BLOGS

Due Process of Law in India

Ruchika Mohapatra · 10 Jan 2025

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The doctrine of "due process of law" is a fundamental tenet of legal systems committed to the rule of law, primarily designed to protect individual rights against arbitrary exercises of state power. Read more about the due process of law here!

What is Due Process of Law?

Due Process of Law focusses on the fairness of certain legal proceedings and governmental actions. Due Process of Law requires that any legal action depriving an individual of life, liberty, or property be carried out fairly and justly.

In essence, due process demands not only adherence to prescribed procedures but also an intrinsic standard of fairness and reasonableness in the exercise of state power.

Historical Evolution

The origins of due process can be traced to the Magna Carta of 1215, where the English monarchy recognized the rights of individuals to be judged according to the "law of the land" rather than arbitrary royal edicts.

Over centuries, this concept was absorbed into various legal systems, evolving through judicial interpretations and statutory frameworks in countries like the United States and India. In particular, the U.S. Constitution's Fifth and Fourteenth Amendments enshrine due process as a safeguard against both federal and state overreach.

Due Process of Law and Procedure Established by Law

Procedure established by law essentially means that a person's right to life or personal liberty can only be restricted according to a procedure that is:

1. Legally Enacted: The procedure must be outlined in a law that has been duly passed by the legislature.
2. Procedurally Adhered To: The law must be followed strictly in practice.

Under a literal interpretation, as long as a law is correctly passed by the legislative body and the prescribed procedures are followed, the deprivation of life or liberty would be deemed lawful, even if the law itself is harsh or unfair.

Due Process of Law, by contrast, requires that any deprivation of life, liberty, or property not only adhere to legal procedures but also meet certain standards of fairness, justice, and reasonableness. This principle places a higher value on protecting individual rights by ensuring that laws are substantively fair (substantive due process) and procedurally just (procedural due process).

Initially, Indian jurisprudence strictly adhered to the phrase "procedure established by law" without a requirement for the procedure to be just or reasonable. This interpretation shifted with the landmark case of ***Maneka Gandhi v. Union of India***, where the Supreme Court emphasized that the "procedure established by law" under Article 21 must be "just, fair, and reasonable."

This judgment marked a shift towards the Due Process model without directly using the term "due process." By broadening the interpretation of "procedure established by law" to incorporate fairness and reasonableness, the Supreme Court effectively introduced substantive due process into Indian law.

This case transformed Article 21 from a narrowly interpreted provision to a powerful safeguard for fundamental rights, allowing courts to examine whether laws affecting personal liberty are fair in both substance and procedure.

Procedure Established by Law is more limited, as it does not necessarily protect against laws that may be inherently unjust, provided they follow the prescribed process.

Due Process of Law offers a higher level of protection for fundamental rights, as it enables courts to invalidate laws that are substantively unfair or arbitrary, even if they follow legislative procedures.

What is Procedural and Substantive Due Process?

1. Procedural Fairness: Legal proceedings affecting an individual must be fair, transparent, and unbiased. This includes the right to a fair trial, notice of legal action, and an opportunity to be heard.
2. Substantive Due Process: The law itself must be reasonable and not arbitrary. Even if the procedure is correctly followed, a law infringing on fundamental rights may be deemed invalid if it lacks a legitimate purpose or is overly oppressive.

Although India does not formally use the term “substantive due process,” the Court has introduced it through Article 14 by examining the reasonableness of laws themselves, beyond mere procedural compliance. This approach prevents the state from enacting laws that are arbitrary or unreasonable, even if they meet procedural requirements.

Article 14 of the Indian Constitution [Rule of Law and Due Process of Law]

Article 14 itself does not explicitly mention “due process,”; however, the Indian judiciary has gradually interpreted it to encompass elements of fairness, reasonableness, and procedural justice that resonate with due process principles.

Article 14 is primarily based on two principles:

1. Equality Before the Law: No person, regardless of their status or position, is above the law. This principle mandates that all individuals are equal in the eyes of the law and should be treated without favoritism or bias.
2. Equal Protection of the Laws: This principle allows for reasonable classification, meaning that individuals in similar situations should be treated alike. However, it also acknowledges that different circumstances may require different treatments.

Over time, the Supreme Court of India has broadened the interpretation of Article 14, infusing it with due process elements to enhance the protection of individual rights.

Landmark Cases on Due Process of Law

In **AK Gopalan v. State of Madras**, the Court held that "procedure established by law" in Article 21 simply referred to the procedure laid down by any law passed by the legislature. The Court ruled that it could not question the content or fairness of the procedure itself. This decision aligned with the British concept of parliamentary supremacy, prioritizing legislative intent and procedural adherence over judicial review of substantive fairness.

The **Rustom Cavasjee Cooper v. Union of India** case, also known as the **Bank Nationalisation Case**, focused on the validity of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969, which led to the nationalization of major private banks in India.

The Supreme Court's decision in this case significantly broadened the scope of judicial review in India by interpreting due process principles and expanding the interpretation of the fundamental rights under Articles 14, 19, and 31. The Court held that fundamental rights are interconnected, not isolated, and must be interpreted in a way that allows for a holistic protection of individual liberties.

This case laid the groundwork for the Maneka Gandhi case, which ultimately expanded the interpretation of Article 21 to include due process principles.

Maneka Gandhi v. Union of India is a landmark case in the interpretation of Article 21. Maneka Gandhi's passport was impounded by the government without giving her a fair hearing. She challenged this decision, arguing it violated her right to personal liberty under Article 21.

The Supreme Court ruled that "procedure established by law" must be fair, just, and reasonable, effectively reading due process into Article 21. This judgment linked Articles 14, 19, and 21, ensuring that all laws affecting life and liberty must also meet standards of reasonableness and fairness.

Conclusion

The doctrine of due process ensures both fair procedures and fairness in the laws themselves. It requires that laws be followed properly and also be just and reasonable. By limiting the power of the state, due process protects individual rights and is essential to maintaining a democratic society, the rule of law, and basic freedoms.

Also Read: Rule of Law in India