



# INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

## A Critical Legal Study On Need For Expanding Scope Of Writ Jurisdiction In Ensuring Access To Justice

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கொடையளி செங்கோல் குடியோம்பல் நான்கும்

உடையானாம் வேந்தர்க் கொளி<sup>2</sup>

(The best **ruler** is a light among rulers who is endowed with the four merits of generosity, graciousness, **providing justice** and care for the people)

- Thiruvalluvar

### ABSTRACT:

The primary responsibility of the State is to ensure the fair and impartial administration of justice, making it accessible to all citizens, irrespective of socio-economic status. In India, this responsibility is upheld through judicial independence, but procedural delays and jurisdictional limitations hinder timely access to justice. One key aspect of the judicial system, writ jurisdiction under Article 32 of the Indian Constitution, plays a crucial role in protecting citizens' fundamental rights, particularly against violations by the State. However, the current framework of writ jurisdiction faces significant barriers in terms of accessibility, particularly for marginalized communities. This research examines the challenges faced by Indian citizens due to the absence of writ jurisdiction at lower judicial levels, and the urgent need for the implementation of Article 32(3), which empowers Parliament to authorize other courts, such as High Courts, to issue writs. While Article 32 allows citizens to directly approach the Supreme Court for the enforcement of fundamental rights, its practical effectiveness is limited by factors such as legal illiteracy, financial constraints, and bureaucratic delays. These barriers disproportionately affect vulnerable populations, leaving them without effective legal recourse. The study critically analyzes the systemic issues in accessing justice, especially in rural and economically disadvantaged areas, and highlights how the lack of writ jurisdiction at lower levels

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exacerbates these challenges. The research proposes the expansion of writ jurisdiction under Article 32(3) as a solution to improve access to justice.

**KEYWORDS:** Access to Justice, Article. 32(3), Judicial Independence, Jurisdiction, Delay

## INTRODUCTION:

“If I was asked to name any particular Article in this Constitution as the most important Article without which this Constitution would be a nullity- I could not refer to any other Article except this one. It is the very soul of the Constitution and the very heart of it.”

- Dr.B.R.Ambedkar<sup>3</sup>

‘Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law<sup>4</sup>.

The ultimate aim of the law is to protect the rights of individuals and ensure justice for those whose rights have been violated, even by the State. Recognizing this, the framers of the Indian Constitution explicitly included constitutional remedies under Article 32, which is a fundamental right guaranteed to every citizen. A truly just legal system must be fair, accessible, and not merely bound by procedural limitations—it must serve as a vital instrument for people to voice objections against the State. India, adhering to the principle of judicial independence, must prevent interference not only from other branches of government but also from public pressures that may compromise justice. Merely enumerating rights is insufficient, regardless of how precisely they are worded<sup>5</sup>. India, adhering to the principle of judicial independence, must prevent interference not only from other branches of government but also from public pressures that may compromise justice. Merely enumerating rights is insufficient, regardless of how precisely they are worded. A declaration of rights holds little value without a robust mechanism for their enforcement. It is the remedy that gives substance to the right—without a remedy, the right becomes meaningless. Understanding this, the Constitution’s framers not only provided an extensive list of fundamental rights but also ensured their enforceability through Article 32. This provision is among the most "highly cherished rights," empowering citizens to directly approach the Supreme Court to seek enforcement of their fundamental rights”<sup>6</sup>.

Article 32 guarantees the final and essential fundamental right in the Constitution of India. Unlike other rights that are substantive in nature, Article 32 is remedial—it provides a mechanism for individuals to seek judicial redress when their fundamental rights are infringed<sup>7</sup>. Significantly, Article 32 itself is classified as a

<sup>3</sup> Constituent Assembly Debates, Vol.VII, 953.

<sup>4</sup> [https://www.globaljusticeblog.ed.ac.uk/2023/12/05/udhr75-right-to-effective-remedy/Article 8 of the UDHR](https://www.globaljusticeblog.ed.ac.uk/2023/12/05/udhr75-right-to-effective-remedy/Article%208%20of%20the%20UDHR)

<sup>5</sup> Nirmalendu Bikash Rakshit, ‘Right to Constitutional Remedy: Significance of Article 32’ (1999) Vol. 34, No. 34/35 Economic and Political Weekly accessed 3 June 2014.

<sup>6</sup> Fertilizer Corporation Kamgar Union vs. Union of India, AIR 1981 SC 344.

<sup>7</sup> Rakshit (n 16).

fundamental right, underscoring its critical role in safeguarding civil liberties. In addition to the Supreme Court's jurisdiction under Article 32, Article 226 empowers all High Courts to issue writs for the enforcement of fundamental rights. Article 32 ensures an expeditious and affordable remedy for protecting these rights against encroachments by legislative or executive actions<sup>8</sup>. Both the Supreme Court and High Courts are authorized to issue writs such as *habeas corpus*, *mandamus*, *prohibition*, *quo warranto*, and *certiorari* to enforce the rights guaranteed under Part III of the Constitution. Importantly, the powers conferred upon the High Courts under Article 226 do not limit the jurisdiction of the Supreme Court under Article 32(2). As a fundamental right in itself, Article 32 allows direct access to the Supreme Court, and the existence of an alternative remedy does not preclude the Court from entertaining a petition for enforcement of a fundamental right<sup>9</sup>. As per reports from the Supreme Court dated 31 August 2024, a total of 34,212<sup>10</sup> writ petitions are currently pending before the Court. In 2023 alone, 73,216<sup>11</sup> cases were pending before the Supreme Court. Similarly, in High Courts across India, there were 2,69,014<sup>12</sup> pending writ petitions in the year 2024. These figures clearly indicate a widespread and persistent violation of fundamental rights across the country, often at the hands of the State. A concerning aspect of this data is the implicit reality that most of these cases are filed by individuals who are well-educated and legally aware. This raises a critical question—what about those who are not equipped with the knowledge or resources to seek legal redress? Many may suffer silently, unable to assert their rights through the judicial process. It is for this reason that we have undertaken this study: to explore the root causes of this problem and to identify practical solutions that can ensure more equitable access to justice for all citizens, regardless of their background or education level.

### RESEARCH QUESTIONS:

1. Is there a pressing need for the implementation of Article 32(3)?
2. Does the denial of access to justice lead to the violation of constitutional rights?

### OBJECTIVES:

1. To investigate the suffering and challenges faced by victims of fundamental rights violations.
2. To examine the implications arising from the absence of writ jurisdiction.
3. To assess the role of the Constitution and Parliament in addressing the absence of writ jurisdiction.
4. To propose improvements to the legal system through the extension of writ jurisdiction.
5. To investigate the necessity and urgency of implementing Article 32(3).

<sup>8</sup> Constitution Assembly Debates(C.A.D) Vol. VII at 953.

<sup>9</sup> S.Govinda Menon vs. Union of India, AIR 1967 SC 1274.

<sup>10</sup>[https://www.sci.gov.in/flipbook/?flipbook\\_url=https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/12/2024120414.pdf](https://www.sci.gov.in/flipbook/?flipbook_url=https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/12/2024120414.pdf).

<sup>11</sup>[https://www.sci.gov.in/flipbook/?flipbook\\_url=https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/12/2024120414.pdf](https://www.sci.gov.in/flipbook/?flipbook_url=https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/12/2024120414.pdf).

<sup>12</sup> [https://njdg.ecourts.gov.in/njdg\\_v3/](https://njdg.ecourts.gov.in/njdg_v3/)

## METHODOLOGY:

The researcher has adopted purely doctrinal method of doing legal research in doing this project. The researcher has used different tools of research like books, journals, online resources, texts of the Constitution and other necessary tools as per requirement.

## SIGNIFICANCE OF THE STUDY:

The primary responsibility of the State is the administration of justice. In India, this duty is upheld through the principle of judicial independence, ensuring that justice is delivered impartially—without favor to either the State or the public. A foundational doctrine of our legal system is that "justice delayed is justice denied," yet procedural delays and limitations, such as territorial jurisdiction, often hinder timely justice. Justice should not be a privilege available only to those who can afford to seek it—it must be affordable and accessible to all. Writ jurisdiction plays a vital role in protecting the fundamental rights of citizens, particularly against violations by the State. When such violations occur, it is the higher judiciary that intervenes to provide appropriate remedies. This research aims to highlight the urgent need felt by the people—the "thirst" for justice and for effective remedies when their rights are infringed by State authorities. A common question arises among ordinary citizens: *Why should I have to wait and travel long distances just to seek justice when my fundamental rights are violated by the State?* This sentiment is both valid and powerful. It reflects a genuine concern that was, in fact, anticipated by the framers of our Constitution, who included Article 32 to ensure direct access to justice. More specifically, Article 32(3) empowers Parliament to authorize any other court to exercise writ jurisdiction, thereby potentially decentralizing access to justice. It is time to seriously consider the implementation of Article 32(3). The Supreme Court<sup>13</sup> held that once a citizen establishes a violation of their fundamental right, the Court is duty-bound to entertain petitions for the enforcement of such rights and cannot decline to do so. The Supreme Court<sup>14</sup> emphasized that the constitutional provisions granting it broad powers to enforce fundamental rights reflect the clear intent of the Constitution-makers to ensure that procedural technicalities do not obstruct the effective enforcement of these rights. This study aims to examine and amplify the concerns of laypersons, exploring how the justice system can be made more reachable and responsive to the needs of all citizens—not just the educated or privileged.

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<sup>13</sup> Romesh Thapper v. State of Madras, (1950) SC 124

<sup>14</sup> Bandhua Mukti Morcha v. Union of India, (1984) SC 802

## **REQUIREMENTS OF THE RIGHT TO A REMEDY, ESPECIALLY RIGHT TO A JUDICIAL REMEDY:**

International human rights bodies have progressively interpreted and expanded the concept of an effective remedy. The right to a remedy entails guaranteed access to an independent and competent authority empowered to determine whether a human rights violation has occurred or is ongoing, and to provide appropriate redress—either through cessation of the violation or reparative measures. For a remedy to be truly effective, it must meet several essential criteria: it must be prompt, accessible, available before an independent and impartial body, and capable of leading to genuine reparation and, where necessary, cessation of the wrongful act. The following sections will outline and analyze each of these core elements of an effective remedy. While each component can be considered independently, it is important to emphasize that these elements are interdependent. Their combined fulfillment determines the overall effectiveness of a remedy and ensures the meaningful enforcement of human rights.

### **PROMPTNESS AND EFFECTIVENESS:**

The jurisprudence of all major international human rights bodies uniformly affirms that promptness and effectiveness are fundamental prerequisites for any legal remedy. These principles are recognized as essential to ensuring the practical realization of human rights and the meaningful enforcement of legal protections<sup>15</sup>. The Committee on the Elimination of Discrimination against Women has reaffirmed that, under their treaty obligations, States parties are required to ensure that all women enjoy equal access to remedies that are both prompt and effective in addressing rights violations<sup>16</sup>. The Inter-American Court of Human Rights has consistently affirmed that the right of every individual to a simple, prompt, and effective remedy before a competent judicial authority—aimed at protecting against violations of fundamental rights—is a foundational element not only of the American Convention on Human Rights but also of the broader principle of the Rule of Law within a democratic society, as articulated in the Convention<sup>17</sup>.

### **ACCESSIBILITY, INCLUDING LEGAL ASSISTANCE:**

A practical and effective remedy must be both simple in procedure and accessible to all individuals. The Human Rights Committee has emphasized that ensuring such accessibility requires particular attention to the heightened vulnerability of certain groups. It further underscores the necessity of providing legal aid to enable individuals, especially those from marginalized communities, to meaningfully exercise their right to a remedy<sup>18</sup>. Specifically concerning women complainants and witnesses of gender-based violence, the

<sup>15</sup> AfrComHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003, Principle M(5)(e).

<sup>16</sup> CEDAW Committee, General recommendation on women's access to justice, UN Doc CEDAW/C/GC/33 (2015), para 11. See also paras 14(d), 18(d), 19(a).

<sup>17</sup> *Mayagna (Sumo) Awas Tigni Community v Nicaragua*, I/ACtHR, Judgment of 31 August 2001, Series C No. 79, para 112.

<sup>18</sup> Human Rights Committee, Concluding observations on Poland, UN Doc CCPR/CO/82/POL (2004), para 14.

Committee on the Elimination of Discrimination against Women has recommended that States adopt and implement effective measures to ensure their protection and support throughout all stages of legal proceedings—before, during, and after. This includes, among other measures, guaranteeing access to financial assistance and the provision of high-quality legal aid that is either free or available at low cost<sup>19</sup>.

### LEADING TO CESSATION AND REPARATION:

The Human Rights Committee has emphasized that an effective remedy must encompass not only the cessation of the violation but also appropriate reparation and measures to prevent its recurrence<sup>20</sup>. The Inter-American Court of Human Rights, the African Commission on Human and Peoples' Rights, and the European Court of Human Rights have all consistently affirmed that an effective remedy must be capable of providing adequate redress for violations of fundamental rights<sup>21</sup>. The Committee on the Elimination of Discrimination against Women has recognized that both civil and compensatory remedies constitute essential components of effective remedies<sup>22</sup>. The Committee on the Elimination of Racial Discrimination has stated that the claim for compensation must be considered in all cases, including those where no physical harm has occurred, but where the victim has experienced humiliation, defamation, or other forms of harm to their reputation and dignity<sup>23</sup>. International human rights bodies have considered that the right to an effective remedy encompasses the right to a prompt, thorough, independent and impartial effective investigation<sup>24</sup>. The Human Rights Committee has held that the remedy could be assured by the judiciary, but also involve administrative mechanisms, particularly to investigate allegations of violations<sup>25</sup>.

<sup>19</sup> CEDAW Committee, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, UN Doc CEDAW/C/GC/35 (2017), para 40(c). See also, CEDAW Committee, General Recommendation No. 33 on women's access to justice, CEDAW/C/GC/33 (2015), paras 36-37.

<sup>20</sup> Human Rights Committee, General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 (2004), para 15.

<sup>21</sup> Judicial Guarantees in States of Emergency (Articles 27.2, 25 and 8 American Convention on Human Rights), I/ACtHR, Advisory Opinion OC-9/87, 6 October 1987, Series A No. 9, para 24; ECtHR: *Silver v the United Kingdom*, Judgment of 25 March 1983m Series A No. 61, para 113; AfrComHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003, Principle C(a).

<sup>22</sup> CEDAW Committee, General Recommendation No. 19 on Violence against Women, UN Doc A/47/38 (1992), para 24(t)

<sup>23</sup> *Keenan v the United Kingdom*, ECtHR, Judgment of 3 April 2001, Reports 2001-III, para 126.

<sup>24</sup> Human Rights Committee, General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 (2004), para 15; *L.K. v the Netherlands*, CERD Committee Communication 4/1991, UN Doc CERD/C/42/D/4/1991 (1993), para 6.9; *Habassi v Denmark*, CERD Committee Communication 10/1997, UN Doc CERD/C/54/D/10/1997 (1999), paras 9.3-10; *Blake v Guatemala*, I/ACtHR, Judgment of January 24, 1998, Series C No. 36, para 97; *Villagrán Morales et al v Guatemala* (The "Street Children" Case), I/ACtHR, Judgment of 19 November 1999, para 225; *Castillo Páez v Peru*, I/ACtHR, Judgment of 3 November 1997, Series C No. 34, para 90; *Extrajudicial Executions and Forced Disappearances of Persons (Peru)*, I/AComHR, Report No. 101/01, Case 10.247, 11 October 2001, para 243; *Riofrío Massacre (Colombia)*, I/AComHR, Report No. 62/01, Case 11.654, 6 April 2001, para 74;

<sup>25</sup> Human Rights Committee, General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 (2004), para 15.

## EXPANDING WRIT JURISDICTION AND STRENGTHENING CONSTITUTIONAL REMEDIES IN INDIA:

India, with a population nearing 1.5 billion—making it the most populous country in the world—has 25 High Courts and their respective branches to administer justice. However, the country is served by only one Supreme Court, which lacks regional branches. This presents a significant challenge, as the accessibility of justice is limited. The absence of an efficient and decentralized judicial system can lead to the abuse of power and arbitrary actions by other branches of government, eroding public confidence in the state and potentially fostering the rise of revolutionary, violent, or criminal elements. Such conditions are detrimental to the country's stability and can make it vulnerable to external influences or exploitation by more powerful nations already poised to encroach upon India. To address these concerns, it is crucial that writ jurisdiction be extended to every district in India. This would ensure a stronger, more accessible justice system, curb abuses of power, and contribute to sound governance. The implementation of a revised judicial structure, with courts more widely distributed and empowered, is essential for improving the delivery of justice in the country. This proposal calls for urgent action to reform the court system to address the challenges faced by ordinary citizens and provide effective solutions to these systemic issues. In the Constituent Assembly, Dr. B.R. Ambedkar, the chief architect of the Indian Constitution, highlighted the need for a balance between individual rights and national interests. He emphasized that while individual liberty is fundamental, in certain critical situations, particularly where the nation's survival is at risk, constitutional remedies and rights may need to be subject to limitations for the greater good of the state. As he stated, "it is equally clear that in certain cases, where, for example, the state's very life is in jeopardy, constitutional remedy's rights must be subject to a certain amount of limitations"<sup>26</sup>.

This is why the framers of the Constitution believed that, during an emergency, the enforcement of fundamental rights should be suspended. They reasoned that the unrestricted exercise of individual rights in such circumstances could jeopardize the security and stability of the nation as a whole<sup>27</sup>. The primary purpose for invoking Article 32 is to enforce Fundamental Rights. The violation of a Fundamental Right is an essential condition (*sine qua non*) for the exercise of the remedy provided under Article 32<sup>28</sup>. Consequently, Article 32 may be invoked solely when there is a violation of a Fundamental Right. To ensure the enforcement of such rights, judicial review of administrative, legislative, and governmental actions—or inactions—is permissible. However, Article 32 cannot be invoked merely to assess the validity of legislation or administrative actions unless they directly and adversely affect the petitioner's Fundamental Rights<sup>29</sup>.

<sup>26</sup> D.D.Basu, Introduction to the Constitution of India (21st Edition, Lexis Nexis 2013) 100.

<sup>27</sup> Rakshit (n 16).

<sup>28</sup> Federation of Bar Association of Karnataka vs. Union of India, AIR 2000 SC 2544.

<sup>29</sup> Shantabai vs. State of Maharashtra, AIR 1958 SC 532.

## **ANALYSIS OF THE CHALLENGES IN ACCESSING CONSTITUTIONAL REMEDIES:**

This research proposal is the first of its kind to critically assess the societal challenges and realities faced by Indian citizens due to the absence of writ jurisdiction and the unmet need for the implementation of Article 32(3) of the Indian Constitution. Despite the constitutional guarantees designed to protect citizens' rights, particularly through judicial remedies, there remains a significant gap in understanding and addressing the inaccessibility of these rights to the broader public. Article 32 of the Indian Constitution is often regarded as a cornerstone of justice, providing citizens with the fundamental right to directly approach the Supreme Court in cases of violations of their fundamental rights. However, the practical effectiveness of this provision—especially in terms of accessibility—remains a critical concern. While the right to seek remedies under Article 32 is central to the functioning of Indian democracy, the barriers that ordinary citizens face in utilizing this right are frequently overlooked. The state's fundamental responsibility is to ensure the equitable administration of justice, free from favoritism or discrimination, particularly between individuals and the state. Ideally, the state must act as a neutral and fair authority in providing avenues for justice and redress to citizens whose rights have been infringed. Yet, despite constitutional provisions aimed at safeguarding citizens' rights, numerous individuals continue to encounter significant barriers in accessing justice. These obstacles may stem from factors such as legal illiteracy, financial constraints, lack of awareness regarding legal recourse, bureaucratic delays, or procedural complexities within the judicial system. Such challenges disproportionately affect marginalized communities, leaving them unable to seek the justice they are rightfully entitled to.

This research aims to explore the deep-rooted societal distress caused by the absence of effective judicial remedies, particularly in the context of Article 32. It will examine the struggles faced by ordinary citizens—especially those in rural areas, economically disadvantaged communities, and individuals with limited legal knowledge—who are often deprived of recourse to the judicial system. Through this examination, the study intends to uncover systemic issues that contribute to the denial of justice and propose potential solutions to address these gaps. By focusing on the lack of writ jurisdiction, this research will investigate the extent to which citizens are hindered in asserting their rights before the courts, particularly when their fundamental rights are violated by the state or other powerful entities. Additionally, it will explore how the absence of certain judicial mechanisms or the inadequate enforcement of constitutional provisions exacerbates the injustice experienced by individuals who have no other means of redress. Ultimately, this study seeks to illuminate the real-life consequences of the lack of access to justice and to offer actionable solutions. The research will focus on how the implementation of Article 32(3)—which empowers High Courts to issue writs—could provide a more accessible, effective, and widespread solution. By advocating for reforms and increased public awareness, this study aims to contribute to a more just and equitable society, where citizens can fully access the legal remedies to which they are constitutionally entitled.

## CONCLUSION:

This research reaffirms the critical role of constitutional remedies under Article 32 of the Indian Constitution, which Dr. B.R. Ambedkar called its "heart and soul." However, it highlights significant barriers to accessing these remedies, particularly due to territorial and subject-matter jurisdictional limitations. These constraints undermine the promise of justice and result in the systemic denial of redress for violations of fundamental rights. The study identifies a pattern of state inaction, where the extension of writ jurisdiction remains incomplete or absent in certain territories, shielding the state from legal accountability and perpetuating unchecked administrative power. This denial of judicial remedies leads to a dual injustice—violations of rights coupled with a lack of legal recourse. The research also reveals that a large section of the population, particularly marginalized communities, is adversely affected by the absence of writ jurisdiction. This deprivation exacerbates the violation of rights under Articles 14, 19, 21, and 32 of the Constitution, especially the right to life and personal liberty. Additionally, widespread ignorance about fundamental rights, compounded by inadequate civic education and limited access to legal resources, prevents many from asserting their constitutional remedies, further entrenching cycles of injustice. In conclusion, the absence of writ jurisdiction in parts of India is not only a legal failure but also an ethical concern, undermining justice, fairness, and equality. The findings call for urgent legal reforms, greater public awareness, and a stronger judicial commitment to ensuring universal access to constitutional remedies for all citizens.

## RECOMMENDATIONS:

- It is imperative to establish writ jurisdiction at the district court level and appoint designated judges to oversee and manage such cases.
- Establish simplified procedural mechanisms to facilitate the initiation and conduct of cases under writ jurisdiction.
- Ensure the expeditious adjudication and timely disposal of writ cases to uphold the right to effective justice
- The jurisdiction of the High Courts and the Supreme Court should be expanded and decentralized by establishing regional branches across the country to ensure more equitable and efficient access to justice for all citizens.
- Court proceedings should be conducted in the regional language, and, where necessary, in a language that is representative and comprehensible to all parties involved, to ensure inclusivity and effective participation in the judicial process.
- The State should establish a dedicated and specialized agency empowered to take suo moto cognizance of writ cases involving violations of fundamental rights or significant public interest concerns.

- The State must ensure that the judiciary is empowered and obligated to take cognizance of writ petitions based on the substantive merit and genuineness of the claims, irrespective of procedural technicalities.

“STEP TO AVAIL JUSTICE”

