



ACCESS TO JUSTICE

AND LEGAL AID IN INDIA

ACCESS TO JUSTICE AND LEGAL AID IN INDIA

EDITED BY
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Access to Justice and Legal Aid in India

Part-I

Access to Justice & Legal Aid: A General Overview

1. Access to Justice: History and Evolution.....2
2. Access to Justice and International law.....16
3. Perception of Formal Methods in Access to Justice.....30
4. Public Interest Litigation.....42
5. Access to Justice and Prerogative Remedies.....65
6. Engaging with Communities for Access to Justice.....81
7. Legal Education, Clinical Education, Legal Aid, Legal Clinics,
Law Schools, and Access to Justice.....104

Part-II

Access to Justice and Legal Aid: Some Specific Aspects

8. Access to Justice: Addressing Poverty as a Hurdle.....121
9. Access to Justice: Schedule Caste, Schedule Tribe and Other
Backward Class.....138
10. Access to Justice and Women.....161
11. Access to Justice and Domestic Violence.....173
12. Access to Justice and Children.....186
13. Access to Justice and A Child Victim of Sexual Abuse.....198
14. Rights of Prisoners and Norms dealing with Prisoners in Justice
Administration.....228
15. Role of State and Individuals in the protection and preservation
of environment.....242

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About the Editor

Dr Bharti Yadav has been a faculty at National Law University Delhi since 2012. She did her PhD on “Comprehensiveness and Adequacy of the Legal Services Authorities Act, 1987-An empirical study of Rajasthan and Haryana” from the University of Rajasthan. She has also qualified NET. Her areas of interest and specialisation are Criminal Law, Research Methodology, Legal Aid and Clinical Legal Education. She has been involved in administrative reform initiatives at Delhi Prisons by conducting various empirical researches. She collaborated with Delhi Legal Services Authorities and Delhi Prison for promoting equal access to justice for prisoners at Delhi Prison. She also contributed to various Legal Aid initiatives of Delhi Legal Services Authorities.

She has been a resource person at the Haryana Institute of Public Administration in various training programs for HCS officers and law officers of Haryana. She has also been a resource person in many workshops and training programs organised by NLU. She has also been a resource person for a live legal awareness program on Gyan Darshan TV channel. From 2015 to 2018, she has been continuously appointed as an external member of the complaint committee against sexual harassment at workplace of NABCONS and NABARD.

She designed the e-pathshala course on Access to justice. She also prepared MOOCS course on “access to justice” by designing the structure, writing e-modules and video recording the sessions. Since 2018, she has consistently offered this MOOCS course on “Access to Justice” through the Swayam Platform and thousands of learners have benefitted from this course.

She is the faculty coordinator of the Pro Bono Club of National Law University Delhi constituted in collaboration with the Department of Justice, Ministry of Law and Justice. The aim of this club is the promote equal access to justice and spread legal awareness through the involvement of law students. The initiatives of the pro bono club under her guidance and supervision have been highly recognised and appreciated.

She has offered seminar courses at the University of Wurzburg, Wurzburg, Germany in the years 2016 & 2017. She was invited by the Justice Academy, Ankara, Turkey for addressing judges and advocates on the art of cross-examination in the year 2017. In August 2022, she delivered a talk on “Clinical legal education promoting equal access to justice during pandemic and beyond” at Bahcesehir University,

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She has organised many international and national workshops and conferences on criminal law and clinical legal education at National Law University Delhi. She has also presented papers on various aspects of criminal law and access to justice at national and international conferences. Her research papers are published in many journals and books.

ABOUT THE CONTRIBUTORS

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Dr Kim Rocha Couto: She is an Associate Professor at VM Salgaocar College of Law, Miramar, Goa. She holds a PhD in Law on the topic, “*Enhancing Access to Justice in Goa through Lok Adalats: A Critical Legal Study,*” from Goa University. She has published research articles and presented papers at several national and international seminars. She has contributed chapters to various books on civil law, environmental law, human rights and child rights. She has actively contributed to the development of e-content on ‘Access to Justice’ for the UGC project on e-PG Pathshala for Post Graduate courses in Law, an initiative of the MHRD. Her areas of interest are Human Rights, Alternative Dispute Resolution systems, Environmental Law and Child Rights.

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PREFACE

India being a democratic country is under a constitutional mandate of providing equal access to justice to people. The need of promoting equal access to justice has been highlighted tremendously in the recent past. The relevance of legal awareness and equal access to justice has been put forth by various dignitaries time and again from different platforms. The Union Law Minister, Kiren Rijiju, once said that people's expectation for speedy justice is legitimate in the light of the constitutional mandate of providing access to justice and stressed the need for collaboration by all the stakeholders of the administration of justice in promoting access to justice.¹ He also recognised that the complexities of the procedure for accessing justice make it arduous for many. It gets further complicated for marginalized communities due to a lack of awareness, limited financial resources, insufficient knowledge of the local language, and long-distance for reaching legal services providers. In such a situation, legal aid is the only mechanism to promote access to justice.

All the four pillars of the Indian democratic system i.e., legislature, executive, judiciary, and press have strongly advocated for ensuring equal access to justice but still much more needs to be done. People still are not aware of their basic rights and enabling provisions for eliminating impediments to access to justice. In view of this, it becomes important for people to understand the legal dimensions of equal access to justice.

This book has been specifically designed to provide not only an overview of the formal justice system in India but also an in-depth knowledge about basic rights promoting equal access to justice, the mode of realization of such rights, remedies for its infringements, and other related important issues. This book also covers current developments for promoting equal access to justice to have a comprehensive understanding of the topics covered in the book. This book is relevant for any person interested in legal awareness in general and students of law, social sciences, or humanities in particular.

The book consists of two parts. The first part deals with the general overview of access to justice and legal aid in India whereas the second part deals with specific rights for access to justice for vulnerable groups in India. The key deliverables for the first part of the book consist of the historical background and evolution of access to justice in India, the international law perspective of equal access to justice, formal methods of dispute resolution, public interest litigation, prerogative remedies, and

¹*available at:* <https://www.livelaw.in/top-stories/kiren-rijiju-mediation-for-commercial-disputes-ease-of-dispute-resolution-ease-of-living-182974> (last visited on January 18, 2023).

community engagement and clinical legal education can promote equal access to justice. The second part of the book on specific rights for access to justice for vulnerable groups, focuses on the rights of poor people, scheduled caste and scheduled tribe people, women and children, prisoners, and environmental protection.

The first part of the book titled, “Access to justice: A General Overview” includes writings of Prof. (Dr) MRK Prasad, Ms Jane E. Schukoske, Dr G Shaber Ali, and Dr Kim Rocha Couto. Dr Kim Rocha Couto in her chapter on *History and Evolution of Access to Justice* covers the meaning and significance of justice, analyses the framework on access to justice, identifies various impediments within and outside the justice system that hinder access to justice, comprehends dispensation of justice as a fundamental function of a Welfare State and critically assess to see how access to justice can provide the key to the reform of law and institutions. In her chapter on *International law on Access to Justice*, she gives an insight into the international human rights instruments on access to justice and appreciates the scope and extent of the right, covers universal recognition and acceptance of access to justice as a human right, identifies the key components that constitute the right of access to justice, recognises that the State has the obligation to ensure access to justice to its citizens, and appreciates the role and importance of the treaty bodies in promoting access to justice.

Dr G Shaber Ali, in his chapter on *Perception of Formal Methods in Access to Justice*, tries to verify the concept and advantages of justice, discusses remedies available in the case of formal justice, analyses the various methods in the administration of justice, and examines the hierarchy of authorities set up in the administration of civil and criminal justice.

Prof. (Dr) MRK Prasad in his chapter on *Public Interest Litigation* explains the Rule of Locus Standi and its relevance in seeking remedy in a court of law, comprehends the reasons for liberalizing the rule of Locus Standi and acceptance of Public Interest Litigation, expounds the need for protection of group rights and learn the scope and aspects of Public Interest Litigation, explores how a Public Interest Litigation could be drafted and the procedure to be followed upon. In his chapter on *Access to Justice and Prerogative Remedies*, Dr Prasad explains the meaning and importance of prerogative remedies, elaborates upon the nature of writs, appreciates the constitutional provisions dealing with the writs, discusses various grounds on which such writs could be claimed and comprehends the limitations on the power of the courts in issuing the writs. Prof. Prasad in his chapter on *Legal Education, Clinical Education, Legal Aid, Legal Clinics, Law Schools, and Access to Justice* discusses the basic setup of legal education in India and the concept of Clinical Legal Education and its goals, explicates the link between Law Schools and its Legal Aid Clinics in promoting access to justice, explores the challenges in implementing clinical legal education in Law Schools, and elaborates various

opportunities available to the Law Schools in dealing with the legal needs of the society.

Ms Jane E. Schukoske, in her chapter on *Engaging with Communities for Access to Justice*, provides introductory knowledge about entitlements and public service delivery as legal issues, discusses the value of and methods for legal empowerment of marginalized communities in rural India, illustrates communication techniques for effective communication to and with members of marginalized communities on access to justice, and motivates students to zealously study and analyse the legal remedies for injustices faced by marginalized communities.

The second part of the book titled, “Access to Justice and Legal Aid: Some Specific Aspects” consists of contributions from Prof. (Dr) MRK Prasad, Dr G Shaber Ali, Dr B S Patil, Dr Mrunmayi Mukund Vaidya, and Dr Andryusha A. D’Costa e Pinho. Dr B S Patil in the chapter on *Access to Justice: Addressing Poverty as a Hurdle* explains the importance of the protection of rights, discusses various statutory provisions ensuring legal aid to the poor, appreciates the need to provide free legal aid to the poor, and highlights the professional obligations of lawyers in promoting legal aid to the poor.

Prof. (Dr) MRK Prasad & Dr Andryusha A. D’Costa e Pinho in their chapter on *Access To Justice: Scheduled Caste, Scheduled Tribe And Other Backward Class*, cover the basic concept of the caste system in India and how the caste hierarchy developed in India, explain the meanings of various terms such as Caste, Backward Class, Scheduled Caste and Scheduled Tribes, appreciate the link between Caste and backwardness, expound the Constitutional safeguards in the protection of these deprived classes and the legislative attempts in eradication social, political and economic deprivation, and discuss various remedies available to these section of the people for access to justice. Dr Andryusha A. D’Costa e Pinho in her chapter on *Access to Justice and A Child Victim of Sexual Offences*, explains various sexual offences as defined under the Act, discusses the role of key authorities with respect to dealing with child victims in cases of Sexual Abuse, and appreciates the child-friendly procedure to be followed by Special Court under the Act.

Dr Mrunmayi Mukund Vaidya in her chapter on *Access to Justice and Women*, covers the need for special protection of law in the case of women, identifies special enactments meant to guarantee the rights of women, explains procedural protection to women in relation to the administration of justice, and comprehends the grievance redressal mechanism under various laws relating to women. Dr Vaidya, in her chapter on *Domestic Violence and Access to Justice*, explains the Concept of Domestic Violence, identifies the reasons for Domestic Violence and highlights its effects on the victims. She also covers the Protection of Women from Domestic Violence Act 2005 and Rules to analyse the redressal mechanism available to women victims of violence along with the judicial approach towards cases of domestic violence. Dr Mrunmayi Mukund

Vaidya in her chapter on *Access to Justice for Children*, explains the need for special protection of law in case of children, identifies special enactments meant to guarantee child rights, analyses the procedural protection to children in relation to the administration of justice, discusses the grievance redressal mechanism under various laws pertaining to children, and highlights the approach of the judiciary towards a child in relation to administration of justice.

Dr G Shaber Ali, in his chapter on *Rights of Prisoners and Norms dealing with Prisoners in Justice Administration*, explains the term prison and its need in our society, appreciates the specific enactments concerning prisoners, discusses remedies available to prisoners under the Indian Constitution, analyses the provisions accessible to a prisoner under the Criminal Law, and examines the role played by the judiciary in incorporating a variety of rights to the prisoners. Dr Ali in his chapter on *Role of State and Individuals in Protection and Preservation of Environment*, verifies the protection available to the environment during ancient times, analyses the various remedies available in case of environmental pollution in the Indian scenario, examines the various rights available to a community against environmental pollution and access to justice, and discusses the remedies available under special enactments to deal with environmental pollution

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