

Accessibility of Courts in India: An Evaluation of Lucknow District Courts in India

Aradhana Pandey

Research Scholar, Department of Sociology, University of Lucknow, Lucknow

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Abstract

India, the world's biggest democracy, has granted its people a wide range of social, economic, political, and legal rights. Almost all the people of the country have the knowledge regarding their rights and exercise them judiciously. Whenever any of the rights are hampered, legal procedures are used to exercise them. Courts are one of the means to gain access to these rights. Indian Courts are of highest integrity and are always honoured. Despite this, sometimes people have low faith in the working of Indian Judiciary. The sole objective of the study was to analyse how the citizens of the society perceive courts as a means of justice delivery mechanisms. The study shall comprise of Lucknow District and Sessions Courts, Uttar Pradesh, in which the respondents will be local residents of Lucknow City. According to the survey, the privileged sectors of society have considerably easier access to the courts. India must give the SDGs of peace, justice and strong institutions its full attention if it is to restore public confidence in these institutions.

Keywords: *Courts, law, access, social justice, Indian Judiciary*

Introduction

Law is the road map to achieve justice. Every country has an organized system of rules and regulations which provides justice to all irrespective of their caste, creed, religion or race. The sacred preamble of the Indian Constitution begins with, "We the people of India" where 'we' stands for the common people and it's the sole responsibility of the State that everyone should

have an access to justice. It ensures that every person has the right to exercise the fundamental rights and freedom as guaranteed by the Constitution of India. The lawyers, activists, executives and the judiciary have been baffled with the evolved obstacles for access to justice. Now legal, social and economic factors are among the multiple barriers being faced by individuals for access to justice. Access to courts is therefore an undeniable reality as a result of major contributing variables, which include the rates of poverty, illiteracy, and population growth. These problems have created a huge gap between the victim and the justice.

The phrase 'Access to justice' is associated with several social and political aspects. Attaining justice is the only thing that matters the most. The rule of law, which upholds equality, is the foundation of the concept of justice. It suggests that all individuals are equal in the eyes of law and ensures that everyone should be treated equally. Our Judicial System or the courts are the mode to have an access to justice. After India attained Independence from the British Rule, Indian Constitution was modified and redesigned that ensured to protect the rights of all the citizens of the country irrespective of their background, religion, caste, class or sex. The preamble enshrined in the Indian Constitution became the symbol of security of justice i.e., political, social and economic rights for all its citizens. Everyone has an equal access to justice since all humans are born free with equal dignity and rights. Marginalized group suffers the most because of discriminatory justice as it is taking away from them all the basic human rights. The poor and the marginalized always become the victims of several criminal offences including violation of many laws. The whole system is made to serve the superior or the elite class. The complete set of justice is made to serve them. In the Judicial System there is no concept of real justice which is being given to the victims. Instead, the poor and the deprived are being tortured and exploited by the advocates, court staff, opposition parties and by the system physically, emotionally and financially as well. Though this mode of access to justice is playing safely in order to avoid criticism. But from our Judicial System we expect and hope for the true justice for all without being biased.

Indian society has always observed the law and the courts as depicted through the literary works and popular films where a moral order is dramatically restored and the justice is given to the aggrieved party with a positive outlook. Through these representations people build strong faith in the judicial system where justice will always prevail in whatever the circumstances are. But the ground reality of the Indian court says something else. In India, "the law" is not found in legislative or higher court records; rather, it is found in the actions

of lawyers and police, in lower court processes, in informal tribunal operations, and in the popular conceptions of legality. (Marc Glanter)

As per the recent reports, out of total 4.18 crore cases, about 1.08 crore cases or nearabout 25% cases have been pending for more than five years. Uttar Pradesh is the worst performing state in terms of pendency of cases. Among other states, Uttar Pradesh has the maximum pending cases as 14% cases have been pending for more than ten years with over one crore cases. Kerala, Delhi, Haryana and Himanchal Pradesh have high number of cases but have a lower pendency percentage of less than 25%. In terms of cases per capita, both U.P. and Odisha have a higher number while the pendency of cases is for more than five years. About 1000 judicial posts are lying vacant in the lower courts from among the total allotted strength of 30%, considered as highest in the country. In terms of availability of judges, U.P. (1.13 lakh residents per judge) has the poorest judge availability in the country followed by Telangana (1.08 lakh), W.B. (1.03 lakh) and Bihar (1 lakh). Of Overcrowded prisons, data shows occupancy rate in 17 States/ U.T.s was higher than 100%, with Uttar Pradesh (177%) at the top of the list (The Hindu 2022). The above statistics shows that more than a decade will be needed to clear backlog of cases. Due to the slow pace of wheels of justice, the cry for speedy resolution of cases will going to be shriller and shriller in the upcoming years. This situation might shackle the confidence of the people in the justice delivery system. As is often said that "Justice delayed is justice denied"(William E Gladstone) and "justice denied anywhere diminishes everywhere" (Martin Luther King Jr.)

Studies describe about the various barriers for access to justice. Operational barriers include delay in disposal of cases, increasing cost of litigations, procedural technicalities, unfulfilled positions and backlog of cases. Inadequate laws, lack of legal aid and legal presentation, lack of legal awareness and the socio-economic inequalities existing in the society create structural barriers for access to justice (Bremond 2020). The existing study will analyse the structural barriers for access to justice as India is not deficient in the laws, it is its implementation which matters the most. In most cases it has been observed that common and indigent cannot bear the expenses of the court procedures for seeking justice in the courts of law. The existing provision of fee exemption is only for the poor and is of no use for ordinary poor litigants who might be able to pay some portion of the fees but not the entire cost. These reasons prevent a majority of people from approaching the courts and register their cases for civil litigations. The Chief Justice of India NV Ramana brought attention to the matter as well, pointing out

that most people suffer in silence while only a few people can afford to go to the court to seek justice (The Hindu 2022). The majority of Indians are ignorant of the law and lack the resources needed to use the judicial system. During his speech at the All India District Legal Services Authorities Meet, Chief Justice Ramana stated, "The aim of modern India was to eliminate social inequalities." Creating a space for everyone to participate is the goal of Project Democracy. Social emancipation is a prerequisite for participation. One instrument for socioeconomic emancipation is access to justice. Additionally, he emphasised the significance of the district judiciary, given that it serves as the initial point of contact for a significantly wider population. The public's perception of the judiciary is largely based on their interactions with district judicial authorities. Thus, it is imperative that the district judiciary be strengthened.

Power dynamics exercised by the courts is one of the factors due to which Indians have lost faith in the judiciary. This caused many to believe that power, rather than the law, governs courts (The Print 2020). In 2019, actions of the Hyderabad police on the custodial killings of the accused rapists-murderers was applauded and praised all over the country. Everyone, from national superstars to autorickshaw drivers, from Parliament to casual talks, was vocally advocating for the accused's execution. There was no dialogue, no tolerance, and no belief in the legal system's due process. The demand from the whole country for killing the rapists of Dr. Priyanka Reddy itself raised the questions of what the society thinks of our formal judicial system?

Hyderabad Gangrape case (2019) is just only one example of the slackening cog of trust in the judiciary. There are several other instances. The incident involving Vikas Dubey and the Uttar Pradesh Police on July 10th, 2020 demonstrated how public confidence in the legal system is declining. All across India, people were quietly rejoicing in the encounter because they believed that instant justice had been served. In 2004, the crowd in Nagpur killed Bharat Kalicharan, also known as Aku Yadav, inside the courthouse premises. There were twenty-five cases filed against him, involving allegations of rape, extortion, kidnapping, murder, and other offences. People noticed that despite the repeated complaints the police was favouring the accused. He was always granted bail. Hence, the people took their actions accordingly (The Leaflet 2020).

Recent court judgement over Bilkis Bano Gangrape Case (2002) of releasing the all the 10 out of 11 convicts after having fourteen years of punishment for the heinous crime. This case clearly shows the politico- legal nexus. The release of the convicts was celebrated by their relatives and were also felicitated by the RSS members according to the media reports. The Unnao Rape case also highlighted the dominance of power where the victim was unable to lodge even an FIR against the accused ruling party MLA. This demonstrates how the wealthy and powerful may hold all public office while the impoverished and weaker can never file a police report. The affluent can establish breakaway states on private islands, while the weak can be driven out by the state. The wealthy are immune to arrest, while the impoverished spend behind bars awaiting trial. Since cases can be dropped when offenders gain influence, as gaining influence now appears to be the best defence against any type of legal action.

Theoretical Orientations

Several sociologists have discussed about law and its impact upon the society. Weber talked about law. The emphasis is not on how people create it, interpret it and daily recreate it but its coercive effect on the individual. Weber also dealt with different forms of authority, including traditional, charismatic, and rational. "Belief in the legality of enacted rules and the rights of those elevated to authority under such rules to issue commands" is the foundation for authority that is justified for rational reasons. The whole legal profession believes only on rational principles. As structural functionalist, Parsons identified four main structures and subsystems in society based on the functions (AGIL) that each one carried out in his theory of the social system. The economy is the subsystem that manages labour, output, and allocation in order to help society adjust to its surroundings. Goal attainment is carried out by the political system through the pursuit of social objectives and the mobilization of actors and resources in support of those aims. The transmission of cultures (norms and values) to actors and their subsequent internalization by them is how the fiduciary system which includes family and schools manages the latency function. The sociocultural community, which unites the several facets of society through the law, is responsible for carrying out the integration role. From the Marxian perspective class struggle can be analysed how the poor and weaker sections are suppressed by wealthy and stronger group to exercise their legal rights. Bourdieu in his concept of field thinks of it relationally rather than structurally. In the field, several

forms of capital, i.e. economic, social, cultural and symbolic are used and deployed in a competitive marketplace. The realm of politics, or the area of power, is paramount. All other domains are structured by the political field's hierarchical power relations (Ritzer 2011). Through the economic, social and symbolic capitals power dynamics within institutions can easily be comprehended. According to Post Structuralism, Derrida's concept of deconstruction can be utilised to understand how the social institutions are unable to constrain people and how it can be restructured.

The role of courts is growing as compared to other institutions. From international affairs to personal relationships, they are handling every facet of human existence. The courts are shaping the social, economic, religious and political issues (Berti & Tarabout 2018). Through a small survey in Dane County, Wisconsin shows that litigants who do not appoint lawyers for their cases can complete the legal action initiated by them or not. The study revealed that most of the people who self - represented themselves attained satisfaction by knowing and completing the legal proceedings (Mansfield 2016).

National Women Commission in their workshop on 20th March ,2002 gave a "Report on Working of Family Courts and Model Family Courts". The report gives us the detailed information about the structure and functions of the Family Court, the various laws and the type of cases it deals with, the scope of its jurisdiction etc. Critical analysis on done on various issues as absence of lawyers, lack of sustaining rights and the actual functioning of Family Courts. The report also gave many recommendations for the effective functioning of family courts which too comes under civil jurisdiction.

Through his work, he discusses the nature of law, the area of sociology of law, approaches to the study of law, trends in the field, the evolution of the discipline of sociology of law in the United States, the United Kingdom, and the communist globe, as well as sociology of law in India (Sharma 1992).

The importance of ethnography used as a research method to study the proceedings of family courts. The students of sociology are given assignment for fieldwork observation to have knowledge about everyday realities of any institution. The primary goal is to ascertain the real functioning of family courts in their endeavors to address children's best interests (Callaghan 2005). Detailed insight on the reasons why very few people are approaching the courts for the civil disputes. Proliferation of tribunals like National Green Tribunal and Armed

Forces Tribunals might be one reason for fall in civil litigation. Secondly, the Alternative Dispute Resolution is also leading to fall of civil cases. It is seen that the parties are using the criminal justice system to settle the disputes what would have been civil cases (Kumar 2017).

How are lawsuits handled in Indian courts? What is the duration of a case and how are they resolved? Do women and men file lawsuits in the same ways and get the same justice (Iyengar 2016). The study of Tamil Nadu Family Court not only talks about the existing system of the courts but also suggest various recommendations to overcome obstacles and constraints in their functioning. (Agnes 2008) The study of Kolkata Courts explains an ethnographic portrait everyday life shaped through laws, violence and mediation. (Basu 2006)

Examining the influence of gender, age, education and court experience on citizens' perception of the Ernakulam District and Sessions Court, Kerala. After the survey was done it was analyzed that negative perception towards courts is somewhat positively corelated with the people's perception that the courts are generally difficult to access. Courts were considered as a slow and expensive mechanism for dispute settlement by majority of the respondents regardless of their court experience. (M.P. et. al. 2020)

Structural reforms are required in the civil justice system of both developed and developing countries to ensure access to justice is available to all highlighting the right to legal aid and the role of legal aid in funding the civil justice systems in England and India (Higgins 2022)

Research Methodology and Discussions

The methodology of the research was exploratory in nature. The data was collected from the fieldwork on the visiting the Lucknow District and Sessions Court. The responses were gathered from face- to -face encounter with the respondents. Throughout my study I got the opportunity to interact with persons from both legal and non-legal backgrounds.

The first person whom I interacted was a senior citizen and had served on various administrative posts in the judicial system. I asked him, Sir, it is observed through newspapers and social media that people have lost faith in the law and the courts. Why is it so? The person replied, "Normally, civil cases take too much time to get resolved. It never settles even after the death also. Why to waste time and money in the case? One should try not to be adamant and focus on out of court settlement."

During my visit to courts, I saw a women who was sitting impatiently along with her brother and waiting for her name to be called by the court clerk. I asked her, from when is your case going? She replied, 'from twenty years'. The women started the interaction, saying, I have been waiting here since 11:30 in the morning. Now it's 3:30 but the advocate didn't come. When he will come, they will have to bring one or two rounds of tea and after the tea break their advocate will take them to the pairokar (Hindi name of court official) and the next date will be issued. Thereafter, the lawyer will take his visiting charges and this is going on continuously through years. After investing nearly twenty years in the court procedures, the individual has no idea when the case will be closed and justice will be imparted to them.

Another women who had a maintenance case going on from nine years responded, 'Behen court ke chakkar mein mat faso. Hume to kisi tarah se maa baap paal rahe hain'. Her words indicated that people have no hope in the court processes as they are too messy.

Young women and a mother of three kids approached the court for filing the domestic violence case. She told, till my brother is supporting me financially in the court case, I will fight for the case. When he will not, I will also be stopping as she does not have much money to spend in the court case. It seemed as if court fees was constraining her to exercise her rights.

Another man who has a case pending from twelve years said that up till now he has spent nearly five to six lakhs on his case. It is not that he has hired any junior lawyer for the case. In fact, they are all senior and reputed lawyers who are very well aware of the legal technicalities. It indicates, lawyers have a crucial role in moving the case upward or downward.

A well educated lady who has attained several degrees like Graduation, B.Ed, CTET and Super TET said that lawyer's working culture is one of the high reasons for pendency of cases. The court procedures are the major cause of distress among the people.

A women who was a senior citizen and a retired government teacher told that if one wants to get heard in the court, then one has to dress up properly. She told that, when I dress nicely, staff people say 'Madam aap baithye aapka kaam ho jayega' otherwise these people will only say "go go, come after 4 o'clock". Lawyers will themselves not talk properly.

A corporate worker who had come to withdraw her case after seven years said that, one never gets anything from the court cases. It is only a wastage of time and energy while the career is also being hampered.

Young women who covered herself in a burqa responded that she did not feel safe in court premises. As a lawyer remarked over her wet hairs saying, 'your hairs are too beautiful. Untie it and show it to me once.' If I would have reacted to this statement, he would not have done my work. How will the litigant expect for justice if she is not feeling safe within the court premises?

A business class person said that the whole court system is faulty. He seemed quite agitated with the court procedure as his work was not done. According to him, the biggest problem was the unavailability of judges.

These are one of the few problems which are being faced by the members of different socio-economic strata of society in accessing the courts.

Some recommendations for expanding the process of Access of Justice

Since the marginalized people find the present judicial system alien as they do not have proper access to justice. Some suggestions are recommended which might help them to have its greater accessibility which are listed below-

1. Education is an important factor which can bring a huge social change both at the local as well as global level. Individuals should be educated which will help them in understanding the complexity of the legal procedures and the set of rights and reliefs provided to them under the Constitution.
2. We have an expensive litigation process which should be reduced as it is not possible for the common man having an average salary to bear the burden of complex and expensive litigation.
3. Well trained defence counsel, an efficient and citizen-centric court staff, more reasonable hours and an increase in the number of courtrooms will help in improvising both the quality as well as quantity of justice.
4. Legal Information Centres should be created so that they can render free legal advice at a low cost. This will help the litigants in having sufficient knowledge before approaching the courts.

5. Expansion of ADR (Alternate Dispute Resolution) Centres will help in settling the disputes in an effective manner. Only well qualified and trained mediators and counsellors should be appointed so that accountability should be made.
6. Language of the law needs to be simplified so that it can be made more accessible for the common masses.
7. In a country like India, an average time taken to settle a civil case may take twenty years or sometimes even more. The major problem in the delay of cases is mostly due to the extended role of advocates. Being a law officer of the court, they have no accountability towards effective and efficient disposal of cases. In the same way, there is no accountability of the judges to dispose off the cases as soon as possible. Thus a proper system should be made in which the judges and the lawyers are accountable for their cases.
8. Adoption of technology should be made so that individuals as well as the court staff will be updated about each and every case. This in turn will make the courts paperless and participate in Government of India's Digital India Mission.

Although there are various dimensions which need to be explored to make the justice accessible to the poor and marginalized people. But while taking any such initiative, Gandhian concept of 'Sarvodaya' which means upliftment for all. We should always keep in mind and think about the weakest or the poorest of the poor person and ask how beneficial any system would be for them.

Conclusions

According to Lord Bryce, "there is no better test of excellence of a government than the efficiency of its Judicial administration". Law is the most pivotal facet for the efficient functioning of judicial administration. Anarchy will be prevalent whenever there is insufficient justice or inability to obtain it. Whenever situations like this occur, it is evident that both the court and the executive branch have failed. India being the largest democratic country in the world needs to prioritise the area of access to justice as well. Whenever any dispute takes place, ordinary citizens are always heard saying, "I will see you in the court" which clearly indicates that still people have hope that a justice will be meted out to them through the courts.

Lastly, I would like to conclude by saying that Courts provide oxygen to the system to make the government and the institutions accountable. Fundamental Rights as enshrined in the Constitution of India can be approached only through the courts in cases of violation. Access to courts or access to justice is significant because it is the process through which an individual can invoke his right to legal process and receive just and fair treatment irrespective of his social, cultural and economic factors. People who cannot afford private attorneys should be eligible for free legal aid, legal fees should be eliminated or drastically reduced, and the court access should be made simpler in person. Following the escalation of these obstacles, Indian citizens would have easier access to justice through various legal channels. In its 245th Report, the Law Commission of India also pointed out that the conversation surrounding access to justice has mostly centred on issues such as judicial delays, backlogs in court, corrupt judges, unethical and poorly trained lawyers, frequent adjournments, frequent judge transfers that prolong cases and frequently necessitate reiterating arguments, a lack of clerks, a slow procedural system, and a failure to adopt technology. The ground reality of the courts is still the same as negligible improvements have been noticed. India is far behind in achieving its Agenda 2030 and needs to focus on the 16th point of Sustainable Development Goals (SDG's) which talks about peace, justice and strong institutions to rebuild faith among its citizens.

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