



SOCIAL EXCLUSION OF MARGINALIZED GROUPS AND ACCESS TO THE JUSTICE

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Introduction

Social exclusion is a multidimensional process of progressive social rupture, detaching groups and individuals from social relations and institutions and preventing them from full participation in the normal, normatively prescribed activities of the society in which they liveⁱ. Social exclusion emerges at the individual or group level on four correlated dimensions: insufficient access to social rights, material deprivation, limited social participation and a lack of normative integrationⁱⁱ. Social inclusion, the converse of social exclusion, is affirmative action to change the circumstances and habits that lead to (or have led to) social exclusionⁱⁱⁱ.

The Vienna Declaration and Programme of Action, a document on international human rights instruments affirms that "extreme poverty and social exclusion constitute a violation of human dignity and that urgent steps are necessary to achieve better knowledge of extreme poverty and its causes, including those related to the program of development, in order to promote the human rights of the poorest, and to put an end to extreme poverty and social exclusion and promote the enjoyment of the fruits of social progress. It is essential for States to foster participation by the poorest people in the decision making process by the community in which they live, the promotion of human rights and efforts to combat extreme poverty^{iv}."

Marginalized Communities and Access to Justice is a comparative study by leading researchers in the field of law and justice of the imperatives and constraints of access to justice among a number of marginalized communities. A central feature of the rule of law is the equality of all before the law. As part of this equality, all persons have the right to the protection of their rights by the state, particularly the judiciary. Therefore, equal access to the courts and other organs of the state concerned with the enforcement of the law is central^v. Access to the justice is very important for the marginalized groups in India to reach social inclusion. Legal awareness and free legal aid to the marginalized groups are two areas of access to the justice.

Law

Article 39A of the Constitution of India, says that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities^{vi}.

This Article emphasizes that free legal service is an inalienable element of 'reasonable, fair and just' procedure, for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice^{vii}.

In the civil side, Order XXXIII. R.18 of the Code of Civil Procedure 1908 provided that the state and central governments may make supplementary provisions as it thinks fit for providing free legal services to those who have been permitted to sue as an indigent person. In the criminal side, section 304 of the Criminal Procedure Code provides the legal aid to the accused.

Legal Services

In 1987 Legal Services Authorities Act was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. National Legal Services Authority was constituted on 5th December, 1995. National Legal Services Authority is the apex body constituted to lay down policies and principles for making legal services available under the provisions of the Act and to frame most effective and economical schemes for legal services^{viii}.

In every State a State Legal Services Authority is constituted to give effect to the policies and directions of the Central Authority and to give legal services to the people and conduct Lok Adalats in the State.

District Legal Services Authority is constituted in every district to implement legal aid programmes and schemes in the district.

Taluk Legal Services Committees are also constituted for each of the Taluk^{ix}.

Legal empowerment is an important strategy to promote inclusion, foster economic growth and achieve human development outcomes. As the Government of India prepares its 12th Five-Year Plan with the aim of ensuring faster, more inclusive growth, this Consultation can provide timely inputs on strategies to enhance access to justice for marginalized citizens and institutional capacity development that are critical to fostering inclusion^x.



In partnership with the Department of Justice, Ministry of Law and Justice, Government of India, the project - Access to the Justice for Marginalized People (2008-2017) focuses on strengthening access to justice for the poor by developing strategies that address barriers to accessing justice in legal, social, economic and political domains. The focus of the project Access to Justice for the Marginalized has been both on empowering the poor and marginalized to be aware of and demand legal services while at the same time, supporting national and local justice delivery institutions to deliver justice to the poor^{xi}.

Legal Awareness

Legal awareness among the marginalized people should be strengthened and legal aid to them should be available easily. National Legal Services Authority has to take as sole responsibility for the same. More funds have to be allotted for this programme from the government.

Legal awareness subjects should be introduced from class one to twelfth and general legal studies should be introduced as a subject to all the degree courses including engineering and medical. Legal awareness camps are essential at the grassroots level. Legal aid schemes to the marginalized groups have to be increased and easy approach to the same is essential. Lawyers unions and NGOs should strive for the social inclusion of marginalized groups in India. Print and electronic media have to contribute to strengthen legal awareness and aid to the marginalized groups. Assistance to the victims of crimes, human rights violations and abuse of power should be delivered for the inclusion of marginalized groups. If the access to justice is possible to the marginalized groups, it will help them to come out from the social exclusion.

ⁱ Hilary Silver, Social Exclusion: Comparative Analysis of Europe and Middle East Youth, Middle East Youth Initiative Working Paper (September 2007), p.15

ⁱⁱ G. Jehoel-Gijsbers and C. Vrooman (2007). Explaining Social Exclusion; A Theoretical Model tested in The Netherlands. The Netherlands Institute for Social Research/SCP. 2; Vrooman, J. C.; S.J.M. Hoff (June 2013). "The Disadvantaged Among the Dutch: A Survey Approach to the Multidimensional Measurement of Social Exclusion". *Social Indicators Research* **113** (3): 1261–1287. doi:10.1007/s11205-012-0138-1. ISSN 0303-8300

ⁱⁱⁱ World Bank (2013). Inclusion Matters: The Foundation for Shared Prosperity. Washington, DC: World Bank. ISBN 978-1-4648-0010-8.

^{iv} Vienna Declaration and Programme of Action, Part I, paragraph 25.

^v Yash Ghai and Jill Cottrell(ed), Marginalized Communities And Access To The Justice, Tje World Justice Project, Washington D.C.,2009.

^{vi} Article 39 A, Constitution of India.

^{vii} Hussainara Khatun & Ors vs Home Secretary, State of Bihar (1979 AIR 1369, 1979 SCR (3) 532).

^{viii} <http://nalsa.gov.in/>.

^{ix} <http://nalsa.gov.in/>.

^x <http://www.in.undp.org/content/india/en/home/presscenter/pressreleases/2011/11/18/consultation-by-department-of-justice-and-undp-examines-approaches-to-ensuring-access-to-the-law-by-the-poor-and-marginalised/> .

^{xi} <http://www.in.undp.org/content/india/en/home/presscenter/pressreleases/2011/11/18/consultation-by-department-of-justice-and-undp-examines-approaches-to-ensuring-access-to-the-law-by-the-poor-and-marginalised/>.