

Paper Title: Constitutional Democracy and Government in India

Lesson: The Judiciary in India: Access to Justice

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Content:

I. Introduction

II. Access to Justice: Meaning, Nature and Safeguards

III. Judiciary in India: An Overview

IV. Judicial Activism: Problems and Prospects

V. Legislature Vs Judiciary: Confrontation and Competition

VI. Responsible and Accountable Judiciary: A Need for Constitutional Sanctity

VII. Conclusion

Objective: After reading the lesson the students would be able to know the following:

- 1. What is access to justice and what are the safeguards provided in the constitution of India to ensure that no body is deprived of justice?**
- 2. Why a common citizen is hesitant and even frightened to resort to the legal procedure to demand justice when his/her rights are violated?**
- 3. Which sections of the population are most vulnerable to suffer from the onslaught of injustice and why?**

Learning Outcomes:

1. Students will come to know their rights as citizens and will be able to exercise them effectively. They will be empowered to guard against the violations of their rights and will be able to adopt the right procedure for their grievance redressal.

I. Introduction:

You must have been aware of the popular perception how an ordinary citizen is panicked at the very mention of the words: 'Court- Kachery'. On your closer interaction with them they will tell you about many such incidents from their own experiences where people and their families have been thoroughly devastated in fighting legal battles. Similar concerns have also been expressed through other mediums such as popular block-buster movies, novels, street-plays and television-serials. You can take the example of a classic Amitav-Rajnikant starrer like the "Andha Kanoon".



But make no mistake; the message in this film is not to provoke one to take law into one's own hands but to draw public attention to 'miscarriage of justice' due to the inadequacies of our criminal-justice system. In a mello-dramatic style though, it teaches, nonetheless, that you cannot be penalized for the same offence twice and also imparts a very useful lesson in one of the cardinal principles of justice that punishment must be in proportion to the crime committed-nothing more or less. Another such example could be the story of 'Damini', who showed exemplary courage

and determination to bring a rapist, who is one of her very own, to book against tremendous family pressure and often at great risks to her life and security.



The message, here, is very loud and clear. With determination, courage and patience you can certainly fight your battle for justice, always remaining within constitutional norms, while holding your own in observing the law even against heavy odds and still emerge victorious at the end. Please note that by so doing you are not only helping other victims in making it easier for them to get justice and thus contributing your mite towards social responsibility but also the fact that you are helping the system to mend itself and thereby performing your larger duty to your nation in the nation-building process.

The democratic institutions in India are passing through very critical times today – both challenging as well as promising at the same time. In a comparative perspective while it can be fairly argued that the judiciary in India has performed creditably ‘sustaining the trust of the people in its independence, fairness and impartiality’ it is also not free from criticism either for its ‘enormous delay in adjudicating matters and the consequent problems in accessing justice for a large section’ of the Indian population, especially the marginalized ones. In view of India’s phenomenal diversities and inequalities this is, indeed, a very challenging task. However, there is no denying the fact that ‘judicial activism’ has been, by and large, given a lot of

credit for showing exemplary courage and determination 'in checking the excesses of the executive government' as well as chipping in from time to time filling up the void with useful initiatives and steps so as to protect the rights of citizens. But at the same time 'the falling standards of integrity and independence' of some members of the judiciary, of late, are very disturbing signs of these powerful institutions. In view of such serious lacunae judiciary tends to become the least accountable branch of the government- a major worry in contemporary times.

II. Access to Justice: Meaning, Nature and Safeguards

For an adequate understanding of what is access to justice you must be curious, first, to know and identify the major dimensions of justice. Two major dimensions of justice are retributive and distributive justice. While retributive justice is primarily concerned with determining punishment of a crime distributive justice, on the other hand, is concerned with the allocation of benefits and burdens according to certain principles. Three conditions can be identified here to ensure justice in the matter of punishment:

- (i) that punishment should only be inflicted on those found guilty of wrong- doing through proper procedure;
- (ii) that punishment be uniformly imposed implying thereby that the differences in penalty should always correspond to differences in wrong-doing; and
- (iii) that the scale of penalties should be proportionate to the various misdemeanours being punished (David Miller,1987).

Thus retributive justice requires that punishment should be awarded for a crime duly proved beyond a reasonable doubt and that it should be in proportion to the seriousness of crime. So the

main purpose is that punishment should neither be too severe nor too lax. As regards distributive justice the problem of social justice lies in determining 'the principles which should be chosen to govern the distribution of wealth, prestige and other benefits among the members of society' (David Miller, 1976). The question that immediately crops up in your mind is an enquiry as to what these criteria could be which determine the principles of distributive justice? Well, three such criteria may be identified here which are usually invoked to determine these principles. They are: (i) Protection of acknowledged rights; (ii) distribution according to desert/ merit; and (iii) distribution according to need. But none of these criteria can claim to be full-proof. Each has its own strengths and limitations. So the solution to this problem may be possible in a judicious combination of these criteria so as to blend the principles of liberty, equality and justice harmoniously. In India, for example, some special arrangements such as reservation, also known as affirmative actions of the state, for vulnerable groups such as Scheduled Castes, Scheduled Tribes, and Other Backward Classes etc. are made so as to protect them and deliver social justice. You will, of course, appreciate such protective measures as justice requires that people who have suffered losses and handicaps in the past for no fault of theirs need to be compensated to bring them on an equal footing with others. Equality of opportunity, in a genuine sense, would exactly require this.

Access to justice", in its general connotation, refers to individual's access to court or a guarantee of legal representation. Identification and recognition of grievance, awareness and legal advice or assistance, accessibility to court or claim for relief, adjudication of grievance and enforcement of relief, which is,

certainly, the ultimate goal of a litigant public together form the basic features of "Access to Justice".

You, as students of the judicial system in India, may have your curiosity to enquire what different components of this concept of 'access to justice' are there. Two components immediately come to the mind here. First, there is the existence of a strong and effective legal system with rights enumerated and supported by substantive legislations. Second, there is the existence of a useful and an accessible judicial/ remedial system, which is easily available to the litigant public.

The Constitution of India, the basic law of the land, in its preamble, stands for securing justice to all its Citizens. This aspiration is retained again in Article 39A, where the Constitution aspires to secure and promote access to justice to all its citizens, especially to the marginalized ones with 'free legal aid by suitable legislation or schemes or in any other way'.



" The State shall secure that the operations of the legal system promote justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities".

Several international documents have already recognized 'access to justice' as a prominent and fundamental right. The National Commission to Review the Working of Constitution (NCRWC), which was constituted in India, in the 50th year of her Independence, in its final report, suggested for incorporation of this right as fundamental rights by incorporating Art.30 A, in the Constitution. It was proposed to be 'access to Courts and Tribunals and

Speedy justice'. This was supposed to include the right to access to a court or tribunal for a fair public hearing as well as a right to reasonably speedy and effective justice in all matters before the courts or tribunals or any such forums.

30 A. Access to Courts and Tribunals and Speedy justice.- (1) *Everyone has a right to have any dispute that can be resolved by the application of law decided in fair public hearing before an independent court, or where appropriate, another independent and impartial tribunal or forum.*

(2). *The right to access to courts shall be deemed to include the right to reasonably speedy and effective justice in all matters before the courts, tribunal or. other forums and state shall take all reasonable steps to achieve the said objectives*

At this stage of the discussion a question may arise in your mind as to how the principles of 'access to justice' are going to be formulated? For this one has to identify and recognize one's grievance since this has a direct correlation to one's right. While formulating the principles of access to justice, the identification and protection of these rights, especially of the poor and the disadvantaged ones, becomes the chief concern and forms the very basis. As you know from your reading of the preamble of your constitution that India is a secular and democratic republic, it is very significant that rights of different people belonging to different religions and that of the minorities, linguistic or cultural, are protected under the Constitution itself.

Apart from the Universal Declaration of Human Rights, the Constitution of India, guarantees, fundamental rights in its Part III, from Articles 14 to 32.

This includes, right to equality, freedoms, right to life, religious and minority rights and finally the special right which guarantees constitutional remedies in cases of infringement of fundamental rights. Though these rights are not absolute, but they are protected under Article 13 of the Constitution, which expressly prohibits enacting of law inconsistent with or in derogation with fundamental rights. Additionally, any action abridging the fundamental rights are subject to inherent or implied limitations, as per the Doctrine of Basic Structure or Basic Features.

There are other sets of rights guaranteed as per the express provisions in the Statutes. Right of representation in elected bodies, right to maintenance, right to minimum wages, right to social security, right to vote are some such rights. In India, there are a number of statutes dealing with these special kinds of rights, such as Representation of Peoples Act, Minimum Wages Act, Provisions for Maintenance under Section 125 of the Code of Criminal Procedure, Social securities under Workmen's Compensation Act, Industrial Disputes Act, Employee's Provident Fund and Miscellaneous Provisions Act, Payment of Bonus Act, Payment of Gratuity Act, Employees State Insurance Act etc.

III. Judiciary in India: An Overview

One justifiable criticism of the Indian judiciary is 'for the unusual delay in the disposal of disputes, for the enormous arrears of cases' and the poor management of proceedings. You may recall a very common saying in India, 'justice delayed is justice denied'. This shows 'very little concern for the plight of the litigant public and to the society at large' with devastating consequences for the marginalized sections of society in particular. Obviously you will develop curiosity to know the reasons behind such delay. A cursory glance at the structure and composition of the judicial system in

the country would probably enable you to understand this problem of delay and arrears which invariably result in denial of justice. Consider some data given here carefully. Whatever may be the reasons, in view of India's vast population and her phenomenal diversities, it is amply evident that the working strength at all the three levels is short by 15 to 30 per cent which is very inadequate. The Law Commission, in its 120th Report, way back in 1987, had put the number of judges per million population in India at a meager 10.5. Over the years it may have gone up to between 13 or 14 per million, which are not great numbers either. It is in this backdrop that the Supreme Court, in the All India Judges' Association Case in 2002 (4 SCC 247), directed the governments, both at the central as well as state levels, to consider the proposal of increasing the number of judges five-fold. It was proposed to be done in a phased manner over a five year period in order to achieve the judge to population ratio as 50 per million. But the proposal could not be translated into action primarily due to financial constraints. This brings us to the question of allocation for judiciary under the Five Year Development Plans. In this regard the Union Government's allocation for judiciary is said to be less than one per cent of the total plan outlay. This makes the judiciary almost entirely dependent upon the non-plan budget. But the non-plan budget remains almost static which leaves little scope for modernization and development. Besides, nearly 90 per cent of all litigation in the country is handled by the subordinate courts. The subordinate courts depend for their budgets on the state governments. But barring Delhi the annual budgetary allocation for judiciary is less than one per cent of the state's annual budget estimates in every state. The situation complicates further when the volume of work, which is estimated to be 30 million cases pending in the court system in India at any given point of time, is taken into consideration. The figure that on an average the 14,000 subordinate courts deciding nearly 13 million cases every year could probably be the highest in

the judicial world. So from this perspective the impressive performance of the judicial system notwithstanding, the arrears/ pendency keep on increasing every year.

Equal access to all, which is a constitutional guarantee, is another issue troubling administration of justice. Because of structural deprivation based on class, caste, race, gender, religion, region etc. with intersecting inequality access to equal justice to all persons especially women, Dalits, Tribals, Children and the Disabled persons has been obstructed. A network of legal aid centers with state funding throughout the country set up by the Legal Services Authority Act and managed by the judiciary has not been able to address this problem. Many special schemes have also been devised for the purpose and many legislative measures in terms of amendments to the laws and institutions or the making of more stringent laws are being resorted to. But these measures have failed to achieve the desired goals primarily due to lack of proper implementation. There are several social, economic and political reasons behind this poor or even complete absence of implementation. Thus the legal aid apparatus is administered in a way which leaves much to be desired. It has not been able to build bridges with civil society. Since the legal aid is under the control and management of the judiciary it has to share the blame for such inadequacy.

IV. Judicial Activism: Problems and prospects

The constitution of India promises equality, social justice and rule of law. But access to justice has always remained a big challenge in India's multi-cultural society with its widespread and complicated structural deprivation as mentioned above. Apart from the judicial system a number of statutory commissions had been set up by the government with the mandate to look after the rights and entitlements of different sections of society. But they

have failed to give relief because of very little power at their command. Judicial activism and public interest litigation have also met with limited success in this regard. The operation of the judicial system in this country reveals clearly the fact that it expects people to know their rights and assert their claims according to the legally prescribed procedures. Acute poverty and wide-spread illiteracy are clear disadvantages here for a large number of people. Neither is the language and procedure of law familiar to their culture nor do they have the resources to fight long-drawn procedures in courts. A basic handicap of the legal aid scheme is that such aid can only be helpful if it is sought. But the problem here is that most of the people, because of their illiteracy and ignorance, do not even know where and how to get it. It is against this backdrop that judicial activism has come to the picture. The Indian judicial system took some concrete measures in an active manner. The locus standi doctrine was relaxed and letter petitions from public spirited individuals on behalf of groups of disadvantaged people were entertained in the courts. Court-appointed commissioners were mobilized to ascertain facts and gather evidence. Social context reliefs and remedies, unknown to jurisprudence in the past, were developed now. The rationale for such court intervention was the constitutional jurisdiction given in the constitution for enforcement of the fundamental rights (Right to Constitutional Remedies, Art.32) and the power of judicial review of executive/legislative action. However the other side of the story should not be lost sight of. The emergence of judicial activism and public interest litigation in the 1980s also brought the judiciary in direct conflict with the other two branches of government. This is not to deny the fact that through such activism it delivered justice to vast sections of people who otherwise would not have received it.

It would be interesting at this point to analyze at least two fundamental shifts in the approach of Indian judiciary to issues of constitutional

governance and judicial protection of human rights. The period before the declaration of emergency i.e. roughly until 1975 the approach of the court was largely conservative and positivist. But in the period that followed emergency i.e. the post-emergency era the court's approach changed into a liberal and an activist mode. This brought a new life in the working of the constitution where the judiciary played a key role. It met with mixed responses: sharp criticism from the executive and the legislature for disturbing the pre-existing balance of powers and warm appreciation and support of the judiciary by the people. The judiciary benefited massively from this popular support and virtually went on to exercise near absolute power which was not envisaged at all by the framers of the constitution. The Supreme Court's decision, in 1973 in the Keshavananda Bharati Case (AIR 1973 S.C. 1461) that Parliament does have the power to amend any part of the constitution except altering or destroying its 'basic structure', has been 'perceived by many as an assault on parliamentary democracy and a challenge to its federal character'. Use of judicial activism as a counter-majoritarian check on legislature resulted in the court becoming an oversight body on proceedings in the legislative bodies. This was vehemently criticized as an assault on democracy. In the 60s there were issues which had put both the organs of government at logger heads concerning granting of bail to a person sentenced to jail by the state assembly for its contempt. The assembly, on the one hand, insisted that the judges be brought before the House for its contempt. On the other hand, the High Court restrained the speaker from issuing warrant against the judges. This created an impasse which was set to rest by presidential intervention. But the court asserted that it had the power to review the warrants issued by the legislature. Another matter which invited judicial interventions was the anti-defection law giving power to Speakers of legislatures to determine "defection cases". Such judicial interventions, in turn, invited the wrath of legislatures and

political parties. The Supreme Court's issuing a series of directions to the Speaker of Jharkhand Assembly in 2005 on the ways to conduct the floor test within the prescribed period and with video recording of the proceedings was considered an unwarranted interference by the judiciary with the powers and privileges of the legislature. In cases such as this where there can be no judicially manageable standards it would have been better left to the democratically elected bodies to address the problem politically.

V. Legislature Vs Judiciary: Confrontation and Competition

The nature of India's federal structure, initially, was in favour of a strong centre which changed only in the early 1970s when the single party (Indian National Congress) dominance came to an end. It was during this time that numerous conflicts arose between the Union and States leading to situations when the Union Executive invoked its powers to dismiss state governments opposed to its authority. The period has been regarded as the darkest phase of democracy in the country. All the democratic institutions suffered a serious setback and a series of authoritarian measures finally culminated in the imposition of national emergency in the country in 1975. Suspension of fundamental rights, curtailment of dissent and censoring of press freedom became the order of the day. The judiciary in India came to be known as a "committed judiciary". It even gave a judgment which justified unbridled exercise of executive power during emergency to the detriment of the right to life and liberty (A D M Jabalpur case AIR, 1976 S.C. 1207). Another major happening was the supersession of senior judges who resigned when their junior, because of his closeness with the government, was appointed Chief Justice of India.

In the first 25 years of the constitution's working, the judgements of the Court rendered on two fundamental rights, namely, right to property and right to equality, are well documented and indicative of the approach the then Court had adopted in looking at State powers vis-à-vis citizens' rights.

The Courts' approach in the interpretation of the concept of compensation on property matters was contrary to the Parliaments' agenda on land reform and social justice. As a consequence of such conflict a series of Constitutional amendments including the introduction of the IXth Schedule were made. The introduction of the IXth Schedule consisted of legislations which were expressly declared to be outside judicial review. In the "Privy Purses" abolition matter and in bank nationalization issue the Court again followed the same approach. The government felt so much upset about it that it dropped the right to property from the list of constitutionally guaranteed fundamental rights at the time of emergency. In the matter of reservation for backward classes there arose a similar confrontation between the executive and the judiciary on the scope of the right to equality and the claim for preferential discrimination or affirmative action in favour of certain disadvantaged sections of society. When a Brahmin candidate challenged a government order on the basis of unfair discrimination based only on caste the Supreme Court, in *State of Madras V. Champakam Dorairajan* (AIR 1951S.C.525), went on to invalidate the government order reserving seats for non-Brahmin students in medical/engineering colleges. It was done on the basis of prohibition of discrimination on grounds of religion, caste, sex etc. under Article 15(1). But the judgement was nullified later by the Indian Parliament through a constitutional amendment adding a new provision (clause 4 of Art. 15) which enabled the government to make preferences for socially and educationally backward classes of citizens. But the State action under the amended provisions was also challenged and the Supreme Court again held that the Caste of a group of persons cannot be the sole or predominant factor for ascertaining whether a particular class is backward or not. (*M.R. Balaji V. State of Mysore*, AIR 1963 S.C. 649). Another point which was made by the Court was regarding reservation not exceeding the reasonable limits. Such conflicts continued unabated for quite sometime,

each organ sticking to its own position, until in the Mandal judgement (AIR 1993 S.C. 477) when the Court changed its earlier position and conceded the argument that caste-based reservation is legitimate provided the government excluded the "creamy layer" from among the beneficiaries. In A.K. Thakur V. Union of India (April 10, 2008) the Court even went further and allowed reservation in both State and privately managed educational institutions under Article 15(5).

Three independent processes need to be highlighted here which have led to the expansion of civil liberties through Courts. Firstly, the assumption of judicial activism and liberalization of the doctrine of locus standi opened the doors of court for large sections of disadvantaged people to seek justice. The rehabilitation of bonded labour, improvement of conditions of custodial institutions, prevention of environmental degradation, stricter enforcement of labour welfare, greater accountability of law enforcement agencies and greater respect for rule of law in governance would not have been possible without relaxation of Court procedures and democratization of judicial remedies in PIL matters. The second important process is a liberal and ingenious construction of the phrase "procedure established by law" through which the Court brought in the American concept of "due process" in the interpretation of right to life and liberty under Article 21. A very important development which was simultaneously happening was that the Court adopted an activist approach to read and implement several Directive Principles of State Policy (not judicially enforceable) in conjunction with the fundamental rights of liberty, dignity and equality by invoking the doctrine of harmonious construction. As a result of all this now there was a profusion of rights considered integral to life and liberty. By giving a broader interpretation of the right to life guaranteed under the constitution to mean a life with dignity and not animal existence the court justified its directing the executive to fulfill its obligations under Part IV of the Constitution

through writ jurisdiction. Thus a number of rights such as right to legal aid, right to education, right to clean environment, right to better living conditions in jails and mental asylums, right to privacy and right to speedy trial became integral to life and liberty. The third process is the Court's celebrated theory of "Basic Structure" under which the Court put limitations on Parliament's power to amend certain fundamental aspects of the Constitution. This is, undoubtedly, much more significant than the other two processes. The "Basic Structure" concept is not clearly specified and it seems to be still evolving. However at present the Court has 'invented' some of them as the fundamental rights of citizens, independence of judiciary, judicial review, and democratic character of the polity and many others which may soon be specified.

VI. Responsible and Accountable Judiciary: A Need for Constitutional Sanctity

You must be quite familiar with the basic features of a federal polity. Besides a written constitution, an independent and impartial judiciary for delivering free and fair justice is one of the most important features of India's federal polity. On reading the Indian constitution you will come across detailed provisions intended to secure the institutional independence for the judicial branch of the government. But do you know that the process of selection of persons for appointment to higher judiciary is such that the executive has neither any say nor any veto power in this matter? It is, indeed, an entirely judiciary-driven process. It may be very interesting for you to further know that India is perhaps the only country in liberal democracies where the judges alone appoint judges to the higher judiciary. Besides, as discussed earlier, judiciary in India becomes very formidable with its vast powers such as contempt jurisdiction to ensure compliance of its orders and directions, power of judicial review over executive and legislative actions and the judicially- evolved recent theory of "basic structure". Is it not absolutely

essential then that such a powerful institution must also be responsible and accountable to prevent it from posing a potential threat to parliamentary democracy? Corruption and narrow loyalties of all kinds pose an imminent threat to constitutional values and principles in contemporary times. Thus the approach of judiciary needs to be transparent, impartial and restrained.

There have been only two instances where the impeachment of judges on grounds of corruption and impropriety was resorted to. But it was only in 1991 that the Chief Justice of India asked the Government to impeach and remove a sitting judge of the Kolkata High Court on grounds of misappropriation of the clients' money while he was a lawyer. Recently allegations of corruption and biases against judges of the higher judiciary have been all too very common. Some of these cases have been probed through an in-house mechanism devised by judges themselves and have resulted in resignation or voluntary retirement of the judges concerned. A pertinent question that arises here: is there any provision in the constitution for disciplining a judge of a Superior Court except through an extra-ordinary and very difficult process of impeachment? You will be surprised to know that there is no such provision. This explains why the Bar in some instances adopted the unconventional method of disciplining judges by passing resolutions demanding their resignation and boycotting their courts.

Though there are other organs of the government as well as a host of other institutions which have their role in ensuring access to justice, a greater role for judiciary, which is an integral part and parcel of an effective judicial system, cannot be ruled out at all. This is so since the concept of 'access to justice', primarily, necessitates a potential system securing appropriate legal remedies within the Civil and Criminal justice fields. V.R. Krishna Iyer, a prominent jurist of our Country and a former Judge of the Supreme Court of

India, is of the view that judicial role is pivotal to constitutional functionalism. Because 'access to justice' is fundamental in implementation of every human right (V.R. Krishna Iyer, 2003)

VII. Conclusion

Judicial reforms constitute a very important aspect of strengthening India's democracy in a substantial or qualitative sense. It is important that the government should take into consideration the recommendations and suggestions given by various committees and boards while attempting to do this. Apart from this it is also necessary to consider certain other facets.

Section 89 of CPC which deals with the alternative disputes resolution for settlement in case of civil matters is not fruitful until some circumstances are laid down to guide that the particular matter must first go for settlement outside the court. It is the central government which needs to draft the rules or guidelines laying down clearly the circumstances.

Effective steps need to be taken to ensure that judgments are not allowed to be kept reserved by the judges at various levels for more than two weeks after completion of argument. Although Rule 1 Order XX of Civil Procedure Code deals with the same but it is not strictly adhered by the court. There should be provisions making judges statutorily liable for delay in pronouncement of Judgments. In the Code of Conduct a provision must also be introduced for judges that if a judge hears the case, he should deliver the judgment. Other than exceptions such as death of the judge or retirement the provision must strictly be followed. In the absence of such a provision a new judge takes time to understand the facts and situations of the case afresh thus causing undue delay in the process.

It must also be noted here that some steps need to be taken to assess the performance of judges and advocates. In this connection it may be

suggested here that on the basis of statistical data Records of Performance Assessment or Audits of workload of judges and advocates on individual basis should be maintained. The number of cases disposed by each judge, number of adjournments granted by the judges, etc. should be mentioned therein. There should also be publication of such statistics as they are done in the USA and UK. Courts should not grant Second Appeal for the matters leniently and they should do so only on certain conditions, which should be clearly laid down by the High Courts.

The challenges before India's Judiciary for delivering justice are going to multiply in the days to come. When those sections of the society, who have remained oppressed and unaware of their legal rights, thus far, become more aware of their rights due to spread of legal literacy and increased awareness equipped by effective legal aid and advice, the situation is certainly going to be much more demanding. The larger picture is achieving social justice which can not be possible without an egalitarian politico-social order, where no one is exploited and where every one is equal and free from Hunger and poverty. So providing basic necessities to these marginalized sections of the population in particular is the key to ensure justice. Justice should not be understood in an absolute or abstract sense. Its definition varies from individuals to individuals depending on its economic conditions. The saying 'Justice Delayed is Justice Denied' is fraught with disastrous consequences for the poorest of the poor. People with legal problems are like people with pain who want relief and they want it as quickly and inexpensively as possible. It can, then, be argued here that judiciary obviously owes an obligation to deliver quick and inexpensive justice irrespective of the complicated procedures. However, certain things must be kept in mind here. Justice cannot be hurried to be buried i.e. stress on speed alone at the cost of substantial justice may impair the faith and confidence of the people in the system. This may cause greater harm than the one

caused by delay in disposal of cases. The sole objective of deciding cases is for imparting justice and not for the sake of their disposal. Secondly, there should be utilization of arbitration procedure as a better option for quick disposal of cases. Finally, Lord Hewet is very right to observe that it is of utmost importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

Group Project I: Randomly identify in your locality at least 50 people from different categories (male and female, educated and uneducated, rich and poor, high-caste and low-caste, minorities- religious, linguistic and cultural etc.) and find out what percentage of each category knows about their rights to justice. Secondly, how many of them have used them when their rights have been violated by any individual, group or the state and to what effect? Thirdly, if others have restrained themselves from exercising their rights why have they done so?

We all have gone through different kinds of situations in our day to day life where our rights, in some way or other, have been violated by fellow citizens or groups/institutions or even by the state apparatus. It could be discrimination or harassment on the basis of one's caste or religion or language or culture. There could be a property dispute with any of these parties. There can be a dispute regarding one's right to any public office or right to promotion or any other benefits. In case of the vulnerable groups there can be occasions when an extremely poor and helpless person may not have the necessary resources to fight a legal battle even if he/she has a genuine case. In a secular and democratic country like India all of us; irrespective of our caste, class, religion, sex, place of birth etc. have our

rights to access justice through different kinds of mechanisms which are available for us.

Case Study I:

Pradip and Manan have passed their Class 12 CBSE Exam recently with 92% and 65% respectively. Both have applied for admission into one of the reputed colleges in the University of Delhi. Pradip belongs to a higher caste and his parents are quite well off. Manan, on the other hand, is from a Scheduled Caste with an economically poor family background. While Pradip could not get admission into the college Manan succeeds in doing so. Pradip has strong feeling that justice has not been done to him. The principle of merit has been violated in his case.

Discussion Points:

- . Is Pradip justified in his claim?
- . Why do you think Manan deserves his seat and justice has been done to both?

Case Study II: Dev, an 18 year old uneducated and unemployed boy was caught in a crowded DTC bus while pick-pocketing. In a fit of anger a group of passengers thrashed him so badly that later on the boy succumbed to his injuries. The parents of the boy are making a fervent appeal that they have lost their son due to the criminal assault of some people who must be brought to book to do justice to their dead son and to this poor family.

Discussion Points:

- .What, in your opinion, should the passengers have done to penalize the boy for his wrong-doing?
- . Do you think the boy's rights were violated? Why?
- . What should have been the right punishment, in your opinion, for the crime the boy committed?

Case Study III:

Narahari is a marginal farmer with some land of his own which is just enough to support his family of four members. But he had a dispute with his neighbour over a piece of land. The confrontation between the two families turned so ugly that Narahari had to file a case in the subsidiary court hoping to get justice soon and move on in life. But the case has been dragging on for quite a long time now. The long-drawn legal process has serious consequences for Narahari's family as it has cost him so dearly that in the process he has sold some of his land to meet the court expenses. At present Narahari is unable to support his family.

Discussion Points:

- . Why do you think justice delayed is justice denied?
- . What measures would you suggest to expedite justice delivery system in India?

Case Study IV:

Devaki, an old lady of 70 years of age, is living alone in a house located at one end of a village. She has a small plot of land adjoining this house which she is using for her livelihood. She has a small shop there selling cosmetics, bangles and other such articles. Some powerful people of the village are making all kinds of attempts to occupy her plot to merge it to their adjoining plot where they have a big commercial concern. But the lady finds it very difficult to fight these powerful people in a court of law as she feels it would be beyond her means to bear the legal expenses.

Discussion Points:

- . How do you think you can help the lady to fight a legal battle?

Case Study V:

Raman is a brave Good Samaritan of 25 years of age. In front of his very eyes a middle-aged person got seriously injured when a speeding car hit him on a Delhi road. It was a hot afternoon. While a number of by-standers simply watched on, Raman showed exemplary courage to take the bleeding man to a nearby hospital. He had to face all sorts of difficulties as the hospital staff was reluctant to admit the man and start the treatment immediately without losing any time insisting that it being a police case, some formalities must be completed first. Subsequently, on a number of occasions, Raman was called to the police station and later to Tis Hazari Court where the case dragged on for quite a long time. As Raman was a casual worker he had to forgo his payment for being absent in work.

Discussion Points:

- . What measures, in your opinion, need to be taken to ensure that those who help the needy in case of such road accidents do not face harassment of the types that Raman had to undergo?
- . Do you think judicial reforms alone will be sufficient to deliver speedy justice? Explain why?

Case Study VI:

Srikant was brutally assaulted by four armed people in a public place in broad day light and murdered in cold blood. Earlier he had tried to prevent the son of a very powerful person in the locality from misbehaving with an innocent girl. According to many eye-witnesses the attack was unprovoked and preplanned. Some of these eye-witnesses, indeed, had given their statements against the culprits with detailed narration of the incidents. But when they were produced before the court each one of them turned hostile. Consequently the culprits were not declared guilty and freed because of lack of evidence irrespective of the fact that all the circumstances were clearly

suggesting to the contrary. Powerful and dominant people can use their influence and resources to bribe the witnesses to their side or use their muscle power to intimidate them so as to prevent them from giving their testimony in favour of the affected party.

Discussion Points:

- . Do you think when criminals go unpunished after committing a heinous crime it encourages them to commit further crimes?
- . How do you think such menaces can be tackled effectively?

Case Study VII:

At a time when PIL (Public Interest Litigation) and judicial activism are becoming all too common ways to deliver justice and fill the vacuum of government inaction in lot many areas you encounter the following problems in your locality affecting the health and hygiene of the people living in the place. Garbage is not cleared regularly and drains are overflowing due to blockage at many points. Excessive mosquito breeding has made the life of the residents very miserable with the outbreak of diseases like malaria and dengue. Pollutant gas and smoke from a nearby factory are making the air very dirty and hazardous thus depriving people to breath fresh air. Despite repeated complaints and representations by the people to the concerned authorities no action has been taken to address to their grievances.

Discussion Points:

- . How could you help the people in getting justice?
- . Which rights of the people are violated and how?

- . Give some examples from recent times when judicial activism has protected rights of people.

Case Study VIII:

Scandals and corruption charges are gripping almost all institutions of our society today. Of late, even an important and a prestigious institution like the judiciary is no more immune from such charges. There have been allegations against eminent judges to have indulged in corrupt practices of all sorts. Certain cases of very serious nature such as sexual misdemeanors towards women have also been reported recently where some high-profile judges are alleged to have violated the most fundamental rights of their junior lady colleagues. Questions such as who will judge the judiciary or who will guard the guardians are being asked today. 'Can there be any protection when the fence starts eating the crops', is, indeed, a moot question. Besides, the other organs of government are also raising some issues regarding the "undue interference" of the judiciary.

Discussion Points:

- . Do you think the purpose of justice can be served when judiciary becomes a law on to itself?
- . What measures, in your opinion, need to be taken to maintain harmony among the various organs of the government?

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