

UNDERSTANDING PROCEDURE ESTABLISHED BY LAW WITH DUE PROCESS OF LAW

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ABSTRACT

Both of these phrases might look similar to a layman but it is far more different than what it seems and was a landmark change for the Indian Judiciary. This concept took a long time to get its validity, stated as a “procedure established by law” in ‘Article 21’ of our Indian Constitution which specifically deals with the law that has been passed within the proper procedure by the ‘Parliament’ only then it will be recognised as a law. But for its further application a person’s ‘right to life and personal liberty’ may be restricted or limited by this procedure established by law accordingly.

Keywords: Procedure, Due, Law, Constitution.

INTRODUCTION

The Indian judiciary accepted the meaning of the statement only after the judgement given in *Maneka Gandhi v. Union of India*¹. ‘Due process of law’ specifically lies in the American constitution for providing safeguards to the fundamental identity of an individual. There were many instances in which had defined the correct usage of the Indian judiciary as conflict arose between both towards establishing the ‘fundamental elements’ the democracy by which the concerned way of process gives it validity towards its application but the concept of ‘Due process’ got revival several times in the history of Supreme Court. In the depths of our Indian Constitution history, the constituent assembly played a major role in its work and all the aspects of the constitution were taken from the constitutions of the world nations and compiled into one but it can be seen that the Concept of ‘Due process of law’ was not adopted that was used in the American constitution. Due to this, it became very difficult to apply any law, and contention arose about its effect on fundamental rights in Indian Society. This article will give you an enhanced layout for understanding both phrases with case laws that significantly impacted the era of the Indian Judiciary.

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¹ *Maneka Gandhi vs Union of India* 1978 AIR 597, 1978 SCR (2) 621.

THE CONCEPT OF “PROCEDURE ESTABLISHED BY LAW”²

The SC has widely considered this and now if the government snatches away an individual's freedom but it was made by the procedure established by the law then it would not violate articles 14, 19 and 21 of the Indian Constitution. The interpretation made by the court in Article 21 towards the contention that the procedure established by the law can take away a person's right to life and personal liberty.³

This concept came into the picture as the SC laid down the notion of procedure established by law under Article 21 concerning the procedure as followed by which the “right to life and personal liberty” might be curtailed unless the law has been passed accordingly⁴. The word “due” and the limitation established under the term “procedure” combined with the word “established” highlight the contentions of parliament regarding the article⁵. The notion of procedure established by law states the passing of law with proper procedure and the violation made stands valid but may lead to a threat in a person's life.

The phrase “Procedure established by law” was borrowed from Article 31 of the Japanese constitution which was enacted after World War, but its meaning was still unclear in the Japanese constitution. The contention was made by the constituent assembly members that it would undoubtedly curtail one's liberty and that most of the cruel laws would be passed by the parliament⁶. But the scope was widened in the Maneka Gandhi case⁷ in which the SC held that under Article 21 the procedure established by law must be “just, fair and reasonable” and not arbitrary or else it would not be followed as a procedure further limiting the aspects of article 21 which guarantees to basics of “right to life” and “personal liberty”.

Procedure established by law and due process of law stand alike in nature but they completely mean different as interpreted in which the judiciary only has minimal power and complete power to give validity to its application and protect the citizens from the actions of legislature and executive.

² Shraddha Jain, ‘PROCEDURE ESTABLISHED BY LAW’ (*iPleaders*, 1st November 2022) <<https://blog.ipleaders.in/procedure-established-by-law/>> accessed 14th September 2023

³ *Ibid*

⁴ *A.K. Gopalan v. The Government of India* 1966 AIR 816, 1966 SCR (2) 427

⁵ The Constitution of India 1950, art 21

⁶ Alok Prasanna Kumar, ‘PROCEDURE ESTABLISHED BY LAW’ (*Deccan Herald*, 17th October 2021) <<https://www.deccanherald.com/opinion/due-process-of-law-or-procedure-established-by-law-1041283.html>> accessed 14th September 2023

⁷ *Maneka Gandhi vs Union Of India* 1978 AIR 597, 1978 SCR (2) 621

THE CONCEPT OF “DUE PROCESS OF LAW”

The phrase “Due process of law” was developed from the 39th clause of the Magna Carta from England. However, it significantly diverged in American and English law but was not taken into consideration in England and further put into use in the Constitution of the United States. Similar to the “Procedure established by the law”, “Due process of Law” obligates the government to respect fundamental rights and the aspect of fairness to be applied, individual rights are certainly on a higher pedestal with the procedural safeguards. In the United States, the Fifth and Fourteenth Amendments of the U.S. Constitution include the Due Process Clause, which prohibits the government from depriving any person of life, liberty, or property without due process of law⁸.

This concept was borrowed by Dr. Ambedkar from the “Fourth and Fifth Amendments” of the American Constitution. The notion of “Due process of law” in India has taken very significant changes over the years which also highlighted Articles 14, 19 and 21 in which the procedure to be established must be “just, fair and reasonable” and the aspect of Article 21 have enhanced the relationship between article 20, 21 and 22 as a dynamic change, so now the constituent assembly had an important task whether to follow the “Due process of Law” or the “Procedure established by the law”⁹.

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The phrase “Due Process of law” cannot be found in any part of the Constitution, but it revolves around the golden triangle of our Constitution¹⁰. This phrase is taken into consideration in compliance with the article¹¹ and is read with the “procedure established by law”.

The notion of due process of law tends to be a legal requirement of the state and the state must respect the legal rights that are towards a person, there may be laws enacted by the state by which the law should comply with the law of the land to be specific like the rules of fairness, the aspect of fundamental rights and liberty rights further giving way to the judiciary in accessing this law of the land to be just fair and equal.

⁸ Alex Andrews George, ‘PROCEDURE ESTABLISHED BY LAW VS DUE OF PROCESS OF LAW’ (ClearIAS, 7th August 2023) <<https://www.clearias.com/procedure-established-by-law-vs-due-process-of-law/>> accessed 14th September 2023

⁹ Patil Amruta, ‘DUE PROCESS OF LAW-INDIAN POLITY NOTES’ (Prepp by Collegedunia, 15th September 2023) <<https://prepp.in/news/e-492-due-process-of-law-indian-polity-notes>> accessed 15th September 2023

¹⁰ The Constitution of India 1950, art 14, 19 & 21

¹¹ The Constitution of India 1950, art 21

SIMILARITIES BETWEEN THESE TWO DOCTRINES

The implication of this doctrine of procedure established by law and due process of law might stand different but it consists of various similarities in the Indian political system both these doctrines play a very crucial role and act as a necessary principle and they also safeguard the individual's rights and liberties. Despite the law made by the legislature, the Supreme Court acts like the only higher authority that holds the power to give validity to the laws made under these two doctrines. The Indian constitution has specified the notion of procedure established by law which stands as a valid aspect for the country. Recent enactments have completely revived the legal process ultimately focusing on fairness and the individual rights of the citizens and these concepts have been further interpreted in recent times.¹²

DIFFERENCES BETWEEN THESE DOCTRINES¹³

Firstly, the meaning of “Procedure established by law” is that it is not concerned with the laws that are made through the legislature are within the compliance of natural justice to be fair and just, whereas the doctrine of “Due Process of Law” tends to work with both the procedural and substantive side of legislation so that it stands as a valid law. Secondly, the British constitution is the source of the doctrine “Procedure established by law” whereas the “Due Process of law” aspect originated from the American Constitution. Thirdly, we can find the notion of “Procedure established by law” in our Indian Constitution¹⁴, but it seems more difficult to follow “Due process of law” as it is not explicitly mentioned in the Constitution of India¹⁵. Fourthly, the former is used to keep a check on the validity of laws that are passed by the legislature is made accordingly as per the procedure as it has a narrower scope, and the latter is for the giving the law made is just, fair and reasonable and not arbitrary as it has a wider scope. Fifthly, it is limited to cross-checking the validity of the laws made under “Procedure established by law” whereas the judiciary is the highest authority to recheck the laws made under “Due process of law”. Sixthly, the former provides a safeguard to the citizens against the arbitrariness of the executive and the latter protects from both legislature and executive actions.

¹² ‘DUE PROCESS OF LAW VS PROCEDURE ESTABLISHED BY LAW’ (*IAS Express*) <<https://www.iasexpress.net/modules/du-process-of-law-vs-procedure-established-by-law/>> accessed on 16th September 2023

¹³ Manishiq, ‘PROCEDURE ESTABLISHED BY LAW AND DUE PROCESS OF LAW’ (*Study IQ*, 7th July 2023) <<https://www.studyiq.com/articles/procedure-established-by-law-and-due-process-of-law/>> accessed 15th September 2023

¹⁴ The Constitution of India 1950, art 21

¹⁵ *Ibid*

LANDMARK CASES

Maneka Gandhi case¹⁶ stood as a landmark case for the Supreme Court in which the action of seizure of an individual passport led to the violation of her liberty the court immensely widened the scope of Article 21 of the Indian Constitution as the aspect of “individual personal liberty” should not have a narrow space instead it should be wide and liberal. The court also stated that if an individual’s life is taken away, it must comply with the law, representing the lawful process as being reasonable and non-arbitrary.

A.K. Gopalan v. Government of India¹⁷ where the petitioner was detained under the Preventive Detention Act, violating the individual's fundamental rights under the Indian Constitution. He further claimed that there should be proper “procedure established by law” under Article 21 and the detention was done inappropriately thus violating Article 21. However, Justice Fazal Ali also places an opinion concerning the phrase “procedure established by law” and includes the notion of “Audi alteram partem” (no person shall be left unheard). The principles of natural justice include this and state that no one should be denied the right to be heard.¹⁷

The case of ADM Jabalpur is based on Habeas corpus and it was held by P.N Bhagwati that “an individual’s right not to be suspended” occurred during the times of emergency of 1975-1977.¹⁸

A test was also created in the US Supreme Court in the case¹⁹ of whether the enactment of legislation would rather infringe on the freedom of an individual which was further adopted by the SC after Maneka Gandhi’s judgement which included, “If there is a law in place that empowers the state to take away someone’s life and freedom, Whether the Parliament has the authority to enact the relevant legislation and Whether the assembly followed the right steps when passing the law²⁰”.

As evolution took place a long debate on whether to adopt procedures established by law or due process of law came to an end and India adopted the Doctrine of “Procedure established by law” and the doctrine of “Due process of law” can be seen in the United States.

¹⁶ *Maneka Gandhi vs Union Of India* 1978 AIR 597, 1978 SCR

¹⁷ Manishsiq, ‘PROCEDURE ESTABLISHED BY LAW AND DUE PROCESS OF LAW’ (*Study IQ*, 7th July 2023) <<https://www.studyiq.com/articles/procedure-established-by-law-and-due-process-of-law/>> accessed 17th September 2023

¹⁸ *Ibid*

¹⁹ *F. David Mathews, Secretary of Health, Education, and Welfare, v. George H. Eldridge* 424 U.S. 319 (1976)

²⁰ *Ibid*

CONCLUSION

Lastly, I would like to conclude by saying that both doctrines” Procedure established by law” and “Due Process of law” have played a very significant role in the well-being of the Indian Judicial system. The correct and valid way of enacting the law is governed and regulated by the concept of “Procedure established by law” and the aspect of providing fairness and non-arbitrariness is established under the “Due process of law”. The landmark case of Maneka Gandhi of 1987 was one of the evolutionary changes which further broadened the scope of Article 21 including the notion of Due process of law by which individuals have been provided with more safeguards towards the judicial process with equal fairness.

