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“Dharma is to protect the Needy”

Article on

**CONSTITUTIONAL MANDATE OF CONCEPT OF ACCESS TO
JUSTICE IN INDIA**

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ABSTRACT

Before I start with the chapter, I'd like to state about the concept of justice in our Indian Constitution. Justice refers to the rule of law which provides equal rights towards the citizens without any arbitrariness. According to our constitution our country has an independent democratic country where all citizens inclusive of caste, religion and belief can profess in their path. Now the question arises what's the requirement of justice over here? The answer is quite simple justice is associated with the constitution for fair treatment, providing equal opportunities to both men & women. As our country is socialist, secular and democratic country so social justice is also there which looks about the social welfare of the state. We also know that preamble serves as an introduction to the Constitution. Therefore, it is important to know that how Preamble serves not merely as a surety, but also as a protection for the cause of justice. The paper further demonstrates how an independent and versatile judiciary has helped to safeguard the rights of people affected by these issues in India. Lastly, this paper provides a few reasons as to why it is difficult to change the Preamble.

KEYWORDS

Indian Constitution, Preamble, Justice, Fundamental Rights, DPSP

INTRODUCTION

We know that our constitution is one of the lengthiest constitutions which has incorporated all the essential features from various other countries constitution like from British constitution Rule of law has been derived, US constitution provides judicial review, fundamental rights. Irish constitution provides Directive principles of state policies i.e., DPSP so like that our country's constitutional features are well developed as it has essentials derived from foreign countries. Our constitution is the organic and fundamental law of the nation that establishes the form of governance, which contains the fundamental principles according to which the State recognized as governed, providing the mechanisms under which they must be dictated laws, define the criteria of competence for the functioning of the organs of the State and regulate relations between the people of society, among themselves, as well as between people and their leaders who govern the State.¹ It is not easy to describe the term "access to justice." It is a manifestation of the administrative, legal, and rhetorical representation and appeal to the subjects of federalism. In so far as this is its minimal requirement, the access to justice has an inherent connection to the term "justice." The idea of justice calls to mind the acceptance of the rule of law, the settlement of disputes, the establishing systems of the Law and those that enforce it.²

Access to justice is related to facilitating access by a legal entity and therefore the essential thing of fulfilling the commitment made by the legal institutions.³ The definition of access to justice has been dramatically modified, previously a formal right of the degraded to just challenge or defend a case. The right of access to judicial protection. The explanation was that access to justice did not, of course, require affirmative state action and natural rights.

CONCEPT OF RULE OF LAW

Massey sets forth the rule of law as a complex term in his book on 'administrative law' which, like many others, cannot be described precisely. It does not, though, imply that the universal principles that it stands for have not been accepted. The Rule of Law includes laws that are founded on and are certain, routine and predictable on the ideals of equality, fair justice, non-

¹ Madhav Khosla, the Indian Constitution, 14 (1st Ed, 2012).

² Rawl John, " A Theory of Justice" (Harvard University press, Edition 1997) p11

³ This view is contrary to the general notion wherein the nature of justice as contained in the law (procedural or otherwise) is considered beyond the scope of this head.

discrimination, brotherhood, accounts and non-arbitrariness. "Apart from the declaration of generalization, the definition shares the traditional English inheritance and contains a certain body of data." This detail provides the basis for a pragmatic governance framework.⁴

The principle of law was created in a dictatorship to regulate the practise of the monarchs' arbitrary powers which purported to have God's authority. A.V. Dicey has suggested that there is room for arbitrariness anywhere there is discretion. In a democratic sense like India, however, the idea takes on a different dimension, and in the midst of the dynamism and cry of democracy, the rule of law has shaped justice as a transcendental and paramount element in monitoring the exercise of all powers.

HISTORY OF ORIGIN OF JUSTICE

The concept of "Justice" can be considered as a prodigious concept incorporated in our Constitution which owes its genesis to the soil of India. The oldest narrative related to the Vedic Age speaks of (Rit) which is a cosmological principle equated with justice that not only governed nature but also ethical human conduct. To follow (Rit) was to act in accordance with justice or natural law. It was only after the arrival of the Upanishads that the concept of "कर्म" (Karma) that justice became the consequence of an action. The idea behind this concept was that only good actions are rewarded and bad actions are rejected either in one's own life or in the next. However, during subsequent centuries Justice came to be defined as "धर्म" (Dharma) and played an important role in the social and political order. Due to the prevailing form of royalty, it became the duty of the King to do justice and thus in turn to do Dharma to his subjects. This also became leveling tools which protect subjects from the tyranny of rulers that existed before the advent of this idea that justice and dharma can be equated.

ACCESS TO JUSTICE - OVERVIEW

I have considered and outlined in depth the contours of the rule of law, particularly as regards the judiciary, and now I am going to address another important term, that should be read along with the rule of law. In the general term 'access to justice' implies the individual's access to

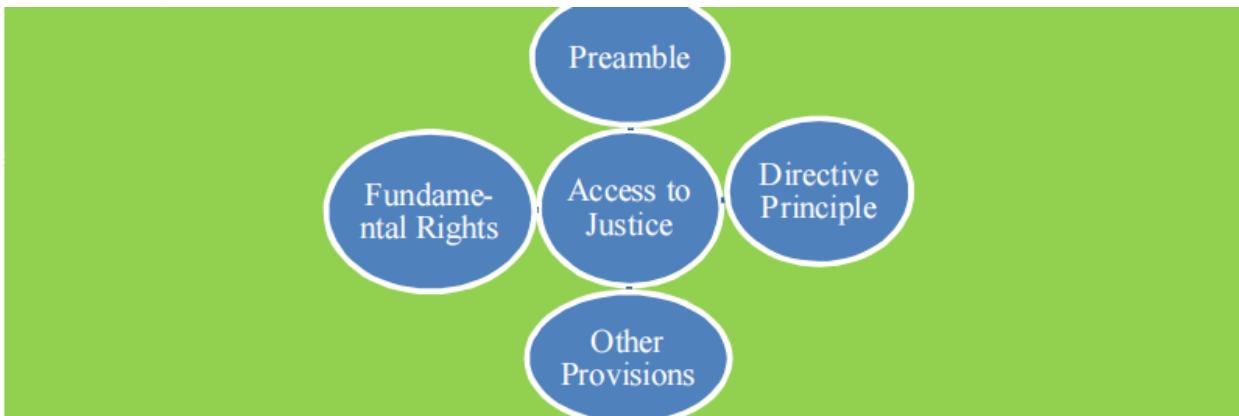
⁴ Justice J.S. Verma, 50 Years of Freedom under Rule of Law: Indian Experience, Ed. Soli J. Sorabjee, Law & Justice: An Anthology, Pg. 325, Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2003

a court or legal representation promise. It has a number of key elements such as identification, grievance recognition, recognition and legal advice or support, accessibility to a court or relief claim, grievance adjudication and implementation of relief.

There are two important elements of the principle of 'access to justice.' A strong and functional legal system of protections, listings and subordinate legislation, is first and foremost to be embraced. The second is a valuable and readily available method of judicial redress for the public at issue. India's Constitution is this country's living text and this nation's constitutional statute. It stands for securing liberty for all people, as revealed in its preamble. The Constitution in Article 39A maintains its aspiration in the following words to guarantee and facilitate access to justice; "The State guarantees that, on the grounds of equal opportunity, the activities of the judiciary foster justice and in particular grant legal assistance, by means or in some other manner, free by sufficient laws or schemes, to obtain those opportunities No resident is denied justice because of economic or other disabilities."

JUSTICE UNDER THE INDIAN CONSTITUTION

In the whole Constitution the word «justice», namely the Preamble, Article 38, Article 39A & Article 142, is only contained in only a few areas. Article 38 attempts, on the one hand, to foster a social order in which justice is concerned. All shall notify social, economic and political National institutions as enshrined in the Preamble. National institutions On the other hand Article 39A seeks to ensure that, by effective legislation or schemes or in some way, the functioning of the legal system encourages equality of justice and particularly to ensure that no one, in particular financial or other disabled persons, has the right to prosecute justice. It also relates Article 38 to that of Article 142, which requires the Supreme Court to issue a decree or order with a view to exercising full justice in any event, in any matter or in any case until it pending. But these provisions themselves don't offer a good picture of what justice means. There are no clear reasons why a scholar should not use the word "justice," but how much the Constitution represents those theories and ideas of "justice" must be sought in the absence of a clear justification for this word.



RIGHT TO EQUALITY AND ACCESS TO JUSTICE

The Preamble of India ensures equal status and opportunity for all people, along with social, economic and political justice. There is interconnection between the two objectives. Justice manifests equality and equality is facilitated by justice. Unless equality is supported, we cannot presume justice. Equality is high without help of provisions such as legal aid in a country like India where there are disparities among citizens based on social, economic and political factors. Legal assistance takes those who are less advantageous and wealthy together to ensure that they have equal opportunities to access justice. Besides access to justice in the preamble, fundamental rights are now being supported. It means for attaining the purposes of the preamble are basic fundamental rights enshrined in the Constitution of Section III. They are fundamental, universal and inalienable rights that are essential for human development and growth and that are inevitably a part of the growth and development of a nation. Articles 14, 21, 22, 32 and 226 provide free legal support. The State shall not deprive a person of equitable treatment, or of equal protection of the law, within the jurisdiction of India, in Article 14. Article 14 includes the terms 'equality before the law' and 'equal treatment under the law.' England takes equality before law, and the Constitution of the United States takes parity by law. The two words appear to be the same, However, their context is different. Equality before the law means, on the other hand, fair application of the law. Everything is equal before the law is a relief to those who are in a less favourable situation in terms of special laws, in order to make good use of the benefits of law while their wealthy peers make use of it and equity should be upheld before the legislation. Indian people don't have the same chance to get fair justice as their educated and

privileged counterparts because of affluence, prejudice, injustice and a lack of confidence in the legal system.

RIGHT TO LIFE & PERSONAL LIBERTY AND ACCESS TO JUSTICE:

Article 21 of the Constitution states that, but pursuant to the process laid down by statute, no person shall be deprived of his/her life or person's freedom. In *Menaka Gandhi V. Union of India*⁵ the Supreme Court held that Article 21 permits the removal of the life and freedom of an individual only by legal proceeding. It should be just, equitable and moral to take the lives and freedoms of an individual. Any legal proceeding that does not grant free legal assistance to the vulnerable to guarantee fair trial before the court cannot be treated as fair, equitable and rational. The Supreme Court then broadened the reach of Article 21 with provisions for free legal aid.

ENFORCEABILITY OF RIGHT TO ACCESS JUSTICE

In the event that a State failed to fulfil its duty to offer the universal right to legal aid to those unable to afford it, the aggrieved may be upheld by a complaint brought before an Apex Court or the Supreme Court concerned pursuant to Article 32 or Article 226 of the Constitution. Article 32 gives the Supreme Court the power to go forward to uphold the basic rights provided for in the Indian Constitution. The Supreme Court is entitled to issue instructions or directives in writing, as necessary, for the protection of constitutional rights, such as Habeas corpus, mandamus, prohibition, quo-warranto and Certiorari.

⁵ *Maneka Gandhi vs Union Of India* on 25 January, 1978 <https://indiankanoon.org/doc/1766147/>

Access to Justice

- Enforceability

Fundamental Right

- Article 32

Other Constitutional Right

- Article 226

It is one of the most respected rights. The fundamental structure of the Constitution is extremely important and integral. It provides for the Supreme Court's position as protector and Fundamental rights guarantor in the event of violation. This right underlines the duty of the State to protect fundamental rights. The fundamental right declaration is irrelevant until adequate legal infrastructure is available. It is the solution that sets in the right. No right exists if no solution is available. The same right as provided for in Article 32, but just not the fundamental right of Article 226 is also provided.

ACCESSIBILITY OF JUSTICE IN INDIA

In India, adverse legalism is the basis of the new method of courts accessing justice. The adversarial law system is usually practised in countries of common law and is distinguished by the independence of the State in which the parties initiate and continue until the State initiates prosecutions in criminal matters.⁶ This mode of access to justice is a legacy of British rule and was implemented for the use of the Indian masses by the British Government. The accomplished setup was for the annual of the ability holders and not for the ability addressees. After independence, the framework to access to justice was redesigned and amended at the time of the creation of India's Constitution, and efforts were made to add parity of authority to the settlement of disputes. The preamble to the Indian Constitution seeks to provide justice, civil, economic and democratic for all its people. Moreover, the following is written in Article 14 of the Indian

⁶ P P Rao, Access to Justice and delay in disposal of cases, Indian Bar Review, vol-30, 2003, pp 208 5. 'cited in' http://en.wikipedia.org/wiki/Adversarial_system

Constitution: 'Equality before the law - No citizen shall be denied fair treatment before and equal protection of law in the territories of India.' There are two aspects of the term "fair treatment of laws": First and foremost, everybody has the right to preserve all land. Secondly, each individual is equally entitled to such protection within the Indian territory. Article 14 imposes the State's obligation to fulfil the substantial promise of law, in other words that the State has been placed on all the citizens in the jurisdiction of India to provide justice. In addition, two crucial points are provided for in Article 256 of the Indian Constitution First, it obliges the governments of the states to apply the rules enacted by the laws of the State and the laws of the Union. The government of the Union is, secondly, bound to instruct the government of the State to apply the rules, if this is not achieved.⁷

CONCLUSION

The view of justice as contained in our Constitution ensures that all citizens are created with certain inalienable rights and that governments have their powers derived from the consent of the ruled; where some form of rule becomes destroying those purposes, the peoples have the right to withdraw their consent and bring a new government into power. The best benefit for most people is consistent with the protection of the interests of individuals, our Constitution believes. While the rules of the Constitution were formulated economically, the Supreme Court & High Court have extended them dynamically all throughout country to fulfil the need which has arisen from time to time, making the provisions meaningful and applicable to the Indians. Our Constitution is noble, and the citizens of perfect loyalty and ability have been raised. It is a document which is rooted in fundamental principles and which stands on solid moral grounds. Our Constitution shows the unparalleled attributes of agelessness with an incredible viewpoint of justice.

⁷ Article 256 of Constitution of India