

ACCESS TO JUSTICE AND LEGAL AID IN INDIA

DR. BHARTI YADAV



Singh

॥ न्यायस्तत्र प्रमाणं स्यात् ॥



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Signature



CHAPTER

1

Access to Justice: History and Evolution

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Access to Justice History and Evolution

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INTRODUCTION

Blindfolded Lady Justice or 'Justitia' with a pair of scales and sabre in her hands is a familiar symbol and sight in justice systems the world over. Though 'Justitia' may have different variations, she possesses three distinct and significant features (i) the blindfold (ii) the scales and (iii) the sword. Together they emphasize impartiality- action without reference to the circumstances, the fair process to be followed and the power and protection of the law. Lady Justice is a representation and reminder of these very ideals which are fundamental to the law.

Law and justice are thus two concepts which are inextricably linked to each other. To study law without comprehending justice is like possessing a pen without ink. One is of little use without the other. In a similar vein, a famous jurist has said 'Law without justice is blind and justice without law is lame'. Even though both concepts are interconnected and go hand in hand, they are clearly not the same thing. Again, the notion of justice brings to mind images of the rule of law, the litigant, the judge, the court, the lawyer and even the law-maker. In this Chapter, the meanings of various concepts including law, justice and access to justice are clarified for better understanding. The universal concept of access to justice that has taken centre-stage in discourses and discussions at various international and national fora on enhancing the effective dispensation of justice, is the central focus of this chapter.

MEANING OF JUSTICE

In a simple sense, justice is a broad concept which encompasses principles of fairness, equality and right judgement. Law, on the other hand, is a set of rules, regulations and standards based on justice and laid down by the State or international bodies. Attempts have been made by early thinkers, scholars and others throughout history and different theories have been propounded to clarify the meaning of the law. While some of the theories have sought to explain what law is from the point of view of its origin or source, other theories have gone on to explain law in terms of its nature, its role or purpose in society and also its evolution.



CHAPTER

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Access to Justice and International Law

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Access to Justice and International Law

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INTRODUCTION

The age-old maxims of natural justice 'Nemo debet esse iudex in propria sua causa' and 'Audi alteram partem' call for the delivery of justice in its true sense. In order to effectively deliver justice, it is imperative that justice should be easily available to those who seek it. It is said, "a society without access to justice for everyone, is a society where injustice can come to anyone". Access to justice is a real and key issue that has confronted humankind from times immemorial. It has prompted kings, rulers, thinkers and scholars over centuries to devise ways of dispensing justice to all. Access to justice has thus been the crucial cornerstone in any and every justice administration system the world over.

The concern for justice has prompted the nations of the world, the United Nations Organization (UNO) and other International Organisations to enact and pass resolutions as well as declarations towards securing access to justice for all. Access to justice is regarded as a basic principle of the rule of law. Rule of Law mandates the right of equal access to justice for all and therefore necessitates necessary steps to provide fair, transparent, effective, non-discriminatory justice. Rule of law is more than the mere clarity, generality, stability and prospective nature of norms. It encompasses the processes and institutions by which the norms are administered. Accessibility of justice for all thus emerges as a core principle of the Rule of Law signifying more than mere access to courts.

Respect for the rule of law and the ideals of fair and accessible justice systems got strengthened in the 20th century following the birth of the United Nations Organisation. Before that, access to justice finds its roots in principles of customary international law. This chapter highlights the recognition and protection that international law provides to access to justice which in turn impels its constitutional and legal recognition at the domestic level. Furthermore, access to justice being a very wide and comprehensive area of international dialogue, debates and resolutions, this chapter will also endeavour to provide some comprehensive ideas on access to justice.



CHAPTER

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Perception of Formal Methods in Access to Justice

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Perception of Formal Methods in Access to Justice

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INTRODUCTION

The idea of justice is derived from ancient scriptures, where the word Dharma is equivalent to justice. The term Dharma was followed in our country until and unless the British introduced English law in India. In a legal sense, Justice means the enforcement of rights as they are defined by various statutes. Administration of justice is one of the important functions of the State. Law and order within the State are maintained by the administration of justice. The State defines the rights and duties of its citizens. It protects the rights and enforces the duties. The State appoints persons to adjudicate the rights and duties and to secure their protection and enforcement. In this way, courts come into the picture. Slowly, a well-organized judicial system is developed in our present society. It is the function of the judiciary to protect and enforce the rights of individuals and to punish the wrongdoer, who committed illegal, wrongful or unlawful acts.

TYPES OF JUSTICE

The justice delivery system is of two types, that are formal and informal methods. In the informal system, they apply non-state methods of conflict resolution. In this system, decision-making is usually based on consultation and under the authority of non-lawyers/jurists, mainly local, tribal or religious leaders, either individually or in groups. Informal justice systems tend to address a wide range of issues of significant concern to the people, including personal security and local crime; protection of land, property and livestock; resolution of family and community disputes; and protection of entitlements, such as access to public services. It is often referred to as a traditional, indigenous, customary or non-state justice system. In this system, there is a simple meeting and a



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Public Interest Litigation

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Public Interest Litigation

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INTRODUCTION

The right to access through courts of justice is available to individuals who are aggrieved by the action of others. Only when a person is affected or aggrieved, he/she can approach the court of law for redressal. This means that there is a mechanism to address the violation of individual rights. But the peculiar socio-economic conditions that are unique to India strictly following the rule of *locus standi*, i.e., whose right is violated alone can approach the court, would restrict access to the judicial process. For example, what happens when an individual cannot afford to reach out to the courts? Does his right remain violated forever, or is there any other recourse in such situations?

Thus, blindly following the rule of *locus standi* would cause greater injustice. As a result, there is a need for creating new principles and strategies to tackle those cases where individual representation is either inadequate or impeded due to social, political, and economic constraints. Public Interest Litigation is one such initiative by the Indian Judiciary to meet those situations.

Public Interest Litigation is a judicial doctrine that has tried to address the circumstances in which a person is poor, ignorant, indigent, or illiterate and cannot afford to handle the litigation used in enforcing social rights. The justice delivery system is



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Access to Justice and Prerogative Remedies

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Access to Justice and Prerogative Remedies

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INTRODUCTION

A writ is an "order in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing, some specified act."¹ A writ is an order issued by a monarch exercising his/her authority of extraordinary powers under special circumstances to his subordinates. This power being extraordinary, issuing writs is generally known as the prerogative power of the King. In this context, prerogative means

- The power is the exclusive domain of the Crown
- The statute is not the source of the power to issue writs
- It is a personal power enjoyed by the Crown
- The purpose of such power is to control the subordinates and other courts

HISTORICAL EVOLUTION OF WRITS

The origin of the writs could be attributed to the British legal system. They are the result of orders passed by the King's Bench in England. The writs or the orders passed by the King's Council under Royal Seal are hence considered a Royal Order.² This prerogative power took shape due to the regular court system's inability to address the issues where traditional remedies are either absent or inadequate. Courts' inability to provide relief to the litigants forced them to approach the King's Council and the Council by exercising its extraordinary powers to issue the written orders popularly known as writs. Initially, such writs are issued to protect the interest of the Crown. But later the operation of the writs was

¹ *Black's Law Dictionary*, 1299 (7th edn., 2000).

² Abhe Singh Yadav, *Law of Writs: Jurisdiction and its Efficacy* 3 (Universal Law Pub., Delhi, 2009).



CHAPTER

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Legal Education, Clinical Education, Legal Aid, Legal Clinics, Law Schools, and Access to Justice

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Legal Education, Clinical Education, Legal Aid, Legal Clinics, Law Schools, and Access to Justice

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INTRODUCTION

With the adoption of the Constitution in 1949, the 'rule of law' became the basic component of Indian democracy. The essence of free India was well summed up in Art.14 of the Indian Constitution, which entitles every person to the equal protection of the law to guarantee the enjoyment of justice, liberty, equality, and fraternity; the four paramount aspirations of the Constitution.

Judicial trends in interpreting the Constitution, particularly from the *Maneka Gandhi*¹ case, made 'due process' of law a cornerstone of Constitutional ideology in post-independent India. Yet this Constitutional guarantee is a luxury for many facing poverty, economic deprivation, social stratification, and want of education.

The efforts for ensuring access to justice apart from the Constitution of India² are found in Legal Services Authorities Act, 1987;³ Civil Procedure Code, 1908;⁴ Criminal Procedure Code, 1973;⁵ Advocates Act, 1961;⁶ Reports of Committees constituted by the Government of India and other agencies, Law

¹ *Maneka Gandhi v. Union of India* AIR 1978 SC 597.

² Preamble, Part III and IV of the Constitution of India.

³ Chapter VI A, Legal Services Authorities Act, 1987, ss. 4 (e), 7(c), 10, 11(b), 12.

⁴ The Code of Civil Procedure, 1908 (Act 5 of 1908), Order XXXIII.

⁵ The Code of Criminal Procedure, 1973, s.304.

⁶ Advocates Act, 1961, s. 9A; Bar Council of India Training Rules, 1995, s. VI, Rule 46.



CHAPTER

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Access to Justice: Addressing Poverty as a Hurdle

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Access to Justice: Addressing Poverty as a Hurdle

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‘If I am asked which is the most important provision of the Indian Constitution, without which the Constitution would not survive I would point to none other than article 32 which is the soul of the Indian Constitution.’

Dr. Babasaheb Ambedkar

(Constituent Assembly Debate)

INTRODUCTION

The formal justice system in India follows a common law system. The Judiciary plays a major role in interpreting and implementing the legislation. The foundation of the system lies in the doctrine of precedent, where the judgment of a higher court binds its subsequent judges as well as subordinate Courts.

The vibrant justice delivery system ensures the enforcement of rights. The procedure should cater to the needs of all kinds of remedy seekers. It also should provide meaning to the maxim ‘Ubi Jus Ibi Remedium’ (where there is a right, there is a remedy). Therefore, economic hindrance or economic disability should not be a cause for refusal to entertain the case. This module helps us in understanding the procedural law given the needs of the poor.

The justice delivery system in India is built on two procedural pillars, civil procedure code and criminal procedure code. The main objective of these pillars is to ensure justice at all costs. The legislature understood the difficulty of providing justice with the standard procedure under different situations. Therefore, the code creates exceptions against itself



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Access to justice: scheduled caste, scheduled tribe and other backward class

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Access To Justice: Scheduled Caste, Scheduled Tribe and Other Backward Class

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INTRODUCTION

One of the fundamental purposes of the law is to secure the equality of all before the law. To establish an egalitarian society, all social groups ought to have equal access to any service provided by the State and an equal opportunity for economic, political, and social mobility.

But the concept of justice can never be the same for people belonging to different strata of society and subsequently facing different levels of injustice. In an unequal society, the level of victimization of people differs, depending upon not only their economic status but also their location on the social ladder. Thus, the meaning of justice cannot be the same for marginalized communities as it is for the dominant layers of society¹.

Therefore, certain groups like the Scheduled Caste (Dalit), Scheduled Tribes (Adivasis), and Other Backward Classes who are historically disadvantaged, vulnerable, and socially oppressed call for certain steps to be taken to provide equal access to justice and prompt redressal

¹ Badri Narayan Tiwari, "Ethnography of Social Justice in Dalit Patis (Hamlets) of Rural UP", State of Justice in India issues of Social Justice, Volume III, edited by Paula Banarjee and Sanjay Chaturvedi, 2009.



CHAPTER

10

Access to Justice and Women

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Access to Justice and Women

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INTRODUCTION

Women have always been glorified as goddesses to be adored and revered for all the virtues they possess. They have been clothed with divinity and felicitated as goodness and sacrifice personified. There has been a gradual degradation of the status of women due to various socio-economic reasons resulting in grave violations of their rights as human beings at all levels not only outside the household but more so in their own house.

Women by nature are caring, affectionate, sensitive and considerate, thus making them more vulnerable to abuse and exploitation. The perpetrators of wrongs against women are not only the men but also the women themselves. This is the reason why several laws have been enacted and various mechanisms put in place to redress the wrongs against women. The process of access to justice for women has to be very simple and convenient due to the very fact that women are very reluctant to approach the law due to their nature of putting up with a violation of their rights.

INTERNATIONAL INSTRUMENTS RELATING TO WOMEN

The International Community has been very sensitive in its approach towards women's rights generally and access to justice mechanisms for women particularly. There are several International Instruments for the protection of the rights of

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CHAPTER

11

Access to Justice and Domestic Violence

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Access to Justice and Domestic Violence

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INTRODUCTION

Domestic violence has been a universal concern for ages across civilizations. It has no bounds of age, race, gender or status but is widespread in all the strata of society. Men as well as women of all ages are its victims but women are its major sufferers. These cases represent serious violations of human rights and are the most difficult to detect because the victims are silent sufferers who are reluctant to seek redress due to the intimate nature of the relationship.

Domestic Violence: It's meaning

Domestic violence is an act of acquiring domination by one person over another person, both placed in a domestic relationship, by use of violence of some kind. It can assume different forms like physical, sexual, emotional, economic, or psychological violence. 'Domestic violence' is a term that has come to refer to a broad array of harm committed against members of a family or intimate unit by other members of such family or intimate unit¹. The action of the perpetrator is designed to humiliate, intimidate exploit or cause pain to the victim.➡

Victims of Domestic Violence

Any person in a domestic relationship who faces violence of any type, whatever its gravity, is termed a victim to be entitled to the protection of the law. Domestic violence is not restricted to a specific class of persons. It is even prevalent among persons belonging to the upper economic strata.

The victim may be related to the perpetrator of violence as

- a. a spouse,
- b. a child,
- c. a parent or



¹ Maryland Inst. For Continuing Prof'l Educ. Of Lawyers, Inc., "Domestic Violence Cases: Handling Them Effectively in Circuit and District Court" 5-6 (2001).

CHAPTER

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Access to Justice and Children

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Access to Justice and Children

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INTRODUCTION

Children have always been considered to be special beings requiring distinct treatment. Their tender bodies and minds make them merit a gentle approach in their upbringing. They constitute over 40 per cent of India's total population. Every year, an estimated 26 million children are born in India. They being the future of the nation, need special nurturing and consideration in their process of growth and development, which has to be healthy and all-round. This includes not only their physical development through a healthy diet but also psychosomatic¹ well-being, which is possible through various stimulations and a feeling of belonging to a secure environment.

Vulnerability of child

There are various factors which compromise with a secure environment, like child labour, child sexual abuse and exploitation, trafficking, etc, which hamper the growth of the child. The compromising issues that a child faces are varied in nature, and are not limited to a particular economic or social status. A child by nature is vulnerable irrespective of its class or gender and therefore susceptible to exploitation. At such a time, it becomes necessary that the law comes to the aid of the child, and not only rescue those in difficult circumstances but create a framework that accords protection to the child and its rights at all times and in all situations, so that the world becomes a safer place for the child to live in.



¹ A physical disorder thought to have psychological causes.

CHAPTER

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Rights of Prisoners and Norms dealing with Prisoners in Justice Administration

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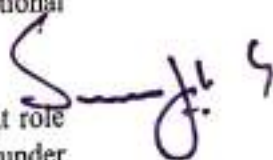
Rights of Prisoners and Norms dealing with Prisoners in Justice Administration

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INTRODUCTION

The oldest penal institution is the 'jail' which is commonly known as a prison in all countries. A prison is a place for detaining prisoners waiting for and execution of sentences. It is a place where the criminal justice administration put its entire hopes. The correctional mechanism, if fails will make the whole criminal procedure in vain. The doctrine behind punishment for a crime has been changed a lot by the evolution of new human rights jurisprudence. The concept of reformation has become the watchword for prison administration. Human rights jurisprudence advocates that no crime should be punished in a cruel, degrading or inhuman manner. On the contrary, it is held that any punishment that amounts to cruel, degrading or inhuman should be treated as an offence by itself. The change caused to the criminal justice system and its correctional mechanism has been adopted worldwide.

The central government, State government and Judiciary play an important role in prison administration. Prison is a State/Union Territories (UT) subject under List II of the Seventh Schedule to the Constitution of India. The management and administration of Prisons fall exclusively in the domain of the State Governments/UT Administrations and are governed by the Prisons Act, 1894 and the Prison Manuals of the respective State Governments. Thus, States/UTs have the primary role, responsibility and authority to change the current prison laws, rules and regulations. The Central government assists the States/UTs to improve security in prisons, repair and renovation of old prisons, medical facilities, development of borstal schools, facilities for women offenders, vocational training, modernization of prison industries, training to prison personnel, and for the creation of high-security enclosure. The Supreme Court of India has laid down various aspects of prison administration in its judgments. The Apex Court has laid down three broad principles regarding imprisonment and custody. Firstly, a person in prison does not become a non-person; secondly, a person in prison is entitled to all human rights within the limitations of imprisonment; and, lastly there is no justification for aggravating the suffering already inherent in the process of incarceration.



CHAPTER

15

Role of State and Individuals in protection and preservation of environment

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Role of State and Individuals in Protection and Preservation of Environment

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INTRODUCTION

A momentum to protect and preserve our natural environment emerged after the Stockholm Convention in the year 1972. The protection of nature is important for our survival on this earth. If we destroy our nature, nature destroys us. Protection and conservation of the environment are the duty of every person. Natural resources belong to the community. It does not belong to any specific person. Pollution of the environment does not result or cause damage to one person, but it leads to causing damage or injury to the entire community.

The development of industrialization, science, and technology, led to several problems in the world. Developmental activities resulted in environmental pollution, hazards and degradation of our natural resources. The concept of environmental protection and preservation of natural resources evolved only after the first global conference on Human Environment in Stockholm in the year 1972. Every country started making enactments to protect the environment within their local territories as per their local limitations and restrictions.

In this paper, an attempt is made to analyse the various sources of protection, rights, remedies, and access to justice concerning environmental problems in general and specific.

PROTECTION OF THE ENVIRONMENT DURING THE ANCIENT PERIOD

The protection of the environment is not a new idea in India. The idea of access to justice in case of environmental problems can be traced back to ancient times. Environmental protection was mentioned in ancient scriptures for example Bible, Quran, Vedas, Puranas, Sikhism, and Jainism. During ancient times people started worshipping animals, birds and trees. Once they worship them as an abode of God, vahanas of God, vana devata and vruksha devata, as a result, they are not daring to destroy our nature. Even in ancient times temples and shrines are constructed in the forest area. People believed that God need peace and he





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EMBRACING THE GOLDEN YEARS

AN INITIATIVE OF THE HEALTH SERVICES
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INDUS

Chapter 13

LEAVING A LEGACY: END-OF-LIFE ESTATE PLANNING

Babugouda S. Patil

Mr. Govind was a hardworking entrepreneur who had acquired properties in several cities. His children and their families were living in houses that he had purchased. Now Mr. Govind in his advanced age needs continuous assistance. His youngest daughter Neeta quit her job and decided to spend time with Mr. Govind and take care of him. Neeta's presence helped Mr. Govind to recover his lost health, and more importantly, he developed a renewed interest in life and social gatherings.

Mr. Govind wants to pay back Neeta for all her sacrifices. She sacrificed her career, her family, and even her personal life. He wants to give Neeta a larger share of his property, as well as conveying other information, such as his wishes for his last rituals, his final resting place, instructions about medical care, and many more things. Can he do so?

Introduction

The above illustration is just one of many scenarios that older adults experience. "What will happen to my body, my reputation and my estate?" There is a need for a well-planned devolution of property to the next generation. This is a necessity in order to avoid disputes and enjoy the properties. In addition to devolution of property, there are many other things to be conveyed. How can this be done? How can these instructions be conveyed? How can one know whether these wishes will be adhered to?

It is important to note that one's "legal personality" survives beyond one's "natural personality." This means that a person survives in law much longer than biologically. There are certain documents that need to be created under the law for one's legal personality to survive. One such document is the Will and the other is a Deed of Trust. This chapter will:



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AGRICULTURAL WATER GOVERNANCE: SUSTAINABLE PRACTICES & STRATEGIES

EDITORS: M. K. RAMESH | SAIRAM BHAT



Joint Publication by:

Centre for Environmental Law, Education, Research & Advocacy, National Law School of India University, Bengaluru
Indian Council of Agricultural Research – Indian Institute of Water Management, Bhubaneswar
Department of Agricultural Economics, University of Agricultural Sciences, Bengaluru

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Indian Institute of Water Management, Bhubaneswar

Department of Agricultural Economics
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Chapter 3

Agricultural Water Law and Policy: Goan Perspective

Dr. G. Shaber Ali* Dr. Kim Couto**

“The earth, the land and the water are not an inheritance from our forefathers but on loan from our children. So, we have to handover to them at least as it was handed over to us.”

Mahatma Gandhi¹

Abstract

Water is one of the most important natural resources for all the living organisms on this earth including agricultural activities. Agriculture is one of the most important sectors that provides sustenance to the human beings on this earth. Water on this earth is scarce, hence there is a need to preserve, conserve and save the water for future generations. For this purpose, we need to have proper law, policy and management of water resources. In this article an attempt is made to look into the Central Water Policy and the role played by the State of Goa in adopting similar policy for water preservation. This article starts with an introduction about the importance of water, its use and need to control water misuse. This article is mainly divided in to five parts. First part deals with the colonial regulations made by the Portuguese rulers in Goa, second part deals with the post-colonial period regulations incorporated with regards to water conservation, preservation, and the third part is concerned with National Water Policies introduced from time to time by the Central Government in 1987, 2002, 2012 and 2021 and Goa State water policies introduced to comply with

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¹ Newman, J. (2011). Green Ethics and Philosophy: An A-to-Z Guide (Vol. 8). Sage.

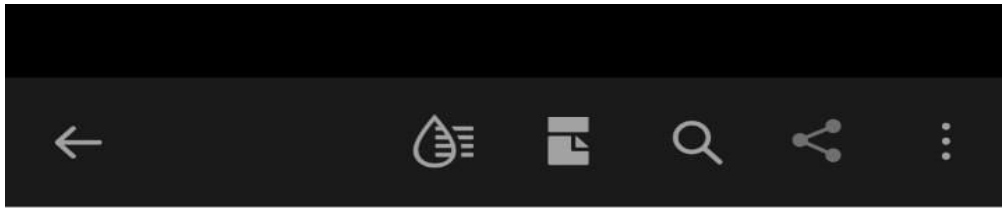
**3.3.3 Number of Books and Chapters in Edited Volumes/ Books
Published and papers published in National/ International
Conference Proceedings per teacher during the year**

Sarfaraz Ahmed Khan
Tony George Puthucherril
Sanu Rani Paul *Editors*

Groundwater Law and Management in India

*From an Elitist to an Egalitarian
Paradigm*

 Springer



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Law and Practice**

Dr. Nagesh Sadanand Colvalkar

NATION, NATIONALISM AND LITERATURE

Editors

Dr. Dattaguru G. Joshi
Dr. Govind G. Kajrekar
Mr. Sharad B. Shirodkar

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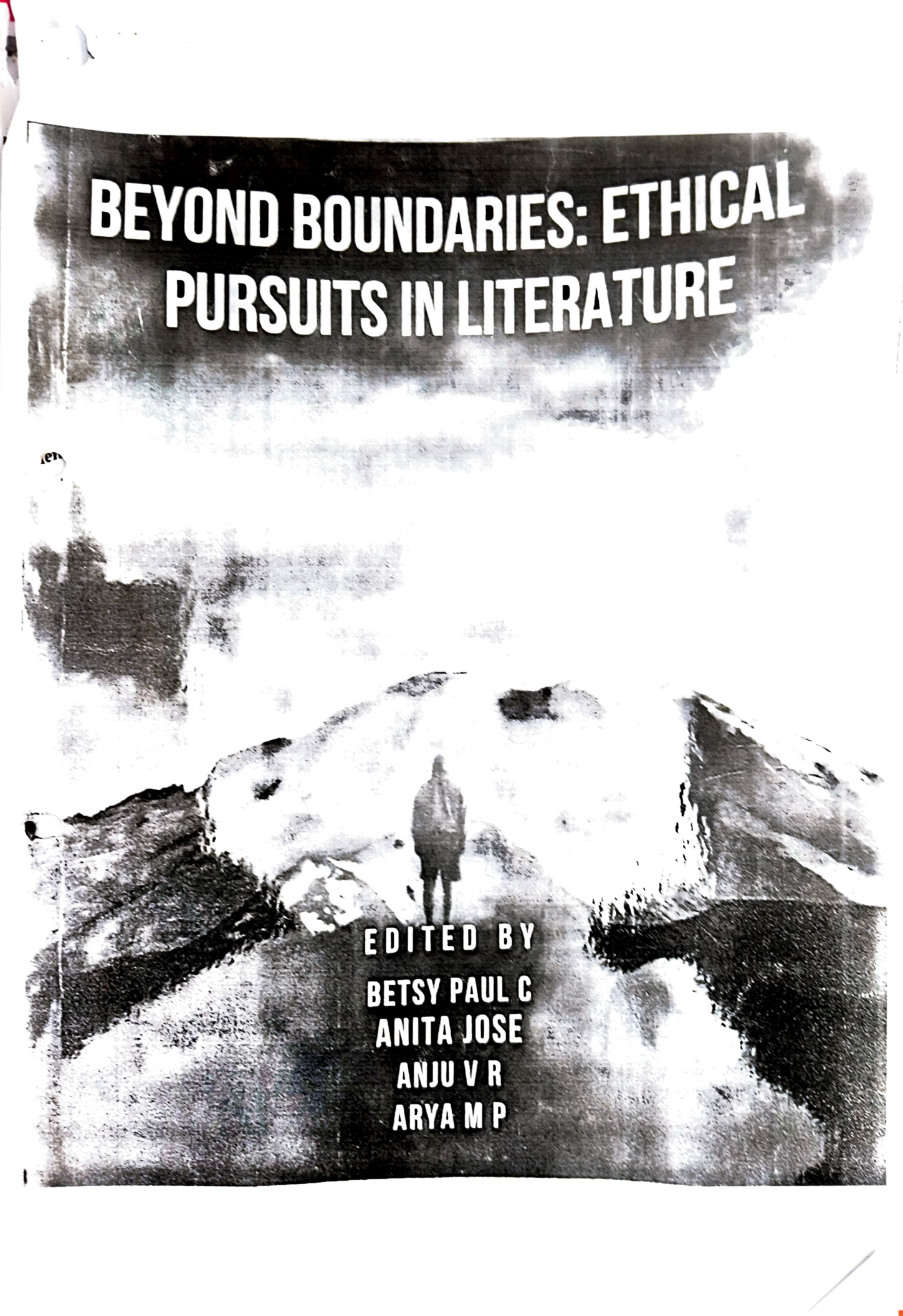
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BEYOND BOUNDARIES: ETHICAL PURSUITS IN LITERATURE

**EDITED BY
BETSY PAUL C
ANITA JOSE
ANJU V R
ARYA M P**

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Discovering One's Identity after Personal Encounters with the Divine in Three Amar Chitra Katha Comics and Some Biblical Parallels

Dr. Layla Mascarenhas

Introduction

Who are you? What would you say to describe who you are? Would it include your job-title, your gender, your age...? What else would it include? The ways we define ourselves are important to examine because it gives us clues about how we view our place in the world. For example, if someone were to answer the query with, "I am a doctor," it would partially indicate the importance he placed on his profession, his identity as a doctor. Then we have a person's Facebook page which can give more clues about the "image" he/she would like to portray to the world. Interviewers often ask interviewees, "Tell us about yourself." However, seated face to face with "ourselves", how would we define who we are?

In a small Indian village, everyone knows everyone. People have a pretty well-defined sense of their personal identity vis-à-vis the rest of the others who make up their village community. In a small Goan village, where the people have inhabited the same region for several generations, the identity question would be framed, "Tum Konnagelo?" - Whose child are you/ to whom do you belong? This question is directed to one's family of origin. There are reasons for tracing the origins of a person when defining who he/she is. One reason is that the character of a person is assumed to approximate to the general nature of the family of origin. If the father was a hardworking, honest man, his son would "most probably be like him." Secondly, every village has a particular culture of its own and by zooming in to the minute specifics of place this collective group nature is assumed to be part of who this individual is. This method used in traditional communities is a useful heuristic for "placing a person" in the taken-for-granted social and regional hierarchies. For a villager, there is no apparent need to figure out his "roots", simply because he knows where he belongs. However, with the breakdown of agricultural economy and the mass migration of people into urban spaces, there is a loss of a definite sense of "who we are" in