of Law requires that the police to be an integral part of the criminal justice system and must respect and uphold the rights and liberty of individuals. Despite the police the judiciary should also have some firm grounds to provide justice to the poor and needy and protect their rights. The Constitution promises to the entire country equality of status and opportunity, as well as equal protection of the law. The emphasis is on legal empowerment and mobilisation, preventive and strategic legal services through courts and Commissions intended to avoid victimisation, and the development of a public sector in the legal profession capable of responding to the problems of the urban, rural and tribal communities. The Supreme Court has sought to interpret socio-economic rights (Directive Principles) as civil and political rights (Fundamental Rights), compelling the state to come forward with laws empowering the poor and vulnerable groups with rights enforceable under the law. However, the poor continue to be at the receiving end of an indifferent administration because of the difficulties in accessing justice through conventional legal methods.

Democratic De- Centralisation

One of the most important lessons of governance in post-Independent India is the recognition that centralisation of power- legislative, executive or judicial-has huge problems in a federal polity. However, the justice delivery mechanisms continue to be centralised and the existing courts systems are based on a hierarchical governance structure, which are not effective to address the problems of injustices in the Indian society.²²

Legal Regime

Legal education has a very wide role to play in the personality development of the upcoming lawyers. Human Rights education has been made an essential course by UNESCO in each field of education. There should be a conscious effort to provide opportunities for law students to the extent of providing experiences in the SHRC for their voluntarily working and acknowledging the Law. This will help the students and the legal profession strengthen their foundations with the procedure of Indian legal system.

Duties of the Lawyer

Lawyers need to promote access to justice. Access to justice has an important effect on the legal system. There has always been a risk of Indians losing their faith in the legal system and the judicial institutions if it is unable to get justice within a reasonable time frames and reasonable expenses. The present legal system with help of the fraternity should work in

²² C. Raj Kumar, “*Expanding Access to Justice*”, The Hindu, Nov 28, 2013, www.thehindu.com (Last seen 21-9-2015)

promoting access to justice with adequate necessities provided to the Lawyers and bringing more awareness of human rights through NHRC and SHRC.

District Human Rights Courts

The Protection of Human Rights Act, 1993 has a big provision of District Human Rights Courts other than the Commissions in the State and the Centre. The Indian legal system is facing challenges at the level of justice delivery. The delay in the litigation process has made the face of the system look ugly. The provisions of the Act should be brought to use and provided with the Human Rights Courts. The functioning of these courts will be an access to justice, as it will involve more lawyers and the litigation process will end up with a satisfaction to the citizens of India.

Conclusion

Respect for human rights lies at the heart of good governance. In a democratic society, it is the responsibility of the State to protect and promote human rights. All State institutions whether they are the police department, the army, the judiciary or civil administration have a duty to respect human rights, prevent human rights violations, and take active steps for the promotion of human rights. Crimes are the psychotic syndromes and patients suffering from this must be healed by medico-legal recipes inside prisons where social beings are kindled and not killed.²³ In the hierarchy of values, judicial integrity is above judicial independence. Judicial accountability needs to be balanced with judicial independence. The Bar as well as eminent jurists should deliberate upon constitutional concepts and access to justice should be provided with proper care and with reasonable cause.

²³ V.R Krishna Iyer : Constitutional Miscellany, ed. 2 Eastern Book Company, Lucknow, 2003 p. 152