

The Necessary Conditions for the Access of Justice for women in India

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Introduction

The justice is the very foundation of the gender equality and women's Empowerment. J.S. Mill in his book said that "I shall attempt no definition of justice but will adopt for the time being" and defined "Justice implies something which is not only right to do, and wrong not to do, but which some individual person can claim from us as his moral right".ⁱⁱ He distinguished justice from mercy. As justice Bagwati said providing access to justice is not the government's charity but the constitutional mandate. Martin Luther Kingⁱⁱⁱ said "Injustice anywhere is a threat to justice everywhere". The basic requirement is accessibility to the judicial system

When the judicial system is weak to provide remedies the democracy cannot be sustained, Nation cannot stand and develop. Access to justice involves normative legal protection, legal awareness, legal aid and counsel, adjudication, enforcement, and civil society oversight. Access to justice supports sustainable peace by affording the population more attractive alternative to violence in resolving personal and political disputes.^{iv}

United States, Institute for Peace mentioned the necessary conditions for access to justice. It prescribes several barriers to get the justice such as financial, geographic, linguistic, logistical, or gender-specific. Improving access is not just about more courtrooms or more staff; it is about quality and quantity of justice administration. Justice systems that are remote, unaffordable, slow, expensive or incomprehensible to the public effectively deny legal protection. Better prepared defence attorneys, more citizen-oriented court staff, more reasonable hours, better information about the justice system are all means for improving quality. The justice system

should be linguistically accessible with local language proceedings or provision of interpretation.^v United Nation Organization recommended its member-states to provide the justice and enhanced the access to justice through the provisions of legal aid, by Promoting legal awareness, by enhancing the physical access, by creating and strengthening the public confidence in the justice system, by Maximizing the remedial approach for grievances, Understand informal justice mechanisms, use informal systems in combination with formal mechanisms to ensure adherence to international human rights standards and so on

Existence of legal remedies and mechanisms alone cannot be made to measure women's access to justice when the circumstances of access remain to be affected by factors not only inside the legal system, but outside it

The elements of access to justice and the enabling environment for access to justice

The elements of access to justice and the enabling environment for access to justice must both be present for access to justice for women to exist. Access is not confined to access to the legal system (substantive, normative, procedural) as it includes access to multidisciplinary support services as well, taking into account women's active participation, agency, and empowerment in the overall process; their specific needs for immediate protective orders and the circumstances of access which lie beyond the law and the legal system e.g. the cost of litigation and other geographic, political and economic factors affecting women's resort to the process. It likewise takes into account the necessary political, economic, social and cultural contexts and conditions which enable and empower women to access justice in cases of violence^{vi}

Justice looks into women's substantial and critical participation in the process, women's empowerment and non-oppression, the eventual elimination of patriarchy and structural inequalities between men and women in the political, economic, social and cultural domains which are the root causes of exploitation. It aims for a more strategic, comprehensive and long-lasting shifts in the conditions of women in society, their enjoyment to and entitlement to full development, made manifest by women's political and economic empowerment, and in a culture that accords full respect for women's inalienable, indivisible human rights, putting an eventual end to women's subjugation and subordination.

For access to justice for women victims of violence to be effective and responsive to the needs and experiences of women, all of the elements discussed below must co-exist and be accompanied by an enabling environment.

Elements of access to justice - Adequate Remedies: making remedies work and respond to women's needs; women's substantive participation and critical engagement in processes and experiences affecting her while acting for and her behalf; An effective, responsive, speedy, immediate enforceable, competent, impartial, independent, gender-sensitive legal system and accountable legal system; zero tolerance towards violence against women and Strengthening the Legal Culture in such cases; and Cultural shifts in viewing violence against women^{vii}

The enabling environment for access to justice are compliance with Human Rights norms and observance with due diligence of state obligations; the existence of democracy and women's substantial citizenship; the political and economic empowerment of women and their full right to development by addressing structural inequalities; recognition of the interrelatedness, interconnectedness, and compounded nature of Violence Against Women; and strengthened international and regional advocacy and struggle against Violence Against Women^{viii}.

The rule of law, a cornerstone of good governance and democracy, requires that laws are in place to hold everyone to account, from the individual to the government. However, for millions of women and girls it means little in practice. The two areas in which women's rights are least

protected, where the rule of law is weakest are: (i) women's rights in the private and domestic sphere. This includes their right to live a life free of violence, to enjoy equal rights with their partner in marriage and divorce, and to fully realize their reproductive health rights; and (ii) their right to decent work and to inherit and control land and other productive resources.^{ix} These are not only reports but stark realities of the societies. To protect and cover up these gaps law plays very important role. Law is an instrument of social reconstruction and social change. So in this offensive world, Law could be the best instrument for creating violent free society and non-discriminative world where women feel free and safe at home and outside and can demand execution of their legal rights. Law can make better human environment to live dignified life. It can provide the framework for translating international standards into national benchmarks. Without a solid legal foundation, attempts to make courts more accessible to women, make police less hostile to their complaints and bring in other necessary reforms to the administration of justice, are likely to be beyond our reach. Enhancing the ability of women to access justice is essential to further eliminating gender inequalities and discriminations, and for furthering development and human security. Women's empowerment in every aspect of their lives is reliant upon systems of law and justice that work for women^x

The Constitution of India is based on the ideals of liberty, equality, apart from its principles of upholding the dignity of human beings. By 42nd Amendment Act, 1976, a new provision has been incorporated in the Constitution under Art. 39 A, for providing free Legal Aid and the concept of equal justice found a place in our Constitution which provides the opportunity to seek justice. The Supreme Court observes while interpreting Art.21 that free legal service is an essential ingredient of reasonable, fair and just procedure implicit in the guarantee of Art.21 as well as 14. It imposes an imperative duty upon the State to provide free legal aid to the poor and to enable the poor litigant to have an easy access to a court of law to invoke legal right and to secure him equal protection of laws against his opponent. Despite the directive principles provided in the Constitution and the increasing number of

protective laws, crime against women are rampant making women more vulnerable victims of violence and they do not have enough financial sources and social backups to stand up against the dominant world. The crime against women is the manifestations and the result of deep-rooted deceased which has socio- economic, cultural and political dimensions. In such cases legal aid through legal Services Authorities plays a role of combating their pain and plight. As these women are emotionally and financially broken down, legal aid and assistance may provide support to them. There was a need of novel and activist approaches and over hauling of methodology to be adopted by the courts to fulfill the Constitutional expectations, hence the Constitution obliges them compulsorily to weave a new culture, build a new justice jurisprudence to construct an effective equalitarian kingdom of justice

Various other statutory provisions are also included under various laws to protect the right of justice through legal aid such as under Code of Civil Procedure, 1908 Order 33 and Order 44, Criminal Procedure Code, 1973 Sec 303 and Section 304, Legal Services Authorities Act, 1987, Section 15 of the Protection of Civil Rights Act, 1955 provides adequate facilities to the victim including legal aid, Family Courts Act, 1984 Section 23 provides the payment of fees and expenses to legal practitioners appointed under section 13 as amicus curiae out of the revenues of the State Government, The Protection of Women from Domestic Violence Act, 2005 made the provision for legal aid to aggrieved person under section 9, Section 8 of the Juvenile Justice (Care and Protection of Children) Act, 2015 provides the JJ Board has to ensure about the availability of legal aid for the child through the legal services institutions. Also, Rehabilitation and reintegration services in institutions registered under this Act 37 shall provide legal aid, under Rights of Persons with Disabilities Act, 2016 the police officer who receives a complaint from any person with disability shall inform the aggrieved person of the right to free legal aid, The Mental Health Act, 2017 Section 27 provides that a person who is mentally ill has a right to receive free legal services

Legal aid programs are a central component of strategies to enhance access to justice. The United Nation Organization committed itself in taking all

necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid. In December 2012, the General Assembly unanimously adopted the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice System(67/187), the first international instrument on the right to legal aid. The UN Principles and Guidelines establish minimum standards for the right to legal aid in criminal justice systems and provide practical guidance on how to ensure access to effective criminal legal aid services.xi

Though, nationally and internationally, endeavours are made to secure the right to justice through legal aid. Women are very vulnerable to social exclusion legal advice is a key to tackle this social exclusion. Legal aid empowers women by facilitate their access to legal rights by way of legal representation, counselling and legal education. It enhances the capacity of women to fight for their rights and prevent violations being committed against them. The legal aid program is meant to bring social justice to the people, hence cannot remain confined to the traditional or litigation-oriented program but it must take into account the socio-economic conditions prevailing in the country and adopt a more dynamic approach especially for women.

What the millions of women around the world need today is not our sympathy but their rights to be implemented and executed. Every drop of tear shed by women in defense of her honour is a curse to the entire humanity. What the social obligation is not to lend mere an ear to her agony but to provide the forum of free legal aid and legal services through Legal Services Authorities so that she can fight against injustice happening to her Judicial system is continuously taking various initiatives with a view to strengthen justice delivery mechanisms especially for the marginalized people, the focus has been on supporting the Legal Services Authorities. Legal Services Authorities have the unique potential to rapidly expand access to justice for India's poor and marginalized who face routine discrimination and denial of rights. Better understanding of the ways in which these institutions function is intended to help identify the steps needed to increase capacities

Conclusion

Quality and better legal services to women enhances the capacity of women to fight for their rights and prevent violations being committed against them. It is regarded as central in providing access to justice by ensuring equality before law, the right to counsel and the right to a fair trial^{xii}. It will help in building legal system, the system which is based on the rule of Law, with laws that are publicly known and are informed in a predictable way and through transparent mechanism. The quality of legal norms in a society and the manner in which they are administered have direct impacts on the decision making process. It greatly affects the daily lives of citizens, particularly poor people who are least able to protect themselves from abuses of their rights. It is and will uphold and protect the rights of the women which will enhance the full women empowerment in our society.^{xiii} If women are given opportunity and the potential of this fifty percent is realized to the optimum, it will undoubtedly contribute towards societal development. We have to move “women’s issues” from the margins to the mainstream and recognize that the issues are not only about women’s role, but are about the kind of world we want to create. One of our aims is to reduce barriers to justice for women for implementation of their total rights.

ⁱ Utilitarianism, 1910ed., p.46

ⁱⁱ Potter, The Quest of Justice, Universal Law Publishing Co.,2005, pg. 3

ⁱⁱⁱ Martin Luther King was an American Baptist minister, activist and the most visible spokesperson and leader in the civil rights movement. he is best known for advancing civil rights through nonviolence and civil disobedience, tactics his Christian beliefs and the nonviolent activism. On October 14, 1964, King won the Nobel Peace Prize for combating racial inequality through nonviolent resistance

https://en.wikipedia.org/wiki/Martin_Luther_King_Jr

^{iv}<https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice>

^v<https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice>

^{vi}<https://www.ohchr.org/documents/HRBodies/CEDAW/AccessToJustice/WomensLegalAndHumanRightsBureau.pdf>

^{vii}<https://www.ohchr.org/documents/HRBodies/CEDAW/AccessToJustice/WomensLegalAndHumanRightsBureau.pdf>

^{viii} ibid

^{ix}<http://asiapacific.unwomen.org/en/focus-areas/governance/womens-access-to-justice>

^x ibid

^{xi}<https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>

^{xii} en.m.wikipedia.org/wiki/Legal_aid

^{xiii} Womenwelfare.org/legal_assistance.html