
A LEGAL AND ETHICAL CONSIDERATION OF LIVELIHOOD AS A HINDRANCE TO ACCESS JUSTICE

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ABSTRACT

This paper addresses how livelihood can affect the ability of a person to access justice from both legal and ethical standpoints. Livelihood is fundamental to survival; it encompasses the basic necessities that are required for one to lead a convenient and dignified life. Ranging from the aspects of food, shelter, electricity, clothing, and other basic amenities, the scope of livelihood transgresses far beyond the expectations of humans.

Justice is both free and expensive; the cost of it, though decided by the Judge, can affect the economic stability and livelihood of a person. While the notion of justice is very subjective and cannot be generalised, what is just to one may be unjust to another

The scope of the present work covers the position of livelihood from the perspective of the Constitution of India, and the legal hindrances to justice from the aspect of filing cases, victimisation, failure to appeal, duration of sentence versus release, and post-sentence problems. On the other hand, the ethical concerns that have been addressed cover the aspect of plea bargaining, the delays in judicial proceedings, inadequate systemic responsiveness of the police as well as jail authorities, and also that of some advocates, especially in not providing efficient legal aid services to the needy masses.

The authors have provided numerous suggestions on the means by which this contemporary issue can be resolved. It therefore concludes that justice can only be said to be complete when a person can identify their rights, the legal actions to take, and can get the proper remedy available by law without any fear for their state of livelihood.

Keywords: Livelihood, Justice, Victim, Plea bargain, Constitution, Law and Ethics.

INTRODUCTION

The notion of justice is very subjective and cannot be generalised; what is just to one may be unjust to another. Justice has been defined to mean fairness; however, there is no rocket science or a yardstick for testing and determining what is just and what is on the contrary.

Livelihood as a hindrance to justice can be viewed from various dimensions, the classification of which may lead to absurdity. There are several reasons why one should think about justice from the ethical and legal perspective of the people's well-being. The Indian Constitution has been framed in such a way that the sovereignty becomes a product of the people. Meanwhile, the tussle emancipates from the question regarding the scope and extent to which this attribution can be made to the people. Keeping in mind the recognition of fundamental rights being given a similar weightage to the non-enforceable directive principles of state policy, the challenge increases on the delivery of justice when there is failure on the part of the State to meet the demands of the needy populace.

Livelihood is fundamental to survival; it encompasses the basic necessities that are required for one to lead a convenient and dignified life. Ranging from the aspects of food, shelter, electricity, clothing, and other basic amenities, the scope of livelihood transgresses far beyond the expectations of humans. One possible reason for this could be a result of the heterogeneous nature of the people in terms of language, religion, culture, and occupation. On the other hand, the mindset of the people on their means towards achieving an end may be contradictory with the state's will and as a consequence, becomes subjected to rejection, prohibition, unethical considerations, and if care is not taken, arrest and prosecution.

This article will apply doctrinal methodology of legal research to inquire into the necessity of livelihood as a means to access justice with the help of secondary sources of data collection such as textbooks, statutes, case laws, journals, articles, online materials as well as critical analysis of the constitutional standpoint and evaluate some hindrances to the access of justice by resorting to the background logic and knowledge in the field of Law and Ethics

THE NECESSITY OF LIVELIHOOD AND ACCESS TO JUSTICE

There are several reasons why livelihood is very pertinent. However, different people can have divergent reasons for making ends meet, such as basic sustenance, achievement of life's goals,

payment of debts, living a luxurious life, etc. (Chanchani, 2019). Even so, the rapid development of the Indian people has put them in such a condition that they cannot be classified to be in a primitive society in a real sense. Unlike the period of laissez-faire economy, where there was little or no state intervention, the Indian system has progressed to the stage of being classified as a Welfare State. Even so, the issue remains with the consistency maintained in this involvement of the State, which has brought about the question of justice. (BHAT, 2018)

Livelihood is the nature of an occupation that a person undertakes over a certain period; it can be a permanent or temporary activity, provided there is a consideration in return for any service rendered. In most cases, some people can utilise this opportunity, and the advantages can be seen through their ability to promote food security, prevent deficiency, reduce vulnerability, enhance reliance and build skills in case of any unforeseen circumstances. Invariably, they can secure what they have at all costs, which means any form of infringement upon their rights can trigger the employment of legal machinery through the process of the justice delivery system. (Conway, 1991)

Furthermore, livelihood is fundamental to survival; it encompasses the basic necessities that are required for one to lead a convenient and dignified life. Ranging from the aspects of food, shelter, electricity, clothing, and other basic amenities, the scope of livelihood transgresses far beyond the expectations of humans. One possible reason for this may be as a result of the heterogeneous nature of the people in terms of language, religion, culture, and occupation. On the other hand, the mindset of the people on their means towards achieving an end may be contradictory with the State's will and as a consequence, becomes a crime or violation of social norms, which can be subjected to rejection, prohibition, unethical consideration, and if care is not taken, arrest and prosecution.

Justice is both free and expensive; the cost of it, though decided by the Judge, can affect the economic stability and livelihood of a person. The notion of justice is very subjective and cannot be generalised; what is just to one may be unjust to another. Justice has been defined to mean fairness; however, there is no rocket science or a yardstick for testing and determining what is just and what is on the contrary. Those who are not financially buoyant may find the justice system to be an illusion, and navigating the course of justice can be daunting. To access the justice system, the need to provide economic justice for all, affordable, and accessible legal services becomes the order of the day.

CONSTITUTIONAL STANDPOINT OF LIVELIHOOD

Livelihood as a hindrance to justice can be viewed from various dimensions, the classification of which may lead to absurdity. There are several reasons why one should think about justice from the side of the people's well-being. The Indian Constitution has been framed in such a way that the sovereignty becomes a product of the people. Meanwhile, the tussle emancipates from the question regarding the scope and extent to which this attribution can be made to the people. Keeping in mind the recognition of fundamental rights being given a similar weightage to the non-enforceable directive principles of state policy, the challenge increases on the delivery of justice when there is failure on the part of the State to meet the demands of the needy populace.

To substantiate this notion of justice in coreferential to livelihood, it is a well-settled principle that Article 39 of the Constitution, (Constitution, 1950) has clearly directed the State to ensure that Indian Citizens, men and women equally, have the right to an adequate means of livelihood. If one is to elaborate on this particular provision of the Constitution, a harmonious reading of the concept of equality in the Preamble and other parts of the Constitution has to be done. The 'equality of means of livelihood' contemplated here is not *per se* directing the state to provide the means, but to ensure that the opportunities, if any, are not discriminatory. This could be evident by reading the provision as a whole to understand that the major emphasis laid down is in terms of promoting ownership for the common good of all, and taking such steps to ensure that there is less concentration of wealth and means of production in the hands of a few.

Even though these principles have been regarded as essential for the achievement of justice by the citizens, they are not enforceable. It is a settled principle of natural justice that 'justice should not merely be done but also seen to be done'. (Datar, 2020) Justice can be attained if there is a fair hearing of the parties; however, on the question of livelihood, there is no cause of action to warrant the tendency of employing the safeguards of any Court, let more of doing justice. This means, even when citizens lack the means of livelihood, they do not have the constitutional or statutory remedy to sue or compel the government of India to provide them with the same, as the directive principles are non-justiciable in nature. (Mukherjee, 2014)

To understand the irony behind the contradiction of livelihood and justice, the parliament recognised that a person can be denied justice due to their present state of affairs. Consequently, Article 39A, which was not part of the original draft of the Constitution, was subsequently

inserted in the 42nd Amendment to give effect to such acknowledgement. It has obliged the state to provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities. (Kumar, 2023) Although it is also creditworthy to note that livelihood has been given a narrow definition here, identifying the same gives more substance to the reality that the present article is expecting to unfold.

In addition to that, it would be unfair to have a biased reasoning of justice under the Indian Constitution without giving due consideration to the wide scope of Article 21 through judicial interpretations. This is to say that the word 'life' in this Article has been considered to include the right to work and have adequate means of livelihood. (*Olga Tellis v. Bombay Municipal Corporation*, 1985) The threat which arises from these judicial interpretations is not concerned with expanding the meaning of Constitutional terms but with the issue of redressing them. By merely looking at the fundamental rights as provided under part three of the Constitution, one unique feature of it can be seen that the violation of any one of them serves as a cause of action against the State. However, when it comes to those rights which are declared by the Courts to be fundamental, not providing the means of seeking legal remedy when it is violated by the state can be considered an injustice, hence, should be traded with caution within the ambit of Article 32 of the Constitution.

LIVELIHOOD AS A HINDRANCE TO JUSTICE

It is undeniable that justice is available to all, yet the question remains whether it is equally accessible to all, and this remains difficult to give any gesture in the form of providing concrete answers. The livelihood of Indian people can be measured through the human capital, this can be in the form of knowledge possessed by an average citizen which may hit the level of education they have received, their state of health, nutritional level in terms of food and its quality, and also the efficiency they have in executing the work assigned to them at any given point in time. (Gopal, 2013) Where there is any deficiency in any of the aforementioned, there is the likelihood that the outcome of justice that they will get can be different or disturbed from that of the general society. This does not imply that the judiciary is biased; however, the grassroots propriety of actions done by the middlemen, such as the investigation authorities, the availability of the means to gather adequate evidence, including forensic reports, among others, are important to be considered.

It is a bitter truth that the battle for getting justice is not free. For example, let's consider the

condition of land disputes, how a person will fight towards recovery of their property will be different based on the capacity they possess. The reasons can vary, but are not limited to the hiring of a competent legal representative, payment of necessary court fees, and the cost of getting the relevant material evidence available before the Court (Ireland Bellsmith, 2022). Sometimes, it can be an industry or small business setup where the only means of livelihood of a person has been shut down, and it becomes impossible for them to struggle or fight for justice.

To simplify, undoubtedly, it will be seen that livelihood legally impacts the outcome of justice in various ways, and this can be substantiated in the following:

- 1. Inability to File a Case:** The difficulty in filing a case is both in terms of civil and criminal matters. This can be further substantiated below:
 - a. On the part of civil cases, it has been seen that there is difficulty in initiating proceedings; one of the possible reasons could be the cost of litigation. Civil matters are disputes between two individuals; it does not involve the State; hence, the cost is borne by the aggrieved party. After considering the cost of hiring an Advocate, the amount of time it will take to conclude the suit, and the inability to pay the court fees, those with inadequate means of livelihood begin to lose hope in contesting their claims. One may suggest the privilege of filing a suit as an indigenous person; however, the status is not conferred at the discretion of the individual opting for it. It can happen in most cases that the Court may decline such recognition or application to that effect. Thus, considering all the factors, where there is no sufficient means of livelihood, the possibility of getting the actual justice becomes compromised; consequently, the respondents can achieve an unjust enrichment and cause injustice to the less privileged.
 - b. From a criminal standpoint, it can be seen that the state of well-being of a person also has some influence on their access to justice. Unlike civil matters where the question of civil rights or personal law disagreement arises, the criminal matter involves the victim, the state and the accused. When a crime occurs, the police get to know about it through information given to them, through their person knowledge, or direction of the magistrate; however, when it comes to those with insufficient means of livelihood, there is a chance that they do not stay around the police station, and the channel of passing the information of any crime committed to them becomes less. On the other hand, even when there is a means of

communication, there may be no awareness of how to send the information across to the police or properly explain their plight before the police officers, especially when they are met with fear, shame, anxiety, and ultimately, contradictions. (Sharma, 2023) The alternative of reporting a case to the magistrate under the Bharatiya Nagarik Suraksha Sanhita 2023 is not completely understood, apart from considering the distance of the Court, it may happen that the complainant does not even have access to laying the complaint before the Magistrate, hence, injustice suffices, not only because there is no establishment of the system, but due to delays and lack of the ability to access or press the laws in motion before being hit by the laws of limitation. The position of one's livelihood can make them lose confidence in the criminal justice system because of the fear instilled in them that they are less privileged or that the offence has been committed against them because of their status in society. In line with that, there is also the burden of proving their matter; sometimes, this gets disposed of without merit due to the inability to preserve evidence or establish that they are victims who deserve the coverage, adequate compensation, and due protection of the Court of Law.

2. **Victimisation:** Another form of injustice faced as a consequence of inadequate means of livelihood is as a result of victimisation. Victimisation can take the course of various interpretations; to be more precise, it will be ideal to look at it from the standpoint of the undertrials as well as the convicts simultaneously. To begin with this point, it will be pertinent to mention that people sometimes get tortured, mentally or physically, while awaiting their trials or after conviction, due to their status in society, even before reaching such unspeakable conditions. A practical example of this will be the unlawful parading of arrested persons by the police authorities, as noted in several judicial pronouncements, which are contrary to the principles laid down in the case of *D. K. Basu v. State of West Bengal*. (*D. K. Basu v. State of West Bengal*, 1997) Due to the feeling of being already condemned, it becomes impossible for the victims with poor means of livelihood to stand out to challenge the violation of their rights, and even if this is done, they are sometimes left in such a state of affairs that they cannot easily prove the situation they undergo in the police custody or during incarceration. (Sahoo, 2023)
3. **Failure to Appeal:** The means of proper livelihood also affect the justice that one could have received if a matter is brought to the attention of a higher court. An appeal is a substantial or statutory right available to a person to approach a superior court for

reconsideration of the decision of the court below. This process of appeal can be cumbersome; sometimes it can be against an order, decree, or sentence, as the case may be. When laid before the competent court, the judicial authority can recall the records of the court below, reverse, modify, uphold, or send back the findings for determination or giving effect to the changes. Until it attends finality, it inspires confidence on the side of an aggrieved party that complete justice has been done; however, the challenge arises on the issue of livelihood. A person can easily approach the higher court for redressal of right if there are sufficient means of doing the same, nonetheless, it is not the case that a party will always be in the same position that they were before instituting or defending their case, it can be that they have been given such direction to deposit an amount which makes them incapable of taking any further steps, it can also be that the amount court fees required or finance to avail the service of an advocate is not available, or the lack of transportation costs to follow-up the case, and as a result of this, livelihood becomes another big issue for the effective achievement of justice as the matter is either dropped or unintentionally allowed to exceed the limitation period for appeal.

4. **Duration of Sentence versus Release:** Another reason why justice matters in the livelihood of a person can be seen from the perspective of the terms of the sentence. In most cases, convicts sometimes serve their lifetime in jail, even though their punishment is less severe. (Joseph v. State of Kerala, 2023) The reason for this injustice is simple: first, they are not aware of the alternatives available to them. The law provides for bail in some offences, and parole based on the severity of the offence, the mitigating factors on the part of the accused and also the discretion of the concerned judge are all taken into consideration. However, it may happen that the accused is not aware of the fact that they could issue a personal bond or surety to be granted bail in some cases. On the other hand, even when there is the particular possibility of release on bail, there is also the possibility that the condition of their livelihood does not permit them to be able to afford the requisite amount needed for availing this liberty provided under the law.
5. **Post-Sentence:** Injustice does not end before or after trial; it continues even in post-conviction. The people who have limited access to proper livelihood are being ostracised by society and sometimes abandoned by their families. This means, they do not have better conditions of livelihood as they lose their jobs, and connection with friends, family and society at large, hence, the cycle of injustice continues to persist (Santhosh, 2019).

ETHICAL CONCERNS

There are some ethical dilemmas when it comes to the question of justice from the standpoint of livelihood. This can be seen from the perspective of Advocates who are not interested in assisting their clients who are unable to pay them the requisite fees. The law as a profession raises the question whether the service of the masses by the legal practitioners should include mandatory legal aid services to the less privileged, if not all, but for a few, or be treated based on the ability to pay for an advocate.

On the other hand, livelihood has affected the practical aspects of the criminal justice system; sometimes, the criminals who are less educated or financially unstable are convinced to admit an offence they did not commit and opt for plea bargaining due to the fear of undergoing the complex criminal procedures in the quest for justice. So far, there are no measures taken to bring transparency in this aspect, such as a committee which can apprise the person of other means of proving his innocence instead of admitting the crime that they did not take part in. Indeed, the Judges ensure they inquire about the willingness of individuals to take plea bargaining; however, their observation cannot be made with precision, especially when the influence to make the guilty plea is engineered by the Defence Advocate before appearing in the Court of Law. (Wan, 2007)

Another ethical problem that may arise is regarding the extent to which the State should be obliged to empower its citizens. The empowerment contemplated here encompasses all-around development of people, or at least, creating proper awareness of their entitlement to the available means of getting justice, even with the status of their respective livelihood. It is not doubted that legal aid services are available to be availed by the wanting masses; even so, it is not possible to cover all cases, especially for those who are not aware of this opportunity. (Spend & Pandey, 2023) In addition, advocates who take up legal aid services with the intention of getting promotion or recognition in the bar do not tend to show sincere interest in matters; since there cannot be an adequate means to monitor such behaviour, which is not *per se* forbidden by law, it becomes questionable from a moral or ethical viewpoint.

Moreso, the treatment accorded to victims in the criminal justice system also brings both legal and ethical challenges in their ability to get justice without making reference to the state of their livelihood. These include the inaction of the police, the delay in the judicial system in disposing of cases to which the hope of an individual lies, inadequate victim-support services,

which are calculated based on the earning capacity of the concerned persons, and a lack of information regarding the status of their case by the advocates. (Forer, 1980)

Lastly, the ethical concern can also be on the opposite perspective, wherein the consideration of livelihood, like educational background, financial strength, and matters related to an accused person as mitigating factors during the hearing of sentencing by the Court can become an injustice to the victims. This means that people who belong to the mainstream society, even though they participate in crime, are more likely to be awarded a lesser sentence due to the availability of mitigating factors as aforementioned, and this can affect the expectations of the victims in the criminal justice system. The bottom line that can only be inferred to judge the intrusion of ethics is whether the findings were based on justice, equity, and good conscience, or based on bias, whims, and caprices.

CONCLUSION AND SUGGESTIONS

Justice can only be said to be complete when a person can identify their rights, the legal actions to take, and can get the proper remedy available by law without any fear for their state of livelihood. It has been seen that there are several factors contributing to the failure of properly accessing justice. The scope of livelihood has been expanded, not from the notion of poverty but from the status and means by which a person strives towards achieving their goals.

It is strongly suggested that there should be reformation, and government intervention is required to reduce the cost involved in civil litigation. Justice can be seen to be done if there is a proper review of the functionality of the free legal aid available to a person. Also, the barriers towards the effective grant of the liberty to initiate a matter as an indigenous person should be made flexible so that people can be able to properly contest for their rights.

Furthermore, strict rules should be made for those in the criminal justice system, that is, the jail authorities, to have such a platform whereby there will be timely updates of the due date for releasing a person, and that should be made without delays or resort to other broad procedures, irrespective of the livelihood of the people.

Also, awareness programs should be done to counter the fears to avail the proper legal remedies in the minds of people and inspire their confidence in the justice system. They should be able to understand the means of bringing up their grievances before the appropriate authorities, the

alternatives available to them, including free legal aid, as well as the basic laws that they need to know as citizens, along with the right to appeal. Society should also be sensitised to the need to accept the convicts into the mainstream environment to enable them to properly reform and return to a normal livelihood.

In addition to that, there should be a proper installation of surveillance in the places where undertrials or convicts are being kept, or as a matter of fact, strict care from the time of their arrest to the place where they are being interrogated to ensure their safety and transparency in the process, especially in the prevention of parading of arrested person, proper interrogations, among others. Also, the accused persons should be given the liberty to lay certain complaints in the jail itself without the need to wait for a long time to bring such prohibited infliction of torture to the attention of the Hon'ble Court. That means, there should be an independent and accessible platform where prisoners can be able to raise complaints regarding the nature of their unfair treatment and get proper remedies without any fears or delays.

From the ethical perspective, it is strongly recommended that the Advocates take up the moral responsibility of ensuring that they do not compel their innocent clients to enter a plea bargain. It is also necessary that a body is set to make a detailed inquiry regarding the willingness of a person to plead guilty for any offence in exchange for a lesser punishment and ensure that such a person is duly informed about their rights and legal remedies in the justice system. The Advocates should also be trained on the need to assist the wanting masses who are unable to afford the requisite finances and pursue their matters with utmost sincerity and integrity, as would have been done in their regular course of profession. While it is legally tenable, the police should be trained as a matter of ethics to take actions in complaints made to them, irrespective of the status, there should be preference to the cases of people whose livelihood are likely dependent on the outcome of the judgement, adequate and timely information should be given to people regarding the status of their cases, and victims support system should not be calculated solely on the level of a person's means of earning capacity to avoid undue hindrance to justice.

Last but not least, there should be an overall empowerment of people to help them become more self-reliant in their occupations. By doing so, they will be able to set a good and meaningful livelihood for themselves, and all should be treated equally, respected for who they are and not judged for the same.

REFERENCES

BHAT, P. I. (2018). *LAW AND SOCIAL TRANSFORMATION*. EBC PUBLISHING.

Chanchani, A. (2019). Accessing Community Rights and Livelihood Through Tourism: A Community-Based Tourism Initiative in Kumirmari, Sundarban. *IGI Global*.

Constitution, I. (1950).

Conway, R. C. (1991). Sustainable Rural Livelihoods: Practical Concepts for the 21st Century. *Institute of Development Studies*, 5 - 12.

D. K. Basu v. State of West Bengal, 1 SCC 416 (The Supreme Court 1997).

Datar, A. (2020). The Origins of "Justice Must Be Seen to Be Done". *Bar and Bench*.

Forer, L. G. (1980). Moral Failures of the Legal System. *Bulletin of Menninger Clinic*.

Gopal, K. S. (2013). Challenges of Livelihoods in Difficult Tribal Regions: Understanding Markets. *CM Toolkit*, 20 - 28.

Ireland Bellsmith, O. G. (2022). *Poverty and Access to Justice*. Vancouver: International Centre for Criminal Law Reform.

Joseph v. State of Kerala (The Supreme Court of India 2023).

Kumar, B. (2023). Article 39A: Equal Justice and Free Legal Aid. *Legal Service India E-Journal*.

Mukherjee, D. (2014). Judicial Implementation of Directive Principles of State Policy: Critical Perspectives. *IJLPP*.

Olga Tellis v. Bombay Municipal Corporation, 1986 AIR 180, 1985 SCR Supl. (2) 51 (The Supreme Court of India 1985).

Sahoo, N. (2023). Justice System in Crisis: The Case of India's Undertrial Prisoners. *Observer Research Foundation*.

Santhosh, D. R. (2019). From Cell to Society: A Study on the Social Reintegration of Released Prisoners in Kerala and Tamil Nadu. *National Human Rights Commission, New Delhi*, 1 - 11.

Sharma, A. (2023). Criminal Justice System: The Triturator of Poor. *Legal Service India E-Journal*.

Spend, I., & Pandey, S. (2023). Why is the Quality of India's Free Legal Aid so Poor? *IDR*.

Wan, T. (2007). The Unnecessary Evil of Plea Bargaining: An Unconstitutional Conditions Problem and a Not-So-Least Restrictive Alternative. *Review of Law and Social Justice*, 3-48.