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ROLE OF JUDICIARY IN PROTECTING THE INTEREST OF MARGINALISED COMMUNITY IN INDIA

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Abstract

Access to justice has been regarded as a component of the right to life. It is so fundamental that denial of justice is regarded a direct breach of the Rule of Law. One of the elements of the Rule of Law is that no one shall be punished except for a violation of the law. When justice is denied due to a lack of accessibility and quality, this element is directly violated people's rights because they are different from the rest of society in matters of religion, caste, sex, ethnicity and so on. India is a welfare state and as such, it must offer equitable administration and access to justice for all citizens, which implies that no one would be refused access to the courts. Justice must not only be done, but it must also appear to be done. According to Article 38, the State must create a social order that ensures social, economic, and political fairness. The successful implementation of social justice is access to justice for the marginalised society. Social justice is a dynamic tool for alleviating the miseries of the poor, weak, Dalits and tribals and also other disadvantaged members of society. Article 39A requires the State to guarantee that the judicial system promotes justice and that the State provides free legal assistance to ensure that no citizen is denied justice due to economic incapacity or other limitations. The primary goal of legal aid is to give the impoverished and disadvantaged segments of society with the legal help they need to assert their rights in a court of law. Legal assistance satisfies the constitutional need of equal protection of the law enshrined in Article 14.

Key Words: - Justice, Implementation, Marginalise, Society, Alleviate.

INTRODUCTION

The term marginalization refers to the overt act or tendency of human societies to exclude those they judge to be undesirable or lacking in useful functions. People excluded from a group or community for purposes of protection and inclusion are referred to as marginalized groups. These groups include Scheduled Castes and Tribes, women, religious minorities, persons with disabilities and LGBTQ people. In our society they have problems in every aspect of life and they are unable to get justice. As we all know, our Constitution guarantees equal rights to all citizens irrespective of religion, caste, colour, sex, place of birth or any other reason. But they could not get justice. Justice is not a state-provided service; it is a fundamental human right. A nation that achieves social justice by providing equal treatment to all citizens without prejudice. It entails the removal of advantages in favour of a certain person or community, as well as the empowerment of underprivileged populations.

In the year 1928, Robert Park gave momentum to the notion of marginality. According to him, it is a process in which a person gets pushed to the margins or ignored in a group or society at large. The Encyclopaedia of Public Health defines marginalisation as being placed on the periphery and thus excluded from the privilege and power found at the centre.

MEANING AND CONCEPT

The marginalised sections generally refer to human societies' tendencies and overt actions in which those perceived as lacking any desire or function are excluded or removed from the prevalent system of protection and integration, limiting their opportunities and means of survival. The term "marginalisation" refers to a scenario in which an individual or a group is completely ignored. The grounds for such marginalisation might range from political to economic to cultural, and so on.

Marginalisation is the process of being ignored and marginalised in the community in which one lives. Neglect might be social, political, or for any other reason. Being marginalised in this context means being removed from the rest of society, forced to occupy the margins and edges rather than the core of things. People who are marginalised are not regarded as an active member of society. When it comes to how material resources are distributed in society, material deprivation is the most typical effect of marginalisation. In addition to material hardship, marginalised people are excluded from services, activities, and policies.

SOCIALLY MARGINALISED GROUPS

In a society, marginalisation is the specific groups of individuals, it seems as if society is unconcerned with their suffering or existence. Certain groups of individuals are excluded or denied to access routine activities as a result of this exclusion. Another facet of this social separation from the dominant portions of society is social stigma. People who are socially marginalised are typically denied social opportunities. They may get stigmatised and are frequently subjected to harsh public sentiments. Their possibilities to contribute to society may be restricted, and they may develop poor self-confidence and self-esteem. Social policies and practises may limit their access to valuable social resources such as education and health care, housing, income, leisure activities, and employment.

Another issue is that persons born in marginalised communities lack the social and cultural capital necessary to engage in mainstream development processes. Their social networks are frail and exposed. Individuals who lack social capital are denied to access the resources such as economic, educational, cultural, and other support systems. This leads to social isolation and restricts their ability to participate in the growth process.

ECONOMICALLY DISADVANTAGED GROUPS

Economic marginalisation diminishes a person's existence in society. Majorities usually enjoy support due to their large number. In such a situation, the minority groups are sometimes overlooked. Minorities are often left feeling uncertain about their lives and well-being due to the treatment they are given in society. A marginalised individual feels that he has no importance in society. They do not want to involve in any State's economic activities. They have no access to resource and also, they are isolated from the rest of society. All of this will have a negative impact on their lives as human beings and members of society.

POLITICALLY MARGINALISED GROUPS

Political marginalisation prevents the group from participating democratically in decision making, and as a result, they lose their entitlement to all social, economic, and political benefits. Political empowerment is one of the most significant instruments for gaining access to other social and economic benefits. Lack of political empowerment affects vast groups of people in every community, including women, ethnic minorities, migrants, handicapped people, the

elderly, and others. They are not permitted to run for office or vote in the election. Because of their lack of engagement, they are denied many of the rights that others in that society have. As a result, they are denied the privileges of political rights.

EDUCATIONAL MARGINALIZATION

The right to education is universal and does not permit exclusion or discrimination. However, both emerging and developed countries confront issues in ensuring equal access to and within education systems for all. National educational policies frequently leave marginalised groups behind, depriving many individuals the right to an education. People who are marginalised are more likely to face numerous levels of discrimination since they are members of more than one marginalised group. Non-discrimination and equality are two fundamental human rights concepts that pertain to the access to an education. However, a substantial proportion of youngsters in India are still excluded from the educational system and hence unable to engage actively in their communities' economic, social, political, and cultural life.

PSYCHOLOGICAL MARGINALISATION

Marginalisation also raises the prospect of further psychological and ideological dangers. The first is the defining of one's identity by others: The ideological formulation of one's marginalised identity in the interests of society's dominant groups. All social movements representing disadvantaged and marginalised communities have identified and critiqued the issue. Minority groups such as those with impairments (physical or mental), women, racial minorities, aboriginal communities, elderly people, single moms, and homosexuals are all marginalised as a result of dominant discourses within societal systems.

ACCESS TO JUSTICE BARRIERS FOR MARGINALISED COMMUNITIES

- i. **Socioeconomic factors:** Poverty and a lack of education continue to be important hurdles to marginalised populations' access to justice. They are unable to get legal representation or access official judicial forums due to financial concerns. Furthermore, poor literacy levels make comprehending legal processes and documents challenging.
- ii. **Discrimination and Social Stigma:** Marginalised populations are frequently subjected to discrimination and social stigma, which contributes to criminal underreporting and

- aversion to engaging with the legal system. This generates a vicious circle of impunity for abusers and victim disempowerment.
- iii. **Lack of Rights Awareness:** Many marginalised people are uninformed of their legal rights and entitlements. This lack of understanding prevents people from pursuing legal recourse for the abuses they suffer.
 - iv. **Inadequate Legal assistance Mechanism:** Despite the constitutional requirement to offer free legal assistance, the provision of legal aid services in rural and isolated regions remains restricted. To successfully reach out to marginalised areas, the legal aid system must be reinforced and expanded.
 - v. **Disparities in Representation:** Marginalised groups are frequently underrepresented in the legal profession, the court, and law enforcement authorities. This lack of representation has an impact on the administration of justice since the experiences and views of these communities are not fully recognised or addressed.

IMPROVING ACCESS TO JUSTICE

- I. **Suggestions for Solutions Legal Literacy and Awareness Programmes:** The government should conduct comprehensive legal literacy and awareness programmes aimed at marginalised populations in conjunction with civil society organisations. These programmes should educate people about their legal rights, processes, and the availability of legal aid services.
- II. **Mobile Legal Clinics and Lok Adalats:** Establishing mobile legal clinics in rural places can give marginalised people with legal aid and counselling. Lok Adalats (people's courts) can also be formed to settle conflicts amicably, providing an alternative to the regular legal system.
- III. **Strengthening the Legal Aid Mechanism:** To serve the most disadvantaged members of society, the legal aid system requires enough financing and growth. Every district should have a legal aid clinic, and skilled paralegals should be hired to help marginalised groups navigate the judicial system.
- IV. **Judicial and Law Enforcement Officer Sensitization:** Regular training programmes should be organised to educate judges, magistrates, and police personnel about the special issues that marginalised population's experience. This will aid in the prevention of prejudice and discrimination in judicial procedures and investigations.

- V. **Affirmative Action in the Legal Profession:** Encouraging marginalised populations' representation in the legal profession and the court can lead to a greater knowledge and empathy for their challenges. To improve diversity in the legal field, affirmative action measures can be used.
- VI. **Specialised Courts:** Establishing specialised courts to handle cases involving marginalised populations, including as sexual offences, caste-based crimes, and discrimination charges, might help to speed up justice and assure better outcomes for victims.

ACCESS TO JUSTICE

In *Anita Kushwaha v. Pushap Sudan*, the Supreme Court held access to justice a facet of rights guaranteed under Articles 14 and 21 of the Constitution. The following are the main four facets that constitute the essence of access to justice:

1. The state must provide an effective adjudicatory mechanism.
2. The mechanism so provided must be reasonably accessible in terms of distance.
3. The process of adjudication must be speedy.
4. The litigant's access to the adjudicatory process must be affordable.

UNDERSTANDING OF THE OBSTACLES THAT MARGINALISED POPULATIONS CONFRONT IN ATTAINING JUSTICE

Awareness is the primary instrument for comprehending our constitutionally guaranteed rights. There is a dearth of knowledge among the marginalised minority. However, in today's reality, the government is assisting such people to reach their full potential through policies. Most women in our nation are still illiterate, and they are unaware of their rights; nevertheless, certain non-governmental organisations are advocating for their rights. Recently, the Supreme Court issued a landmark decision in *Shayara Bano v. Union of India and Others*¹

On August 22, 2017, the Supreme Court ruled that the practise of triple talaq was illegal, citing Articles 14 and 21 of the Indian Constitution. Three of the five justices on the Constitutional Court ruled against triple talaq, while two sided in favour. Triple talaq should be abolished,

¹ *Shayara Bano v. Union of India and Others* (2017) 9 SCC 1.

according to Justices Kurian Joseph, R F Nariman, and U U Lalit, whereas CJI JS Khehar and Justice Abdul Nazeer. In recent years, the government has implemented a slew of measures to improve access to justice and its delivery, including the establishment of e-Courts under a Mission Mode Project for computerization of courts and delivery of e-services to stakeholders, funding of infrastructure in subordinate courts under State Governments, and funding of Family Courts. The Department of Justice has requested High Courts to launch an effort to minimise case pending and hasten case disposition.

JUSTICE INNOVATION FUND

This was an essential component of the Project, which was developed to conduct innovative actions on legal empowerment of marginalised people and to strengthen the skills of intermediaries who support them. Under this, 15 programmes across 7 Project States reached out to about 20 lakh individuals. A series of capacity building events taught and sensitised over 7000 paralegals and 300 attorneys. Quality legal empowerment knowledge products were generated, as well as innovative Information Education and Communication (IEC) materials and community radio spots to enhance legal awareness among marginalised populations.

FELLOWSHIP PROGRAMME FOR YOUNG LAWYERS FOR JUSTICE

A training and sensitization campaign for young attorneys was initiated in three states: Chhattisgarh, Jharkhand, and Odisha, with the goal of encouraging them to help marginalised people gain access to justice. A vigorous screening procedure resulted in the selection of 60 young attorneys, 20 from Chhattisgarh, Jharkhand, and Odisha. Three partner organisations (CLAP, ELDF, and Manthan) successfully completed a series of training sessions. Fellow attorneys were instructed and sensitised on marginalised groups' rights and legislation, as well as advice on strengthening professional skills such as writing, legal advising, mediation, and conciliation. The programme received active support from Legal Services Authorities, and young lawyers were assisted by mentors in undertaking community level activities such as conducting legal awareness camps, providing legal advice, counselling, and conducting action research on specific topics, among other things.

LEGAL LITERACY TRAINING FOR SABALA GIRLS

SABALA scheme stands for Rajiv Gandhi Scheme for Empowerment of Adolescent Girls, and it aims to empower adolescent girls aged 11 to 18 through nutrition, health care and life skills education. It is a currently sponsored programmed lounged by the Government of India in 2011 under the Ministry of Women & Child Development. As a consequence of the confluence of two central ministries viz. the Ministry of Law & Justice and the Ministry of Women & Child Development offered a necessity legal literacy to SABALA (adolescent girls covered by the WCD's SABALA scheme) arose. It was agreed to teach Madhya Pradesh and Rajasthan SABALA females. CECOEDECON, a Rajasthan-based group, was chosen and successfully conducted four trainings in two states, Madhya Pradesh and Rajasthan, where 200 SABALA girls received legal literacy training and exposure to justice sector institutions.

LEGAL LITERACY MATERIALS FOR THE SAKSHAR BHARAT SCHEME

As part of the convergence with the MoHRD's Sakshar Bharat initiative, IEC materials (12 booklets, 10 motivating songs, 1 short video on legal assistance, and a facilitators guide) on the rights and entitlements of underprivileged persons were created. Adult legal literacy will now be included in the ongoing adult literacy initiative. On November 18, 2011, the previous Hon'ble Minister for Law and Justice and the Hon'ble Minister for HRD jointly published a guidebook containing the 12 books in New Delhi.

JUDGES' ANTI-HUMAN TRAFFICKING TRAINING MODULE

The Project produced a programme for anti-human trafficking training for judges with the active cooperation of the Maharashtra State Judicial Academy (MJA). The training module was launched during the valedictory session of the International Conference on Equitable Access to Justice: Legal Aid and Legal Empowerment in November 2012 in Delhi by former Chief Justice of India, Hon'ble Shri. Justice Altamas Kabir. This curriculum was sent to Judicial Academies around the country.

LEGAL SERVICES AUTHORITIES ACT, 1987

Under Article 39A of the Constitutional Law of India, the Legal Services Authorities Act of 1987 was adopted in order to offer free and competent legal services to the most vulnerable members

of society:

- At the national level, there is the National Legal Services Authority ("NALSA").
- At the state level, there is a State Legal Services Authority ("SLSA").
- District Legal Service Authority (the "DLSA") at the local level.

Access to justice for the underprivileged is the successful implementation of social justice. Social justice is a dynamic tool for alleviating the miseries of the poor, weak, Dalits, tribals, and other disadvantaged members of society.

Furthermore, Article 39A requires the State to guarantee that the judicial system promotes justice and that the State provides free legal assistance so that justice is not denied to a person due to economic incapacity or other limitations. In *Hussainara Khatoon v. Home Secretary, the Bihar*², in this case the Supreme Court ruled that Article 39A has made free legal services an intrinsic component of reasonable, fair, and just procedure, and that the right is implied by Article 14.

CONCLUSION

A citizen's right to access justice is unalienable. Courts are the final chance for disadvantaged populations, and barriers to accessing courts and justice deprive these people of fundamental humanity and dignity, making democracy a mirage. Today, the world is discussing the transfer of geopolitical power from the West to the East, and India is viewed as a key component in South and Southeast Asia; however, this would be of little benefit if India is unable to achieve justice, as established in its Constitution's Preamble. There is a significant difference between the goals established and the achievements achieved. The lack of legal understanding is the most significant impediment to the legal aid movement in India. People are still unaware of their basic rights, which is why the legal aid movement has yet to fulfil its aim. The lack of legal understanding leads to exploitation and deprivation of the poor's rights and advantages.

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