**Right of Access to Justice and International Human Rights Instruments**

Sehrish Saba, LL.M Human Rights Law, Lecturer at International Islamic University Islamabad, IIUI, Pakistan

Effective access to information, public participation and access to justice are essential for transparent and accountable governance, for high quality outcomes of the decision-making and to strengthen trust of public in governing institutions.[[1]](#footnote-1)

**ABSTRACT**

Right of access to justice is not only a human right in itself but a comprehensive terminology preserving in itself numerous other human rights. Almost all the international human rights instruments guarantee this right in one form or the other. Unless practical provision and preservation is not ensured mere Constitutional guarantees are like a sea shell without pearl. The research underhand is an attempt to provide an insight into the concept of access to justice as a fundamental right followed by the analysis of international human rights instruments guaranteeing this right.

***Key words: Human Right, Access to Justice, International Human Rights***

**INTRODUCTION**

Provision of human rights remained unfulfilled promises throughout the world, despite their recognition at international and national levels.[[2]](#footnote-2) Right of access to justice is not only declared as a fundamental human right but also considered as an enabler and protector of other human rights.[[3]](#footnote-3) Therefore, violation of this right is not only a violation of human rights in itself, but it also becomes the cause of the violation of several other rights.[[4]](#footnote-4) Right of access to justice is not limited to access of the people to the courts or judicial system of the country but it also covers effective access of the litigants to the system of law, judicial record, case information etc.[[5]](#footnote-5) Access to justice is not only a basic human right but an important means to fight against poverty and to avoid the conflicts.[[6]](#footnote-6) It is important to realize that fundamental rights and constitutional liberties would be not more than an ornamental pieces in the Constitution if not enforced in the true spirit by the independent and impartial judiciary.[[7]](#footnote-7)

Right of access to justice is widely recognized human right as well as fundamental right around the globe yet it remained unable to attain the pivotal position it deserves.[[8]](#footnote-8) The complexity of the legal process can itself be categorized as denial of access to justice.[[9]](#footnote-9)

**LITERATURE REVIEW**

Mauro Cappelletti who wrote a book titled “Access to justice and the Welfare State”[[10]](#footnote-10) published in the year 1981 was one of the early writings on the subject. It comprehensively provided the historical concept of access to justice. It elaborated the preliminary issues attached to the concept of access to justice. It also provided historical access to justice movements on the subject along with future prospects.

The book “Access to Justice and Legal Empowerment”[[11]](#footnote-11) written by Ineke Van De Meene and Benjamin Van Rooij in the year 2008. The author elaborated the concept of access to justice and legal empowerment as innovative approaches towards legal development and focuses on the reform of legislation and State institutions. The writers discussed the influential organizations in the area of conceptualizing access to justice and legal empowerment reforms along with some simple questions about this new trend in legal development cooperation. The writer had discussed some very basic concepts like importance of access to justice and legal empowerment, obstacles through the legal system, reforms proposed along with framework for programming reforms.

Deborah L. Rhode’s book “Access to Justice”***,[[12]](#footnote-12)*** published in 2004, gave the detailed insight on the situation of access to justice in American legal system. The book expounded the reasons to care about access to justice. It concluded that practically, American legal system has failed to protect its citizens falling under the category of poor and moderate class.

Vivek Maru through his review paper “Access to Justice and Legal Empowerment: A Review of World Bank Practice”[[13]](#footnote-13) written in the year 2009, presented in a very comprehensive manner the efforts of World Bank for promotion of right of access to justice. The paper was an attempt to provide directions to the World Bank for their justice reform interventions. It recommended the World Bank to take into consideration social context and specific needs of that society whose justice sector is going to be reformed. The paper also suggested that evaluation of access to justice projects should be on the basis of their impact on society and public at large.

M. Elvira Mendez Pinedo through an article “Access to Justice as Hope in the Dark in Search for a new Concept in European Law”[[14]](#footnote-14) published in 2011, provided a concept of access to justice and its analysis under European Law. The author pointed out the shortcomings of the concept of access to justice in European Law. According to author European laws focus more on procedural access to justice and consider the expression in limited terms of access to courts and effective remedies only. A series of papers published in 2012, on access to justice by Zoila Hinson and Dianne Hubbard titled “Access to Justice in Namibia: Proposals for Improving Public Access to Courts”[[15]](#footnote-15) carries discussion about protection of this right in Namibia. In part A of the series, article titled as “Access to Justice as a Human Right” is provided. The article consists of topics of access to justice in the Namibian Constitution, international law on access to justice and factors obstructing access to justice. The article elaborated the provisions provided under the Namibian Constitution regarding access to justice. Under Namibian Constitution access to justice is taken as a mean for the enforcement of other rights. The article express right of access to justice as enabler of other rights only, therefore, needs improvement. Meaning thereby, the article is more inclined to the procedural access to justice than its substantive side.

The book titled “Access to Justice in Pakistan”[[16]](#footnote-16) published in 2003, was written by Former Justice of Supreme Court, Justice (R) Fazal Karim for the guidance of bench and bar under one of the project of ADB. Through this publication minimum standard of judicial fairness had been brought in writing in order to facilitate and disseminate the true concept of access to justice. The scope of the book is procedural access to justice only and is silent about substantive access to justice.

The book “Access to justice in Transnational B2C E-Commerce: A Multidimensional Analysis of Consumer Protection Mechanism”,[[17]](#footnote-17) published in 2015, is one of the latest work on the topic of access to justice. It provided concept of effective provision of access to justice to consumers in the context of e-commerce. The book provided guidelines for consumer protection in borderless E-Market and tried to identify possible solutions for preservation of right of access to justice in the online market. The book provided historical debate on access to justice from the work of 19th Century authors on the subject. It also provided contemporary debates on access to justice along with enhancing mechanisms for consumer protection in e-commerce. The book “The Art of a Lawyer and Access to Justice”[[18]](#footnote-18) consists of many articles related to art of advocacy edited by Emmanuel Zafar was published in the year 2011. The book is a guideline for young lawyers to learn how to act in their professional career. The book is collection of views of legal luminaries of different countries. Overall, the work of the author is in terms of art of advocacy and not from the perspective of right of access to justice available to the citizens.

Ishfaq Ali wrote a book titled “Right to Access to Justice”,[[19]](#footnote-19) published in 2014 is a unique compilation of case-laws on the topic of access to justice. The writer has gathered case laws on almost all the terms and phrases used for access to justice. The book is neither discussing the procedural access to justice nor elaborated substantive access to justice. It is providing compilation of case laws on the topics like due process of law, independence of judiciary and role of judiciary in disseminating justice.

# **DEFINITION OF ACCESS TO JUSTICE**

It is rightly said that “Access is the first weak point in the law machine”[[20]](#footnote-20). Access to justice lacks any unanimous or widely acceptable definition under international law rather it is articulated through different terminologies[[21]](#footnote-21) and expressions in human rights conventions. The term been used in numerous ways under different perspectives. Conventionally, it was an expression indicating the formal systems and structures of the law to the vulnerable segment of society [[22]](#footnote-22) but now the concept has been diversified and is used in its broader sense. Underhand is presented some of the definitions of access to justice disclosing the terminologies in which it exists.

Sometimes, it is considered much easier to define the term in negative connotation i-e to express what access to justice is not rather than what it is. In other words it is easy to figure out denial of access to justice than its achievements.[[23]](#footnote-23) For instance, backlog of cases defines denial of access to justice in a more appropriate manner than expeditious disposal of cases which is an expression of attaining access to justice.

Throughout its evolution, many intellectuals have offered numerous explanations of the term ‘access to justice’ but no single all-inclusive and unanimously acceptable definition could be coined till today. One of its simplest definition is presented by Stefan Wrbka. According to him, “The term of access to justice consists of two parts: *access* and *justice*. In its literal meaning, *access* stands for the chance to reach or accomplish something, whereas *justice* refers to fairness and reasonableness and embodies the concepts that everybody’s rights are safeguarded”.[[24]](#footnote-24) Wrbka defines access to justice in terms of fairness, reasonableness and equal protection of law.

Stephen Bottomley[[25]](#footnote-25) and Simon Bronnit[[26]](#footnote-26) has defined access to justice in terms of formal system of justice. According to them, “Access to justice is usually taken to mean access to formally constructed, political impartial courts and administrative agencies”.[[27]](#footnote-27) This definition excluded all the informal systems[[28]](#footnote-28) of attaining justice prevailing around the globe.

A much broader definition of the term has been presented by Mauro Cappelletti[[29]](#footnote-29) and Bryant Geoffrey Garth[[30]](#footnote-30). According to them access to justice is “A system by which people may vindicate their rights and/or resolve their disputes under the general auspices of the state. It consists of guaranteeing equal access and achieving just outcomes. It could also simply refer to ‘mechanisms by which an individual may seek legal assistance”.[[31]](#footnote-31)

As compared to previous definition given by Bottomley and Bronnit, Cappelletti and Garth has defined access to justice in a much broader way. This definition has covered all the existing systems of ADR like Jirga systems[[32]](#footnote-32), Lok adalat and other formal and informal systems of dispute resolutions recognized and permitted by the State. Moreover, emphasis of this definition is on the point of reaching to the just and fair results of this exercise.

**Another comprehensive explanation of the term** access to justice is presented by UNDP. UNDP expresses it as “The ability of people to seek and obtain a remedy through formal or informal institutions of justice, in conformity with human rights standards”.[[33]](#footnote-33) UNDP has elaborated this concept in terms of right of a person to *seek* and *obtain*  a remedy when aggrieved. This definition on the one hand covers all the formal and informal systems of justice around the globe and on the other hand provides a comprehensive set of rules to be followed in the shape of human rights standards.

# **COMPONENTS OF ACCESS TO JUSTICE**

As the term access to justice do not find any unanimous definition therefore academic and legal experts attempted to establish its parameters. Andre Tunc, distributed it in three broad components. These are “access to legal justice”, “access to machinery of justice specific to welfare state” and “access to Justice”[[34]](#footnote-34). According to Tunc, the first component *access to legal justice* means enforcement of a legal right existing under current legal system of any state and removal of barriers from obtaining legal remedies available to aggrieve. Its second component, *access to machinery of justice specific to welfare state* is related to the protection of new legal rights available to the subjects due to modern machinery like rights of employees, right to environmental protection, consumer rights etc. whereas, the third component *access to Justice* with capital “J” is indicative of the concept that the term access to justice is not restricted to access to judicial process only but concepts of legal awareness, equality and achievement of social justice is also enshrined in it.[[35]](#footnote-35)

Similarly, Dr. Eilionoir has distributed access to justice among three components that are substantive access to justice, procedural access to justice and symbolic component of access to justice.[[36]](#footnote-36) He elaborated, *Substantive* access to justice in terms of assessment of the rights claimed included therein, all stages of judicial process, available to those who seek a remedy. *Procedural* access to justice is defined in terms of opportunities and barriers which come in the way of getting justice like access to court and lawyer, reasonable time etc. Whereas, *Symbolic* component of access to justice is defined in terms of general promotion and preservation of access to justice like legal empowerment and awareness of citizens of a particular state.[[37]](#footnote-37)

**EFFECTIVE REMEDIES**

**FAIR TRIAL**

**DUE PROCESS OF LAW**

**ACCESS TO COURTS**

**Fig.1**

**ACCESS TO JUSTICE**

Access to Justice Advisory Committee appointed by the Government of Commonwealth in 1994 also defined three key features of the term ‘access to justice’ the same includes ‘Equality of access to legal services’, ‘National equity’ and ‘Equality before the law’.[[38]](#footnote-38)

**LEGAL ASSISTENCE**

**INEXPENSIVE JUSTICE**

**INDEPENDENCE OF JUDICIARY**

**EXPEDITIOUS DISPENSATION**

‘Access to justice’ is also defined in terms of different challenges and barriers of justice like provision of legal services and legal aid, reasonable time, cost of litigation, settling of small claims, financial responsibility and competence of the party to recognize a claim or defense,[[39]](#footnote-39) parallel opportunity to access the system and to enforce existing rights or laws.[[40]](#footnote-40)

On the basis of definitions and expressions discussed above, terminologies related to access to justice are presented below through fig.1.

**1.3 ACCESS TO JUSTICE AND RELATED TERMINOLOGIES**

From the above discussion, the term access to justice can be divided into two categories i-e in broader and narrower sense. In broader sense, it can be further divided into two categories namely Procedural and Substantive access to justice. Here term procedural access to justice includes opportunities and barriers in getting ones claim into court or tribunal. Whereas, substantive access to justice indicates receiving of a fair and just remedy for violation of one’s rights or an assessment of the rights claims that are available to those who seek a remedy. To further elaborate the concept, fig. 2 is presented below.

**Fig. 2**

Whereas, in narrow sense the access to Justice is persistently recognized as: a right to a fair and proper trial, right to an effective remedy/ access to legal process, access to court, right to due process of law, financially affordable judicial system, right to have impartial courts, independence of judiciary and right to have expeditious dispensation of justice. These terms can also be considered as offshoots of procedural and substantive access to justice.

# **ACCESS TO JUSTICE AND HUMAN RIGHTS INSTRUMENTS**

The right of ‘Access to Justice’ was kept preserved in almost all the human rights instruments under different expressions of access to justice. Although it was Convention on International Access to Justice 1980, that introduced the terminology of access to justice but Convention on the Rights of Persons with Disabilities 2006, elaborated first time access to justice as a conclusive right. Following is presented some of the human right’s instruments preserving the right of access to justice.

## UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR) 1948

Although, the term Access to Justice has never been coined at the time of promulgation of UNHRC but the fundamental concept of the same has been secured very carefully since inception of human rights preservation efforts. Therefore, in 1948 some terms having meaning to access to justice were placed under this charter.

UNHRC also known as UDHR, under Article 1, declares the right of access to justice as a fundamental right to all. Whereas, Article 7 of the instrument provides for right of equality before law and equal protection of law. Similarly, Article 8 of the Charter enumerates the right to an effective remedy as determined by the courts for fundamental rights ensured by the Constitution or by law.

Article 10 of the Charter provides a combination of various rights covered under the right of access to justice, including right of equality before the law, right to a fair and proper trial, right of public hearing and right to have impartial court and tribunal.

## EUROPEAN CONVENTION OF HUMAN RIGHTS (ECHR) 1950

Generally, at some forums, right of fair trial and public hearing guarantees regular procedures. Whereas, at European Court of Human Rights it is taken in broader meanings and also includes a right to access to the courts. Article 6 of the Convention provides not only right to a fair and public hearing but also provides expeditious disposal from an independent and impartial tribunal as a fundamental right. Whereas, Article 13 of the ECHR guarantees the right to an effective remedy for the aggrieved in case of violation of his rights and freedoms provided under ECHR. It provides an explicit assurance towards the right to access to justice in the sense that it states that the aggrieved “shall have” an effective remedy when any grievance may cause to him.

## INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (CERD) 1965

Article 6 of the CERD highlights the right of access to justice in terms of right of effective remedy through competent tribunals. Here the term competent tribunal is used in wider sense including all the forums of provision of justice i-e all the formal or informal systems of justices. It also includes the right of free, fair and impartial trial through independent tribunal which is ultimate aim of provision of right of access to justice.

## INTERNATIONAL CONVENTION ON CIVIL AND POLITICAL RIGHTS (ICCPR) 1966

The International Covenant on Civil and Political Rights (ICCPR) under Article 2 preserves right of access to justice in terms of right to effective remedy. Whereas, under Article 14, Convention remarkably ensures equality before the law and equal protection of the law along with fairness of procedure, due process of law and impartiality of adjudicating authority. Similarly, in its Article 26, ICCPR reiterates the guarantee of equality before the law and equal protection of the law without any discrimination.

## CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) 1979

CEDAW under its Article 2 requires States parties to the Convention, to ensure the provision of right to an effective remedy and equality before the law. It necessitates a rectifier to ensure this right through competent tribunals and other public institutions giving protection to the women against any act of discrimination.

As per CEDAW, no discrimination would be acceptable towards the women with regard to their right of equality before the law and ultimately their right to access to justice.

## CONVENTION ON INTERNATIONAL ACCESS TO JUSTICE 1980

Convention on international access to justice 1980 was promulgated in order to facilitate access to justice to the citizens of the States signatory to this Convention at international level.

The Convention's purpose is not to harmonize domestic laws, but ensure protection of the Convention to the right of access to justice to those aliens to a State. The Convention safeguards such people from discrimination on the ground of either their being non-resident of a State or lacking domicile of the state. According to the Convention the mere status as an alien or the absence of residence or domicile in a State should not disallow a person from seeking redress of his grievances and legal assistance.[[41]](#footnote-41)

Article 1, of the Convention provides assurance of legal aid to non-resident of the contracting states. It safeguards from discrimination to those aliens to the State but in a limited sense because it protects legal aid for “court proceedings” only and not for other forums. Similarly, it specifies that legal aid is to be provided in the matters of “civil and commercial” nature. Whereas, Article 2, of the Convention provides assurance of “legal advice” to the person seeking. Similarly, Article 12 of the Convention secures expeditious and timely disposal of the applications made under Convention for legal aid.

Title of the instrument reveals its enrichment as a comprehensive Convention upon the subject but the detail study is not impressive because it provides for only the right to legal aid, security for cost, copies of entries and decisions and physical detention and safe conduct. Overall, the Convention is not adequately dealing with the concept of access to justice and miserably failed to do justice to its title adopted by the contracting States.

## UNIVERSAL ISLAMIC DECLARATION OF HUMAN RIGHTS (UIDHR)1981

Article 4 and 5 of UIDHR expressly deals with access to justice in terms of right to justice and right to fair trial. Article 4 of the declaration is unique in its perception and the same not in existent in any other instrument or declaration. As this Article is not only creating right to justice but also obligating upon the individual to practically exercise this right. This Article also provides for free and fair trial along with independence of judiciary and impartial trial.

Whereas, Article 5, clause (a) & (b) discusses Right to Fair Trial. According to it no individual shall be held guilty of an offence and made liable to punishment except after proof of his guilt is established before an independent judicial tribunal.

## CONVENTION AGAINST TORTURE (CAT) 1984

The CAT pledges a right to redress for acts of torture. In a broader sense, the Convention indicates about the right to access to justice in cases of torture. Article 13 of the convention provides for right to complain or right to claim which is ultimate guarantee of right to have an effective remedy. Similarly, Article 13 also provides for prompt and neutral examination of one’s case by competent authorities that includes right of due process of law. One of the distinct protection provided under Article 13 of CAT is protection to the complainant as well as the witnesses of the matter concerned.

Similarly, Article 14 of the Convention requires States parties to ensure that victims of torture are able to obtain redress via their legal systems and have “an enforceable right to fair and adequate compensation”, which covers right of fairness in judicial adjudication whether related to some suit before legal forum or some administrative matter before an authority.

## CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS 1998

Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1998 in its preamble aims to improve the system of accountability and transparency in making decisions. It also intended to reinforce the public support for decisions on the environment.[[42]](#footnote-42)

Through Article 9, the Convention allows the public to access to justice, i.e. the right to seek redress when environmental law is infringed and the right to access review procedures to challenge public decisions that have been made without regard to the two other pillars of the Convention.

This Article has established number of rights to the public. The same starts from provision of right to information and goes on with all other inter-related rights, including due process of law, right to have effective and inexpensive justice through independent and impartial tribunal and expeditious disposal.

## CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES 2006

The Convention on the Rights of Persons with Disabilities[[43]](#footnote-43) requires under its Article 13, from States parties to “ensure effective access to justice for persons with disabilities on an equal basis with others”. It provides for the provision of right of access to justice to those with disabilities along with acceptance of their equality before the law. This is second international instrument after Convention on International Access to Justice, 1980 that categorically refer the comprehensive expression of right of access to justice.

It is important to mention here that the Convention attained highest number of signatures on its opening day, which makes it remarkably unique in history to a UN Convention. Similarly, it is considered as a first comprehensive human rights treaty of the 21st century and is the first human rights convention to be open for signature by regional integration organizations.

MAGNA CARTA OF JUDGES, 2010

The Consultative Council of European Judges ([CCJE](http://www.coe.int/t/dghl/cooperation/ccje/default_EN.asp?)) of the Council of Europe adopted the [Magna Carta of Judges](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE-MC(2010)3&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864) (Fundamental principles) on 18th November 2010[[44]](#footnote-44).

The purpose of the instrument is to promote the role of judges, improvement in their efficiency and independence, as well as to elucidate their duties and responsibilities.[[45]](#footnote-45) This instrument brings to limelight all fundamental principles regarding judges and judicial system. According to Article 23 of the instrument, the principles provided in the instrument “shall apply mutatis mutandis to judges of all European and international courts”.

Magna Carta of Judges includes access to justice as one fundamental pillar of the rule of law. Under Clause 15 of the instrument it requires from judges to play their effective and responsible role towards the provision of access to justice.

Whereas it’s Clause 16 provides for the right of public hearing and right to information to the litigants, right of expeditious disposal of cases along with utilization of efficient case flow management.

Clause 17 of the instrument provides for enforceability of right of fair trial. According to it “The enforcement of court orders is an essential component of the right to a fair trial and also a guarantee of the efficiency of justice”.

Magna Carta, 2010 is one of the pioneering instruments highlighting the role and responsibilities at the shoulders of judges for the preservation of the right of access to justice.

## AMERICAN CONVENTION ON HUMAN RIGHTS 1969

American Convention on Human Rights, comprehensively provides for right of access to justice in both of its terms i-e procedural and substantive access to justice.

The Convention demonstrates the right to access to justice under the expression of right to access to the courts, which has become an international norm. Through Article 8, the Convention introduces a concept in terms of right to be heard, expeditious disposal, right of fair trial, independent and impartial forums to adjudicate upon the matter and right of legal assistance. As all these terminologies are prerequisites to the procedural access to justice.

Article 25(1) of the Convention provides this guarantee from another aspect of “Right to Judicial Protection”. According to this Article everyone is entitled to recourse “to a competent court or tribunal for protection” for violation of his fundamental rights. The same is indicating the substantive access to justice in terms of competency of the adjudicating authority to handle the matter.

Similarly, Article 25(2) obligates upon a contracting party to “ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state”, “develop the possibilities of judicial remedy” and “ensure that the competent authorities shall enforce such remedies when granted”.

## THE AFRICAN CHARTER ON HUMAN AND PEOPLE’S RIGHTS 1981

The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) was adopted in 1981 and entered into force in 1986.[[46]](#footnote-46)

The Charter contains the most explicit guarantee of access to the courts under its Article 7(1). It states that “Every individual shall have the right to have his cause heard”. Through this Article enormous rights have been discussed that are expressions of access to justice, like right to claim, right to public hearing, expeditious dispensation of justice and legal assistance.

Article 26 of the Charter directs the States party to the Charter, preservation of the right of access to justice by assuring the independence of the judiciary. This Article obligates the States party to the Charter, assurance of the independence and impartiality of the courts in order to preserve and promote the rights and freedoms guaranteed under the Charter.

Article 3 of the Charter, the same provides that every individual “shall be entitled to equal protection of the law”. According to the African Charter a legal system which fails to provide meaningful access to justice to individuals in a society, regardless of their financial status, actually dissents from its responsibility of equal protection of the law.

## AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS 2001

In 2001, the African Commission on Human and Peoples’ Rights adopted a set of Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa[[47]](#footnote-47). The guidelines provided under the commission includes public hearing through independent and impartial tribunals, appropriate education and training of judicial officials, guarantee of right to an effective remedy, public access to court records and information related to judicial proceedings, access to lawyers, mechanism of legal aid and assistance and expeditious disposal of cases.

The commission considers right to fair trial, provision of legal assistance and access to courts as the means of promotion and preservation of right of access to justice. According to it, everyone is entitled to bring before “judicial bodies” his grievance upon the violation of human right, which is once again authenticating the concept that access to justice is not only a right in itself but means to protect other human rights as well.

## SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC) PROTOCOL ON GENDER AND DEVELOPMENT

The Southern African Development Community (SADC) Protocol on Gender and Development recognizes access to justice both as a means of securing other rights and a right in itself that women must share on a basis of equality with men.

The Protocol provides in Article 7, “Equality in Accessing Justice” that States Parties must put in place measures that secure “equality in the treatment of women in judicial and quasi-judicial proceedings, or similar proceedings, including customary and traditional courts”; “equal legal status and capacity in civil and customary law”; “the provision of educational programs to address gender bias and stereotypes and promote equality for women in the legal system”; and “accessible and affordable legal services for women.”

The protocol discusses equality before the law especially of the women, provision of accessible and affordable legal services including legal assistance.

## ACCESS TO JUSTICE IN EUROPEAN LAWS

There was no common concept of access to justice in European Law that included European Union (EU) law, European Convention on Human Rights (ECHR) and European Economic Area (EEA) law, till the commencement of Treaty of Lisbon 2007.

The Treaty of Lisbon was adopted in order enable several EU policies to be reformed. It was signed at the European Council of Lisbon on 13 December 2007 and it has been ratified by all Member States.[[48]](#footnote-48)

Before the Treaty of Lisbon, Access to justice was usually taken in the meanings of application and enforcement of rights in the European Union legal system, both at national and European level.[[49]](#footnote-49)

Under Title V of TFEU namely “Area of Freedom, Security and Justice” Article 67.1 provides general legal basis for the EU to legislate in the field of (access to) justice.[[50]](#footnote-50) The treaty makes it mandatory that the contracting parties, through ‘TFEU as amended by Treaty of Lisbon” shall provide facilitation to the right of access to justice under its Article 67(4) of Part I. according to it: “The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters”.[[51]](#footnote-51)

Similarly, through Article 81 (e) of Part I, Chapter III namely Judicial Cooperation in Civil Matters, TFEU as amended by Lisbon Treaty, provides for cooperation for provision of “effective access to justice.”

Along with these articles in the main EU Treaties, the EU Charter of Fundamental Rights (EU CFR) that has gained the same legally binding status as the EU Treaties provides for the right to an effective remedy and to a fair trial under Article 47 EU CFR. Article 47 guaranteed the provision of right to an effective remedy, right to fair and public hearing, expeditious disposal of matter, impartial and independent tribunal and free legal aid to those who deserves. According to Article, the provision of these rights ensures the protection and preservation of right of access to justice. Moreover, the third paragraph of Article 47 specifically refers to legal aid as an element of access to justice, but the term “access to justice” which inspires the article in its entirety is neither defined nor explained.

Although the right of access to justice remained present in one form or the other in almost all international human rights instruments but the use of the exact terminology was first time introduced in Convention on International Access to Justice, 1980. Later on, several other international and regional instruments adhered the same terminology in order to comprehensively express numerous fundamental rights including right to fair trial, right to council, right to have due process of law, right to public hearing etc.

Correspondingly, international organizations also played a distinguished role in protection and preservation of this right. They, under their mandates, enshrined judicial reforms and institutional strengthening of the Bar & Bench in order to promote and preserve right of access to justice. Due to these organizations, this right has come to lime light and attained such a milestone today.

**CONCLUSIONS**

Right of access to justice occupies pride of place among all the human rights. It remained protected in international treaties such as UDHR, ICCPR, CAT and UIDHR. Its protection is also featured in regional human rights covenants like European Convention on Human Rights 1950, American Convention on Human Rights 1981 and African Commission on Human and People’s Rights 2001. Almost all human rights instruments provide safeguard to this fundamental right under different terms and terminologies.

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