

Towards equitable access to justice: understanding access to justice and protecting human rights in the English legal system for vulnerable communities

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1. Introduction:

Establishing a fair and equitable society revolves around the pursuit of impartial justice and upholding the rule of law. The principle of impartial treatment within the legal system signifies that all individuals possess an equal entitlement to fair and lawful treatment. These are fundamental principles of the English legal system, which should ensure that everyone is treated equally before the law, and individual human rights are protected. Historically, the principle of equality before the law focused on ensuring that all individuals possessed the same legal rights and opportunities within the legal system. While formal equality before the law provided a foundation for legal rights, it did not address all potential barriers that prevented marginalised or vulnerable individuals from effectively exercising those rights.¹ Vulnerable communities are a key term which goes beyond merely looking at disadvantage. It looks at all individuals who face systemic barriers such as those related to socioeconomic, cultural, linguistic or even political issues. These often include people who are prone to being marginalised or threatened and who have little to no access to certain essential resources or services.

The research aims to contribute to the ongoing discourse on the importance of safeguarding fair trial rights in civil proceedings as a cornerstone of justice and the rule of law. Access to justice is not limited to merely having the right to utilise the legal system. The existing English legal environment presents a plethora of challenges that influence the degree to which individuals can avail themselves of the legal system to make practical use of the rights granted to them in law, particularly for vulnerable individuals. This research will show how the challenges and obstacles faced by vulnerable communities when attempting to access justice reflect systemic inequalities within the legal system. The difficulties and barriers experienced by individuals in seeking justice can include, various factors, such as limited legal aid, social and economic disparities, insufficient legal awareness, and complexity of the legal system. Beyond systemic challenges, individual vulnerabilities also play a critical role in hindering access to justice, especially if individuals have a limited proficiency in speaking English or they do not speak English at all. Cultural and social elements significantly contribute to the difficulty individuals face in accessing justice. Within certain communities, there exists a profound mistrust of the legal system, and cultural norms may deter individuals from pursuing legal assistance. Other internal barriers can also include, but are not limited to, religious barriers and technology barriers, all of which may amount to a hidden vulnerabilities. Often, hidden vulnerabilities persist simply because there is a lack of awareness about their existence. Overlapping vulnerabilities and intersectional challenges arise when individuals face compounded barriers, as multiple vulnerabilities, contributing to the loss of equitable access to civil justice. Barriers to access justice mean that no or inadequate action could be taken to resolve legal issues, and accordingly, disputes will remain unresolved. Moreover, even when disputes are formally resolved, the outcomes may not be satisfactory from the perspective of vulnerable individuals, particularly when viewed through an equity lens. This highlights the need for not just formal resolution

¹ JUSTICE, 'The State We're In: Addressing Threats & Challenges to the Rule of Law' (September 2023) <https://files.justice.org.uk/wp-content/uploads/2023/08/31123029/JUSTICE-The-State-Were-In-Addressing-Threats-Challenges-to-the-Rule-of-Law-September-2023.pdf> accessed 7 September 2024

of disputes, but resolutions that are equitable taking into consideration the unique challenges faced by vulnerable individual. Ensuring the fair implementation of the rule of law for such vulnerable communities requires access to justice as an essential first step. This underlines the need for further reforms in legal and policy frameworks to ensure equitable access to justice for all, irrespective of individual backgrounds or personal circumstances such as identifiable hidden vulnerabilities, to ensure a legal system that is both accessible and just for every member of the society.

It is important to know what justice is before we understand how individuals can access it. Justice has a universal meaning which relates to the concepts of fairness and equality.² Within English legal system, justice represents the equitable treatment of individuals regardless of their background or circumstances,³ in other words, Justice should be administered impartially and without discrimination⁴ a principle referred to as 'equality before the law.' Nonetheless, our comprehension of the elements that define discrimination has expanded over time by acknowledging less visible forms of vulnerabilities. Access to justice is an essential component of every democratic society, supporting the rule of law and ensuring that legal rights are not just theoretical but also practical and enforceable,⁵ therefore, equitable access to justice is not merely a legal imperative but a moral obligation.

2. Methodology:

This research will apply a socio-legal methodology to critically examine access to justice for vulnerable communities. At the outset, a comprehensive review of relevant policies, legislation, case law as well as official reports and publications related to access to justice in England and Wales will be conducted. This initial doctrinal analysis will provide an understanding of the legal framework governing access to justice. However, this research then goes beyond purely doctrinal analysis as such analysis does not capture the broader social context of the impact of these legal processes, particularly for vulnerable and marginalised communities. Taking a socio-legal approach aligns with the evolving landscape of legal research methodology, by expanding beyond traditional doctrinal analysis to incorporate interdisciplinary perspectives and empirical methods, which has long suffered from a lack of explicit discussion of methodological approaches.⁶ Legal empirical research aims to establish a factual foundation for understanding how law operates. Empirical social science focuses upon providing 'evidence to understand what people do and believe'. This often involves the collection of data, the 'gathering and analysis of facts' through various methods, and the 'finding' of information. Empirical socio-legal research utilises qualitative data collection methods. Qualitative research can offer insights into the 'experiences and world view(s)' of those who encounter the law and experience its operation.

3. Barriers in Accessing Justice:

While English law has long upheld the ideal of equality before the law, practical challenges and barriers often hinder access to justice for many individuals. Despite centuries of legal reform and the introduction of various mechanisms promoting and ensuring fair and equitable access to justice in English law, significant barriers and challenges persist, preventing many individuals from fully realising this principle and exercising their rights effectively.⁷ One of the main challenges is the complexity of

² John Rawls, 'A Theory of Justice' (Harvard University Press 1971) 3,11

³ Francesco Francioni, 'The Rights of Access to Justice under Customary International Law' in Francesco Francioni (ed), *Access to Justice as a Human Right* (Oxford University Press 2007)

⁴ United Nations General Assembly, 'Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels' (30 November 2012) UN Doc A/RES/67/1, para 13.

⁵ European Union Agency for Fundamental Rights, 'Access to Justice in Europe: An Overview of Challenges and Opportunities' (Publications Office of the European Union 2011) 9

⁶ Philip Langbroek et al, 'Methodology of Legal Research: Challenges and Opportunities' (2017) 13(3) *Utrecht Law Review* 1, 2

⁷ Hazel Genn, 'What Is Civil Justice For? Reform, ADR, and Access to Justice' (2012) 24 *Yale Journal of Law & the Humanities* 397, 411-413

the legal system, which can deter individuals from seeking legal assistance or pursuing their rights through the courts. The lack of legal literacy further aggravates this problem, making it difficult for individuals to navigate the legal system and understand their rights and obligations.⁸ Moreover, systemic inequalities permeate the legal system, creating significant disparities in access to justice among different socioeconomic groups.⁹ Marginalised and vulnerable communities, including racial minorities, low-income individuals, and individuals with disabilities, often face disproportionate barriers to obtaining legal assistance and navigating the complexities of the legal process.¹⁰ These obstacles can be evident in various forms, such as financial constraints, language barriers, and discriminatory practices within the legal system itself. According to Fineman's vulnerability theory, it is accepted that everyone is vulnerable in one way or another, however, certain societal systems aim at protecting some people and hence placed certain resources and tolerance to certain groups. From this point of view, there should be no waiting for injustice to improve.¹¹

4. Conclusion:

This research emphasises the critical need to ensure equitable access to justice as a foundation of a fair society. Despite the principle of equality before the law in the English legal system, barriers encountered by vulnerable individuals when seeking justice disproportionately hinders their ability to achieve fair outcomes.

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⁸ *ibid*, 401

⁹ JUSTICE, 'The State We're In: Addressing Threats & Challenges to the Rule of Law' (September 2023) <https://files.justice.org.uk/wp-content/uploads/2023/08/31123029/JUSTICE-The-State-Were-In-Addressing-Threats-Challenges-to-the-Rule-of-Law-September-2023.pdf> accessed 11 September 2024

¹⁰ Amnesty International UK, 'Cuts That Hurt: The Impact of Legal Aid Cuts in England on Access to Justice' (October 2016) https://www.amnesty.org.uk/files/aiuk_legal_aid_report.pdf accessed 11 September 2024

¹¹ Martha Albertson Fineman, 'Vulnerability and Social Justice' (2019) 53 Valparaiso University Law Review 341, 357-358