

Short Notes on:

Access to Justice

Introduction

Every individual is born with fundamental rights, known as Human Rights. Based on the general values of society, these rights are protected by Chapter 2 of the Constitution of the Republic of South Africa ("the Constitution"), also known as the Bill of Rights. The significance of the Bill of Rights lies in South Africa's past: a time when these values were not respected equally or extended to every person. An example of some of the basic human rights that are enshrined in the Constitution include: the right to privacy; access to justice; dignity; equality; access to healthcare; freedom of speech; fair labour practices; and many more. However, these rights may still be limited in certain instances. This article will be focusing on the right to access to justice and how you can ensure you maximise your right to its fullest.

Access to Justice

The word "justice" generally refers to fair and equal treatment of persons, as well as the way the law is applied. The Constitution protects, as a human right, a person's access to courts where his/her dispute can be resolved in a fair and public hearing. The importance of this human right is that it plays a big role in the protection and enforcement of other rights, including human rights. The right to access to courts ensures that South Africans can exercise their rights and if they are violated, they may seek assistance from the courts.

Does access to justice place a limitation on individuals to courts only?

Access to justice are not only limited to courts but extends to other forums and tribunals. There are various other forums/tribunals that grant access to justice for different legal matters, such as:

- Legal Aid South Africa that provides free legal services (mostly relating to criminal matters) to people who do not have the means to pay for a legal practitioner and who earns below a certain threshold that is prescribed from time to time.
- The Commission for Conciliation, Mediation and Arbitration ("CCMA") for labour matters. CCMA is open to both employees and employers at no cost.
- The South African Human Rights Commission ("SAHRC") that is a government institution, which promotes, monitors and protects human rights. The SAHRC can investigate, resolve, provide advice to, and assist victims of human rights violations.

Despite having these other forums for a person to exercise his/her right to access to justice, many people are not aware of their right and how to exercise their right.

What are the Limitations to the Right to access of Justice

While there are many factors that can lead to the limitation of an individual's right to access to justice, one such factor is the excessive costs of pursuing a matter in the court that can restrict an individual's right to access justice. In a previous interview, this was touched on by the Deputy Judge President of the Local Division of the High Court in Johannesburg, Phineas Mojapelo, who said the following: "the cost of litigation is depriving the poor from access to justice".

Acknowledging the seriousness of the matter, the recent Legal Practice Act 28 of 2014 ("LPA"), that regulates the legal profession, brought about an entire investigation regarding costs for legal services looking for possible solutions on how to ensure better and more affordable access to justice for everyone. However, while the complexity of a matter might incur high legal court costs, it is important to remember that there are less expensive forums available to enforce your rights. For example, if a person has a consumer or credit related problem, s/he can refer the dispute to the National Consumer Tribunal or the National Credit Regulator. Disputes in a townhouse complex can be heard by the Community Schemes Ombudsman.

Conclusion

Individuals might interpret the term "access to justice" differently. Access to Justice is important as it enables democracy to function. It also ensures for checks on the Executive and gives life to our law system. Access to Justice is essential for the rule of law, and the principle that the required legal processes are followed, as it is set out in the law. By doing so, this prevents arbitrary governance and allows South Africans to access justice, protect and exercise their human rights and put their trust in the justice system. By being educated on your basic rights, you are able to identify when your rights have been violated and the remedies that are available to you.

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