

ACCESS TO JUSTICE IN TIMES OF COVID-19

Ashwin Singh

Symbiosis Law School, Pune

INTRODUCTION

With the existence of human beings came the requirement to fulfil certain needs, where needs could be categorized under various segments- for instance, need for survival required need to gather food and have social security against any danger; need for establishment of state required need to have law and order; and need to protect people required the need to recognize their 'rights'. For the survival of a person in this society, there are various factors that contribute to its sustenance as previously mentioned, and the history suggests that man fought great battles to ensure his rights are recognized and protected.¹

What exactly do these 'rights' mean? The definition has evolved over time among various philosophers. The Oxford dictionary associates 'rights' with freedom of an individual; another view holds 'rights' to be 'claims by individuals that needs to be recognized and justified'; and Andrew Heywood, in his *Political Theory*,² has described rights as entitlements of individuals that specifies the needs as to how an individual wants to act or wants to be treated in a particular way. In the present day, rights are often understood to be rational claims by individuals, and viewing them in terms of globalization, the law and socio-political developments require these claims to be in consonance with the rights of others and must not jeopardize them.³

Today, rights form an inseparable part of the state. The traditional views of Marxists and Utilitarian theory contradict to the stand of rights as understood by a democracy; they completely rejected the existence of natural law and natural rights of the people; for them it is the state that determines the needs of the people and the needs of the people must be held in terms of socio-economic and social circumstances prevailing. In contrary to this, the current view of rights as understood by many democracies and international forums is that state must

¹ Office of the High Commissioner for Human Rights, 'HUMAN RIGHTS: A Basic Handbook for UN Staff' <<https://www.ohchr.org/documents/publications/hrhandbooken.pdf>> accessed 15th May 2020.

² Andrew Heywood, *Political Theory* (Macmillan International Higher Education, 3rd edn).

³ Ibid 1

not interfere with the rights of people unless it is for their protection and safety. This is a negative connotation of rights as understood by many today.⁴

The nature of rights that we claim for in this paper, can be classified under various categories; as a moral or legal right, it is expected what one person owes to another in lieu of the law or rationality; 'right as liberty' can be associated with freedom of an individual, like the right to freedom of speech and expression to express one's opinion; Identifying rights as special claims could be protecting the scheduled caste, scheduled tribes, etc. by implementing laws for their development; and rights have also been understood in terms for 'few and many', where it can be traced back to the American Revolution and the French Revolution that glorified the fight to be a fight for the general public's rights.

The conceptualization of 'rights' does not guarantee its effective implementation; its operation needs a mechanism to enforce it, and this mechanism is the law. The correlative of right is duty; every right imposes a duty upon people to prevent undesired interference with one's right. What is derived from this relation is an important moral and political concept of today- Justice.

Justice, as a concept, is broad in itself. The most common lay man's understanding of justice includes doing the right thing. But to debate about what is right and what is wrong, it would rather deviate us from understanding how justice relates to right and duty to the moral argumentation upon what constitutes as right and wrong. The historical evolution of the concept of 'Justice' has more or less paved its way into the present understanding of it in law. Ancient history suggests justice to be understood as not interfering with one's rights; giving one what's duly theirs; "proportional distribution and reciprocal transactions"; and to say the least, which serves the public by protecting its property. The contemporary understanding of justice by some eminent theorists like Kant, Mills and Rawls, suggest that justice is all about respecting the freedom, dignity and protecting the liberty of others.⁵

Rawls has emphasized upon the objective of justice to be that which aims at eliminating socio-economic inequalities from society that require moral justification. Post the introduction of social contract theories and development of societies and states, the role of

⁴ Nitisha, 'Theory of Rights: Laski, Barker and Marxist's Theories' Political Science < <https://www.politicalsciencenotes.com/theory-of-rights/theory-of-rights-laski-barker-and-marxists-theories/781>> accessed 15th May 2020.

⁵ James Fieser and Bradley Dowden, 'Western philosophy of law' < <https://www.iep.utm.edu/justwest/>> accessed 15th May 2020.

man has increased tremendously. This has resulted in complicating the entire system of human relations. Taking the example of Socrates, teacher of Plato, if a friend gives you weapons when he is sane and asks them back later to do some harm, even if you've to lie, you must refuse to give them away in order to prevent greater harm. This explained that justice isn't always about truth; it's a constructive element of natural justice based on rationalization of understanding.⁶

The role of justice is vast. It is devised for the people and it is an important element of the rule of law. It has often happened that many people are unable to access to justice. Keeping this view, the objective of this research paper is to address the concern of people's access to justice on various grounds during the Covid-19 pandemic. The range of access to justice is diversified and hence, through this paper I shall be highlighting upon the ground level situation for access to justice during these times of world-wide crisis.⁷

ACCESS TO JUSTICE

Recognition of an important principle, 'the rule of law',⁸ changed peoples view toward the justice system. The rule of law dictates that every individual is to be treated equal before the law, and no person is above the fair, justified law of the land; some of the basic principles that constitute the rule of law are- supremacy of the law, equality before the law, accountability to the law, fairness in the application of law, separation of powers, avoiding arbitrariness and ensuring legal transparency. One of the important objectives of the rule of law has been observed to serve justice to the people via fair means; and this demands people's right to access to justice.

The concept of 'access to justice' in bare terms imply enabling people to bear the fruits of what's rightfully theirs. The definition of access to justice varies across the globe but its core constituent remains the same- facilitating people to achieving their righteous interests.⁹ The concept has emerged a long time back, but its relevance can be observed to be quite

⁶ World Health Organization, 'Corona Virus Disease- (COVID-19) Pandemic' (2020) <https://www.who.int/emergencies/diseases/novel-coronavirus-2019?gclid=EAIaIQobChMI4uPcnZ26QIVeG4rCh2EsQrOEAAAYASAAEgINZPD_B> accessed 15th May 2020.

⁷ Ibid 6.

⁸ Anthony Valcke, 'The Rule of Law: Its Origins and Meanings' (2012) <https://www.researchgate.net/publication/255726723_The_Rule_of_Law_Its_Origins_and_Meanings_A_Short_Guide_for_Practitioners> accessed 15th May 2020.

⁹ United Nations, 'Access to Justice' <<https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>> accessed 15th May 2020.

prominent around the 19th and 20th century. The concept of access to justice seems to have emerged in a movement of three waves in the history; the first, second and third wave respectively. The first wave focused toward the emergence of access to legal aid. It determined the need for providing a means for people to get legal representation, who otherwise are often pulled back by their circumstantial factors.¹⁰

The need for legal aid began with the tumultuous criminal cases that faced the inevitable doom of injustice in the hands of authority due to various factors, such as lack of funds to hire a legal counsel, inability in exhausting the possible legal remedies available due to lack of knowledge regarding the same, and so on. Most of the criminals were subjugated to the fate of incarceration around the 90's due to their poor or no representation. The second wave was focused mostly on public interest litigation to address the systematic abuse of inequality in the hands of the authorities. In India, Justice P.N. Bhagwati is considered to be the pioneer of public interest litigation, commonly known as PIL. The third wave tried to advance the scope of access to justice by introducing alternatives to litigation; the aim was to deliver speedy justice for people, lower the burden of courts by reducing the piling of cases over years, facilitating negotiation between the disputed parties to achieve the discover new approach to settlement in cases that was otherwise not possible in a court room.¹¹

A pandemic is an unforeseeable event; the nature of every pandemic varies and it becomes an arduous task for everyone, including the authorities to tackle the problem. As the current situation of COVID-19 is taking a toll on everyone's way of living, new areas of problems are emerging almost every single day. COVID-19, as the reports suggest, is a virus that broke out in the city of Wuhan, in China in the later half 2019, and since then, it has been spreading across the whole world infecting thousands of people every day. The outbreak of this virus led to almost sterilization of the world economy; educational institutions, trade, markets, business corporations, etc., had to shut down. Countries worldwide have gone to entire or partial lockdown for some time now. We do not yet have a fixed solution to this problem but the entire mankind is suffering. The secretary general of United Nations,

¹⁰ Ibid 9

¹¹ Ibid 10

Antonio Guterres has declared this crisis as a pandemic and how it is affecting millions across the world every single day.¹²

One of the important concerns during these times is people's right to access to justice. Difficulty in access to justice is resulting due to multiple factors such as ambiguity in laws, lacks of means to reach the forums of justice or file complaints, arbitrary use of power by authorities at workplace against their employees, discrimination meted out to people based on their gender, race, sexual orientation, etc., and the list goes on. In view of these problems, I shall be addressing the key concerns in accessibility to justice during the current pandemic, and plausible solutions that could be implemented.¹³

SITUATION OF WOMEN DURING THE PANDEMIC

Patriarchy is a system that has been in practice since time immemorial. Its values have been ingrained in our society so deep that its effect can still be seen today. One of the weakest sections of our society, as considered by some, are the women.¹⁴ They have been deprived of their right to a free living, dignified status and access to justice due to various reasons. During a pandemic, women are one of the worst affected sections in the society. Domestic abuse is rampant across houses, and this only compounds during a pandemic. Governments across nations have introduced online platforms for registering instances of violence, but this hardly has enabled in dismantling the deeply rooted evil practice of domestic abuse. One of the drawbacks to this lies in the non-accessibility to means for registering the cases, which when compounded with their literacy or awareness rate only worsens their situation. Additionally, there is scarcity in availability of forums where women can reach out for filing cases.¹⁵

It is not uncommon that women are treated badly due to various other reasons, ranging from dowry demands, and sexual preferences to economic entitlements. The ambiguity in laws, for instance, not recognizing and criminalizing marital in many counties is victimizing women to

¹² United Nations Secretary-General < <https://www.un.org/sg/en/content/sg/secretary-generals-speeches>> accessed 15th May 2020.

¹³ International Commission of Jurists, 'Access to Justice: Human Rights Abuses including Corporations' (2011) < <file:///C:/Users/user/Downloads/AccessToJustice.pdf>> accessed 15th May 2020.

¹⁴ World health organization, 'Promoting Gender Equality to prevent violence against women'(2009)< https://www.who.int/violence_injury_prevention/violence/gender.pdf>accessed 14th May 2020.

¹⁵ Mary Becker, 'Patriarchy and Inequality: Towards a Substantive Feminism'" University of Chicago Legal Forum: Vol. 1999(1) <<https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1266&context=ulcf>> accessed 14th May 2020

unwanted treatment from their spouses.¹⁶ The role of religion and community also plays a bigger role in suppressing women from receiving justice. The United Nations Commission for the Status of Women aims at fostering the idea to protect and empower women across regions. The fear instilled in women needs to be curbed out. Religion often acts a barrier too; for instance, countries and communities following Sharia Law have stricter rules toward women. Courts do not admit their testimony owing to their gender, and instances have been observed where men are considered to be right in correcting women by means of physical and verbal abuse.¹⁷

More self-help groups must be appointed to reach out to women in every region. Governments could take an initiative of deploying groups of people in large numbers to navigate houses on a timely basis during these times. Forums and essentials should be made available for women. When the apps are created, people could be appointed at the regional level to ensure women are educated more and made to reach out for legal aid.¹⁸

RECOGNITION OF THE RIGHTS OF INTERSECTIONAL PEOPLE

Intersection group includes people from race, ethnicity, etc. It is a collection of people ranging from different categories. In the 21st century, while we have laws against hatred or violence against people based on their culture, race etc. we still find cases where institutionalized violence is given out in treatment toward such people. Systematic abuse and discrimination is meted out to people belonging to the intersectional community; we do not have enough laws codified to recognize and safeguard rights of people belonging to this community. During the COVID-19, effect of intersectionality can be observed on jobs, house dwellings, and health care services. Private jobs are laying off workers due to recession in the economy; no security in payment for people from different backgrounds; landlords are evicting people based on prejudiced opinion toward their origin, sexual preferences etc.¹⁹

¹⁶ Laura L. Bierema, 'The Role of Gender Consciousness in Challenging Patriarchy' (2002) University of Georgia <<https://newprairiepress.org/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2359&context=aerc>> accessed 14th May 2020.

¹⁷ Harvey, Matthew, 'A Global Examination of Social Gender and Sexual Norms' (2013) GVSU (195) <<https://scholarworks.gvsu.edu/cgi/viewcontent.cgi?article=1247&context=honorsprojects>> accessed 14th May 2020.

¹⁸ Elizabeth Saewyc, 'A Global Perspective on Gender Roles and Identity' (2017) J.A.H <[https://www.jahonline.org/article/S1054-139X\(17\)30356-7/fulltext](https://www.jahonline.org/article/S1054-139X(17)30356-7/fulltext)> accessed 14th May 2020.

¹⁹ International Commission on Jurists, 'Sexual Orientation, Gender Identity and International Human Rights Law' (2009) <<https://www.refworld.org/pdfid/4a783aed2.pdf>> accessed 14th May 2020.

The Transgender (Protection of Rights) Act 2019,²⁰ decriminalization of consensual cohabitation between same sex adults, and The International Convention on the Elimination of All Forms of Racial Discrimination are some of the legal developments at the national-international level in protecting the people of different race, sex, gender, class, etc., against systematic violence. The impact of conventional practices and beliefs has had higher reverberations than the legal texts. Lack of awareness about gendered relationships²¹ have stemmed from the patriarchal societal perspective regarding them advocated years ago.

Often more than not, there are confounded thoughts around 'gendered-violence' and 'gendered-sexuality'; the downside to this lies in its bemusing effect on groups of people who are plodded toward access to resources based on their 'identity'; Identity has often been controversial in protecting their right to live freely, a dignified life, free from inhuman torture and cruelty. As much as it's challenging to fight against injustice in daily life, it only compounds during a world-wide crisis, for instance, a pandemic.²²

The situation around a pandemic is unforeseeable, and the prognosis of domestic violence during this time is inevitable and alarming. Amidst other problems of non-accessibility to comfort and scarcity of resources for sustainability, one of the biggest concerns lie around accessibility to justice during a pandemic. While some might view this as an opportunity to rebuild relations with their family, there are those who have no means to escape because they're 'legally trapped in their homes'. The worst affected during these times, apart from the people contracting the virus, are the ones who are being constantly subjected to societal institutionalized form of violence- domestic violence.²³

RIGHTS OF THE MIGRANT WORKERS

One of the worst affected groups of people during these times are the Migrant workers. These are the people who move across nations in lookout for employment. The issue that has come up around the COVID-19 is with regards to their visa validity, employment opportunities,

²⁰ The Transgender Persons (Protection of Rights) Act, 2019.

²¹ Elizabeth Saewyc, 'A Global Perspective on Gender Roles and Identity' (2017) J.A.H <[https://www.jahonline.org/article/S1054-139X\(17\)30356-7/fulltext](https://www.jahonline.org/article/S1054-139X(17)30356-7/fulltext)> accessed 14th May 2020.

²² Sarah Joseph and Adam McBeth, 'Research Handbook on International Human Rights Law' (2010) E.E.P.L. UK <<http://www.corteidh.or.cr/tablas/r32535.pdf>> accessed 14th May 2020.

²³ The Convention on the Elimination of all Forms of Discrimination Against Women 1979; The International Convention on the Elimination of All Forms of Racial Discrimination 1969.

health care facilities, proper housing facilities and access to justice.²⁴ A lot of undocumented people who had migrated in look out for work have been affected during this time; people have been forced out of their place of work owing to current economic restraints. This has resulted in workers being able to afford food, basic necessities for survival including health care facilities. An instance of this could be traced back to the concentration camps as well, for instance, the Calais Migrant camp in France; the unlivable conditions has drove out investors from funding these camps. As a result, proper sanitation and a healthy environment cannot be maintained. This makes the people more prone to contracting the virus. Municipalities aren't timely cleaning up the mess around those camps- people are living in a damp environment.²⁵ By virtue of being born freely, it is the right of people to live a dignified life, and be assured of a healthy lifestyle. The government has paid least attention toward the development of these concentration camps. Alongside this, they have no proper means to access legal aid either due to financial constraints or lack of awareness about the proper forums. Illegally detaining people or arbitrarily confining people during such a pandemic due to lack of documents is affecting their lives.²⁶

LEGAL REMEDIES AVAILABLE FOR HUMAN RIGHTS ABUSE

There are plethora of laws that seek to protect the interests of workers in India, e.g., the Workmen's Compensation Act 1923,²⁷ the Trade Unions Act 1926,²⁸ the Payment of Wages Act 1936,²⁹ the Industrial Disputes Act 1947,³⁰ Factories Act 1948,³¹ the Employees State Insurance Act 1948,³² the Employees Provident Fund and Miscellaneous Provisions Act 1952,³³ the Mines Act, the Maternity Benefit Act 1961,³⁴ the Contract Labor (Abolition and

²⁴ 'Supporting Vulnerable Migrants during the COVID-19 Pandemic' (European Commission, 6th May 2020) <https://ec.europa.eu/international-partnerships/stories/supporting-vulnerable-migrants-during-covid-19-pandemic_en> accessed 14th May 2020.

²⁵ May Bulman, 'Calais camp evictions fuelling rise in Channel crossings as situation reaches tipping point' (*Independent*, 11th September 2019) <<https://www.independent.co.uk/news/world/europe/calais-migrants-refugees-camps-eviction-channel-crossings-france-asylum-home-office-a9100921.html>> accessed 14th May 2020.

²⁶ Ibid 25.

²⁷ The Workmen's Compensation Act 1923.

²⁸ The Trade Unions Act 1926.

²⁹ The Payment of Wages Act 1936.

³⁰ The Industrial Disputes Act 1947.

³¹ Factories Act 1948.

³² The Employees State Insurance Act 1948.

³³ The Employees Provident Fund and Miscellaneous Provisions Act 1952.

³⁴ The Maternity Benefit Act 1961.

Regulation) Act 1970,³⁵ the Payment of Gratuity Act 1972,³⁶ the Equal Remuneration Act 1972, the Bonded Labor System (Abolition) Act 1976³⁷ and the Child Labor (Prohibition and Regulation) Act 1986.³⁸ A more recent addition is the Unorganized Workers' Social Security Act 2008- this seeks to provide social security and welfare to unorganized workers such as those who work from home or are self-employed.

1. Damages and Compensation.

Usually damages are paid under tort law. They are of two different types- substantive and exemplary. The former is paid to compensate victims while the latter is mostly for the deterrent effect. In *M.C. Mehta v. Union of India*,³⁹ the Supreme Court presented a new yardstick to this by ruling that, "must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise."

2. Writ Petitions.

There are five writ petitions guaranteed by the constitution, namely, Habeus Corpus, Mandamus, Certiorari, Prohibition and Quo warranto. Habeus Corpus implies to 'have the body'; Mandamus states 'to order something by the superior court to the lower court'; Certiorari authorizes a court to quash an order or a judgment passed by a lower court that is incorrect or out of its power; Prohibition allows a Superior court to prohibit the ongoing proceedings in a lower court if it is not within its scope to adjudicate; and Quo warranto demands by what authority a person is holding a public office.

Article 32 and 226 of the constitution empower people to file writ petitions directly before the Supreme Court or High Court of civil nature. Fundamental rights are guaranteed to people in Part III of the constitution of India. No state has a right to breach these rights. Violation of these rights entitle people to file writ petitions under article 32 of the constitution before the

³⁵ The Contract Labour (Abolition and Regulation) Act 1970.

³⁶ The Payment of Gratuity Act 1972.

³⁷ The Equal Remuneration Act 1972; The Bonded Labor System (Abolition) Act 1976.

³⁸ The Child Labor (Prohibition and Regulation) Act 1986.

³⁹ *M C Mehta v. Union of India* (1987) (1) SCR 819.

Supreme Court of India, and under article 226 before the High Courts of the respective places.⁴⁰

3. Public Interest Litigation[PIL]

“Order 1, Rule 8 of the Code of Civil Procedure re-organizes the possibility of class action:207 where members of a class have “the same interest”, the court may allow a few persons to sue on behalf of the entire class.208 Furthermore, Section 91 of the Code provides: “In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted [...] with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.” It should be noted that these class action provisions of the Code are founded on efficiency in litigation rather than the “access to justice” or people’s participation in governance concerns that have driven PIL in India.”⁴¹

The objective of PIL is to help people belonging to the backward class or people of lower strata in the society lacking the means to afford legal aid, to represent their case before the court that would ensure their rights from being protected.⁴² Any public spirited person who wants to fight for the social cause can file a case through PIL. This was pioneered by Justice P.N. Bhagwati and Justice Iyer to transform the traditional requirements of locus standi.

4. National Human Rights Commission.

Under the Protection of Human Rights Act, the term “human rights” means the rights relating to life, liberty, equality and dignity of the individual either (i) guaranteed by the Indian Constitution or (ii) embodied in the international conventions (such as the ICCPR, ICESCR and other conventions which the government may specify) that are enforceable by courts in India.⁴³ The National Human Rights Commission was created under the Protection of Human Rights Act of 1993; although it does not much scope of intervening into the sphere of private

⁴⁰ Constitution of India, art 32(2); Constitution of India, art 226.

⁴¹ Harish Salve, “Justice between Generations: Environment and Social Justice” p. 360 at p. 369-73.

⁴² *Vellore Citizen Welfare Forum v. Union of India* AIR (1996) SC 2715.

⁴³ Mahendra P Singh, “India: Protection of Human Rights against State and Non-state Actors” in Oliver & Fedtke (edn), *Human Rights and the Private Sphere: A Comparative Study*, Routledge – Cavendish, London, 2007, p. 180.

entities, section 12 of this act provides for suo moto cognizance that can be taken by the commission on account of any human rights violation.⁴⁴

5. Administrative Mechanisms.

The manner in which our civil society has highlighted the human rights abuses and environmental concerns such as pollution caused by big corporations like Vendanta enterprise involved in mining business, has reflected how administrative mechanisms have been implemented to aid in justice. We have big corporations who are involved in projects that require license approval by the government authorities in order to operate. Failure to comply with the rules prescribed by the government relating to environment and people's rights, then people can file case against them in the courts. We have administrative tribunals and tools available to address these issues. The Telecom Regulatory Authority of India, The Central Administrative Tribunal. The Freedom of Information Act allows people to seek information on administrative mechanisms in order to follow up with the procedure of filing cases. Another important tool available is the Environment Impact Assessment [EIA] introduced by the government in 1994.⁴⁵ This act provides guidelines that need to be met and followed by corporations who are looking for clearance by the government in order to continue with their mining projects. People who find that any corporation is not abiding by any such guidelines and is violating any rule that concerns the environment or their rights can file a suit against such company.

6. Community-based Mechanisms.

Under the Legal Services Authorities Act, 1987 Lok adalats and Lokayuktas were established. The judicial decisions passed by these mechanisms have a constitutional binding value. They aid in hearing out cases for people who cannot approach courts due to financial restraints or who prefer to get speedy delivery of justice. These are people's courts whose main objective is to assist people in receiving justice. These are not administrative mechanisms but they do have a constitutional binding effect.⁴⁶

⁴⁴ NHRC- India, 'UN Special Representative's Visit to NHRC'(2009)<
<http://nhrc.nic.in/disparchive.asp?fno=1750>>
accessed 15th may 2020.

⁴⁵ Environment Impact Assessment Act 1994.

⁴⁶ The Legal Services Authorities Act 1987.

LEGAL AND PROCEDURAL OBSTACLES

Following are some of the obstacles that people are facing amidst the COVID-19 in access to justice:-

- Non-accessibility to online platforms like apps for registering cases of violence;
- Lack of funding for the betterment of migrant camps;
- Biasness and prejudiced opinion among the police authorities in registering cases from people based on their sexual orientation, caste, religion, race, ethnicity, etc.;
- Laying off of workers amidst pandemic without providing them opportunities for work from home;
- Lack of adequate forums available offline to reach out during a pandemic;
- Absence of laws and rules for protecting the livelihood of tenants who are evicted based on their race, gender, etc.;

Another important lacuna is the so called initiative of Strategic Lawsuits against Public Participation [SLAPP] taken by many companies against human rights campaigners. This is a means to suppress those who stand for the arbitrary decisions that affect their livelihood or employment, or any decision based on discriminatory basis that affects their economic sustainability. One such instance was in another case, Dow Chemical Co. approached the Madras High Court seeking an “injunction to restrain the International Campaign for Justice in Bhopal and others from picketing, holding demonstrations outside its office in Chennai, harassing and preventing employees from entering or leaving the premises.” The protest was reportedly against Dow’s refusal to own up to its responsibility for cleaning up the toxic contaminants that had remained in the factory premises in Bhopal and which were said to be poisoning the ground water in the area. Dow sought various relief, including a decree for a sum of Rs. 1,000,000 together with interest on account of loss of business suffered by them and another Rs.1,000,000 together with interest for defamation and loss of reputation suffered by them.⁴⁷

⁴⁷ ‘SLAPPING Down Public Protest’ (2009) < <http://mandgoa.blogspot.com/2009/01/slapping-down-public-protest.html> > accessed 15th may 2020.

CONCLUSION

Although the judiciary in India is independent of the legislature and the executive, there are several factors which discourages victims from accessing to justice. To begin with, the number of judges in Indian courts are much lower than compared to any other countries. What makes the situation worse are the number of vacancies which keep increasing in all the courts, and the lok adalats are unable to function properly as well. If we keep aside the PILS, and other new mechanisms, the cost of litigation is high, underdevelopment of class action, and limited availability of legal aid. Strengthening the institutional mechanisms is of utmost importance, both judicial and quasi-judicial bodies, as both play an important role in furthering access to justice; for instance, the National Human Rights Commission must be empowered by being authorized to deal direct with human rights abuses by amending the Protection of Human Rights Act of 1993.⁴⁸ This commission is now used by many courts in order to investigate into human rights abuses in the society. Further, the tribunals such as National Green Tribunals, need improvements on a timely basis, such as restricting, providing adequate resources to deal with cases more innovatively. The government can also create commissions that would be nationalized in order to regulate the private sectors; private sectors are one of the worst affected places for human rights abuse, and it is important to take measures to ensure reformation is sought against it. Dhume recently argued: “If India wants to be taken seriously as a world power, it must establish [...] institutions to fight corruption. A good place to start would be an independent anti-corruption commission backed with investigative powers, prosecutorial heft and fast-track courts.”⁴⁹ This could be one of the important ways to fight against menace against corruption that is so deeply rooted in our political and justice system.

A list of following measures need to be taken in order to enable people to access to justice and that can be possible with numerous amendments⁵⁰:-

- Filling up of vacancies in the existing courts;

⁴⁸ Central Vigilance Commission, ‘Initiatives Taken by the Commission’ < <http://www.cvc.nic.in/newinit16092010.htm> > accessed 15th may 2020;

⁴⁹ Sadanand Dhume, “India Battles for Transparency – Part I”, (2010) YaleGlobal Online, <<http://yaleglobal.yale.edu/content/india-battles-transparency-part-i>>, accessed 15th may 2020.

⁵⁰ Nick Robinson, ‘Expanding Judiciaries: India and the Rise of Good Governance Court’ (2009) Washington University Global Studies Law Review, Volume 8, pp. 20-27.

- Equipping the justice system with establishment of more number of courts and alternative dispute resolution system such as Mediation, Arbitration, etc., for speedy delivery of justice;
- Allocating funds for proper maintenance of migrant camps;
- Providing security of payment and jobs to intersectional groups in order to avoid human rights violation and impact of pandemic on their job and housing;

COVID-19 is a pandemic that was unforeseeable, and as a community it is our job to protect people during this time; the fight isn't just against the virus but also against human rights violations. A man is born freely and, and it is his right to live a dignified life, free from cruelty or inhuman torture. Hence, acting smart and promptly, with transparent measures is the need of the hour.

REFERENCES

1. Office of the High Commissioner for Human Rights, 'HUMAN RIGHTS: A Basic Handbook for UN Staff' <<https://www.ohchr.org/documents/publications/hrhandbooken.pdf>> accessed 15th May 2020.
2. Andrew Heywood, *Political Theory* (Macmillan International Higher Education, 3rd edn).
3. Nitisha, 'Theory of Rights: Laski, Barker and Marxist's Theories' Political Science <<https://www.politicalsciencenotes.com/theory-of-rights/theory-of-rights-laski-barker-and-marxists-theories/781>> accessed 15th May 2020.
4. James Fieser and Bradley Dowden. 'Western philosophy of law' <<https://www.iep.utm.edu/justwest/>> accessed 15th May 2020.
5. World Health Organization, 'Corona Virus Disease- (COVID-19) Pandemic' (2020) <https://www.who.int/emergencies/diseases/novel-coronavirus-2019?gclid=EAIAIQobChMI4uPcnZ226QIVEg4rCh2EsQrOEAAAYASAAEgINZPD_B> accessed 15th May 2020.
6. Anthony Valcke, 'The Rule of Law: Its Origins and Meanings' (2012) <https://www.researchgate.net/publication/255726723_The_Rule_of_Law_Its_Origins_and_Meanings_A_Short_Guide_for_Practitioners> accessed 15th May 2020.

7. United Nations, 'Access to Justice' < <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>> accessed 15th May 2020.
8. United Nations Secretary-General < <https://www.un.org/sg/en/content/sg/secretary-generals-speeches>> accessed 15th May 2020.
9. International Commission of Jurists, 'Access to Justice: Human Rights Abuses including Corporations' (2011) < <file:///C:/Users/user/Downloads/AccessToJustice.pdf>> accessed 15th May 2020.
10. ¹ Central Vigilance Commission, 'Initiatives Taken by the Commission' < <http://www.cvc.nic.in/>
11. [newinit16092010.htm](#)> accessed 15th may 2020;
12. Sadanand Dhume, "India Battles for Transparency – Part I", (2010) YaleGlobal Online, <<http://yaleglobal.yale.edu/content/india-battles-transparency-part-i>>, accessed 15th may 2020.
13. Nick Robinson, 'Expanding Judiciaries: India and the Rise of Good Governance Court' (2009) Washington
14. University Global Studies Law Review, Volume 8, pp. 20-27.
15. SLAPPING Down Public Protest' (2009)< <http://mandgoa.blogspot.com/2009/01/slapping-down-public-protest.html>>accessed 15th may 2020.
16. The Legal Services Authorities Act 1987
17. Vellore Citizen Welfare Forum v. Union of India AIR (1996) SC 2715.
18. Mahendra P Singh, "India: Protection of Human Rights against State and Non-state Actors" in Oliver & Fedtke (edn), Human Rights and the Private Sphere: A Comparative Study, Routledge – Cavendish, London, 2007, p. 180.
19. NHRC- India, 'UN Special Representative's Visit to NHRC'(2009)< <http://nhrc.nic.in/dispatch.asp?fno=1750>>accessed 15th may 2020. Environment Impact Assessment Act 1994
20. Constitution of India, art 32(2); Constitution of India, art 226.
21. Harish Salve, "Justice between Generations: Environment and Social Justice" p. 360 at p. 369-73

22. The Workmen's Compensation Act 1923.
23. The Trade Unions Act 1926.
24. The Payment of Wages Act 1936.
25. The Industrial Disputes Act 1947.
26. Factories Act 1948.
27. The Employees State Insurance Act 1948.
28. The Employees Provident Fund and Miscellaneous Provisions Act 1952.
29. The Maternity Benefit Act 1961.
30. The Contract Labour (Abolition and Regulation) Act 1970.
31. The Payment of Gratuity Act 1972.
32. The Equal Remuneration Act 1972; The Bonded Labor System (Abolition) Act 1976.
33. The Child Labor (Prohibition and Regulation) Act 1986.
34. M C Mehta v. Union of India (1987) (1) SCR 819.
35. 'Supporting Vulnerable Migrants during the COVID-19 Pandemic' (European Commission, 6th May 2020) < https://ec.europa.eu/international-partnerships/stories/supporting-vulnerable-migrants-during-covid-19-pandemic_en > accessed 14th May 2020.
36. May Bulman, 'Calais camp evictions fuelling rise in Channel crossings as situation reaches tipping point' (Independent, 11th September 2019) < <https://www.independent.co.uk/news/world/europe/calais-migrants-refugees-camps-eviction-channel-crossings-france-asylum-home-office-a9100921.html> > accessed 14th May 2020.
37. The Convention on the Elimination of all Forms of Discrimination Against Women 1979; The International Convention on the Elimination of All Forms of Racial Discrimination 1969.
38. International Commission on Jurists, 'Sexual Orientation, Gender Identity and International Human Rights Law' (2009) < <https://www.refworld.org/pdfid/4a783aed2.pdf> > accessed 14th May 2020.
39. The Transgender Persons (Protection of Rights) Act, 2019.

40. Elizabeth Saewyc, 'A Global Perspective on Gender Roles and Identity' (2017) J.A.H <[https://www.jahonline.org/article/S1054-139X\(17\)30356-7/fulltext](https://www.jahonline.org/article/S1054-139X(17)30356-7/fulltext)> accessed 14th May 2020.
41. Sarah Joseph and Adam McBeth, 'Research Handbook on International Human Rights Law' (2010) E.E.P.L. UK <<http://www.corteidh.or.cr/tablas/r32535.pdf>> accessed 14th May 2020.
42. World health organization, 'Promoting Gender Equality to prevent violence against women'(2009)<https://www.who.int/violence_injury_prevention/violence/gender.pdf>accessed 14th May 2020.
43. Mary Becker, 'Patriarchy and Inequality: Towards a Substantive Feminism'" University of Chicago Legal Forum: Vol. 1999(1) <<https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1266&context=ucfl>> accessed 14th May 2020
44. Laura L. Bierema, 'The Role of Gender Consciousness in Challenging Patriarchy' (2002)University of Georgia<<https://newprairiepress.org/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2359&context=aerc>> accessed 14th May 2020.
45. Harvey, Matthew, 'A Global Examination of Social Gender and Sexual Norms' (2013) GVSU(195)<<https://scholarworks.gvsu.edu/cgi/viewcontent.cgi?article=1247&context=honorsprojects>> accessed 14th May 2020.