

Understanding the Difference: Procedure Established by Law vs Due Process of Law under Article 21 of the Indian Constitution

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Abstract

The understanding of Article 21 of the Indian Constitution, which provides for the protection of the right to life and personal liberty, has experienced a substantial transformation from its original reading as "procedure established by law" to a more expansive and inclusive idea known as "due process of law." This abstract examines the fundamental distinction between the aforementioned views, emphasising their consequences on individual rights and the operation of the Indian legal framework. The concept of "procedure established by law" initially constrained the scope of judicial review to the simple presence of a legal procedure. However, the transition towards the principle of "due process of law" has underscored the importance of ensuring that these procedures are equitable, impartial, and rational. The aforementioned evolutionary process has yielded significant outcomes, such as the bolstering of safeguarding individual rights, the establishment of equity in legal proceedings, and the cultivation of a more resilient and adaptable constitutional framework within the context of India. The abstract highlights the inherent dynamism of constitutional interpretation and its significant ramifications on the lives of Indian citizens.

Keywords: Due Process, Article 21, Procedure Established, Right to Life, Liberty

1. Introduction

The twentieth century is the most transitional century with the advent of information and communication technology, cybernetics, technical advancement, mechanical process and educational expansion. Scientific advancement and technological development contribute to the nation's overall development and reconstruct the social, domestic, political and economic phases of human life in postcolonial India.

Article 21 and its Significance in Safeguarding Fundamental Rights

Article 21 of the Indian Constitution is a vital clause that safeguards the fundamental rights of individuals. The provision ensures the protection of the fundamental rights to life and personal liberty, stipulating that individuals shall not be deprived of these rights unless in accordance with the legally prescribed manner. This article not only safeguards the bodily presence of an individual but has been extensively construed to encompass a range of rights that constitute the basis of a respectable human existence.

Article 21 asserts that individuals shall not be deprived of their life or personal liberty, unless it is done in accordance with the legal procedures that have been established. This concise yet deep declaration succinctly captures the core substance of this fundamental entitlement. The statement posits that every human, irrespective of their social standing or personal history, inherently possesses the entitlement to life and personal freedom. The concept of the right to life extends beyond the mere preservation of physical existence. It involves the entitlement to lead a life characterised by dignity, devoid of any arbitrary or unlawful interference. This includes the provision of fundamental essentials such as sustenance, lodging, medical services, and educational opportunities. The protection of personal liberty entails safeguarding an individual's autonomy in terms of their ability to move freely, associate with others, and express themselves.¹

The Supreme Court of India has played a crucial role in shaping the interpretation of Article 21, thereby expanding the scope of the 'Right to Life' to encompass the right to a life characterised by dignity. This has been a significant development over the years. This encompasses other fundamental rights, such as the right to a means of subsistence, the right to physical and mental well-being, the right to personal privacy, the right to access education, and the right to be protected against solitary confinement, among other rights. The concept in question serves as a protective barrier against capricious actions undertaken by the state, functioning as a safeguard that ensures an individual's freedom remains intact, impervious to encroachment from either society or governmental entities. Supreme Court has demonstrated a proactive approach in interpreting Article 21, transforming it from a static declaration into a vibrant and growing provision. The expansion of

¹ Panwar, S. R. C. M. P. (2023, July 10). *INCORPORATION OF DUE PROCESS OF LAW IN INDIA: AN EVOLUTION THROUGH THE GATE OF CONSTITUTIONAL SILENCES*. <https://www.russianlawjournal.org/index.php/journal/article/view/2692>

fundamental rights has been a continual process, resulting in the incorporation of many human rights into the domain of personal liberty. Thus, Article 21 serves not just as a crucial legal safeguard but as a monument to the growing nature of constitutional jurisprudence in India. The statement elucidates the underlying purpose of the framers of the constitution to imbue the nation's legal structure with a dedication to safeguarding and advancing the innate dignity and value of each person.

2. The Concept of Procedure Established by Law: Explained

The essential notion of "procedure established by law" is deeply ingrained into the Indian legal system, specifically enshrined in Article 21 of the Indian Constitution. This statement asserts that the deprivation of an individual's life or personal liberty may only be justified through a legally established procedure. In more accessible language, it signifies that the government is obligated to adhere to a prescribed legal process when curbing an individual's entitlement to life or personal freedom. This concept mandates that any activity which violates these rights shall be subject to legal consequences, as prescribed by a duly enacted law by a competent legislative body, in accordance with the principles outlined in the Constitution. Merely enacting legislation is insufficient; the legislation in question must possess qualities of justice, fairness, and reasonableness. Furthermore, the specified procedural framework must incorporate sufficient protections to avoid any arbitrary infringement of an individual's right to life or personal liberty².

The distinction between the "procedure established by law" and the "due process of law" approach employed in the United States lies in the fact that the latter not only assesses the validity of a legislation, but also evaluates its adherence to principles of fairness, justice, and reasonableness. The Supreme Court of India has progressively incorporated the concepts of due process into the "procedure established by law" through its judicial activism. This approach entails not only assessing the legality of a law but also evaluating its fairness, justice, and rationality. In practical terms, this guarantees that individuals facing a threat to their right to life or personal liberty can rely on the fact that the legislative body is prohibited from enacting laws that are arbitrary or lacking in fairness. Furthermore, they possess the entitlement to contest any deprivation of their rights before a judiciary that is both independent and impartial. The concept of the "procedure established by law" in India serves to protect the principle of the rule of law. This principle asserts that the law is of utmost importance and is applicable to all individuals inside the country, even those who hold positions of authority in the legislative branch.

3. An In-depth Look at Due Process of Law and its Implications

The notion of "due process of law" is a fundamental legal concept that has its origins in common law and serves as a foundational element of the American legal system. It is enshrined in the Fifth and Fourteenth Amendments of the United States Constitution. The statement posits that the

² Mahawar, S. (2022, November 1). *Procedure established by law - iPleaders*. iPleaders. <https://blog.ipleaders.in/procedure-established-by-law/>

government is obligated to uphold and honour all legal rights that an individual is entitled to under the law. The concept of due process encompasses more than merely adherence to statutory laws, as it seeks to guarantee fairness, reasonableness, equity, and justice in the procedures that impact an individual's life, liberty, or property.³

The due process clause encompasses two commonly analysed aspects:

Substantive Due Process guarantees the fairness and justice of laws, recognising that the mere procedural perfection in enforcing an unfair rule would nevertheless result in an unjust outcome. The principle of fairness and reasonableness necessitates that the law's contents or substance adhere to these qualities, so safeguarding individuals from capricious legislative measures.

Procedural due process pertains to the procedural elements inherent in the legal system. The requirement for a law to be considered fair necessitates that the administration procedure of that law must also exhibit fairness. These components encompass providing sufficient advance notification, affording individuals the chance to express their views in a just and impartial proceeding, and granting them the privilege to present and counter evidence.

The concept of due process serves as a protective measure against the arbitrary deprivation of life, liberty, or property by the government without legal justification. The statement serves as a denunciation of judgements that lack a solid basis or are made without reason. In relevant settings, due process encompasses the notion of "natural justice," encompassing the following elements:

The concept of *audi alteram partem* refers to the fundamental right of individuals to a fair hearing, wherein they are afforded the opportunity to address and rebut facts presented against them, as well as submit their own arguments and evidence.

The principle of impartiality (*nemo iudex in causa sua*) posits that choices should be rendered by decision-makers who are unbiased and objective.

In the Indian context, the incorporation of due process concepts into the legal framework has been achieved through judicial interpretation. This ensures that any legislation impacting life or personal liberty must satisfy the criteria of fairness, justice, and rationality. The Indian Supreme Court has interpreted the phrase "procedure established by law" to encompass the requirement that the procedure be "right, just, and fair," thereby embodying the principles of due process. The implementation of due process is a dynamic field of law that adapts to the developing demands and perceptions of justice in society. The fair and equitable administration of justice is a core objective that legal systems strive to achieve, making it a crucial component in this pursuit.

³ Edward, K. (n.d.). *Due Process of Law - Magna Carta: Muse and Mentor / Exhibitions - Library of Congress*. <https://www.loc.gov/exhibits/magna-carta-muse-and-mentor/due-process-of-law.html>

4. Comparing Procedure Established by Law and Due Process of Law under Article 21

The concepts of "procedure established by law" and "due process of law" are fundamental elements of Article 21 in the Indian Constitution. These concepts serve as distinct methods for protecting individual rights and freedoms, and they differ significantly in terms of their extent and consequences.⁴

The constitutional provision of "procedure established by law" guarantees that any impairment of life or personal liberty must be carried out in accordance with a legally regulated method. The primary emphasis is placed on the presence of a legal framework and the observance of its prescribed protocols. Although it ensures legality and compliance with defined procedures, it does not automatically encompass the notions of fairness or justice inherent in the law itself. The aforementioned principle held prominence in the field of Indian jurisprudence at its inception. In contrast, the concept of "due process of law," while not directly enumerated in the Indian Constitution, has been assimilated into Article 21 through judicial interpretations. The concept incorporates a more comprehensive viewpoint, necessitating not only the presence of a legal framework and compliance with established protocols, but also an evaluation of the equity, impartiality, and rationality of both the legal framework and the protocols.⁵ This principle grants the judiciary the authority to assess not only the legality, but also the substance elements of the legislation, so assuring its conformity with principles of justice and equity. The understanding of the phrase "procedure established by law" has undergone constitutional development throughout the years. The Supreme Court's ruling in the significant legal case of *Maneka Gandhi vs. Union of India* (1978) resulted in an expansion of the parameters outlined in Article 21. The court emphasised that the mechanism created by law should adhere to principles of fairness, justice, and reasonableness, therefore encompassing the fundamental principles of due process. As a result, this reevaluation has empowered the judiciary to critically examine and invalidate laws or actions that may adhere to procedural legality but fail to meet the standards of substantive fairness. In essence, the concept of "procedure established by law" emphasises the importance of following prescribed protocols and ensuring procedural legality. On the other hand, "due process of law" broadens these concepts to embrace notions of fairness, justice, and reasonableness in relation to both the law itself and the procedures involved. The reevaluation, which has been influenced by the concept of judicial activism, has resulted in a substantial improvement in the safeguarding of essential rights as outlined in Article 21 within the Indian context. This realignment of the Indian legal system has brought it into closer conformity with the norms of due process.

⁴ *Interrelationship Between Procedure Established By Law And Due Process Of Law In India*. (n.d.). <https://www.legalserviceindia.com/legal/article-7983-interrelationship-between-procedure-established-by-law-and-due-process-of-law-in-india.html>

⁵ George, A. A. (2023, October 9). *Procedure Established by Law vs Due Process of Law*. ClearIAS. <https://www.clearias.com/procedure-established-by-law-vs-due-process-of-law/>

Judicial Interpretations: Evolution of Due Process over Procedure Established by Law in India

The evolution of the interpretation of Article 21 of the Indian Constitution, which ensures the right to life and personal liberty, has occurred within the context of India. At the outset, the prevailing view was centred around the notion of "procedure established by law," but over time, there has been a steady trend towards a more expansive comprehension of "due process of law." The following are many significant cases that exemplify this progression:

A.K. Gopalan v. State of Madras (1950)

This particular case signifies the initial interpretation of Article 21. According to the Supreme Court's interpretation, the phrase "procedure established by law" signifies that as long as a law prescribes a specific mechanism for depriving an individual of their life or personal liberty, it cannot be subject to challenge based on considerations of fairness or rationality. This particular interpretation constrained the extent of judicial review.

Maneka Gandhi v. Union of India (1978)

This particular case marked a significant milestone in the development of legal principles related to Article 21. The Supreme Court rendered a decision that overturned the ruling in the case of A.K. Gopalan, asserting that the expression "procedure established by law" ought to be interpreted in conjunction with the principles of natural justice and fairness. The concept of "due process of law" was created and the scope of judicial review was broadened. The Court ruled that legislation which infringes upon an individual's right to life or personal liberty must adhere to principles of justice, fairness, and reasonableness.

Sunil Batra v. Delhi Administration (1978)

This case is a significant legal matter that warrants academic attention. In this particular instance, the Supreme Court placed significant emphasis on the inclusion of prisoners' rights within the scope of Article 21, asserting that inmates possess some fundamental rights that remain applicable throughout their incarceration. This ruling underscored the Court's dedication to safeguarding the personal freedom of individuals.

Olga Tellis v. Bombay Municipal Corporation (1985)

In this particular instance, the Supreme Court rendered a verdict affirming that the entitlement to sustenance is an inherent component of the entitlement to life as stipulated in Article 21. It has been determined that the act of evicting or displacing slum people without offering alternative homes is in violation of the right to life.

Vishaka v. State of Rajasthan (1997)

Pertains to the matter of sexual harassment within the context of the workplace. The Supreme Court has established that instances of sexual harassment inside the workplace are a violation of a woman's dignity. It has further recognised that a woman's right to work with dignity is an integral component of her right to life, as guaranteed by Article 21. The Court established a set of guidelines aimed at preventing and addressing instances of sexual harassment within the workplace.

K.S. Puttaswamy (Privacy) v. Union of India (2017)

Pertains to the issue of privacy in the Indian legal system. This particular decision principally addressed the legal concept of the right to privacy, and in doing so, it reaffirmed the broad meaning of Article 21. The Supreme Court has established that the right to privacy is a fundamental right that is inherent to the right to life and personal liberty as outlined in Article 21. This ruling substantially enhanced the safeguarding of individual rights in India.

5. Conclusion: Upholding Constitutional Values through a Dynamic Understanding of Article 21

The comprehensive interpretation of Article 21 of the Indian Constitution has played a crucial role in safeguarding constitutional principles and guaranteeing the preservation of citizens' rights and freedoms. Over the course of time, there has been a transformation in the understanding of this interpretive approach, shifting from a narrow framework centred on a "procedure established by law" to a broader and more comprehensive understanding of "due process of law." By doing so, it has assumed a crucial role in upholding the core tenets of justice, equity, and the inherent worth of individuals.⁶

The evolution of Article 21 jurisprudence demonstrates a dedication to modifying constitutional principles in response to the dynamic requirements of a heterogeneous and swiftly progressing society. The aforementioned phenomenon has resulted in a number of noteworthy consequences that carry substantial ramifications for the democratic system and legal framework in India. One of the primary accomplishments of this dynamic interpretation is the heightened safeguarding of individual rights. The judiciary has expanded its protective scope by acknowledging the interdependence of the right to life and personal liberty with other fundamental rights. This expansion encompasses the fundamental entitlements of privacy, dignity, and livelihood, so providing the holistic protection of the well-being of individuals within the citizenry. Additionally, this dynamic approach enables the courts to effectively navigate the complex interplay between the protection of individual rights and the justified concerns of the state. The statement recognises that although the protection of individual rights is of utmost importance, there may arise extraordinary situations in which it becomes essential to impose some constraints in order to safeguard national security, maintain public order, or promote the overall welfare of society. The inherent flexibility of the constitution ensures that fundamental principles are able to adapt to the intricate demands of governance and societal requirements⁷.

⁶ L. (2023, July 6). *India's shield of privacy should reflect Article 21* | Mint. Mint. <https://www.livemint.com/opinion/online-views/indias-shield-of-privacy-should-reflect-article-21-11688656086936.html>

⁷ Jain, R. (2021, August 27). *Article 21 of the Constitution of India: Understanding Right to Life and Personal Liberty from Case Laws* -. Academike. <https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>

In the context of a rapidly advancing technology landscape and shifting social norms, it is imperative to adopt a flexible and adaptable understanding of Article 21 in order to effectively tackle modern-day concerns. The legal framework enables the necessary adjustments to address concerns pertaining to digital privacy, surveillance, and the safeguarding of marginalised people. The capacity to adapt exhibited by the Constitution guarantees its ongoing relevance and efficacy in the protection of citizens' rights within an evolving global context. Moreover, the dynamic interpretation of Article 21 emphasises the safeguarding of human dignity as a fundamental constitutional principle. The statement underscores the need of upholding principles of respect and justice towards individuals, even when confronted with challenging circumstances. The dedication to upholding human dignity functions as a guiding principle for the legal system and underscores the notion that the Constitution is a dynamic text that adapts with the progressing ambitions of society.

In result, it can be argued that a comprehensive comprehension of Article 21 extends beyond its legal framework, as it serves as a manifestation of India's democratic principles and constitutional ideals. The aforementioned statement underscores the significance of upholding justice, fairness, and human dignity as fundamental principles within the Indian legal system. This serves to strengthen the rule of law and make a positive contribution towards the ongoing advancement and growth of the nation. India's constitutional framework, as interpreted dynamically, continues to serve as a symbol of optimism in safeguarding the rights and freedoms of its populace, while also embracing the forthcoming difficulties.