

Access to Judiciary and Delay in Justice

Mihir Desai, Advocate, Bombay High Court

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Mihir Desai said that he will be talking about access to justice by the people who are marginalized and the people's ability to enforce their right. When one is talking about access to justice than one has to keep in mind the level of justice. By and large people do not come in touch with the judiciary in order to enforce their right to justice. But what are the basic problems, which the people face when they do approach the court? They come to the court and then wait for justice for years on end. On August 2006, the figures of pending cases were 39 lakhs at the level of High Courts and 235 crore in subordinate courts, while 35000 cases are pending in the Supreme Court. Figures of cases filed per thousand population comes around 1.2 per 1000 population, which is far less than 17 cases per 1000 in Malaysia and 14 per 1000 in Korea. This shows that in India we do not have many people approaching the courts for getting justice.

Every Law Commission is dealing with disparity in the number of judges per population. According to the standards of the world, the country should have at least 50 judges per million population. But in India in 2004, we had 12 judges per million population. Apart from the fact there are 2000 vacant positions in subordinate judiciary.

Who do these delays and backlogs impact the most? How do they impact access to justice? In case of the criminal cases, the poor people are the most affected. More than 70% of persons inside jails who are held on suspicion of having committed a crime are not able to pay the bail amount, which is very high. They are inside the jails for months and years, as they cannot afford a lawyer.

Before talking about providing legal aid, we must take care of legal representation for the poor. Every accused is entitled to lawyer. Should the right to legal aid be recognized as a right, paid for by the State? *Lok adalats* have now been given statutory recognition. However, the fact that *lok adalats* have failed (if parties are likely to settle cases sent to *lok adalat*) is a recognition that your judicial system has failed. They remain largely ceremonial/ ritualistic, terms of settlement are usually high, an arbitration method is applied and often matters are referred to *lokadalats* even though settlement had been reached in court to show that *lok adalats* are working. In practice legal aid seems to be functioning well in Tamil Nadu, but overall the legal aid system has not been working well. The PIL has been turned on its head. It is used either by the judiciary or by people who go to court to give vent to their upper class/middle class problems. It is being used as a tool to suppress people.