

“ACCESS TO JUSTICE FOR MARGINALIZED COMMUNITIES IN INDIA: CONSTITUTIONAL SAFEGUARDS AND PRACTICAL BARRIERS”

C DINESH

ABSTRACT

The guarantee of access to justice sits at the moral core of any constitutional democracy, yet for millions of marginalized Indians Dalits, Adivasis, women, persons with disabilities, linguistic minorities, and the rural poor that guarantee remains, in practice, unreachable. This article undertakes a comprehensive doctrinal examination of the constitutional safeguards that enshrine access to justice in the Indian legal order and the practical barriers that systematically nullify them.

Drawing on the Preamble's commitment to social justice, the Fundamental Rights articulated in Articles 14, 19, 21, 22, and 32, the directive mandate of Article 39-A, and seven decades of Supreme Court jurisprudence, the article maps the normative architecture of access to justice in India. It then critically assesses the statutory and institutional mechanisms the Legal Services Authorities Act, 1987, the Lok Adalat framework, and Public Interest Litigation against the reality of economic, geographical, linguistic, and systemic barriers that prevent their effective utilisation. The article further evaluates the judiciary's transformative role through expansive constitutional interpretation, PIL, suo motu jurisdiction, and protective guidelines, while honestly acknowledging the limitations of that role.

It concludes with a set of evidence-based legislative, institutional, and policy recommendations aimed at bridging the enduring gap between constitutional aspiration and lived experience for India's most vulnerable communities.¹

I. INTRODUCTION

A state may proclaim the most expansive constitutional rights, establish the most elaborate judicial institutions, and enact the most progressive legislation yet all these achievements are of little practical consequence if the people for whose benefit they exist cannot in reality reach or meaningfully engage with the institutions of justice. This paradox has been a defining tension in the Indian constitutional project since its inception on 26 January 1950. India's Constitution is one of the most rights-generous documents in the world. Its Preamble pledges to secure for all citizens justice that is social, economic, and political. Part III enumerates

¹ **Keywords:** *Access to Justice, Marginalized Communities, Article 21, Legal Aid, Public Interest Litigation, Constitutional Safeguards, Legal Services Authorities Act, Judicial Activism, Structural Barriers.*

a comprehensive catalogue of justiciable Fundamental Rights. Part IV imposes affirmative obligations on the State to progressively realise conditions of equality and dignity. And Article 39-A, inserted in 1976, specifically directs the State to ensure that the operation of the legal system promotes justice on a basis of equal opportunity.

Yet the social reality against which this constitutional architecture must be evaluated is one of profound and structured inequality. India is home to some of the most severely marginalized populations anywhere in the world.

Members of Scheduled Castes continue to bear the burden of centuries of caste discrimination. Scheduled Tribe communities face persistent threats to their lands, forests, and customary ways of life. Women from marginalised communities confront deeply entrenched patriarchal norms that restrict their agency at every turn. Persons with disabilities encounter attitudinal, physical, and procedural barriers in every dimension of public life. Religious and linguistic minorities require active protection against discrimination and violence. And the vast mass of the urban and rural poor find engagement with the formal justice system with its language, its geography, its cost, and its complexity to be an effectively impenetrable barrier.

For these communities, access to justice is not an abstract procedural nicety. It is the means by which they may resist exploitation and violence, secure the entitlements guaranteed by law, challenge unlawful detention, protect their land and livelihood, and hold power to account. When access to justice is effectively denied, the rule of law becomes, in Justice V.R. Krishna Iyer's memorable phrase, the rule of the privileged. Addressing this denial is not merely a matter of institutional design; it is a matter of constitutional imperative.

This article examines that imperative across four interconnected dimensions: the constitutional framework of guarantees; the statutory and institutional mechanisms established to deliver access to justice; the practical and structural barriers that impede realisation of those mechanisms; and the role of the judiciary in responding to those barriers.

It proceeds on the hypothesis that the combination of socio-economic inequalities, structural deficiencies in legal aid infrastructure, institutional indifference, and the absence of effective enforcement renders the constitutional safeguards substantially ineffective in practice for the majority of marginalised communities in India and that addressing this reality requires a determined programme of multidimensional reform.

(i) Object and Scope of the Study

This research pursues five interconnected objectives. First, it undertakes a systematic examination of the constitutional provisions that form the normative foundation of access to justice in India the Preamble, the Fundamental Rights under Part III, and the Directive Principles under Part IV tracing their judicial development. Second, it critically analyses the adequacy of the statutory and institutional mechanisms established to operationalise access to justice, principally the Legal Services Authorities Act, 1987, the Lok Adalat framework,

and the PIL jurisdiction of the superior courts. Third, it identifies and examines the practical and structural barriers economic, geographical, linguistic, cultural, and systemic that prevent marginalized communities from effectively utilising the formal justice system. Fourth, it evaluates the judiciary's contribution to advancing access to justice through expansive constitutional interpretation, social action litigation, suo motu proceedings, and the formulation of protective guidelines. Fifth, it advances normative, institutional, and policy recommendations for reform directed at transforming the constitutional guarantee of access to justice from formal aspiration into substantive reality.

Geographically, the study focuses on the national legal framework, acknowledging significant state-level variation where relevant. Marginalized communities are understood to include, without limitation, members of Scheduled Castes, Scheduled Tribes, women, persons with disabilities, religious and linguistic minorities, and persons from economically weaker sections. Temporally, the study spans the constitutional period from 1950 to the present, with particular emphasis on developments since the enactment of the Legal Services Authorities Act in 1987.

(ii) Research Problem

The central problem animating this research is the persistent and multi-dimensional gap between the normative promise of access to justice inscribed in the Constitution and the practical ability of marginalized communities to obtain meaningful redress through the formal justice system. India's Constitution was a deliberately transformative document. Its framers acutely conscious of centuries of hierarchical oppression, caste discrimination, and economic deprivation designed it not merely as a charter of negative liberties but as an instrument of active social transformation. The right to equality under Article 14, the right to life and personal liberty under Article 21, the right to constitutional remedies under Article 32, and the directive obligation under Article 39-A collectively constitute a constitutional architecture of remarkable normative power.

Alongside the constitutional text, Parliament has enacted substantial legislation to operationalise access to justice: the Legal Services Authorities Act, 1987; the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; the Protection of Women from Domestic Violence Act, 2005; and the Rights of Persons with Disabilities Act, 2016, among others. The development of Public Interest Litigation as a constitutional procedural device has, in principle, opened the highest courts of the land to those who cannot access them through ordinary means.

Yet empirical reality tells a different story. The legal aid infrastructure suffers from chronic underfunding and poor quality of service. Lok Adalats have been criticised for placing disproportionate pressure on weaker parties to settle. PIL has become susceptible to elite capture, its transformative potential for the genuinely poor being progressively diluted. The judicial system carries a backlog exceeding fifty million cases, rendering

timely justice aspirational rather than real. And above all these institutional deficiencies lie structural barriers of cost, distance, language, literacy, and discrimination that exclude the most vulnerable as effectively as any formal prohibition. This research seeks to identify, analyse, and propose remedies for the specific structural and institutional choices that produce and reproduce this exclusion.

(iii) Research Questions

- First, what is the constitutional and normative framework guaranteeing access to justice in India, and how has it been interpreted and developed by the courts over time?
- Second, to what extent have the Legal Services Authorities Act, the Lok Adalat framework, and PIL succeeded in ensuring effective and meaningful access to justice in practice?
- Third, what are the principal practical and structural barriers economic, geographical, linguistic, cultural, and institutional that prevent members of marginalized communities from effectively engaging the formal justice delivery system?
- Fourth, in what ways has the Indian judiciary contributed to the protection and advancement of access to justice for marginalised groups, and what are the limits of that contribution?
- Fifth, what normative, institutional, and policy reforms are necessary to transform the constitutional guarantee into a substantive and realisable right for all marginalized communities in India?

(iv) Hypothesis

This article proceeds on the following hypothesis: that notwithstanding the elaborate normative foundation created by the Constitution and the statutory framework for ensuring access to justice, the persistent combination of socio-economic inequalities, structural inadequacies in the legal aid and justice delivery infrastructure, institutional indifference, and the absence of effective enforcement mechanisms renders these safeguards substantially ineffective in practice for the majority of marginalized communities in India. The research tests and ultimately affirms this hypothesis through doctrinal and comparative analysis, while advancing a constructive reform agenda grounded in that analysis.

(v) Methodology

This research is doctrinal in character. Doctrinal legal research constitutes a systematic inquiry into legal norms, principles, and rules as expressed through primary and secondary sources. It is the appropriate methodology here because the research examines the content and scope of constitutional and statutory provisions, traces their development through judicial interpretation, assesses the normative adequacy of the existing framework, and derives principled reform recommendations all distinctly legal tasks.

Primary sources comprise the Constitution of India; central and state legislation; decisions of the Supreme Court and High Courts; Law Commission of India reports; parliamentary and expert committee reports; and official NALSA and SLSA reports. Secondary sources include books on constitutional law, socio-legal studies, and legal philosophy; peer-reviewed law journal articles; and reports of non-governmental organisations and international bodies concerned with access to justice.

The research adopts an analytical and critical approach, examining textual content of constitutional and statutory provisions, tracing judicial interpretation through careful case law reading, and evaluating the gap between normative framework and practical reality. A comparative dimension is employed where directly relevant, drawing particularly on the experience of South Africa and the United Kingdom in designing access to justice frameworks that achieve substantive as well as formal equality.

(vi) Limitations

Being a purely doctrinal study, this research does not involve empirical data collection, field surveys, structured interviews, or participatory methods. Findings accordingly depend on documented sources and may not fully capture the ground-level complexities of marginalised communities' experiences with the justice system. The study does not provide a comprehensive account of access to justice frameworks at the individual state level, though state-level examples are cited where illustrative. It does not claim to undertake a comprehensive comparative analysis across all relevant foreign jurisdictions, using comparative material from South Africa and the United Kingdom selectively.

The researcher acknowledges that the rapidly evolving character of judicial decisions and legislative amendments may mean that certain developments are not captured at the time of finalisation.

(vii) Scheme of the Study

This article is organised into five substantive chapters and a conclusion. Chapter I the present chapter sets out the context, research objectives, questions, hypothesis, methodology, and limitations, and provides, in section (viii), a review of the principal bodies of literature informing the research. Chapter II examines the constitutional framework, analysing the Preamble, relevant Fundamental Rights under Part III (Articles 14, 19, 21, 22, 32, and 39-A), and Directive Principles under Part IV, tracing the evolution of the right to access justice through Supreme Court and High Court decisions. Chapter III examines the statutory and institutional mechanisms for facilitating access to justice the Legal Services Authorities Act, 1987; the Lok Adalat and Permanent Lok Adalat frameworks; PIL; and ADR mechanisms and evaluates their practical adequacy. Chapter IV identifies and critically examines the practical and structural barriers: economic, geographical, linguistic and cultural, systemic and institutional, and those specific to particular marginalized groups. Chapter V evaluates the judiciary's role through expansive constitutional interpretation, PIL development, suo motu jurisdiction, and

the formulation of protective guidelines, and critically examines the limitations and critiques of judicial activism in this domain. Chapter VI synthesises the findings, assesses the central hypothesis, and advances comprehensive normative, institutional, and policy recommendations for reform.

(viii) Literature Review

The literature on access to justice for marginalized communities in India spans constitutional scholarship, socio-legal analysis, PIL jurisprudence, and comparative constitutional studies. This section surveys the most significant contributions across four streams and identifies the gap that the present research seeks to address.

Constitutional Law and Foundational Scholarship

Any doctrinal study of access to justice must engage with the foundational texts of Indian constitutional law. Durga Das Basu's monumental *Commentary on the Constitution of India* provides the authoritative reference framework for the interpretation of constitutional provisions, and his analysis of Articles 14, 21, and 32 supplies the textual foundation from which both judicial and scholarly discourse on constitutional access to justice has developed.² M.P. Jain's *Indian Constitutional Law* offers a systematic treatment of the provisions most directly relevant to this study, with detailed examination of the evolving judicial doctrine on the right to life, equality, and constitutional remedies.³ These standard texts provide the doctrinal scaffolding, but they do not interrogate the gap between constitutional text and social reality a gap that sits at the centre of this research.

The writings of Justice V.R. Krishna Iyer occupy a singular position in this literature. His advocacy for legal aid as a constitutional imperative, expressed both through landmark judicial decisions and through sustained academic writing, laid the intellectual foundations of India's access to justice jurisprudence. His insistence that justice must be socially meaningful accessible to the poor, the illiterate, and the socially disadvantaged remains the moral touchstone of scholarship in this field.⁴ Upendra Baxi's *The Crisis of the Indian Legal System*, first published in 1982, represents the most penetrating structural critique of the features of the Indian legal order that operate to exclude the powerless.⁵ Baxi's analysis of the gap between the formal promise

² Durga Das Basu, *Commentary on the Constitution of India* (8th ed., LexisNexis Butterworths Wadhwa, Nagpur, 2010). This commentary is regularly cited by the Supreme Court of India as an authoritative reference on constitutional interpretation.

³ M.P. Jain, *Indian Constitutional Law* (7th ed., LexisNexis, Nagpur, 2014). Jain's treatment of Articles 14, 21, and 32 provides the standard doctrinal framework for understanding the constitutional guarantee of access to justice.

⁴ See V.R. Krishna Iyer J., in *M.H. Hoskot v. State of Maharashtra*, AIR 1978 SC 1548, where he held that the right to free legal aid is a necessary ingredient of fair procedure under Article 21. See also his extra-judicial writings on legal aid as a constitutional imperative.

⁵ Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing House, New Delhi, 1982). The work identifies structural features of the Indian justice system caseload, cost, complexity, and colonial legacy that operate systematically to exclude the poor and powerless from the benefits of law.

of law and its application to disadvantaged communities constitutes a foundational framework that continues to inform scholarly work in this field nearly four decades after its initial publication.

P. K. Tripathi's scholarship on the social justice dimensions of the Constitution particularly his analysis of the relationship between Fundamental Rights and Directive Principles provides a nuanced account of the constitutional philosophy underlying the access to justice framework.⁶ H.M. Seervai's Constitutional Law of India offers a contrasting perspective that emphasises the primacy of constitutional text and urges caution in the face of expansive judicial interpretation, providing a necessary counterbalance to the transformative strand of scholarship.

Legal Aid, Institutional Mechanisms, and Law Commission Reports

The literature on legal aid in India spans prescriptive advocacy and critical assessment. The Report of the Expert Committee on Legal Aid (1971), chaired by Justice V.R. Krishna Iyer, and the Report of the Committee for Implementing Legal Aid Schemes (1980), chaired by Justice P.N. Bhagwati, are foundational primary documents that shaped the intellectual and institutional context in which the Legal Services Authorities Act, 1987 was drafted.⁷ These reports proposed the comprehensive state-funded legal aid system and the institutional architecture that was eventually incorporated into the Act. Their combined influence on the design of India's legal aid framework makes them essential reference points for any critical assessment of that framework.

The Law Commission of India has produced numerous reports directly relevant to this subject. The 14th Report on Reform of Judicial Administration (1958) addressed foundational structural deficiencies of the inherited colonial judicial system. The 77th Report on Delay and Arrears in Trial Courts (1978) analysed the problem of judicial delays and its disproportionate impact on poor litigants. The 144th Report on the Legal Services Authorities Act (1992) provided an early assessment of the Act's implementation.

More recent reports including the 245th Report on Arrears and Backlog (2014) provide updated analysis of structural deficiencies in the justice delivery system.⁸ Rajeev Dhavan's scholarly work on the right to legal

⁶ P.K. Tripathi, "Directive Principles and Fundamental Rights: Relationship and Relative Primacy" (1969) 11 Journal of the Indian Law Institute 397. Tripathi's analysis of the complementary relationship between Part III and Part IV of the Constitution informs the constitutional framework analysed in this research.

⁷ Expert Committee on Legal Aid, Report of the Expert Committee on Legal Aid (Government of India, 1971) (Krishna Iyer Committee Report); Committee for Implementing Legal Aid Schemes, Report of the Committee for Implementing Legal Aid Schemes (Government of India, 1980) (Bhagwati Committee Report). Both reports are foundational documents in the legislative history of the Legal Services Authorities Act, 1987.

⁸ Law Commission of India, 245th Report on Arrears and Backlog: Creating Additional Judicial (Wo)manpower (2014). The report analyses the chronic backlog affecting the Indian judicial system and its disproportionate impact on poor and marginalised litigants. Available at www.lawcommissionofindia.nic.in.

representation and the limits of PIL examines the theoretical foundations and practical limitations of legal aid, providing an important theoretical framework for this research.

Sociology of Law, Marginalization, and the Justice System

Marc Galanter's landmark article 'Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change,' published in the Law and Society Review in 1974, remains one of the most influential contributions to the sociology of law and access to justice in the world.⁹ Galanter's demonstration that the structural organisation of the legal system systematically favours 'repeat players' wealthy, institutionally experienced parties over 'one-shotters' the poor and socially marginalised who rarely engage with the justice system has direct and powerful application to the Indian context. His later work, *Competing Equalities: Law and the Backward Classes in India* (1984), provides an authoritative socio-legal analysis of the relationship between the Indian legal system and historically disadvantaged communities.¹⁰

The scholarship of Indira Jaising and the Lawyers Collective on women's legal rights, particularly in the context of domestic violence and workplace discrimination, and the feminist jurisprudence of Flavia Agnes on women's rights in the Indian legal system, highlight the specific compounded barriers faced by women from marginalised communities in accessing courts and legal remedies.¹¹ These contributions illuminate the ways in which gender inequality intersects with caste, class, and geographic disadvantage to produce distinctive and particularly severe access to justice deficits for women in marginalised communities.

Public Interest Litigation and Judicial Activism

The literature on Public Interest Litigation in India is extensive. S.P. Sathe's *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (2002) provides the most comprehensive and authoritative account of PIL's development, tracing its origins from the liberalisation of locus standi requirements in the late 1970s to its maturation as a major instrument of constitutional litigation, and evaluating both its achievements and its

⁹ Marc Galanter, "Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change" (1974) 9 *Law and Society Review* 95. This article is one of the most cited works in the sociology of law and remains directly relevant to the structural analysis of access to justice in India.

¹⁰ Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (Oxford University Press, New Delhi, 1984). Galanter's analysis of the promises and limitations of the constitutional framework of protective discrimination provides an essential socio-legal context for understanding access to justice for Scheduled Castes and Scheduled Tribes.

¹¹ Indira Jaising (ed.), *Men's Laws, Women's Lives: A Constitutional Perspective on Religion, Common Law and Culture in South Asia* (Women Unlimited, New Delhi, 2005); Flavia Agnes, "Law and Gender Inequality: The Politics of Women's Rights in India" (1999) 3 *Economic and Political Weekly* 1.

limitations.¹² Sathe situates PIL within the broader context of the Supreme Court's social justice jurisprudence and provides a balanced assessment of its transformative potential.

Clark Cunningham's comparative analysis of PIL in India and the United States examines the distinctive features of the Indian PIL jurisdiction and assesses its potential as a transformative mechanism for access to justice.¹³ Cunningham identifies the unique contribution of the Indian Supreme Court in developing a form of constitutional litigation accessible to the poor and marginalised, while acknowledging the risks of judicial overreach and institutional overload. Anuj Bhuwania's *Courting the People: Public Interest Litigation in Post-Emergency India* (2017) offers a sharply critical reassessment.¹⁴ Bhuwania argues that PIL, originally conceived to advance the rights of the poor, has over time been colonised by middle-class and elite interests, raising important questions about the conditions under which judicial innovation can serve as an effective mechanism of access to justice for genuinely marginalized communities.

Comparative Perspectives and Gaps in the Literature

The comparative dimension of this research draws primarily on South Africa and the United Kingdom. South Africa's post-apartheid Constitution of 1996 widely regarded as one of the most progressive constitutional documents in the world in terms of its commitment to the substantive realisation of socio-economic rights and the Constitutional Court's rich jurisprudence on justiciable socio-economic rights offer valuable lessons for the Indian experience.¹⁵

In the United Kingdom, the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the well-documented consequences of its significant cuts to legal aid funding for access to justice among low-income groups provides a cautionary comparative example of the human cost of under-investing in legal aid infrastructure. A review of the existing literature reveals that while individual dimensions of access to justice for marginalized communities in India have been extensively studied, there remains a notable absence of comprehensive doctrinal studies that systematically integrate all dimensions constitutional safeguards, statutory mechanisms, practical barriers, and judicial responses within a single analytical framework. Most existing

¹² S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford University Press, New Delhi, 2002). This is the most comprehensive scholarly account of the development of PIL in India, situating it within the broader context of the Supreme Court's social justice jurisprudence.

¹³ Clark D. Cunningham, "Public Interest Litigation in Indian Supreme Court: A Study in the Light of American Experience" (1987) 29 *Journal of Indian Law Institute* 494.

¹⁴ Anuj Bhuwania, *Courting the People: Public Interest Litigation in Post-Emergency India* (Cambridge University Press, New York, 2017). Bhuwania's critical reassessment raises fundamental questions about the class interests served by PIL in its contemporary form.

¹⁵ Constitution of the Republic of South Africa, 1996, Section 34 (right to access courts) and Chapter 2 (Bill of Rights including socio-economic rights). The Constitutional Court's jurisprudence on justiciable socio-economic rights, exemplified in *Government of the Republic of South Africa v. Grootboom* 2001 (1) SA 46 (CC), provides a comparative model for substantive access to justice.

studies focus either on the normative framework or on the sociological dimensions of exclusion, without examining both in conjunction or drawing out the implications of their interaction for the design of effective reforms. This research seeks to address that lacuna by bringing these dimensions into a single, integrated analysis that moves, through a structured reform agenda, from diagnosis to prescription.