



# TIMELY JUSTICE IS A HEART AND SOUL OF THE INDIAN CONSTITUTION – AN ANALYSIS

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## INTRODUCTION

According to our Indian Constitution, there are three pillars namely the Legislature, the Executive and the Judiciary that are governing our entire Nation. We all know that the Legislature enacts Law for the welfare of the people. The enacted Laws are being implemented by the Executives. The Judiciary is another strong pillar which provides justice to those who are aggrieved out of the action committed or omitted either by the Legislature or by the Executives. Hence, the purpose of the court is to grant justice which means a 'Timely justice' and not a delayed justice. There is a famous saying that, "***Justice delayed is Justice denied***". So, by keeping this in mind, a sincere attempt is being made here to study and analyse the provisions of the Constitution of India which expressly or impliedly provides for timely justice to the litigants.

## TIMELY JUSTICE IS IMPLICIT IN THE PREAMBLE OF THE CONSTITUTION OF INDIA

The preamble of the Indian Constitution reads as follows:

“.....

***JUSTICE***, social, economic and political;

***LIBERTY*** of thought, expression, belief, faith and  
worship; ***EQUALITY*** of status and of opportunity; and to  
promote among them all

*FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;*

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”

By quoting the preamble, I hereby emphasize on the aspect of ‘**Justice, social, economic and political**’. To understand the said concept, let us ask ourselves a question *what is social justice?*

Social Justice is nothing but the recognition of greater good to a larger number without deprivation of accrued legal rights of anybody. If such a thing can be done, then social justice must prevail over any technical rule. For instance, if a deal is made with one party without serious detriment to the other, then the court would lean in favour of the weaker section of the society as held by the Hon’ble Supreme Court.<sup>1</sup>

The expression ‘**social and economic justice**’ involves the concept of ‘**distributive justice**’. This connotes the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in society. The ideal of economic justice is to make equality of status meaningful and life worth living at its best removing inequality of opportunity and of status – social, economic and political.

**Art.39(A)** of the Indian constitution deals with social justice which would include legal justice. It means that, the system of administration of justice must provide a cheap, expeditious and effective instrument for realisation of justice by all sections of the people irrespective of their social or economic position or their financial resources.

## **PREAMBLE - AS A PART OF THE BASIC STRUCTURE**

In *kesavananda’s case*<sup>2</sup>, 7 Judges (out of 13) held that the objectives specified in the preamble contain the basic structure of our constitution, which cannot be amended in exercise of the power under Article 368 of the constitution.

Any Legislation or Executive action violative of the basic structure or feature of the constitution would be unconstitutional or invalid.<sup>3</sup>

From the careful reading of the word ‘justice’ in the preamble and making the preamble a basic structure of the constitution, makes it clear that, ‘justice’ plays a vital role for the welfare of the people.

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<sup>1</sup>Sadhuram Bansal v. PulinBehari Sarkar, AIR 1984 SC 1471 ( Paras 29, 70, 73)

<sup>2</sup>kesavanandaBharati vs state of Kerala, AIR 1973 SC 1461(Paras 292, 599, 682, 1164, 1437).

<sup>3</sup>IndraSawhney v. UO, (2000) 1 SCC 168 ( Paras 64 and 65)

The philosophy of justice includes the role of the lawyer and the court, the obligation of a litigant, the legislative commands, the nobility of the Bench and Bar, the ability and efficiency of all concerned thereby paving the way to determine the sanctity of law.<sup>4</sup>

Delay in disposal of cases injects an artificial virus and becomes a vitiating element. Delay either, by the functionaries of the court or the members of the bar significantly exhibits indolence and ultimately the Bench and the Bar gradually lose their reverence, for the sense of divinity and nobility really flows from the institutional serviceability. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly.<sup>5</sup>

Hence, it can be safely concluded that, 'justice' in the preamble includes 'timely justice'. Further, timely justice is also a basic structure of the constitution. Therefore, a litigant should not be deprived from his right to get timely justice.

### **TIMELY JUSTICE IS IMPLICIT IN ARTICLE 21 OF THE CONSTITUTION**

Article 21 is one of the luminary provisions in the constitution and occupies a place of pride in the Constitution. This article mandates that, no person shall be deprived of his life and personal liberty except according to the procedure established by law. This sacred and cherished right i.e., personal liberty has an important role to play in the life of every citizen.

It is of fundamental importance that *justice should not only be done, but should*

*manifestly and undoubtedly be seen to be done.*<sup>6</sup> Access to speedy justice and trial is a part of the right to life and personal liberty under Article 21 of the constitution. It has also been reiterated by the Supreme Court time and again in various judgements that, timely justice and speedy trial are facets of the right to life under the constitution.

In *Maneka Gandhi v Union of India*<sup>7</sup>, the Court held that Article 21 of the Constitution confers a fundamental right on every individual not to be deprived of his life or personal liberty, except according to the procedure established by law. Such procedure as required under Article 21 has to be "fair, just and reasonable" and not "arbitrary, fanciful or oppressive".

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<sup>4</sup> Noor Mohammed v. Jethan and Another (2013) 5 SCC 202.

<sup>5</sup> Ibid.

<sup>6</sup> Lord Hewart, Chief Justice of England.

<sup>7</sup> 1978 AIR 597.

Over the years, the right to life and personal liberty has been interpreted widely to include the right to livelihood, health, education, environment and all those matters that contributed to life with dignity. The test of procedural fairness has been therefore deemed to be one that is appropriate in protecting such rights. Therefore, the Court will not just examine whether the procedure itself is reasonable, fair and just, but also whether it has been operated in a fair, just and reasonable manner. Therefore, it is crystal clear that the right to speedy trial and legal aid is part of any reasonable, fair and just procedure.

The apex court's decision in *Hussainara Khatoon case*<sup>8</sup> is a landmark one in the development of speedy trial jurisprudence. The Court took a serious note of the situation that an alarming number of men, women, and children were kept in prisons for years awaiting trial in courts of law and observed that, 'it was carrying a shame on the judicial system that permitted incarceration of men and women for such long periods of time without trials.' The Court further held that detention of under-trial prisoners in jail for a period longer than what they would have been sentenced if convicted, was illegal as being in violation of Article 21 and thereby ordered the release from jail of all those under-trial prisoners.

The Constitution Bench of the Supreme Court held that, fair, just and reasonable procedure implicit in Article 21 creates a right in the accused to be tried speedily and Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, appeal, revision, and retrial.<sup>9</sup>

Further, access to justice is and has been recognized as part and parcel of right to life in India and in all civilized societies around the globe. This right to access to justice is so basic and inalienable that no system of governance can possibly ignore its significance, leave alone afford to deny the same to its citizens.<sup>10</sup>

The Supreme Court has by a long line of decisions given an expansive meaning and interpretation to the word "life" appearing in Article 21 of the constitution. If "life" implies not only life in the physical sense but a bundle of rights that makes life worth living, there is

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<sup>8</sup>Hussainara Khatoon v Home Secretary, State of Bihar.

<sup>9</sup>In *A.R. Antulay v. R.S. Nayak*.

<sup>10</sup>*Anita Kushwaha v. Pushap Sudan* (2016) 8 SCC 509.

no juristic or other basis for holding the denial of “access to justice” will not affect the quality of human life so as to take access to justice out of the purview of right to life guaranteed under Article 21. Therefore, it must be held that, access to justice is indeed a facet of right to life guaranteed under Article 21 of the constitution.<sup>11</sup>

From this, we can come to the conclusion that access to justice and right to speedy trial also includes timely justice to the litigants as one of the fundamental rights guaranteed under Article 21 of the Constitution of India.

### **TIMELY JUSTICE IS IMPLICIT IN ARTICLE 32 OF THE CONSTITUTION**

Article 32 of the Indian constitution provides the right to constitutional remedies which means that a person has right to move to Supreme Court for getting his fundamental rights protected. The apex court being the protector and guarantor of Fundamental Rights is given the authority to issue directions and orders for the execution of any of the rights bestowed by the constitution.

The rights guaranteed by this article cannot be suspended unless otherwise by the constitutional amendment and is therefore an assured right to an individual who is unduly deprived. Dr Ambedkar stated the significance of Article 32 in the following words :

*“If I was asked to name any particular article in this Constitution as the most important- an 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 and I am glad that the House has realized its importance.”*

In my humble opinion, it is obvious that, judicial remedy under Article 32 is a relief to those litigants whose fundamental rights has been violated. Therefore, the judicial remedy should be efficient and expeditious justice which is nothing but timely justice.

### **TIMELY JUSTICE IS IMPLICIT IN DIRECTIVE PRINCIPLES OF STATE POLICY OF THE CONSTITUTION**

Article 39-A directs the State to ensure that the operation of the legal system promotes justice on the basis of equal opportunity and, in particular, provide free legal aid by suitable

<sup>11</sup>Ibid.

legislation or schemes. Therefore, ensuring equal access to justice is a constitutional mandate not only under part III of the constitution but also a good governance principle under part IV of the constitution dealing with Directive Principles of State policy.

The social, economic and political dimensions emphasized in preamble is reiterated in Article 38(1) which requires that, the state shall strive to secure and protect 'a social order in which justice, social, economic and political, shall inform all the institutions of the national life.' It is explicit that, In addition to the legal justice, social order needs to be ensured and assured in all the spheres of life. Therefore, the unjust social reality needs to be transformed into a just social order through the constitution which guarantees social, political and economic justice by means of various fundamental rights. The explicitly guaranteed rights and forms of justice enshrined in the constitution can be realized by the common man only when the implicitly accorded timely justice is provided.

### **COMPLETE JUSTICE UNDER ARTICLE 142 OF THE CONSTITUTION INCLUDES TIMELY JUSTICE**

The apex court was entrusted with great plenary power in the form of Article 142 which says that the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing *complete justice* in any cause or matter pending before it.

The term 'complete' is prefixed to the word 'justice' to emphasize the fact that complete justice travels much beyond in giving justice to the aggrieved party. Complete justice differs from justice in a view that it not only provides justice for one side rather to all the parties concerned. The expression 'complete justice' in Article 142 is of wide amplitude and gives the court the power to mould the relief sought by the parties with the view that no illegality is perpetuated.<sup>12</sup>

The Supreme Court while exercising its inherent power under Article 142 to do complete justice by moulding the relief to the litigants, even the same power can be exercised in avoiding any delayed justice, because in my humble opinion, '*Complete Justice*' will become complete only when '*timely justice*' is rendered to the litigants without any delay.

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<sup>12</sup>Secretary, State of Karnataka &Ors. v. Umadevi (3) &Ors. AIR 2006 SC 1806.

### **CONCLUSION**

The Court has inherent power and jurisdiction for dealing with any exceptional situation in larger public interest which builds confidence in the rule of law and strengthens democracy. In light of the foundational principles laid down in the preamble, the constitutional provisions and governing principles, it is evidentiary that the timely justice has been accorded a place in the basic structure of the constitution and thereby it forms the '*heart and soul of the constitution*'.