

PROCEDURAL JUSTICE AND SUBSTANTIVE JUSTICE

Introduction-

The Civil Procedure Code, 1908 (CPC), lays down the procedural regime for civil adjudication in India. It was enacted in the colonial era with the purpose of creating certainty and uniformity in conducting civil trials. However, the legal machinery has changed substantially with the introduction of the Constitution of India in 1950, establishing fundamental rights— not least of which is Article 21, the right to life and personal liberty. The implications of Article 21 represent a shift in how justice is understood from a procedural understanding to a substantive and constitutional meaning of legal processes.

To this day, Article 21 is far more evolved than its language ways. It includes within it the right to a fair trial, right to access justice, and the right to speedy justice. Consequently, procedural law, and the CPC in particular, cannot be understood apart from constitutional values. Procedural justice means the process must itself be fair, unbiased, participatory, and accessible, and substantive justice means that the outcomes of those processes must be just and equitable in nature.

Thus, the objective of the CPC is not to regulate civil litigation but to advance the fulfilment of justice in a true sense, and that the manner of the Orders of this Codes and arises to direct actions in accordance to constitutional requirement that, "justice shall not be delayed", the Courts, on progressive reading, states that "the intent of the CPC should be in accordance with its tenet of fair access to justice".

This paper argues that procedural law becomes a living instrument of justice through the lens of Article 21. The paper will consider, how the procedural characteristics of the CPC could be turned to creating substantive fairness, which judicial notice and intervention would be required; it will note in, the procedural "c" or "d" can be a picture of procedural fairness and reflect on procedural changes addressing the vision of access to justice conversation of our constitution.

Conceptual Framework: Procedural Justice and Substantive Fairness-

¹Procedural justice is the fairness of the means to settle disputes. The focus is around transparency, participation and impartiality-that is everyone gets a fair hearing. Procedural justice is concerned with the process and how justice is done, not what the outcome is.

In contrast, substantive fairness is related to the justice of the outcome. To be considered substantively fair, the outcome of the legal process must not only conform to the law in the strict sense of the word, but that it must conform to broader notions of equity, morality and

¹ Yale Law School, *Procedural Justice* (Justice Collaboratory <https://law.yale.edu/justice-collaboratory/procedural-justice> accessed 14 November 2025).

reasonableness. The relationship between procedurally just outcomes and substantively fair outcomes was expressed by Justice Krishna Iyer in **State of Punjab v. Gurdial Singh (1980)**, where he wrote that "procedure is but the handmaid of justice, not its mistress." Thus, the purpose of procedural law must always be to promote the ends of substantive justice.

Constitutionalizing of Procedure-

Maneka Gandhi v. Union of India (1978) represents a constitutional revolution in its treatment of Article 21. In ruling broadly on the interpretation of "procedure established by law", the Supreme Court extended its meaning to emanate a requirement that the "procedure" must be "fair, just and reasonable." This meaning put procedural fairness directly into constitutional law.

In the civil context, this means the procedural requirements of the CPC—service of summons, opportunity to be heard, filing deadlines, execution—must be at least consistent with constitutional concepts of fairness. This means that summary or artificial formality at the expense of justice is inconsistent with Article 21.

Reinterpreting the CPC Through the Lens of Article 21-

Access to justice has become recognized as part of Article 21. In **Hussainara Khatoon v. State of Bihar (1979)**, the Supreme Court ruled that the right to a speedy trial is included in the right to life and liberty. Although it was a criminal case, the principle is equally applicable in all civil proceedings: justice delayed is justice denied. The CPC's preamble indicates the purpose of the Code "to consolidate and amend the laws relating to the procedure of civil courts". The essence of the Code is to facilitate justice rather than impede it. The procedural provisions must accordingly be interpreted in a way that allows accessibility, affordability, and timeliness. Examples of judicial recognition of addressing justice over procedural technical defects include Order I Rule 9 (non-joinder and misjoinder is not fatal), and Section 148 (enlargement of time). The courts have employed these provisions consistently to avoid the miscarriage of justice arising from purely procedural reasons.

Procedural Flexibility and Judicial Innovation-

The judiciary has consistently held that procedure is there to help, not thwart, justice. In **Sangram Singh, v. Election Tribunal (1955)**, Justice Vivian Bose said, "a code of procedure must be looked at as a means to an end and not an end in itself". Likewise, in

State of Bihar v. Kameshwar Prasad Singh (2000), the Court said that procedural prescriptions should not be taken so far as to negate substantive rights.

Judicial creativity in its interpretation of procedural rules has substantially helped in constitutionalising the CPC. Courts also rely on their inherent power under section 151 CPC to satisfy justice. Section 151 CPC, as interpreted by the Court, acts as a constitutional safety valve- availing the courts to act "*ex debito justitiae*".

The Right to Fair Hearing-

The *audi alteram partem* rule, or the right to a hearing, is one of the foundational tenets of procedural justice. The different provisions of the Code of Civil Procedure designed to permit

hearing of parties are: Order IX (appearance of parties), Order XVIII (hearing of suits and examination of witnesses), and Order XX (judgment and decree). Where a fair opportunity for a hearing is denied, or a case is disposed of mechanically, that action will reject the essential fairness required by Article 21 and violate the CPC.

In *A.R. Antulay v. R.S. Nayak* (1988), the Supreme Court held that the right to a fair trial was part of Article 21 of the Constitution in any proceeding, civil or criminal, whatever the nature of the dispute. These provisions of the CPC, if interpreted as restricting participation or depriving a party of the right to a fair hearing must yield to the fairness required by the Constitution.

Procedural Reforms and the Quest for Substantive Fairness-

Changes and the Requirement for Modernization-

The Civil Procedure Code (CPC) has gone through various changes, particularly in 1999 in 2002, to make it quicker and to alleviate some of the delay. The reforms introduced case management, affidavit evidence, and summary judgments in the case of Order XIII-A (for commercial cases). The larger constitutional goal was to improve access to justice by making civil adjudication quicker and less onerous.

In *Salem Advocate Bar Association v. Union of India* (2003) the Supreme Court endorsed these amendments, holding that procedure must develop with modernity, in order to satisfy the constitutional demands of fair and speedy justice.

Access to Justice and Alternative Dispute Resolution-

²Section 89 of the CPC, added by the 1999 amendment, established ADR processes like mediation, conciliation, and arbitration. This section gives effect to the procedural law requirement in accordance with the constitutional scheme for participatory and accessible justice.

In its 2010 decision of *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.*, the Supreme Court clarified the operational structure for animating Section 89 by emphasizing that ADR processes achieve procedural and substantive justice by lowering cost, delay, and complexity.

Digitalisation and E-Justice

The reform agenda in the aftermath of COVID-19 has witnessed more legal practice facilitating e-filing, virtual hearings, and digital summons under the CPC framework. The Supreme Court affirmed in *Re: Guidelines for Court Functioning Through Video Conferencing*, "we have no doubt that technology in access to justice advances the very goals of Article 21" (2020).

Digitalisation aligns with substantive fairness by equalising litigant participation who live far away from representing counsel or litigants from remote and/or marginal settings. Modernising procedures through digitalisation is an important modern application of the fair trial guarantee in Article 21.

² Katyaini Vemparala, 'The Scope and Effect of Section 89 in CPC' (Lawctopus, 5 November 2024) <https://www.lawctopus.com/academike/the-scope-and-effect-of-section-89-cpc/> accessed 14 November 2025.

Striking An Intersection of Procedure and Article 21

Judicial challenges require balancing the necessary judicial discipline of procedure along with the constitutional discipline of compassion. Adherence to strict procedure provides a sense of certainty and predictability, but too much procedural rigidity can create a mechanical ritual of justice.

Judges should sensitively adopt a purposive and humanistic interpretation of the procedural provisions. In **Kailash v. Nanhku**, the Supreme Court held that "our procedural rules are handmaids of justice, not its mistress" while allowing more leeway in interpreting timelines of when an application must be filed, to serve justice.

This "flexible" approach to procedure is in harmony with the constitutional doctrine of substantive due process, that the law and the procedure are both fair and reasonable. It will allow the CPC to remain a living instrument that can work towards greater social justice for humanity and human dignity.

Foundational Constitutional Cases: Expanding Article 21 and Fairness

1. ³**Maneka Gandhi v. Union of India (1978) 1 SCC 248**

Facts:

In this case, the Supreme Court extended the interpretation of Article 21 of the Constitution. The petitioner had her passport impounded by the Government "in the public interest" without being told why or being given an opportunity to be heard.

Judgment:

The Supreme Court held that the language "procedure established by law" in Article 21 must be "right, just, and fair" and not arbitrary, whimsical, or oppressive.

Importance:

This case laid the constitutional foundations of procedural fairness. It introduced the concept of "due process of law" into the Indian system and established that laws would require procedural laws, including laws of procedure such as the CPC, to provide a just and non-arbitrary and fair process and access to justice.

2. **Hussainara Khatoon v. State of Bihar (1979) AIR 1369⁴**

Background:

A collection of petitions addressed the welfare of undertrial prisoners who had been incarcerated for years without trial.

Judgment:

The Court held that speedy trial is a fundamental right under Article 21.

³ *Maneka Gandhi v Union of India* (1978) 2 SCR 621, AIR 1978 SC 597.

⁴ 'Maneka Gandhi v Union of India (1978) – 1978 AIR 597, 1978 SCR (2) 621' (RecordOfLaw, 14 Sept 2025) <https://recordoflaw.in/maneka-gandhi-v-union-of-india-1978/> accessed 14 November 2025.

Relevance:

The judgement in this case expressly connects the idea of procedural justice to Article 21. Despite its criminal nature, the same principles of procedures being timely and efficient can be applied to civil proceedings under the CPC and emphasizes if you delay justice, you deny justice.

3. Anita Kushwaha v. Pushap Sudan (2016) 8 SCC 509⁵

Background:

The case analysed if the right to access to justice is encompassed under Article 21.

Judgment:

The Supreme Court articulated that access to justice is a fundamental right under Article 14 and Article 21. It recognized four involvement aspects:

- The State is to provide an occurring method of adjudication.
- The method of adjudication should be accessible by distance.
- Timely adjudication including a fair court of process is mandatory.
- The method of adjudication must be affordable.

Relevance:

This case is important for your paper, because it explicitly identifies access to justice as a constitutional right, and, therefore, requires procedural statutes, like the CPC, to be enforced in a way to be consistent with something called accessibility and fairness.

4. A.R. Antulay v. R.S. Nayak (1988) 2 SCC 602⁶

Background:

The petitioner protested against the transfer of his case from the Special Judge to the High Court on the basis of denial of a fair hearing.

Judgment:

The Supreme Court reiterated that a fair hearing is a necessary ingredient of article 21. Any deviation from the process that has already been determined must be justified and not arbitrary.

Relevance:

This decision illustrates that deviation from the process (as embodied in CPC) consists of a violation of procedural justice, which is a value protected by article 21.

⁵ *Right to Access to Justice Not Absolute: Supreme Court (SC)* (Vision IAS, 13 January 2025) <https://visionias.in/current-affairs/news-today/2025-01-13/polity-and-governance/right-to-access-to-justice-not-absolute-supreme-court-sc> accessed 14 November 2025.

⁶ *A R Antulay v R S Nayak & Ors* (1988) MANU SC 0002 (29 April 1988) <https://www.manupatracademy.com/legalpost/manu-sc-0002-1988> accessed 14 November 2025.

5. Salem Advocate Bar Association v. Union of India (2003) 1 SCC 49⁷

Background:

This case arose from petitions challenging the CPC (Amendment) Acts of 1999 and 2002.

Judgment:

The Supreme Court upheld the Amendment Acts and indicated that the objective of the amendments was to diminish delays and provide effective access to justice services. The Court only emphasized the requirement of reforming processes that delay the delivery of substantive justice.

Relevance:

In this case, procedural efficiency and reform contained within the CPC, on the one hand, is directly related to substantive fairness. This case reinforces that processes should be in place to further justice -not thwart justice.

Data Perspective: Pending Case Statistics

The judiciary backlog of cases in India offers a sobering backdrop to any discussion of procedural justice under the CPC. For example, the National Judicial Data Grid reveals that in May 2022 there were approximately 10.836 million civil cases and approximately 30.578 million criminal cases pending in the nation's courts—all told, approximately 41.4 million pending cases.⁸

More recent data concurs and demonstrates that in November 2024, for instance, even the subordinate courts alone had more than 45 million pending cases in civil and criminal matters, respectively. For example, in a large metropolitan area, in November 2021, the pending cases before the lower courts in the capital city were 1.56 million pending cases (135,000 criminal; 218,000 civil) with no more than ~700 judges, which means each judge is handing upwards of an average of about 2,200 cases⁹. The moral is clear: and while the CPC provides the framework for the procedural rules regarding civil suits, the significant number of pending cases remains a sobering obstacle to timely till adjudication. Significant delays undermine their

⁷ Afcons Infrastructure Ltd & Ors v Cherian Varkey Construction Co (P) Ltd & Ors (2010) 8 SCC 24, MANU/SC/0525/2010 <https://www.manupatrafast.in/TempPDF/MANU-SC-0525-2010-JUD20240819032102.pdf> accessed 14 November 2025.

⁸ Shubham Pandey and Uday Shankar, 'Issue of Rising Arrears and Pendency in Indian Judiciary: A Consequence of Non-Adherence to Policy Recommendation and Uninformed Policymaking' (SCC Online Blog, 7 February 2023) <https://www.scconline.com/blog/post/2023/02/07/issue-of-rising-arrears-and-pendency-in-indian-judiciary-a-consequence-of-non-adherence-to-policy-recommendation-and-uninformed-policymaking/> accessed 14 November 2025.

⁹ Nirbhay Thakur, 'Delhi lower courts have 15.6 lakh cases pending, only 700 judges to hear them' (The Indian Express, 6 November 2025) https://indianexpress.com/article/cities/delhi/delhi-lower-courts-have-15-6-lakh-cases-pending-only-700-judges-to-hear-them-10348529/lite/?utm_source=chatgpt.com accessed 14 November 2025.

rights under Article 21 of “life and personal liberty,” which, as interpreted by courts, also encompasses the right to a fair and timely trial. The data perspective illustrates and lends further support that whatever system of legal interpretation the court adopts under procedural law (the CPC) there needs to be active efforts to remedy systemic delays and avoid putting the system into additional delays.

Empirical Observation: Service of Summons or Execution of Decree Delays are Impediments

There is empirical evidence that procedural milestones as simplistic as service of summons or execution of decrees are major impeding firm steps toward justice. For example, the Madras High Court ordered an e-summons system to be implemented immediately because a summons had been pending in a harassment case for 12 years.¹⁰

Similarly, again, the Supreme Court of India observed in October 2023, “the inordinate delay, which is caused throughout India, in executing the decree has become a cause for concern,” and observed that the litigant has difficulties once the decree is awarded.¹¹ These matters of delay cannot even be cloaked in some notion of procedural justice: even if a claim is triable on the merits, a situation where the service of a summons or a decree executed too late in time renders the merits of the ruling, a hollow victory. This is an issue tied to substantive justice: we cannot say that justice has been served if the winning party cannot seek efficacious enforcement on an adjudicated right, or a losing party is unable to even be aware of the proceedings in order to defend against a claim based on a defectively remedy in the service of summons.

Doctrinal vs. Human Rights Lens: Evolving CPC from Procedural Code to Rights-based Mechanism

Historically, some scholars have viewed the CPC as a procedural statute - that is, rules governing pleadings, evidence, orders, appeals and execution of decrees. Under a doctrinal lens, the goal of the CPC is to ensure orderly and effective adjudication. However, when viewed through a human rights lens (especially through Article 21), process is a vehicle for ensuring fundamental rights are secured: to a fair hearing; equality before law; and to access justice.

In the human rights view, procedural law is not merely about compliance with rules or a set of duties, but rather, it is about ensuring dignity, participation and effectiveness of the rights. For example, service of the summons is not merely a box to check, it is a guarantee that the respondent will have an opportunity to be heard, which is so important to natural justice. Execution of decrees is not simply the “next step,” it ensures that winning on the merits translates into a real remedy, and not simply an illusory victory.¹²

¹⁰ *HC orders immediate implementation of e-summons system* (Times of India, 23 October 2025) https://timesofindia.indiatimes.com/city/madurai/hc-orders-immediate-implementation-of-e-summons-system/articleshow/124744669.cms?utm_source=chatgpt.com accessed 14 November 2025.

¹¹ Lawbeat News Desk, ‘Inordinate delay in execution of decree a cause of concern throughout India: Supreme Court’ (Lawbeat, 1 November 2023) https://lawbeat.in/supreme-court-judgments/inordinate-delay-execution-decree-concern-supreme-court?utm_source=chatgpt.com accessed 14 November 2025

¹² *Human Rights Law Journal*, Vol III (July 2018) ISSN 2581-3307 (National Law University Odisha) <https://nluo.ac.in/storage/2024/08/HRLJ-Vol-3.pdf> accessed 14 November 2025.

As a result, the CPC must evolve from a purely mechanical code of procedure, into a rights-based justice mechanism. This would entail the following:

- Interpreting procedural rules purposively for the sake of facilitating instead of frustrating justice.
- Embedding the constitutional mandate (via Article 21) in the CPC that litigation must be fair, just, reasonable and accessible.
- Understanding that scheduling delays, technical defaults and inaccessibility are human rights issues and not simply an administrative matter.
- Anticipating that procedural reforms (case-management, ADR, digital courts) will finally be made from a human rights perspective of effective access and fair hearings.
- Such a transformation highlights the principled connection between procedural justice (how the process operates) and substantive fairness (what it produces) and situates the CPC within the greater constitutional framework of rights in India.

The Convergence of Procedural Justice and Substantive Fairness under Article 21¹³

The discussion surrounding procedural justice and substantive justice illustrates an inherent tension between legal formalism and legitimacy - a tension which Article 21 hopes to bridge. Procedural justice focuses on procedures that comply with established rules of notice and the right to be heard; it assures us that the “means” to adjudication are fair and systematic. In contrast, substantive justice focuses on the “ends” - whether the outcome of such procedure meets the values of fairness, reasonableness, and human dignity. In the Indian constitutional scheme, the two dimensions are not contradictory, but are in fact mutually reinforcing. The Supreme Court’s liberal interpretation of Article 21 - from *Maneka Gandhi v. Union of India* to **Hussainara Khatoon v. State of Bihar** - has bent the meaning of “procedure established by law” to include “just, fair and reasonable procedure.” This has constitutionalized fairness, urging procedural law such as the CPC to conform to substantive justice. When adherence to procedural rules in the CPC results in the denial of hearing, dismissal for technical default or endless adjournments, it violates the spirit of Article 21 when a court substitutes justice for formalism.

Therefore, procedural justice becomes constitutionally legitimate only when it serves substantive fairness-that is, when the structure of law becomes a conduit for human rights, rather than an obstacle to them. This re-interpretation requires nothing less than a jurisprudence of living procedure-one that evolves with constitutional morality and makes sure civil litigation remains a means to attain justice and not an end towards procedural tyranny.

¹³ National Judicial Academy, *Principles of Natural Justice for Procedural Fairness* (Justice C V Karthikeyan, Madras High Court, National Seminar on Constitutional and Administrative Law P-1326, 22 January 2023) https://nja.gov.in/Concluded_Programmes/2022-23/P-1326_PPTs/2.Session%204%20-%20Principles%20of%20natural%20justice%20for%20procedural%20fairness.pdf accessed 14 November 2025.

Conclusion-

A close reading of the procedural ecosystem of the Civil Procedure Code, 1908 (CPC) through the lens of Article 21 provides evidence of a changing jurisprudential truth -that procedure is not the goal but a means to justice. In this way, the core of procedural law must depend not on a mechanical application but upon elements of fairness, accessibility, and timeliness - the bedrock of the constitutional entitlement of life and personal liberty. As the Indian judiciary has consistently reiterated, fairness of procedure is a fundamental element to Article 21 and any legal process that obstructs justice through delay, complexity, or technical rigidity is simply a negation both procedural element of justice and the substantive element as well.

With the passing of time, the courts have been gradually inserting a notion of constitutional morality into procedural law. The courts have articulated a role for not just a technical application of the CPC in applying a rights-oriented perspective consistent with human dignity.

Despite strides in judicial reasoning however, procedural justice remains an elusive “promise” in practice. Empirical evidence and pendency statistics typify an unsettling reality: millions of civil cases are pending resolution; and enforcement of decrees can commence another whole litigation. Procedural steps such as a service of summons or an execution under Order XXI of the CPC take years for realization, which could undermine public confidence in the judicial system. Procedural inertia deprives instead citizens their right to a fair and timely hearing, rendering the protection of Article 21 meaningless. Procedural delay thus, is not a mere administrative inconvenience, but a substantive wrong – an infringement of the right to justice.

The real question, then, is whether the CPC has put adequate or sufficient procedural protections in place, that are being operationalized, accessible and fair. The constitutional re-interpretation of procedural laws calls for a movement from ritualistic legality to responsive justice, as rules of procedure ought to be tools that aid, rather than impede resolution of a dispute. This rationale comes from the principal of *ubi jus ibi remedium* – for there is a right, there must be a remedy – stressing that denial or delay of remedy is denial of justice.

As we rethink the CPC using Article 21, "substantive fairness" becomes critical. Substantive fairness signifies the relationship between process and outcome; if the process is not fair, there is inherent doubt about the outcome's fairness. The Constitution thus imposes a duty on the judiciary to give effect to procedural norms fairly and reasonably. In this way of thinking, the question becomes how a court's fidelity to the Constitution gives effect to substantive fairness, not whether the court is exercising judicial activism. Judicial activism is a concern only as long as the procedural norms are merely being used to serve justice, rather than to the submission of justice. The work of reimagining procedural justice in India should be premised upon three intertwined pillars - accessibility, accountability, and efficiencies. Accessibility ensures that no one is denied justice because of economic or structural barriers; accountability ensures that procedural discretion is exercised appropriately; and efficiencies provide that justice and corresponding meaning continues to exist, despite it being delivered in a timely manner. A digitally innovative, constitutionally appropriate procedural justice system incorporating legal aid, technology and transparency - may enable us to reimagine this balance in action.