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A GENERAL AND CONSTITUTIONAL PERSPECTIVE OF THE RIGHT TO APPROACH COURT

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Abstract

One of the fascinating subjects and topics for legalistic literary expression has always been the Indian Constitution itself. With Several facets to it the Constitution of India has always excited and been exciting the law makers, the Jurists, the Practitioners of Law, Academicians and the intelligentsia.

The Constitution has seen several achievements and milestones in the last seven decades and above. The Constitution being very dynamic in nature has seen several amendments in order to keep achieving and delivering the goals. Amongst the several achievements, protection of Fundamental Rights has been a very remarkable one. The inherent need of the Society to seek and obtain justice from courts has always been very pronounced. The Judiciary has played a Stellar Role in safeguarding the rights of its Citizens especially when the Challenges to such Rights came from the State or Sovereign itself. The Right to approach Court is an inalienable and inviolable right available to the Holder of such Rights.

Besides the constitutional redress that is made available to the Citizens of this Country by Articles 32 and 226, there are many other situations which warrant the exercise and vindication of Rights by approaching a Court of Law. The Right to Approach Court is available in matters other than Constitutional Rights. The theme of this paper is to examine the Right to Approach Court by an Individual or a Citizen and the various occasions on which this right becomes so critical for a person to live with Human Dignity.

Background:

The Constitution of India is a sacred document in the hands of both the Rulers and the Ruled by which the lives of its Citizens are governed. It is a document defining and governing the relationship between the State and its citizens apart from many other Institutional Aspects dealt under it. The Constitution has shaped the philosophy of this country through various Actions. It has stood the test of time and it has withstood all challenges that arose from the socio, politico, economic and Legal Front.

The Constitution is the framework on which the edifice of the Indian Parliamentary system has been assiduously built. The Constitution of India lays down the structure of Governance, (the Parliament, the Executive and the Judiciary), the establishment of Political Structure, the setting up of Constitutional bodies such as the comptroller and Auditor General, the Central Election Commission, the Central Vigilance Commission etc.,

The Constitution also provides for the Fundamental rights, to its Citizens (Part III Article 12 to Article 32) the Directive Principles, (Part IV Articles 38 to Article 51) Fundamental duties (Part IVA Article 51 A) s and many other aspects of governance in relation to the central government and state government and the central and state government vis-a-vis its citizens are spelt out. Fiscal and Taxation regimes, sharing of revenues between the Centre and the State, the Local Self Governance Structures are all embodied in our constitution. The Constitution though may be described in several ways, it may as well be seen as the life and soul by which rights and duties of the Individuals, Institutions and the Governments are defined and enforced.

The foundations of Law have been laid down in the jurisprudence of several countries. India has been enriched and adapted and followed the matured legal systems. The adoption of Indian Constitution in 1950 is a watershed development in Indian Constitutional History. The conferment of rights and providing the citizens access to justice has begun from the time of adopting the Constitution. It is pertinent to delve a little bit into the origin of the Legal rights and their remedies. In this connection it will be useful to go back to the earlier points of time and understand the concepts of rights and remedies.

UBI JUS IBI REMEDIUM: A well-known Maxim in the Jurisprudence of Law can be re referred to in this context. The Principle of Ubi Jus Ibi Remedium is apt to be understood here. The meaning of this ubi jus ibi remedium connotes that there can be no right without a remedy.

If rights are to have any meaningful impact in the realm of dispensation of justice, it is necessary that the parties to any relationship have an appropriate and an enforceable remedy for the breach of their rights. The recognition by law of providing an appropriate and effective remedy is the fulcrum on which legal relationships survive and mature in any Country. The remedy if it involves seeking redressal through Courts is often termed as Judicial Remedies**.** These remedies which entail a party approaching Courts for any breach that arises in such relationship may be referred to as Right to Approach Court. The parties to a relationship should have an appropriate mechanism built into their relationships so that in the eventuality of a breach

occurring and the parties by themselves are unable to remedy the breach, the parties to the dispute have the right to approach Courts and get their disputes adjudicated and resolved.

From this age-old maxim, which is found in almost every country, India also did not lag in equipping its citizens with adequate remedies for the violations, they come across in their daily activities.

Concepts of Fundamental, Constitutional and Legal Rights: The ideas of Rights and duties derive their origin to the norms of Jurisprudence. The concepts of rights and the residing of the Corresponding duty derive their strength only if there is a legal recognition to such rights and duties. The classification of various kinds of rights from the perspective of their enforceability and the type of remedy that is available has shaped the development of law. It is relevant to understand the concept of the classification referred to above.

Fundamental Rights: These are rights granted by Part III of the Constitution of India to its Citizens. These rights are available to the Citizens against the State. The breach or violation of fundamental lies in the citizens invoking the Writ Jurisdiction of the Constitutional Courts of the Courts. The Right to approach the Supreme Court under Article 32 or to the High Courts under Article 226 is a Fundamental Right.

Constitutional Rights: These are other rights which are granted by the Constitution but not forming part of the Fundamental Rights under Part III. For E.g. Right to Property under Article 300 A and Right to vote are instances of Constitutional Rights.

Legal Rights: Legal rights are those which are derived from Statutes or they may also arise out of Contractual Relationships.

Right to Approach Court as Ordinary Civil Right:

During various activities associated with an Individual or an Institution, so many relationships are entered into or formed. These relationships can be categorized as under

Individual and Individual (known as Private Relationships)

Individual and Private Entities

Individual and Statutory Entities

Individual and the Government itself (Sovereign) (Known as Relationships in Public Sphere)

If the relationships amongst the parties is conducted in a smooth manner and frictionless manner, there will be no occasion for the parties to feel dissatisfied or rue about such relationship. In other words, the relationship goes through its logical conclusion without any disputes.

However, we wish that each of the relationships be free from disputes, the reality is somewhat different. In all types of relationships mentioned above it is seen that at some stage or the other the relationships are marked by a phase of disputes. These disputes sometime time lead to termination of such relationships. It is also not necessary that all disputes should bring an end to a relationship. In cases where the disputes can be resolved with or without the Intervention of third parties or Courts, the relationships do undergo a revival and the pre dispute stage relationship may be restored.

A Juristic person enters various kinds of relationships, both with government itself directly and with the Instrumentalities of the state.

In case such breaches of law take place, the parties should not be left high and dry. This is where the concept of providing a suitable remedy which is more legalistic in form and content is becoming relevant.

In the context of the jurisprudence developed over the above concept, lawmakers have always been concerned with working out remedies for various breaches or violations of law or infractions of law. The effort and intent of the lawmakers has always been to ensure that in case any breach takes place, either out of a statutory situation or a contractual situation, there should be a corresponding remedy available to the person suffering the breach. For the sake of more clarity the following examples are given.

Personal Relationships: Relationships entered between parties for the purpose of marriage, Adoption, Succession etc. are all falling within this Category. The relevant statutes like the Hindu Marriage act 1956, Hindu Adoption & maintenance Act 1956, Hindu Succession Act 1956 themselves define and provide under what circumstances and when the parties may approach a Court for any of the legal problems they encounter in such relationships.

Contractual Relationships: In the era of the past and the present the heightened economic activity witnesses several kinds of Contracts that are entered. The Indian Contract Act 1872 lays down the framework by which the contractual relationships are entered into and it provides a complete code by itself for addressing the breaches that arise out of such contracts. The Act under S.73 and 74 envisages what kind of consequences are to follow in case any of the party has committed a breach of the Contract. The discussion naturally veers to the concepts of Liquidated Damages and Penalty.

Statutory Relationships: In the context of the current welfare state Concepts many Statutes exist to govern the transactions that the parties enter. The Routine Instances of a Citizen seeking Registration of his car come under the ambit of Motor Vehicles Act, the Sale and Purchase of Goods is covered by the Sale of Goods Act 1930, the Registration of Immovable properties are covered by the Registration Act, and the like.

If a statutory authority vested with a Statutory duty fails to perform such duty, the Law provides for various kinds of Remedies. These may be range from specific directions to perform the expected duty by the Public Authority, Compensation etc.

Fundamental Rights under PART III of the Constitution:

The Constitution of India recognizes Fundamental rights which are guaranteed to its Citizens under Part III of the Indian Constitution. Articles 14 to 32 under Part III of the Constitution has provided for various rights which were described as fundamental rights. These rights are very valuable and Sacrosanct. The breach of these fundamental rights of the Citizens by the State is protected by way of adequate remedies. The Writ Jurisdiction of High Courts and Supreme Courts gets attracted in this Chapter itself. The Invocation of the Writ Jurisdiction by a Citizen is an extraordinary fundamental Right that is vested in a Citizen.

Writ of Habeas Corpus: One of the most invaluable rights made available to the Citizens is the Right of personal Liberty, in case of arbitrary, unlawful and illegal exercise of powers (which may include abuse of law) which results in arrest or deprivation of Liberty at the hand of the State or through its Organs, the Writ of Habeas Corpus comes into play in such situations.

This remedy essentially results in a direction by the High court or the Supreme Court to produce before the court such person who has been unlawfully and illegal Detained. There are many instances by which the High courts and the Supreme Court have issued directions by invocation of this writ remedy. The Judiciary has always protected the rights of the Citizens. It may be useful to recall that the Courts have exercised their Judicial powers in case of arbitrary arrests of Media both print and electronic. Some of the Leading Judgements of the Supreme Court are referred to here which portrays the seminal role played by the Judiciary in protecting such rights. The Judgements rendered by the Supreme court of India in ADM Jabalpur Vs Shivkant Shukla,[1]

A K Gopalan[2] Vs State of Madras and

Rudul Shaha Vs state of Bihar[3] are the landmark judgements on the Habeas Corpus writs

Writ of Mandamus: The writ of Mandamus is essentially a public remedy available to a Citizen to compel the performance of public duty. The Supreme Courts and the High Courts in the exercise of this writ Jurisdiction issues directions to Public Authorities compelling the performance of public duties which they are duty bound to perform under a statute. This remedy is not to be confused with contractual duties and obligations undertaken by the parties under a Contract.

In **Bombay Municipality v. Advance Builders**[4]**, ,** Bombay Municipality had prepared a town planning scheme which had been also approved by the State Government. However, no action was taken for a long time. The Court opined that the writ of mandamus can be issued where an authority vested with a power improperly refuses to exercise it and directed the municipality to implement a planning scheme.

Writ of Prohibition: A writ of prohibition is issued by a Court to prohibit the lower courts, tribunals and other quasi-judicial authorities from doing something beyond their authority. It is issued to direct inactivity and thus differs from mandamus which directs activity. It is issued when the lower court or tribunal acts without or in excess of jurisdiction or in violation of rules of natural justice or in contravention of fundamental rights. It can also be issued when a lower court or tribunal acts under a law that is itself ultra vires.

S Govinda Menon vs Union of India [5][1967 AIR 1274]

In this judgement, it was held by the Supreme Court that, the writ of prohibition can be issued both when there is an excess jurisdiction and absence of jurisdiction by a lower court. In this case, the writ of prohibition was issued by the Kerala High Court, to a lower court in order to take over jurisdiction that was not initially vested in them. On hearing the appeal against this decision, the High Court stated that Prohibition is mainly aimed at keeping lower courts within the limits of their jurisdiction

Writ of Certiorari: When the Court is of the opinion that a lower court or a tribunal has passed an order which is beyond its powers or committed an error of law then, through the writ of certiorari, it may transfer the case to itself or quash the order passed by the lower court or tribunal. A writ of certiorari is issued by the Supreme Court or High Court to the subordinate courts or tribunal

Hari Vishnu Kamath v. Syed Ahmad Ishaque[6]

The Court held that certiorari can be issued when:

A tribunal/court acts without jurisdiction, in excess of it, or fails to exercise it; The court does not allow the parties to be heard or violates the principles of natural justice;

There is an error of law on the face of the judgement.

Writ of Quo Warranto: 'Quo Warranto' means 'by what warrant'. Through this writ, the Court calls upon a person holding a public office to show under what authority he holds that office. If it is found that the person is not entitled to hold that office, he may be ousted from it. Its objective is to prevent a person from holding an office he is not entitled to, therefore preventing usurpation of any public office. It cannot be issued with respect to a private office.

The High Court of Madras in S.Mahadevan Vs S.Balasundaram [1]and others held as under.

1 AIR 1976 SC 1207
2 AIR 1966 SCR(2)427
3 1983 4 SCC 141
4 AIR 1972 SC 793
5 AIR SC1967 SC 1274
6 AIR 233, 1955 SCR (1)1104

"For the issuance of a writ of quo warranto, the Court asks the question-where is your warrant of appointment? It enjoins an enquiry into the legality of the claim which the party asserts to an office and if the appointment and holding on to the office are illegal and violative of any binding rule of law, then the Court shall oust him from his enjoying thereof. This Court, within the scope of the enquiry for the issuance of a writ of quo warranto, is not concerned with any other factor except the well laid down factors which require advertence to and adjudication. The existence of the following factors have come to be recognised as conditions precedent for the issuance of a writ of quo warranto: 1) The Office must be public; 2) The Office must be substantive in character, that is, an office independent in title; 3) the office must have been created by statute or by the Constitution itself; 4) the holder of the office must have asserted his claim to the office; and 5) the impugned appointment must be in clear infringement of a provision having the force of law or in contravention of any binding rule of law.

Right to approach court as a fundamental right.

The Constitution of India under Article 32 guarantees to every citizen the right to approach the High Court and the Supreme Court for violation of any of the fundamental rights of the citizens as enshrined in the Constitution under articles so in short so-and-so. The courts in India have always been very zealous in protecting the fundamental rights of its Citizens and time and again, the courts have been in the forefront of providing access to justice.

What does access to justice mean? Access to justice means the availability of the means and resources to the citizens of a country to seek a judicial remedy in case of violations of law which they encounter in their dealings. Be it private dealings or public dealings. Dispensation of justice is one of the responsibilities of a sovereign government and this dispensation of justice needs to be made affordable to its citizens. Justice rendered by courts is not the only method by which justices dispensed. We have other forms of dispensation of justice other than by courts typically known as arbitration. The law recognizes Conciliation, Mediation and Arbitration as other forms of Settlement of Disputes.

The Supreme Court of India has made judicial innovations which may not be found in jurisdictions elsewhere. The premise for the innovations has always been the concern to do justice to its citizens, The progressive thinking of Judges, the concern for human values and the zeal to protects the rights of every citizen irrespective of their caste, creed, religion., gender has seen the Judiciary opening its doors rising above and cutting technicalities to pieces. If one takes into consideration the greatness of the Judiciary taking suo moto cognisance of the rights of the Blind Prisoners introduction of public interest Litigation etc. are all the untiring and relentless efforts made by the Judiciary.

Multiplier Effect of Litigations

In an era of continuous struggle for rights by the various constituents of the Society, the litigation that is being seen is increasing manifold. The number of Tribunals that exist under different statutes has also increased considerably in the last three decades. Specialized Tribunals and Appellate some of which are of very recent origin are also witnessing large number of cases. The Litigants include both Government and Non-Government entities. Some of the Specialized Tribunals which are functioning can be conveniently listed here.

Name of the Tribunal	Constituted under
Debt Recovery Tribunals	Recovery of Debts and Bankruptcy Act 1993
Debt Recovery Appellate Tribunals	Recovery of Debts and Bankruptcy Act 1993
National Company Law Tribunals	Companies Act 2013
National Company Law Appellate Tribunals	Companies Act 2013
Goods and Services Tax Tribunals	Goods and Services Tax Act
Goods and Services Tax Appellate Tribunal	Goods and Services Tax Act
Income Tax Tribunal	Income Tax Act
Income Tax Appellate Tribunal	Income Tax Act
Industrial Tribunals	Industrial Disputes Act
Securities and Exchange Appellate Tribunal	Securities and Exchange Board Act
Real Estate Appellate Tribunal	
Consumer District Commission	Consumer Protection Act
State Commission	Consumer Protection Act
National Commission	Consumer Protection Act

1 1986 1 MLJ 31

In addition to the above Tribunals there are several Statutory Commissions established for different purposes and with different objectives. For E.g., Central Information Commission constituted under the Right to Information Act 2005, The National Human Rights Commission, National Commission for Minorities, National Commission for Scheduled castes and Scheduled Tribes, National Commission for Persons differently abled are all statutory commissions performing largely Quasi-Judicial Functions. The number of Applicants approaching these types of commission only goes to show that the citizens are more vigilant, legally conscious and assertive in their approach.

The work and contribution of these Commissions is also very significant especially in the context of human rights and other kinds of rights which make an individual to live with dignity and Honour.

The focus of discussions has always been on the pendency of the cases that are piled up in High Courts and the Supreme Court. Efforts to streamline, making changes in laws by making time bound schedules, reducing the oral arguments time and the like are constantly being done.

However, in addition to the Higher Judiciary's role, the role of the subordinate judiciary is also very critical. In the structure of hierarchy, the Indian Judicial system has, it is a natural progression of the cases decided by the Subordinate Judiciary landing up in the higher courts. Hence great amount of attention, time, efforts and resources must be bestowed on the functioning of the subordinate judiciary. Lot of emphasis needs to be given to the manning of the Courts, equipping them with proper and adequate infrastructure etc. are all very vital in dispensing justice in an and efficient and timely manner.

Out of Court settlements: In a welfare state like India, there is always a high probability of parties seeking and accessing formal channels for adjudication of their rights. If all disputes are to take the full course of determination by the Courts, naturally the strain and burden on the Judicial System can be felt very severely. India has seen the spiraling of cases in courts and the pendency we see today is only an expected and Logical outcome.

How do we try alternate methods of Resolution of Disputes. The idea of Lok Adalat, Mediation and Conciliation, Arbitration are all well-known alternatives. We have seen these methods being gainfully resorted to by the parties.

Mediation

Mediation is generally voluntary in nature. An impartial and neutral mediator facilitates parties to the dispute to arrive at a settlement. A mediator's role is more facilitative in nature and it does not envisage imposing a solution on the disputing parties. The role of the mediator is to enable and create a conducive and amicable atmosphere for the parties to resolve their disputes. Mediation is tried and tested alternative method of dispute resolution. There are many instances in which the corporate bigwigs have also amicably resolved their disputes through Mediation.

Conciliation: Conciliation has found its way in Statutes such as the Industrial Disputes Act 1947. There are specific provisions in Law which necessitates the parties to a dispute to go through the process of Conciliations. Normally an Authority is vested with the responsibility of conducting conciliation. A conciliation effort may succeed or fail. The consequence of a failure of conciliation are spelt out in the statute itself. A failure of conciliation may entail the parties to go through the statutory process laid down in the statute.

Lok Adalat:

NALSA along with other Legal Services Institutions conducts Lok Adalat. Lok Adalat is one of the alternative dispute redressal mechanisms, it is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/ compromised amicably. Lok Adalat have been given statutory status under the Legal Services Authorities Act, 1987. Under the said Act, the award (decision) made by the Lok Adalat is deemed to be a decree of a civil court and is final and binding on all parties and no appeal against such an award lies before any court of law. If the parties are not satisfied with the award of the Lok Adalat though there is no provision for an appeal against such an award, but they are free to initiate litigation by approaching the court of appropriate jurisdiction by filing a case by following the required procedure, in exercise of their right to litigate.

There is no court fee payable when a matter is filed in a Lok Adalat. If a matter pending in the court of law is referred to the Lok Adalat and is settled subsequently, the court fee originally paid in the court on the complaints/petition is also refunded back to the parties. The persons deciding the cases in the Lok Adalat are called the Members of the Lok Adalat, they have the role of statutory conciliators only and do not have any judicial role; therefore, they can only persuade the parties to conclude for settling the dispute outside the court in the Lok Adalat and shall not pressurize or coerce any of the parties to compromise or settle cases or matters either directly or indirectly. The Lok Adalat shall not decide the matter so referred at its own instance, instead the same would be decided based on the compromise or settlement between the parties. The members shall assist the parties in an independent and impartial manner in their attempt to reach amicable settlement of their dispute.

Nature of Cases to be Referred to Lok Adalat

1. Any case pending before any court.

2. Any dispute which has not been brought before any court and is likely to be filed before the court.

Provided that any matter relating to an offence not compoundable under the law shall not be settled in Lok Adalat.

Which Lok Adalat to be Approached

As per section 18(1) of the Act, a Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of -

(1) Any case pending before; or

(2) Any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organised.

Provided that the Lok Adalat shall have no jurisdiction in respect of matters relating to divorce or matters relating to an offence not compoundable under any law[1].

The Concept of Lok Adalat has come to stay and it has gained acceptance in our Legal System. Many State Governments have given legal Recognition to the Lok Adalat system. The parties have also understood and realized the benefits of settling the matters through Lok Adalat. This has been a very innovative step in our quest to render justice in a speedy manner.

In one of the most critical areas of our economy i.e., Banking, the system of Lok Adalat has yielded tangible results. Many cases of varying amounts have been resolved through Lok Adalat thereby obviating the torturous and time-consuming legal route. In cases filed for recovery of bad debts parties also intend to shun negative image and hence there is always an inducement to settle disputes through the Lok Adalat

Arbitration

Arbitration has been on the Statute Book Since 1940 and in many commercial contracts, parties choose Arbitration as the method of settlement of Disputes. The drafting of contracts itself are carefully and consciously done by which the agreements generally contain an Arbitration clause. The other aspects of appointment of Arbitrators, place of Arbitration, applicable law etc. are all natural concomitants of Arbitration Law.

Conclusion: Dispensation of Justice has always been a very critical sovereign function. The rendering of justice to the subjects governed by a state has progressed through several phases. In a society which is dynamic in nature, the demands for access to justice keeps growing ever.

The society expects and demands that speedy and prompt justice be done to them in all circumstances. The evolution of Courts and the judgements given by the judiciary has no doubts enhanced the levels of confidence in the Judiciary. The challenges notwithstanding, the criticism notwithstanding against the slow pace of disposal of Cases, Citizens have always been agitating for their rights. The number of cases that are being filed at all levels of Judiciary (Courts and Tribunals Included), the pendency of court cases and the disposal rates are always going to be discussed eternally amongst the Intelligentsia and all having a stake in the Judicial System of the Country.

In an era of Digital age and with the geographical barriers being overcome, the Citizens of the Country are knocking the doors of the Judiciary at a much a greater speed and even on slightest of breaches. Concepts like electronic filing of cases, virtual hearings (in certain situations), streaming of cases live, facilitation of accessing to the services provided by public authorities through Digital means etc. have also added to the dispensation of justice in a very quick manner. Further on the Criminal side Registration of Zero First Information Reports, appearance and presence of Accused through visual means etc. have also been highly reformistic in nature.

With the evolving needs of time, the increase in literacy levels, particularly Legal awareness and the availability of means and resources, the demands on the Judicial system will be very high. Coupled with the demand is the expectations of the ever changing and evolving society, there will always be huge demands and pressure on the Judicial system.

The Observations of the Chief Justice of India while addressing the Supreme Court Bar association recently is a reminder to every one involved in the dispensation of justice to gear themselves up in one of the noblest tasks of rendering Justice to Citizens. D Y Chandrachud on Tuesday said the greatest challenge before the Indian judiciary is to eliminate the barriers to accessing justice and make sure that judiciary is inclusive and accessible to the last person in the line. He also said that there is a need to overhaul the infrastructure on a priority basis to make courts accessible and inclusive[2].

The above observations of the CJI should inspire a long way in making justice affordable, quick, efficient, and effective

1 Source: National Legal Services Authority web site
2 Source Economic Times 17th August 2023