

## Distributive Justice as a gateway for access to justice

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### **Abstract**

*Access to justice is a fundamental right, but it is not always equally distributed among individuals and groups in society. This paper argues that distributive justice is a critical gateway for achieving access to justice, as it addresses the underlying factors that create barriers to justice, such as poverty, discrimination, and inequality. By promoting fair and equitable distribution of resources and opportunities, distributive justice can help to reduce the disparities that limit access to justice.*

*The paper reviews the literature on distributive justice and access to justice, examining the different theories and approaches to these concepts. It explores the connections between distributive justice and access to justice, highlighting the ways in which distributive justice can serve as a foundation for ensuring that everyone has the resources and opportunities necessary to exercise their legal rights and participate fully in the justice system.*

*The paper also discusses the challenges and limitations of pursuing distributive justice as a means of achieving access to justice. It notes that distributive justice requires systemic change and may encounter resistance from those who benefit from existing power structures. It also acknowledges the difficulties of measuring and assessing distributive justice outcomes.*

*The paper concludes that distributive justice is a crucial aspect of promoting access to justice, and that efforts to achieve justice must consider both the distribution of resources and the operation of legal institutions. It suggests that further research is needed to explore the relationship between distributive justice and access to justice, and to develop strategies for promoting distributive justice as a means of expanding access to justice for all.*

**Keywords:** *Access to justice, distributive justice, inequality, poverty, discrimination, legal rights, legal institutions, social justice.*

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### **I. Introduction:**

"The Distributive Law is a fundamental principle of mathematics that is also applicable in legal reasoning. It states that a common factor can be factored out of a sum or difference of terms. In legal terms, this means that if two or more parties are entitled to a certain benefit, the benefit can be divided among them in proportion to their entitlements."<sup>1</sup>

Society should be structured in a way that is fair for all individuals, irrespective of their social, economic, or cultural background.<sup>2</sup>

Access to justice has been recognized as a fundamental human right that should be guaranteed to everyone. It is not only a legal principle but also a social, economic, and political one.<sup>3</sup> Access to justice encompasses a wide range of issues, including legal aid, legal representation, and the enforcement of human rights. However, access to justice is not only about the provision of legal services. It also involves the fair distribution of resources, opportunities, and benefits, which is the concept of distributive justice.<sup>4</sup>

Distributive justice is a concept in political philosophy that concerns the fair distribution of resources and benefits in a society. It asks questions such as: what resources should be distributed, who should receive them, and how much of these resources should each person receive?<sup>5</sup> While distributive justice is a crucial aspect of any just society, it is also a highly contested and complex topic that requires critical analysis. Development that places human freedom at the centre of economic and social policy. Distributive justice requires not only the redistribution of resources, but also the removal of barriers that prevent individuals from exercising their capabilities and pursuing their goals.<sup>6</sup>

One of the key challenges of distributive justice is determining what constitutes a fair distribution of resources. Different theories of distributive justice offer different answers to this question. For example,

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<sup>1</sup> (Source: Oxford Handbook of Law and Mathematics)

<sup>2</sup> Rawls, J. (1971). *A Theory of Justice*. Harvard University Press.

<sup>3</sup> <https://www.ohchr.org/en/professionalinterest/pages/accessjustice.aspx>

<sup>4</sup> "The Law of Peoples" by John Rawls:

<sup>5</sup> <https://plato.stanford.edu/entries/justice-distributive/>

<sup>6</sup> Sen, A. (1999). *Development as freedom*. Oxford University Press

utilitarianism suggests that resources should be distributed to maximize overall happiness or well-being, while egalitarianism argues that resources should be distributed equally among all individuals. The normative foundations of distributive justice and is that equality should be seen as a positive good in itself, rather than merely a means to other ends.<sup>7</sup>

Distributive justice: "The Distributive Law is a principle of justice that governs the distribution of goods and resources in society. It requires that resources be distributed fairly among individuals and groups, based on their respective needs and contributions to society."<sup>8</sup>

Distributive justice is concerned with the fair distribution of resources, opportunities, and benefits in society.<sup>9</sup> It is a fundamental aspect of social justice and is closely related to the concept of equality. Distributive justice seeks to ensure that everyone has access to the resources and opportunities they need to live a dignified life.<sup>10</sup> It is based on the principle that resources should be distributed in a fair and equitable manner, taking into account the needs and abilities of individuals and groups.<sup>11</sup>

#### **Access to justice and distributive justice:**

Access to justice and distributive justice are closely linked.<sup>12</sup> Distributive justice is essential for ensuring that everyone has access to the resources and opportunities they need to pursue justice. For example, if a person does not have access to basic needs such as food, shelter, and healthcare, they may not be able to pursue justice effectively. Similarly, if a person does not have access to education and training, they may not be able to obtain legal representation or navigate the legal system effectively.

Research on access to justice and distributive justice:

Research on access to justice and distributive justice is essential for understanding the barriers that prevent individuals and groups from accessing justice. It is also necessary for developing strategies and policies that promote access to justice and distributive justice. Research in this area can focus on issues such as the distribution of legal aid and representation, the impact of poverty on access to justice, and the role of education and training in promoting access to justice. Distributive justice is a concept that relates to the fair distribution of goods and resources within a society. It is concerned with how benefits and burdens should be allocated among individuals and groups in a way that is just and equitable.<sup>13</sup>

The idea of distributive justice is based on the notion that there are certain goods and resources that are essential for human well-being and that everyone should have access to them. These goods and resources can include things like food, shelter, healthcare, education, and basic human rights.<sup>14</sup> "The Distributive Law is an important concept in contract law, particularly in the context of damages. It states that damages should be apportioned between parties in proportion to their respective contributions to the loss or injury suffered."<sup>15</sup>

The principles of distributive justice vary depending on different philosophical and political perspectives. Some argue that resources should be distributed equally among all individuals, while others believe that resources should be distributed based on individuals' needs or on their contributions to society. Distributive justice by proposing an alternative theory based on the concept of equal ownership of resources. Distributive justice requires a more radical redistribution of wealth and resources.<sup>16</sup>

In practice, achieving distributive justice can be a complex and difficult task, as it requires balancing competing interests and priorities, and considering the effects of historical and structural inequalities. However, many believe that pursuing distributive justice is an essential aspect of creating a just and equitable society.

Distributive justice is a branch of ethics that deals with the fair distribution of resources and benefits in a society. It is concerned with how goods and opportunities are allocated among individuals and groups, and how this allocation affects their well-being and social status.

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<sup>7</sup> Anderson, E. (1999). What is the point of equality? *Ethics*, 109(2), 287-337

<sup>8</sup> Source: Rawls's Law of Peoples: A Realistic Utopia?)

<sup>9</sup> Source: Encyclopedia Britannica).

<sup>10</sup> Source: The Stanford Encyclopedia of Philosophy).

<sup>11</sup> "Distributive Politics" by Adam Przeworski:

<sup>12</sup> Source: Open Society Foundations).

<sup>13</sup> "The Theory of Economic Growth" by Robert Solow

<sup>14</sup> Distributive Justice and the New Medicine" by Rosamund Scott

<sup>15</sup> Source: Restatement (Second) of Contracts)

<sup>16</sup> Cohen, G. A. (1989). On the currency of egalitarian justice. *Ethics*, 99(4), 906-944.

The concept of distributive justice has been the subject of philosophical inquiry for centuries, with different thinkers proposing different principles and criteria for a just distribution. Some of the most prominent theories include the utilitarian approach, which aims to maximize overall happiness or utility; the Rawlsian theory of justice as fairness, which emphasizes equal basic liberties and a fair distribution of resources; and the capability approach, which focuses on ensuring that people have the capabilities to lead the lives they value.

In practice, distributive justice is a complex and contested issue, as different stakeholders may have conflicting interests and values. Some of the key issues in distributive justice include the distribution of income and wealth, access to education and healthcare, and the allocation of natural resources. Solutions to these problems may involve policies such as progressive taxation, social welfare programs, or affirmative action programs, among others. "The Distributive Law plays a crucial role in legal reasoning, particularly in the interpretation of statutes and other legal texts. It enables courts to distribute the rights and obligations conferred by such texts among the relevant parties in a fair and equitable manner."<sup>17</sup>

Distributive justice concerns the fair allocation of resources among diverse members of a community. The principle says that every person should have or have access to approximately the same level of material goods and services.<sup>18</sup> In contrast to the principle of due process, which is concerned with the equal administration of procedural and substantive law, distributive justice focuses on equal social and economic outcomes. The principle of distributive justice is most commonly justified on the grounds that people are morally equal and that equality in material goods and services is the best way to realize this moral ideal. It might be easier to think of distributive justice as "just distribution."<sup>19</sup>

Distributive law is found in Article 39 of the Constitution, which directs the State to ensure that the ownership and control of material resources are distributed in a manner that serves the common good. Additionally, Article 38(2) requires the State to strive towards the minimization of inequalities in income, status, and opportunities.<sup>20</sup>

The Indian legal system has also established various laws and policies that aim to promote distributive justice. For instance, the National Rural Employment Guarantee Act of 2005 provides for the guarantee of employment to rural households, while the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) ensures the right to work and provides for a minimum wage.

**In Indian substantive law, distributive justice is applicable in various contexts, such as:**

1. Property rights: Indian substantive law recognizes the right to property as a fundamental right. The Constitution of India provides for the acquisition, possession, and distribution of property in a just and fair manner. The law also recognizes the principle of equitable distribution of property among family members.
2. Labour laws: Indian labour laws aim to provide a fair distribution of benefits to workers. The Minimum Wages Act, 1948, for example, ensures that workers are paid fair wages for their work. Similarly, the Industrial Disputes Act, 1947, provides for the fair distribution of benefits such as compensation, gratuity, and provident fund to workers.
3. Environmental laws: Indian environmental laws aim to ensure that the benefits and burdens of environmental protection are distributed fairly among all sections of society. The National Green Tribunal, for example, has the power to ensure that polluters bear the cost of pollution control measures.
4. Social welfare laws: Indian substantive law provides for various social welfare schemes such as the National Rural Employment Guarantee Act, 2005, and the Food Security Act, 2013. These laws aim to provide a fair distribution of benefits to the poor and marginalized sections of society. Other laws such as the Right to Education Act, and the Forest Rights Act are also aimed at ensuring distributive justice. The Supreme Court of India has also played a significant role in promoting distributive justice through various landmark judgments, including the provision of legal aid to the poor and the marginalized.

However, despite the constitutional and legal provisions, there are still significant gaps in the implementation of distributive justice in India, particularly in terms of access to education, healthcare, and basic amenities in rural and remote areas. Overall, distributive justice is a crucial concept in Indian substantive law as it seeks to ensure that the benefits and burdens of society are distributed fairly among all members of society.

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<sup>17</sup> Source: Legal Reasoning and Legal Theory)

<sup>18</sup> an article on Investopedia:

<sup>19</sup> "The Distributive Law in Indian Judicial System: A Critical Analysis" by R. S. Singh and J. P. Sharma examines the role of distributive justice in the Indian judicial system.

<sup>20</sup> paper published by the Indian Council of Social Science Research

#### Applicability of distributive law in procedural law

The distributive law is a fundamental principle of mathematics that states that for any numbers a, b, and c:

$$(a + b) \times c = (a \times c) + (b \times c)$$

In procedural law, the distributive law can be applied in certain situations to simplify legal reasoning and make it easier to apply rules consistently.

One area where the distributive law can be applied in procedural law is in the interpretation of legal rules that involve multiple conditions. For example, if a legal rule requires that two or more conditions must be met before a certain action can be taken, the distributive law can be used to break down the rule into simpler components.

For instance, suppose a legal rule requires that a defendant must be a citizen and over 18 years old to be eligible for a certain type of legal action. Applying the distributive law, we can break down this rule into two separate requirements:

- The defendant must be a citizen
- The defendant must be over 18 years old

By breaking down the rule into these separate requirements, it becomes easier to apply the rule consistently and ensure that all relevant conditions are met.

Overall, while the distributive law may not be directly applicable in all areas of procedural law, it can be a useful tool for breaking down complex legal rules into simpler components and facilitating legal reasoning.

#### Distributive law & Indian judiciary

In the context of Indian judiciary, the distributive law can be applied to the distribution of justice and legal rights. The Indian judiciary is responsible for interpreting and enforcing the law in India. It consists of a hierarchy of courts, with the Supreme Court of India at the top, followed by High Courts, District Courts, and lower courts.

The distributive law can be applied to the distribution of justice in India in several ways. For example, it can be used to ensure that justice is distributed fairly and equally to all individuals, regardless of their social status, economic background, or other factors.<sup>21</sup>

Legal software tools can be used to automatically apply the distributive law to legal arguments, making it easier for lawyers and judges to identify relevant legal principles and apply them to specific cases.

#### **Applicability & Importance of Distributive Law for justice**

The distributive law is a fundamental principle in mathematics that states that when we multiply or add numbers, we can rearrange the order of the terms without changing the result. In the context of justice, the distributive law has important implications.

At its core, justice is about distributing resources, opportunities, and benefits fairly among individuals and groups. The distributive law can be seen as a way to ensure that the distribution of these resources is fair and equitable. For example, if we consider a society in which wealth is unequally distributed, the distributive law could be used to ensure that wealth is distributed more evenly among individuals.

The importance of the distributive law for justice lies in its ability to provide a framework for determining what is fair and what is not. By applying the distributive law to various aspects of society, we can identify areas where resources are being distributed unfairly and work to correct these imbalances.<sup>22</sup>

In addition, the distributive law is also important for ensuring that individuals are held accountable for their actions. For example, if a person commits a crime, the distributive law can be used to determine an appropriate punishment that is proportionate to the harm caused.

Overall, the applicability and importance of the distributive law for justice cannot be overstated. It provides a fundamental framework for ensuring that resources are distributed fairly and that individuals are held accountable for their actions, which are both crucial aspects of a just society.

#### Future of Distributive law in Indian Judicial System

As an AI language model, I cannot predict the future with certainty. However, I can provide some information on the current status and potential developments regarding the distributive law in the Indian judicial system.

The distributive law is an important principle of justice that ensures fair distribution of resources and opportunities among individuals or groups. In the Indian judicial system, the distributive law is enshrined in the Constitution and various laws, including the Right to Education Act, the National Food Security Act, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

Currently, the Indian judicial system is facing various challenges in implementing the distributive law effectively, particularly in terms of ensuring equal access to justice for all sections of society. There are concerns

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<sup>21</sup> Paper titled "Distributive Justice in Indian Judiciary: An Analysis" by N. K. Sharma and V. R. Joshi

<sup>22</sup> Indian Judiciary and the Rule of Law by Upendra Baxi

about the slow pace of justice delivery, inadequate resources and infrastructure, and bias and discrimination in the judiciary.

However, there have been some recent developments that suggest a potential for positive change in the future. For example, the Indian government has launched various initiatives to strengthen the judicial system, such as the e-Courts project to digitize court proceedings and the National Mission for Justice Delivery and Legal Reforms to improve access to justice for marginalized communities.

Moreover, there have been several landmark judgments by the Indian judiciary that have upheld the distributive law and protected the rights of marginalized communities, such as the recent Supreme Court verdict on the reservation policy for OBCs in medical colleges.

In conclusion, the future of the distributive law in the Indian judicial system depends on various factors, including the political will to implement reforms, the availability of resources, and the commitment of the judiciary to uphold justice and equality. While there are challenges, there are also reasons to be hopeful for a more equitable and just future.<sup>23</sup>

## **II. Conclusion:**

Distributive justice requires not only the redistribution of resources, but also the recognition and validation of different social identities and experiences.<sup>24</sup> Access to justice and distributive justice are fundamental human rights that are closely linked. Distributive justice is essential for ensuring that everyone has access to the resources and opportunities they need to pursue justice. Research on access to justice and distributive justice is critical for developing strategies and policies that promote access to justice and distributive justice. By focusing on distributive justice, access to justice can be expanded to include a more comprehensive and equitable approach to justice.<sup>25</sup>

The distributive law is a fundamental principle in mathematics that describes how to distribute a set of operations over a group of elements. In the context of the Indian judicial system and society, the distributive law plays a crucial role in ensuring fairness, equality, and justice for all. A theory of "social connection" that emphasizes the importance of recognizing and valuing the diversity of human experience in discussions of distributive justice.<sup>26</sup>

The distributive law is based on the principle that the total value of a set of elements does not change when the elements are grouped differently or when operations are performed on them in a different order. In the Indian judicial system, this principle is applied in various ways to ensure that the rights and interests of all individuals are protected.<sup>27</sup>

One important example of the distributive law in the Indian judicial system is the principle of distributive justice. This principle holds that the benefits and burdens of society should be distributed fairly among all members of society. This means that individuals should receive an equal share of the benefits of society, such as access to education, healthcare, and other social services, and that they should also bear an equal share of the burdens of society, such as paying taxes and obeying laws.<sup>28</sup>

The distributive law is also used in the Indian judicial system to ensure that individuals are treated equally under the law. This means that individuals who are similarly situated should be treated similarly by the law, regardless of their race, gender, religion, or other personal characteristics. For example, if two individuals commit the same crime, they should receive the same punishment, regardless of their personal characteristics. The concept of distributive justice in the context of post-socialist societies, and argues that traditional theories of justice fail to account for the ways in which social identities (such as gender, race, and ethnicity) intersect with economic inequalities. A theory of "participatory parity" that takes into account these intersections and seeks to empower marginalized groups.<sup>29</sup>

The distributive law is also important in the Indian judicial system for ensuring procedural fairness. This means that individuals should have access to fair and impartial procedures when their rights are at stake. For

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<sup>23</sup> "The Right to a Fair Trial: An Essential Principle of the Administration of Justice" by the United Nations Human Rights Office of the High Commissioner

<sup>24</sup> Young, I. M. (1990). *Justice and the politics of difference*. Princeton University Press.

<sup>25</sup> "Distributive Justice and Climate Change" by Steve Vanderheiden:

<sup>26</sup> Iris Marion Young's book *Justice and the politics of difference*

<sup>27</sup> *Indian Judiciary and the Rule of Law* by Upendra Baxi

<sup>28</sup> *The Indian Judicial System: An Overview* by S.P. Sathe

<sup>29</sup> Fraser, N. (1997). *Justice interruptus: Critical reflections on the "postsocialist" condition*. Routledge.

example, individuals should have the right to a fair trial, to legal representation, and to present evidence in their defence.<sup>30</sup>

In addition to its role in the Indian judicial system, the distributive law is also important in Indian society more broadly. The principle of distributive justice, for example, is central to many social and political movements in India, including movements for land reform, education reform, and social welfare. These movements seek to ensure that the benefits of society are distributed more fairly among all members of society.

Overall, the distributive law is a fundamental principle that plays a crucial role in ensuring fairness, equality, and justice in the Indian judicial system and society. By upholding this principle, the Indian judicial system and society can ensure that the rights and interests of all individuals are protected and that social, economic, and political opportunities are distributed fairly.

1. The distributive justice system in India has made progress in reducing poverty and inequality in recent years. According to the World Bank, India's poverty rate declined from 21.6% in 2011 to 4.5% in 2019. However, inequality remains a significant challenge, and certain sections of society, such as women, marginalized communities, and rural populations, continue to face significant disparities in access to resources and opportunities.
2. The government of India has implemented various policies and programs to promote distributive justice, including the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), the National Food Security Act (NFSA), and the Pradhan Mantri Jan Dhan Yojana (PMJDY), among others. These programs aim to provide social protection and access to basic services and resources to vulnerable populations.
3. Despite the progress made, the distributive justice system in India still faces significant challenges, including inadequate implementation and monitoring of policies, corruption, and lack of access to justice for marginalized communities. There is a need for continued efforts to address these challenges and ensure equitable distribution of resources and opportunities for all.

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<sup>30</sup> Justice: What's the Right Thing to Do? by Michael J. Sandel (not specific to India, but discusses ethical and moral dilemmas faced by judges in various legal systems)