

ACCESS TO JUSTICE FOR MARGINALISED VICTIMS OF CORRUPTION

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Abstract

The provided text discusses the pervasive impact of corruption on all individuals, with a focus on how it disproportionately harms marginalised individuals. The research explores the challenges faced by these individuals in seeking justice, including their limited understanding of the legal system, fear of reprisal, social and economic disparities, and financial limitations. These challenges make it difficult for them to attain justice, allowing those engaged in unethical behaviour to act with impunity, perpetuating a cycle of corruption. Legal institutions also face obstacles in providing compensation, including institutional bias, internal corruption, and procedural impediments. The United Nations Convention against Corruption (UNCAC) is highlighted as a potential international legal framework to address corruption and improve access to justice. The conclusion of the paper presents a series of recommendations, such as enhancing legal aid programs, streamlining legal processes, increasing public awareness and education, and engaging civil society. These measures are proposed to eliminate barriers that hinder marginalised individuals from accessing the legal system, ensuring they have equitable opportunities for legal redress and protection from reprisals. The study emphasises the importance of addressing corruption while providing equitable access to justice for vulnerable populations and holding corrupt individuals accountable. It suggests that implementing these policies and fostering global cooperation can lead to a future where all individuals, regardless of their background or socioeconomic status, can access the principles of justice.

I. INTRODUCTION

Corruption involves dishonest or fraudulent actions where individuals misuse their authority for personal gain, often at the expense of others. It can involve various actors, including individuals, businesses, and governments, encompassing activities like bribery,

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unethical business practices, and financial fraud. Corruption poses a significant risk to society's fundamental structures, impacting individuals, communities, and nations. While government intervention is often seen as a cause, implementing checks and balances can help prevent corruption. Financially vulnerable individuals suffer the most from corruption's effects.

Many people worldwide live on society's fringes, lacking agency and access to resources. This limits their contributions to society and perpetuates isolation. This marginalization hinders societal progress and personal growth. To create an environment where individuals can lead productive lives, it's vital to address marginalization. Development typically involves a significant population, but marginalised groups with low socioeconomic status and limited awareness of their rights may resort to corruption to achieve their goals. This research aims to analyse the challenges faced by underprivileged corruption victims seeking justice and evaluate the role of legal institutions in compensating them.¹

Despite being the primary victims of corruption, these individuals often face notable challenges in their pursuit of justice through the legal system. The primary objective of this article is to shed light on the diverse barriers that impede individuals from attaining justice. Some of the challenges that individuals may face include a limited understanding of the legal system, concerns about potential reprisals, societal and economic barriers, and limited availability of legal resources.²

The lack of accessibility to the legal system renders the notion of the rule of law devoid of significance. The Constitution acknowledges that the right to access the legal system is both fundamental and inherent to all individuals. Access to justice refers to the capacity to readily attain justice by means of appropriate legal procedures within a timely manner. In order to guarantee universal access to the legal system, it is imperative to undertake all requisite measures to ensure the provision of services in a manner that is characterised by equity, transparency, efficiency, and accountability. The tolerance of prejudice and discrimination in the administration of justice should never be deemed acceptable. Efforts

¹ TSN Sastry, 'Access To Justice And Judicial Pendency: Confluence Of Juristic Crisis' (2017) 4 MK Nambyar SAARC Law Journal 83

² Code of Justinian, 'Definition & Creation Encyclopedia Britannica' (*Britannica*, 2019) <<https://www.britannica.com/topic/Code-of-Justinian>> accessed 27 Oct 2023

aimed at broadening public accessibility to the legal system heavily depend on the utilisation of legal aid programmes.

The concept of "access to justice" is frequently employed to denote the capacity of individuals or groups to obtain entry to the official institutions of the legal system, whether in the pursuit of a remedy on an individual basis within the framework of a particular civil or criminal case, or collectively through group actions or constitutional challenges.³

In contemporary society, it is imperative to not only enhance the efficacy of the legal system but also to broaden the reach of justice. Within the framework of the civil justice system, the concept of "access to justice" pertains to an individual's capacity to acquire knowledge regarding their legal entitlements and subsequently exercise them through engagement in a formal or informal process that is characterised by fairness, impartiality, and the absence of discrimination. This process is responsible for ascertaining the relevant facts, applying the appropriate legal principles, and ultimately upholding the resulting decision. From the standpoint of the human right to access justice, it is the responsibility of states to fulfil the following obligations: establishing an institutional and legal framework that facilitates the accessibility of impartial and efficient judicial and adjudicative procedures and guaranteeing that individuals seeking redress are afforded a fair and non-discriminatory resolution. This study serves as a poignant reminder to acknowledge and redress the inequities experienced by marginalised individuals who have fallen victim to corruption in their pursuit of justice.

II. UNDERSTANDING CORRUPTION AND ITS IMPACT ON MARGINALISED COMMUNITIES

The assassination of George Floyd and the subsequent global "Black Lives Matter" protests have elevated the discussion surrounding the unequal treatment of racial and ethnic minorities, extending beyond the confines of Minneapolis. The demise of Floyd has garnered significant attention to a highly reprehensible manifestation of prejudice, namely the use of violent measures by law enforcement, which deserves genuine recognition. Nevertheless, this revelation has also brought to light the prevalence of

³ Ibid

discriminatory practices perpetrated by government officials, as well as the correlation between certain types of discrimination and unethical behaviour.

Although the intricate nature of the correlation between corruption and discrimination remains multifaceted and inadequately investigated, a growing body of evidence suggests a connection between these two phenomena. Based on the findings of the 2017 U.S. Corruption Barometer, it is evident that a significant proportion of African Americans, approximately one-third, hold the perception that the police force exhibits a high degree of corruption. In comparison, this figure accounts for a mere 5% of the overall population.

Corrupt practices, while detrimental to society at large, exhibit a disproportionate impact on marginalised groups. This phenomenon is accomplished through the exacerbation of inequality and the distribution of resources in a manner that favours individuals and institutions with greater power and influence. The marginalisation of ethnic minorities, stemming from both historical and contemporary discriminatory practices, is often linked to a decreased socioeconomic status, inadequate political representation, and restricted access to justice. These factors further intensify the impact of corruption on these marginalised groups. This phenomenon poses a greater challenge in addressing the impact of corruption on ethnic minority communities.

III. UNDERSTANDING THE CONNECTION

It is imperative to undertake further investigation and acquire a more profound understanding of this correlation. Transparency International is engaging in collaboration with various grassroots organisations, including the Equal Rights Trust, to systematically record the correlation between corruption and discrimination, as well as the consequential impacts of these interrelated dynamics on the most vulnerable and marginalised segments of society. The limited consideration that scholars and policymakers have dedicated to this matter thus far necessitates further extensive research and analysis.

To gain further insights into the experiences of individuals belonging to marginalised communities in contexts characterised by pervasive corruption, a comprehensive examination of existing scholarly works was undertaken. According to the research

findings, individuals who possess limited access to political, economic, or social rights exhibit a higher propensity to encounter adverse consequences stemming from corrupt practices. Individuals belonging to marginalised groups are those who experience discrimination based on their identity, social standing, or beliefs. Individuals who encounter prejudice and bias due to factors such as their gender, ethnicity, nationality, religion or belief, gender identity, age, or disability may be classified within this particular group.⁴

This study examines the disparate impacts of corruption on marginalised groups, including people of colour, indigenous communities, women and girls, youth and children, LGBTI individuals, and individuals with disabilities. Moreover, these demographic cohorts are prone to experiencing higher levels of discrimination. Given that the main goal is to present illustrations, it is necessary to exercise selectivity in the paper. It must acknowledge that the capacity to perform an exhaustive examination of the various manifestations and impacts of corruption on these communities, as well as its effects on all marginalised populations, is limited. Nevertheless, the primary intention is to provide a descriptive analysis.

Nevertheless, the research findings indicate that, notwithstanding the considerable variations in the encounters of diverse groups with corruption, which are contingent upon their social, political, and economic standing, all of these groups exhibit a higher propensity than the average population to fall victim to corruption, primarily as a result of the inherent power imbalances prevalent within their respective societies.

- **WAYS MARGINALISED GROUPS CAN BE AFFECTED**

Certain marginalised groups face a higher vulnerability to coercive tactics aimed at soliciting bribes and engaging in other rent-seeking behaviours, primarily due to their restricted access to the legal system. It is plausible that additional marginalised communities residing in regions may exist that render them more vulnerable to specific threats, such as the phenomenon of land grabbing. Conversely, certain individuals may be

⁴ Leif Wenar, 'John Rawls', (*Stanford Encyclopaedia of Philosophy*, 2008) <<https://plato.stanford.edu/entries/rawls/>> accessed 27 Oct 2023

susceptible to corruption due to the exploitation of their identities, either as a means to hold them responsible for inadequate governance or as a guise for engaging in political corruption.

The existing body of literature indicates that when communities are exposed to exploitative forms of corruption, it exacerbates their sense of alienation, particularly in relation to state institutions. The exacerbation of marginalisation is attributable to the underrepresentation of marginalised groups in political, economic, and societal domains, thereby perpetuating the discrimination experienced by these groups both historically and presently. The perpetuation of exclusionary practises in decision-making processes, wherein specific groups are systematically excluded, hinders their ability to demand equitable access to opportunities, goods, and services. Additionally, such exclusion fosters an environment conducive to corrupt practices.

Marginalised communities face significant obstacles in challenging coercive corrupt practices that deny them their rights and entitlements solely based on their identity, as well as seeking justice when they bear the burdens of collusive corrupt arrangements in which they had no involvement, particularly when they lack political, economic, or social visibility. These practices result in the deprivation of individuals' rights and necessities due to their identities.

- **VULNERABILITY OF MARGINALISED INDIVIDUALS**

Marginalisation is the process where individuals or groups are forced to occupy peripheral or marginalised positions within a given context. Sociologists use this term to describe situations where a group is hindered from engaging in routine activities due to their distinct language, adherence to divergent social norms, or behaviour that deviates from the majority's perspectives. This can lead to the exclusion of certain groups from more prominent societal sectors.

Certain segments of the Indian population experience marginalisation, which can be attributed to various factors such as their economic status, caste affiliation, gender, Indian heritage, or involvement in manual scavenging, among other considerations. In the context of India, marginalised groups are commonly referred to as vulnerable groups due

to their susceptibility to abuse and discrimination by the dominant population. Certain individuals may experience economic disadvantages, particularly those residing below or slightly above the poverty threshold. Additionally, social and educational disadvantages may be observed among specific groups, such as Scheduled Castes and Scheduled Tribes. Furthermore, there are instances where individuals face political disadvantages, such as the inability to exercise their right to vote, which is particularly prevalent among remote communities. Individuals who find themselves on the periphery of society tend to experience a lesser degree of fortune compared to other societal groups.⁵

Individuals belonging to the Scheduled Castes are those who have encountered social discrimination as a result of their birth into lower caste communities or have been stigmatised as "untouchables." The category of Scheduled Tribes encompasses the Adivasis. The category of Other Backward Classes (OBCs) encompasses individuals who do not belong to the Scheduled Castes (SCs) or Scheduled Tribes (STs), but are considered socially and educationally disadvantaged. Women are encompassed within the category of Other Backward Classes. Throughout history, women have faced exclusion from a diverse range of activities as a result of prevailing beliefs that perpetuated their inferiority to men.

The term "vulnerability" originates from the Latin word "*vulnerare*," which denotes the act of inflicting harm or injury. The topic of vulnerability is a frequent point of discussion among health professionals. Pratt et al. (2004) provide a definition of "vulnerability" as the inclination for an entity to experience harm or damage. Resilience, as a contrasting concept, can be defined as the ability to withstand and subsequently recover from adverse effects or harm. Vulnerability and resilience are interconnected concepts, as they both pertain to the ability to address and overcome adversities. When confronted with shocks and threats, it becomes imperative to possess the capacity to respond and counteract these challenges effectively.

Cesar and Dercon (2005) posit that vulnerability refers to the probability of future poverty occurrence. This definition is additionally substantiated by three supplementary points. Initially, one could construe this as suggesting an inverse relationship between the

⁵ Gurmeet Nehra, 'Access to Justice: Role of legal aid in its complete realization' (2016) 2(77) International Journal of Law < www.lawjournals.org/archives/2016/vol2/issue5/4-5-17> accessed 28 Oct 2023

level of threat and the probability of encountering poverty in the immediate future, as well as the intensity of poverty in such circumstances. There exists a prevailing apprehension among individuals regarding the potential recurrence of poverty in their lives, with assertions suggesting that their susceptibility to such circumstances is so pronounced that the prospect of its reoccurrence cannot be entirely dismissed. Likewise, the vulnerability of individuals to peril and the probability of experiencing poverty exhibit an upward trend in tandem with heightened levels of exposure to hazardous circumstances. The persistence of the threat in its present state will endure until the ambiguity surrounding it has been effectively addressed. Moreover, poverty is a prevalent concern that renders individuals more vulnerable to various risks, including but not limited to health ailments, criminal activities, and social isolation.⁶

Chambers (1989) posits that vulnerability consists of two distinct components. One internal consequence pertains to the experience of helplessness and limited access to resources in managing a profound loss, while an external consequence relates to the exposure to various risks, shocks, and stressors that an individual encounters. There exists a multitude of diverse forms of loss. Experiencing persistent psychological or emotional distress; witnessing a deterioration in one's physical vitality, financial stability, social autonomy, or personal integrity.

Sociocultural norms, biases, and economic inequalities increase marginalised individuals' vulnerability and contribute to corruption. Economic disparities limit access to legal services and representation. Social norms perpetuate marginalisation, devaluing rights and increasing vulnerability. Existing discrimination can deter individuals from seeking justice. In nations such as India, individuals belonging to marginalised communities face significant challenges in addressing systemic corruption, which perpetuates their social exclusion due to their limited political representation and influence. As a result, it is probable that their marginalisation will persist. Furthermore, as a result of their restricted opportunities for education and information, it is probable that they possess a restricted comprehension of their entitlements and the legal recourse accessible to them. Consequently, individuals find themselves trapped in a recurring pattern of marginalisation, wherein their inherent disadvantage not only triggers instances of corruption but also perpetuates its existence.

⁶ Imran Mohd. Khan, 'Alternative Modes of Access To Justice' (2015) 2(2) Uttarakhand Judicial & Legal Review < https://ujala.uk.gov.in/files/ch10_2.pdf > accessed on 28 October 2023

IV. ACCESS TO JUSTICE: A FUNDAMENTAL RIGHT

The preservation of individual rights necessitates the availability of a functioning legal system. When an individual's rights have been infringed upon, it becomes necessary to establish a mechanism that can offer them redress or restitution for the harm inflicted upon them. The concept of justice remains elusive due to its inherent lack of accessibility. Before providing citizens with access to the legal system, the state must establish the necessary organisations and protocols to effectively administer justice. Generally, these mechanisms are utilised within the context of legal proceedings.⁷

Individuals have the right to initiate legal petitions to seek justice in cases of rights violations. Access to the legal system is crucial for both the state and citizens, as it is a fundamental component of democracy and societal principles. To uphold justice, individuals should have reasonable access to judicial institutions, and no individual should be condemned without the opportunity to present their case. Officials must faithfully execute laws enacted by the appropriate governing body, and the exercise of power to ensure compliance with court orders should be without arbitrariness.

The administration of justice and the concept of justice are fundamental components of a legal system, serving as a safeguard for individual rights and protecting against infringements by others or organizations. The rule of law involves initiating legal proceedings against the government to constrain its power and ensure responsibility. However, the decline in respect for the rule of law can be attributed to limited individual ability to use it effectively.

According to Professor Upendra Baxi, the capacity to engage in the legal system is an essential requirement for attaining justice. The primary emphasis of this definition lies in an individual's capacity to avail themselves of the legal system. In the event of a violation of an individual's rights, it is imperative to ascertain their ability to seek legal redress, irrespective of their financial capacity to engage in such pursuit. Put differently, the definition suggests that the degree of accessibility of a justice system is contingent upon an individual's capacity to approach a court and secure a satisfactory resolution to their

⁷ Menaka Guruswamy, Bipin Pradip Aspatwar, 'Access to Justice in India: The Jurisprudence (and Self-Perception) of the Supreme Court' (2014) 1 Cambridge University Press <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2498459> accessed on 28 Oct 2023

grievance. Put simply, the accessibility of a legal system is contingent upon an individual's capacity to attain a satisfactory resolution to their complaint.⁸

Within this particular framework, the concept of "accessibility" pertains to the lack of obstacles that impede an individual from effectively utilising the resources at their disposal in order to actively engage in the pursuit of justice. Researchers in the field of law have identified several scenarios in which individuals who have experienced violations of their fundamental rights may encounter challenges in seeking legal remedies. This case is being considered due to the potential absence of jurisdiction on the part of the court. Several factors can contribute to reduced accessibility of courts as a mechanism for resolving disputes. These factors encompass the high costs associated with legal proceedings, onerous requirements that need to be fulfilled, the sluggish and unsatisfactory nature of the justice system, limitations in obtaining legal representation, and the impact of geographical isolation. These are only a few of the variables.

- **MODERN VIEW OF ACCESS TO JUSTICE**

Access to justice is more than just entering the legal system; it requires ensuring litigating parties have the opportunity to seek redress. The establishment of additional courts is not enough; factors like geographical distance, financial burden, legal procedures, and temporal delays must be addressed. Access to justice is recognized as a fundamental right in some constitutions, as it is not only a means to achieve other legal rights but also a right in itself. This recognition extends beyond its inherent nature as a right.

International human rights instruments protect individuals' rights to free legal assistance, timely trials, just hearings, and effective remedies enhancing access to justice. States are obligated to enable individuals to use the judicial system without financial or procedural obstacles. The definition of access to justice has expanded due to law reform, with class action mechanisms, free legal assistance, and alternative dispute resolution methods now considered integral elements in ensuring justice. The right to free legal aid is an essential component that guarantees individuals belonging to marginalised social groups, who lack the financial means to secure legal representation, the entitlement to receive free legal

⁸ Ibid

assistance from the government. The provision of free legal aid serves as a safeguard against discrimination targeting individuals who face financial disadvantages. The allocation of funds to provide legal aid to individuals with low incomes and limited financial resources is the responsibility of the state. This measure is implemented to guarantee that individuals experiencing poverty are not impeded from attaining equitable access to the legal system. The provision of pro bono legal assistance to individuals who lack financial resources seeks to promote fairness and equality within the legal system by ensuring that disadvantaged parties have an equitable opportunity to participate in litigation, thus mitigating the advantage enjoyed by those who possess the means to cover legal expenses. Hence, the provision of complimentary legal assistance to individuals who are economically disadvantaged and marginalised is perceived as a strategy for empowering socially vulnerable groups to leverage legal mechanisms in order to promote their rights and interests as active participants in the pursuit of justice.

Judicial activism has relaxed the principle of locus standi, allowing individuals to seek legal recourse through the court system if they can prove their rights have been infringed and the harm suffered is unwarranted. This has led to the growth of public interest litigation, where courts do not mandate the submission of a conventional writ petition. This has allowed economically disadvantaged individuals and groups to initiate legal action on their behalf, demonstrating their civic responsibility and providing a means for them to access justice in cases of public importance.

V. LEGAL FRAMEWORKS AND INTERNATIONAL STANDARDS

The recognition of the right to access justice is evident in prominent international and regional human rights instruments, including the African Charter on the Rights and Welfare of the Child (ACHW), the United Nations Convention on the Rights of the Child (UNCRC), the International Covenant on Economic, Social, and Cultural Rights (CESCR), the Universal Declaration of Human Rights (UDHR), and the United Nations Charter on the Rights of the Child (CESCR). One of the human rights instruments that can be identified among various regional and international frameworks is the World Economic and Social Covenant. Both the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights affirm the entitlement of all

individuals to “the right to an efficacious recourse in response to infringements upon fundamental rights.”

In accordance with the Universal Declaration of Human Rights, it is stipulated that every individual possesses the entitlement to seek redress through competent national tribunals for any transgressions committed against their fundamental rights as granted by their constitution or by law. Clause 13 of the Universal Declaration of Human Rights (UDHR) encompasses the following provision.

In a similar vein, the International Covenant on Civil and Political Rights (ICCPR) mandates that all states parties to the Covenant must fulfil the subsequent obligations: a. Guarantee that individuals whose rights or freedoms, as acknowledged herein, are infringed upon are provided with an efficient means of redress, regardless of whether the violation was perpetrated by a government official; b. Guarantee that individuals asserting their entitlement to such redress have their right to it adjudicated by competent judicial authorities. However, if a State Party wishes to justify its absence of domestic legal remedies for violations of economic, social, and cultural rights, it must provide evidence that either these remedies do not meet the criteria of being 'appropriate means' as outlined in article 2/1 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), or that they are unnecessary considering the existence of alternative means. This would hold true irrespective of the State Party's endeavours to rationalise its choice of not offering any domestic legal remedies in the event of a breach of economic, social, or cultural rights.⁹

- **THE SUBSTANCE OF THE RIGHT**

The right to access justice is an inherent entitlement that typically ensures individuals the opportunity to obtain a trial that is equitable and impartial, as well as a legal procedure that is independent when there is a potential infringement upon their freedom or property. Nevertheless, the concept of access to justice does not solely revolve around the traditional court system. Instead, it encompasses the presence of alternative avenues for

⁹ Menaka Guruswamy, Bipin Pradip Aspatwar, 'Access to Justice in India: The Jurisprudence (and Self-Perception) of the Supreme Court' (2014) 1 Cambridge University Press <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2498459> accessed on 28 Oct 2023

seeking redress or remedies that are prompt, cost-effective, efficient, and readily available.

Access to justice, when viewed through a rights-based lens, refers to the ability of marginalised individuals to address and alleviate human poverty by actively seeking and attaining resolution for their complaints using both formal and informal legal systems, while adhering to established human rights norms and principles. The achievement of this objective can be realised through the pursuit and acquisition of redress for complaints in alignment with the norms and values of human rights.

- **RELEVANCE AND LINKAGES**

When assessing the importance of access to justice in relation to human rights, it is necessary to consider three distinct levels: its status as a universally acknowledged human right, its interconnections with various human rights concerns, particularly those pertaining to the administration of justice, and its role in the overall enforcement of human rights.

The right to access justice is widely acknowledged as a fundamental human right in the realm of international human rights. Hence, the recognition and execution of this entitlement hold substantial importance in and of themselves.

Furthermore, the substantive nature of the right to “access to justice” enhances its significance when it is linked with the principles of “equality before the law” and “fair trial”. These two concepts are interconnected with the notion of “access to justice”. The ultimate rationale for the importance of access to justice within the human rights framework lies in the concept of “justiciability” of all human rights and the provision of remedies in cases of human rights violations. The significance of acknowledging a right would be rendered insignificant if the ability to enforce claims arising from such acknowledgment was absent.

The notion of comprehensive access to justice is intrinsically tied to the fundamental importance of a fair trial. The principles of legal equality, the right to mount a defence, and the presumption of innocence are fundamental tenets that underpin the concept of a

just trial. Furthermore, it encompasses the entitlement to have one's legal matter adjudicated by a knowledgeable, unbiased, and autonomous tribunal. The primary objective of these guiding principles is to enhance public trust in the legal system by ensuring the fair administration of justice and the perception thereof.

Ensuring the availability of legal recourse for individuals who have suffered harm and experienced disadvantages as a result of the actions of unscrupulous officials is of utmost importance. These individuals often experience a disproportionate impact from corruption due to their limited access to resources, knowledge, and support necessary to navigate intricate legal systems. By depriving individuals of this essential entitlement, you further amplify the inequities resulting from corruption and heighten their susceptibility.

VI. CHALLENGES IN ACCESSING JUSTICE

The case of *Anita Kushwaha v. Pushap Sudan*¹⁰ in 2016 established a correlation between the right to life and the capacity to pursue justice. The denial of justice is considered a blatant violation of the Rule of Law due to the inherent importance of justice. The violation of this particular facet of the Rule of Law occurs when justice is denied due to its unavailability or inadequate quality. The infringement upon individuals' rights occurs as a consequence of their divergence from the prevailing societal norms in terms of religion, caste, gender, ethnicity, and various other classifications.

The administration of justice is impeded when individuals possess limited awareness or knowledge regarding their rights, when the legal system is excessively costly, or when individuals, particularly those belonging to marginalised communities, refrain from engaging with the system due to apprehension or a feeling of detachment.

Adivasis and Scheduled Tribes (STs) face ill-treatment and prejudice due to limited awareness of legal safeguards and constitutional provisions. The executive branch should establish a comprehensive framework to raise awareness among marginalised groups about their rights and appropriate actions in case of infringement. The effectiveness of the legal system depends on a well-informed citizenry. Judge P.N. Bhagwati emphasizes the

¹⁰ 2015 SCC OnLine SC 1670

need for impoverished and lack of education individuals to engage with the legal system, ensuring their access to justice.

- **THE PROCEDURE IS CHALLENGING**

Due to the intricate nature of the “procedure established by the law,” there are instances where it becomes imperative for superior courts to engage in the interpretation thereof. A considerable segment of the general population exhibits a preference for avoiding the recourse to a judicial or administrative entity to resolve their conflicts due to the inconveniences and financial burdens associated with seeking legal remedies. The extended duration of the process can be attributed to its inherent complexity. The guarantee of a speedy trial has been determined to be implicitly protected by Article 21 and the principle of due process of law. According to the legal precedent set by the 2008 case *Moses Wilson v. Karluriba*,¹¹ it is asserted that a procedure lacks reasonableness, fairness, and justice unless it ensures a timely trial to ascertain the culpability of the individual whose freedom is being curtailed. The limited literacy levels among individuals belonging to marginalised communities pose challenges in their engagement with the legal system, thereby constraining their ability to attain justice. Based on the results of the 2017 DAKSH Access to Justice Survey, it is evident that individuals are deterred from engaging with the courts primarily due to the financial burden, protracted duration, and intricate nature of the legal system.

- **CHALLENGES ARISING FROM GEOGRAPHY**

The Indian subcontinent's diverse topographical variations offer both advantages and disadvantages, particularly in justice provision, especially in rural areas. E-courts, or electronic courts, could help reduce fiscal strain on state budgets and enhance public engagement with the legal system. They ensure equitable access to the legal system, reducing litigation expenses by allowing virtual proceedings instead of physical presence in many legal proceedings. This could help address the fiscal strain of traditional court systems in rural areas. While certain states have taken steps to mitigate the geographical

¹¹ [2007] 14 SCC 452

challenge by establishing High Court benches in cities other than their capitals, it remains crucial for lower courts to extend their presence to remote regions. In order to tackle the matter of geography, certain states have nevertheless established High Court benches in cities that are not their respective capitals.

- **ECONOMIC CHALLENGES**

The issue at hand pertains to individuals with limited financial resources who face significant expenses associated with legal matters. As a result of this significant obstacle, marginalised and disadvantaged populations within society exhibit decreased likelihood of reporting their cases, instead opting for out-of-court settlements that consistently yield unfavourable outcomes for them. The court system poses significant barriers for low-income litigants, as they face challenges in accessing it due to the protracted court proceedings and the substantial opportunity cost associated with attending court. As per the assertion made by Judge Ruma Pal, a subset of legal practitioners specialising in victim restitution engage in the misappropriation of significant sums of money awarded by the court.

The current structure of the victim compensation process undermines its primary objective. As a result, individuals face barriers in accessing the legal system due to financial constraints that prevent them from affording legal services. The user's text does not contain any information to rewrite. The inadequate state of the physical infrastructure across the nation deters individuals living in poverty from pursuing legal recourse when faced with the challenging circumstances of their lives. The impoverished individuals face the potential consequence of jeopardising their means of sustenance if they choose to engage in legal proceedings. India's legal system faces considerable challenges due to the substantial number of unresolved cases. The deficiency of courts and judges within a court system, particularly in district courts, hinders the effective dispensation of justice and infringes upon the defendant's entitlement to a prompt trial. When the individual who has been subjected to harm belongs to a marginalised community, such as women or

individuals belonging to the Scheduled Castes or Scheduled Tribes, the severity of the issue is significantly heightened.¹²

- **THE ABSENCE OF ESSENTIAL INFRASTRUCTURE**

The absence of essential infrastructure has a detrimental impact on the efficacy of justice administration. The establishment of *Gramme Nyayalayas* has facilitated a certain degree of accessibility to the legal system for individuals residing in rural areas. The establishment of *nyayalayas* is imperative in response to the documented prevalence of violent crimes and discriminatory incidents disproportionately affecting individuals of lower socioeconomic status in rural regions. Hence, these establishments serve to enhance accessibility to the formal legal framework and promote the dissemination of democratic principles across society. The *Gramme Nyayalaya* possesses the jurisdiction to adjudicate matters about both criminal and civil cases. The management of this organisation is overseen by a *Nayyadhikari*. This individual possesses equivalent authority and entitlements to that of a judge serving in the highest court. The appointment of this particular Nyayadhikar is exclusively carried out by the state government in consultation with the highest courts of the state. *Grammen Nyayalayas* are commonly established at the panchayat headquarters of each village.

The violation of the *Ubi jus ibi remedium* principle occurs in situations where physical infrastructure is absent. According to this theory, the presence of a remedy is necessary in conjunction with the existence of a right. When individuals are impeded from exercising their constitutionally protected rights due to their inability to avail themselves of the legal system, the perception arises that justice has been duly administered.

- **THE INEFFICIENT UTILISATION OF THE AVAILABLE POLICE RESOURCES**

The exposure of law enforcement personnel's brutality towards civilians has been brought to the forefront after the homicides of a father and son in June 2020. In the context of

¹² Menaka Guruswamy, Bipin Pradip Aspatwar, 'Access to Justice in India: The Jurisprudence (and Self-Perception) of the Supreme Court' (2014) 1 Cambridge University Press <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2498459> accessed on 28 Oct 2023

India, it is frequently observed that there exists a prevailing issue of insensitivity among the police force when it comes to addressing the concerns of marginalised communities who file First Information Reports (FIRs), particularly in rural regions. Likewise, instances of caste-based violence or discrimination often remain unreported due to apprehensions among rural law enforcement officials regarding the potential influence wielded by the upper class, or due to personal biases held against specific castes, thereby resulting in their reluctance to initiate formal complaints, commonly known as First Information Reports (FIRs). In cases involving sexual assault, women are often compelled to revisit their traumatic experiences. As a result, instances of violence or discrimination based on caste remain unreported.¹³

Law enforcement often violates legal protocols, especially when dealing with marginalised individuals. The handling of crime scenes can hinder victims' justice. District Judge Dharmesh Sharma criticized the Unnao rape case for its patriarchal approach, neglecting sexual violence concerns. He attributed the case to the cultural restrictions faced by women in rural areas. The victim and her family were subjected to an unjust investigation process, lacking equitable treatment. Therefore, there exist multiple factors that can impede the ability of either or both parties involved in a dispute to avail themselves of the legal system. Among these factors, the most prominent ones include psychological, geographical, and economic obstacles.

VII. LEGAL INSTITUTIONS AND THEIR ROLE

In accordance with the principles of a welfare state, it is imperative that all citizens of India are afforded equitable access to justice and a just administration of the law. This suggests that the legal system does not have the ability to exclude any individual. The administration of justice is imperative, and it is equally important that it is perceived to have been administered.

The inclusion of Articles 38 and 39A in the Indian Constitution was facilitated by the 42nd Constitutional Amendment Act. These articles serve to ensure that citizens possess the fundamental right to avail themselves of the judicial system and seek justice. This

¹³ Aparna Chandra, 'Indian Judiciary and Access to Justice: An Appraisal of Approaches' (*DakshIndia*) <https://dakshindia.org/state-of-the-indian-judiciary/33_chapter_18.html> accessed 18 October 2023.

provision serves as a directive to the governing body. According to Article 38 of the Constitution, it is the responsibility of the state to facilitate the development of a societal framework that guarantees equitable treatment and fairness in social, economic, and political domains for every individual. In order to achieve social justice, it is imperative that individuals who are marginalised within society are afforded equitable access to the legal system. Social justice is an effective mechanism for mitigating the hardships faced by vulnerable populations, including those who are economically disadvantaged, socially marginalised, and specifically the Dalits.

Furthermore, Article 39A mandates that the state must guarantee the promotion of justice within the legal framework and offer free legal assistance to prevent any citizen from being deprived of justice on the grounds of financial constraints or disability. The Supreme Court of Bihar, in the case of *Hussainara Khatoon v. Home Secretary, State of Bihar*¹⁴, held that the right to free legal assistance is implied by Article 14 and has been established as an essential element of a reasonable, fair, and just procedure by Article 39A.

Access to justice can be achieved through leveraging fundamental rights, as Article 14 of the Constitution guarantees equal protection under the law for all individuals. This allows the state to implement legislation focusing on disadvantaged sectors, such as women, children, and those in the "Socially and Educationally Backward Classes." This ensures the unobstructed exercise of access to justice for marginalised populations, fulfilling the preamble's dedication to social justice.

The present discourse examines the correlation between Article 21 and the provision of legal aid services, with a specific focus on the concept of accessibility. Legal aid refers to the provision of complimentary legal representation to individuals who are economically disadvantaged and unable to afford such services. This assistance is funded by the state. The primary goal of legal aid is to guarantee that individuals with low income and other forms of societal disadvantage are provided with the necessary legal representation to assert their rights within the judicial system. Article 14 of the Constitution ensures the provision of legal aid to all parties, thereby safeguarding the principle of "equal protection of the law." The passage of the Legal Services Authorities Act was motivated by the Directive Principles and the Preamble's commitment to ensuring social justice.

¹⁴ *Hussainara Khatoon & ors v. Home Secretary, State of Bihar, Patna* [1980] 1 SCC 98

This legislation was enacted with the aim of granting marginalised individuals access to the justice system. Access to justice has been recognised as a vital element in Article 21. Both the defendant and the victim have access to this form of legal assistance. The Supreme Court, in the case of *M.H. Hoskot v. The State of Maharashtra*¹⁵, rendered a verdict affirming that the principles of fairness, justice, and reasonableness necessitate the provision of cost-free legal assistance by the state to indigent individuals, including those facing criminal charges who lack the financial means to secure legal representation. The implicit requirement stated in Article 21 is evident.

Natural justice is a principle that guarantees two fundamental liberties: the right to a fair and unbiased adjudicator to handle legal matters and the right to present one's case and be heard. Violations of this principle occur when individuals face economic disadvantage or limited literacy, highlighting the state's responsibility to ensure adequate legal representation for all, regardless of their financial status or legal expertise. Furthermore, it is stated in Article 40 of the Magna Carta that there shall be no sale, denial, or delay of right or justice to any individual. Hence, the notion of a legally determined age of majority is an antiquated concept that has yet to be fully actualized in its intended essence.

- **NALSA**

The National Legal Services Authority (NALSA) is responsible for ensuring legal services are accessible to all individuals, guiding principles and policies, and developing optimal methods for delivering legal services. Its main initiative is to establish legal aid camps in labor colonies, urban slums, and rural areas, educating marginalised populations about legal rights and encouraging the use of Lok adalats for dispute resolution. NALSA also conducts legal research on equitable access to justice for low socioeconomic status individuals.

¹⁵ *Madhav Hayawadanrao Hoskot v. State of Maharashtra* [1978] 3 SCC 544

- **LOK ADALATS**

The formal nature of obtaining justice through litigation in a traditional court of law is emphasised, in contrast to the informal nature of seeking justice through Lok Adalats.

The legislation establishes and amends "Lok Adalats," which serve as an alternative mechanism for resolving disputes. The "Lok Adalats" function as a viable substitute for the traditional process of litigation. The term "Lok Adalat" pertains to cases that are either in progress within the legal system or in the pre-litigation stage. Lok-adalats are employed as a means to amicably resolve conflicts.

The Lok Adalats are bestowed with the status of a statutory body by the Act. Lok adalats signify a departure from the conventional adversarial litigation model, wherein one party emerges as the victor and retains the monetary benefits, while the other party suffers losses. Instead, they promote a settlement-oriented approach that aims to achieve mutual satisfaction for all parties involved. In its most comprehensive interpretation, this guarantees the attainment of justice.

The court fee is exempted for individuals who meet the eligibility criteria for free legal aid as stipulated in the Act. Furthermore, if a case is referred to Lok Adalats, the initial court fee is reimbursed. An individual who seeks support from a legal aid counsellor, commonly referred to as a LAC. Lok Adalats possess the complete jurisdiction of a civil court, and their rulings are recognised as decrees of the civil court. The absence of an appeal process renders this ruling conclusive. The role of chairperson for the meeting could be fulfilled by a judge, an attorney or a social worker.¹⁶

- **PUBLIC INTEREST LITIGATION (PIL)**

Historically, the Supreme Court entertained petitions for judicial redress exclusively from individuals whose rights had been infringed upon. This concept is alternatively referred to as the locus standi rule. Nevertheless, these individuals are deprived of equitable opportunities to seek justice due to their inability to engage with the judicial system. This

¹⁶ Lucinda Orr, 'Without prejudice? Judicial bias and unfair conduct' (*Enyo Law*, LLP, 5 June 2019), <<https://www.enyolaw.com/posts/111/without-prejudice-judicial-bias-and-unfair-conduct>> accessed 27 Oct 2023

phenomenon results in the deprivation of equitable access to justice for individuals who experience economic or social disadvantages. However, the introduction of Public Interest Litigation (PIL) has weakened the traditional understanding of locus standi. Public Interest Litigations (PILs) enable individuals from the general public or specific social groups to initiate legal proceedings against the state in cases where there has been a violation of the legal or constitutional rights of individuals who lack the financial means to pursue legal remedies through traditional court channels. This concept was established in the landmark case of *S.P. Gupta v. Union of India*¹⁷.

This paper explores the concepts of restorative justice and alternative dispute resolution. This statement pertains to the issue of insufficient availability of courts and the exorbitant expenses associated with legal proceedings. The potential jeopardy faced by a democratic society's continuity becomes tangible rather than speculative when the affluent segment exclusively reaps advantages from legislation, while the underprivileged, who are most reliant on it, find themselves unable to bear its costs. The reason for this is that the preservation of democracy is contingent upon the establishment of a highly resilient justice system that engenders trust among all members of society and ensures equitable treatment and impartiality for all. A significant concern arises in relation to the equitable application of the law in the United States Supreme Court, particularly when the affluent segment of society is the primary beneficiary, while the economically disadvantaged, who are most in need of legal protection, face insurmountable barriers due to financial constraints.

The case of *Hussainara Khatoon*¹⁸ in 1979 marked a significant milestone in the implementation of public interest litigation (PIL). In this instance, a judicial body in the state of Bihar issued a directive for the liberation of approximately 40,000 individuals who were being held in custody prior to trial, specifically from the correctional facilities located in Patna and Muzaffarpur. Due to the fact that her case marked the inaugural instance of Public Interest Litigation (PIL) being adjudicated by an Indian court, the judgment swiftly propelled Pushpa Kapila Hingorani and her husband, the petitioner, into a position of considerable prominence and letting her be regarded as 'the mother of public interest litigation in India'.

¹⁷ [1981] Supp SCC 87

¹⁸ *Hussainara Khatoon & ors v. Home Secretary, State of Bihar, Patna*, [1980] 1 SCC 98

- **NATIONAL COMMISSION FOR SCs, STs, AND BACKWARD CLASSES**

According to Article 388 of the Indian Constitution, a National Commission for Scheduled Castes is established. The Indian Constitution encompasses two distinct provisions, namely Articles 338-A and 338-B, which serve to establish the National Commission for Scheduled Tribes. The National Commission for Backward Classes is established under Article 338-B of the Indian Constitution. These commissions are tasked with the responsibility of investigating and monitoring issues related to constitutional and legal safeguards for Scheduled Castes (SC), Scheduled Tribes (ST), and Backward Classes. Their primary focus is on investigating and monitoring complaints that involve the infringement of the rights of individuals belonging to these marginalised groups.

The aforementioned commissions possess equivalent authority to that of a civil court in investigating a lawsuit, enabling them to examine any matter or complaint. This implies that they possess the legal power to issue subpoenas for the attendance of witnesses and the production of documents, elicit testimonies and sworn statements, and compel the physical presence of individuals within the jurisdiction of India. Furthermore, they possess the jurisdiction to mandate the attendance of individuals, regardless of their location within the boundaries of India. Furthermore, the respective commissions have been assigned the responsibility of ensuring the protection, nurturing, and advancement of individuals belonging to Scheduled Castes (SC), Scheduled Tribes (ST), and Backward Classes. The SE commissions have played a pivotal role in guaranteeing unrestricted access to the legal system for socially and economically disadvantaged groups, as well as in developing policies tailored to address their needs. The United Nations Development Programme (UNDP) has undertaken an initiative aimed at enhancing the accessibility of justice.

The Ministry of Law and Justice has received support from the United Nations Development Programme (UNDP) in its endeavours to enhance the accessibility of the legal system for marginalised individuals. This project will provide the impoverished and marginalised individuals in society with the necessary resources to access and pursue justice services. The following states have actively engaged in the project: The aforementioned states include Rajasthan, Uttar Pradesh, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra, and Odisha.

The project was executed in collaboration with NALSA and SLISA to enhance accessibility to the legal system. A series of measures were implemented within the framework of this project to enhance overall accessibility to the justice system. One of the actions undertaken was the development of a judge's manual focused on laws about marginalised groups. Additionally, field trips were organised to four countries to study and evaluate the efficacy of their legal systems. Delegates from the Department of Justice, the South African Legal Services Authority (SLSA), the National Legal Services Authority (NALSA), and Indonesia were all sent to Malawi, South Africa, Indonesia, and Sierra Leone.

The Justice Innovation Fund (JIF) aims to empower marginalised individuals through legal means and enhance intermediaries like Self-Help Groups and Legal Aid attorneys. Key initiatives include community radios, helplines, and welfare programs. The most significant is the dissemination of legal awareness through paralegals, school-based clinics, and Dalit women's Sarpanch networks. Technology is used effectively, and the Young Lawyers for Justice fellowship program offers education and training for aspiring solicitors and volunteer paralegals.

VIII. RECOMMENDATIONS FOR IMPROVING ACCESS TO JUSTICE

Two strategies for enhancing access to justice for all involve augmenting the quantity of pro bono contributions and the representation of solicitors within the legal profession. The task of increasing the representation of underrepresented groups would require implementing specific measures within the varied legal frameworks of different jurisdictions. The United Kingdom (UK) has the potential to make substantial progress in enhancing its representativeness if it establishes objective and measurable qualifying criteria. In response, legal regulatory bodies such as the Solicitors Regulation Authority and the Bar Standards Board would be compelled to initiate appropriate measures. Nevertheless, enhancements in representativeness can be achieved even in the absence of regulatory assistance. In the context of pupillage and training contract positions, it is plausible for law firms and chambers to employ objective assessments, such as interviews, as opposed to subjective evaluations, such as interviews. Business enterprises and organisations have the opportunity to form partnerships to create a comprehensive

network that provides pupillage and training contracts. This network would be established using standardised evaluation criteria, with the potential to operate on a national level. The established protocol for probationary employment is designed to ensure consistent adherence to the highest standards. This seemingly minor alteration would lead to a qualification process that is considerably more meritocratic and, as a result, more reflective of the broader societal composition. Ultimately, this would result in a decrease in the geographical separation between legal practitioners and their clientele, thereby fostering heightened trust and faith in the judicial framework.

Structural reforms and pro bono legal services could significantly improve access to justice in England and Wales. If each solicitor and barrister in England and Wales allocated two hours per week, the annual provision of pro bono legal assistance would amount to around 17 million hours. Organisations and businesses can access more resources, such as establishing their divisions. Donations can enhance public awareness and encourage volunteer efforts. Non-profit and charitable organizations, such as Citizens Advice, the Free Representation Unit, and university law clinics, are available to provide legal assistance to those without financial means.

The inclusion of supplementary coursework in law degree programs could improve public access to justice. This would allow students to gain a comprehensive understanding of the legal system, but current research is limited. Accessing information about lower courts is challenging, as a significant proportion of cases are adjudicated by lower courts. Including a module addressing practical aspects of the legal profession in the curriculum could help students make informed career choices, as magistrates' courts resolve approximately 95% of criminal cases.

Legal education programs should incorporate a module addressing individual diversity, incorporating various scholarly fields like biology, genetics, neuroscience, sociology, and psychology. This skill is beneficial for legal professionals like solicitors and judges, as it helps identify tailored strategies for clients with behavioural issues, mental health conditions, and learning impairments. It also encourages self-assessment to identify sources of irritation and burnout, preventing errors, memory deficiencies, and unfounded assumptions.

National and university-based student associations play a crucial role in promoting change in the legal profession. These organizations coordinate career development initiatives, facilitate publication, and support aspiring legal professionals. If their efforts increase, they can highlight inefficiencies within the legal system, prompting individuals to seek urgent reforms. Surveys from the UKLSA Annual Equalities Conferences show that a significant proportion of aspiring legal professionals prioritize the pursuit of justice over financially lucrative careers. Collaboration among various stakeholders within the legal system can lead to significant advancements in access to justice, potentially prioritizing justice for all over economic equality.

IX. CONCLUSION

This study focuses on understanding the obstacles faced by marginalised victims of corruption when seeking legal help. It highlights the widespread nature of corruption and its negative effects on vulnerable individuals, worsening existing social and economic inequalities. Additionally, marginalised groups face significant barriers to accessing justice and holding corrupt individuals accountable. The author also, through this research, found that marginalised people who are victims of corruption face many obstacles when trying to seek justice. These challenges include not having enough resources due to social and economic inequality, not understanding legal matters well, being afraid of potential retaliation, and having to pay a lot of money for legal proceedings. These barriers prevent them from getting justice and allow corrupt individuals to escape punishment, which further marginalises vulnerable populations.

The current study in this article highlights the challenges faced by legal institutions in providing justice to victims of corruption. These challenges include institutional bias, lack of accountability mechanisms, long procedural times, and a compromised legal framework. In addition to addressing internal corruption, legal institutions are also responsible for ensuring fair access to justice for marginalised individuals.

This article suggests that using international agreements like the UNCAC can help fight corruption and improve access to justice. The paper provides recommendations for making the justice system more efficient, increasing legal aid, raising public awareness,

and involving civil society organisations. Thus, by working together globally, these measures can greatly improve the situation for marginalised people fighting corruption.

In summary, it is crucial to not only make legal and institutional changes to help marginalised groups access justice for corruption-related offences but also to recognise the moral importance of this issue. We need to create a fair society and just, where the most vulnerable individuals are protected and those who act unethically are held accountable. This research aims to inspire further actions, research, and advocacy to promote justice and equality for all individuals, regardless of their socioeconomic status or background. It also contributes to the ongoing discussion about this important problem.