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DUE PROCESS OF LAW FOR GIVING JUSTICE

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ABSTRACT

In the realm of justice, due process acts as a reliable guide for our legal system. Its roots can be traced back to ancient civilizations and it has been formalized through significant documents like the Magna Carta and the U.S. Constitution. Due process guarantees fair treatment for individuals under the law, protecting them from arbitrary actions and ensuring fundamental rights during legal proceedings. Today, due process remains a crucial legal principle globally, adapting to societal changes and evolving interpretations of civil liberties, especially with the rise of technology. It encompasses the fair and just legal procedures that individuals are entitled to, ensuring equal treatment under the law and safeguarding essential rights such as the right to a fair trial, legal representation, and protection against arbitrary government actions. This concept is vital for upholding justice and protecting individual liberties within a legal framework. Strengthening due process protections within legal systems leads to more equitable outcomes, ensuring fair and just resolutions for those involved in legal proceedings. Implementing comprehensive legal education programs for both citizens and legal professionals can raise awareness about due process rights, enhance transparency in court proceedings, and ensure timely access to legal representation for all individuals, particularly those from marginalized communities. Additionally, advocating for legislative reforms that strengthen due process protections and address systemic biases within the legal system is essential.

Keywords: Due Process, Fair, Justice, Legal Systems, Transparency.

Introduction:

The concept of "law" is the foundation of justice and fairness. The state has legal frameworks and principles that ensure that people are treated fairly. Due process ensures that no one is deprived of life, liberty or property without their legal consent. This principle has been established in different laws and countries to prevent state abuse. due process suggests that

justice is more than the mechanics of law, it must be fair, transparent and respectful of human rights. From its historical origins to its modern interpretation, the fundamental system is important in democracy and international law. We will examine the process and the main points of the legal process, the main issues that led to its understanding and the international impact of this law, particularly in the Indian context and the United States. The principle of justice is the foundation of judicial law. It prevents people from being deprived of their fundamental rights such as life, liberty or property without following fair and reasonable procedures. due process, particularly the magna carta, has deep roots in legal history and has become an important part of today's legal systems worldwide. whether through the fifth and fourteenth amendments to the United States constitution or the 21st amendment to the Indian constitution, this right protects individuals from the abuse of state power and ensures that justice is not only done but also seen to be done due process must be more than just due process; the concept ensures that all people, regardless of their status, have equal rights and are protected against abuse of power. It requires the government to operate within a framework of law that respects individual rights, thereby promoting the connection between state law and personal freedom. in modern democracies, due process is an important part of the executive, legislative and judicial branches of government. he said that laws must be reasonable and must not violate human rights, both in terms of procedure and quantity. while the legal system expresses the fairness of the law and the process, the critical system states that the law itself must be fair, reasonable and respect fundamental freedoms. Proper procedures are essential to maintaining good relations and ensuring justice. This principle transcends national boundaries and establishes international human rights standards and international legal frameworks. Although its application and interpretation may vary across regions, the basic principles of due process for the prevention of crime and the promotion of justice are universally true. This article examines the evolutionary history, legal foundations, and use of due process in different legal systems, focusing on the United States and India. we will examine various aspects of due process, critical interpretation of decisions, and how their changing role in today's legal, technological, and national security environment poses new challenges to its authority.

Historical Foundations of Due Process:

- The Magna Carta and Its Influence:

The principle of due process has a deep history dating back to the Magna Carta of 1215. arbitrary power. One important provision stated that no "free man" could be imprisoned, exiled, or deprived of his property except by order of his peers or by the law of the land. The concept

of protection against unreasonable conduct eventually evolved into what we now know as “common law”. Although Magna Carta was primarily aimed at nobles, its principles were gradually extended to all citizens. It marked the beginning of a legal system that emphasized fairness in the administration of law and ensured that legal decisions were made in accordance with established procedures.

- **The English Common Law Tradition:**

The principle of due process was well established in English common law. Judges in this system came to define the “law of the land” as a set of laws designed to protect people from arbitrary government action. This tradition emphasizes the importance of honesty and compliance with the law. Due process represents the idea that governmental authority should be exercised within the framework of law, and has influenced the creation of constitutional systems in England, as well as in the United States and India.¹

The Constitutional Underpinnings of Due Process in the United States:

- a. **The Fifth Amendment: Protection at the Federal Level:**

The United States Constitution explicitly states the principle of reasonableness in the Fifth Amendment, which was ratified as part of the Constitution in 1791. Deprivation of life, liberty, or property. This ensures that the government follows due process before depriving people of their basic rights. For example, in criminal matters, due process provides individuals with the right to an attorney, the right to remain silent, and the right to be informed of the charges against them.

- b. **The Fourteenth Amendment: Extending Due Process to the States:**

After World War I, the Fourth Amendment to the United States Constitution of 1868 was greatly expanded due to the protectionist agenda. Its legal framework states: “No state shall deprive any person of life, liberty, or property, without due process of law”. In applying the law, it must be fair. The Fourteenth Amendment was significant for its inclusion in the Constitution, which gradually extended federal immunity to state actions through judicial review.²

¹ Historical evolution of due process of law available at <https://pwnlyias.com/mains-ags-the-evolution-and-significance-of-e-due-process> seen on 18/12/23

² The Constitutional Underpinnings of Due Process in the United States available at www.justia.com/ seen on 18/12/2023

Procedural vs. Substantive Due Process:

In U.S. jurisprudence, due process is divided into two categories: procedural and substantive due process. Each serves a different function in protecting individual rights.

Procedural Due Process:

Due process focuses on the steps or procedures that the government must take before depriving a person of life, liberty, or property. The right to know the law ensures that the government's use of the law is fair, including the right to present evidence in one's own defense and the right to have justice administered by an impartial tribunal.

Key protections under procedural due process include:

- **Notice:** The individual must be informed of the charges or legal actions taken against them.
- **Opportunity to be Heard:** The person must have a chance to defend themselves, usually through a court hearing.
- **Impartiality:** A neutral and unbiased tribunal must preside over the case to ensure fairness.

Substantive Due Process:

The critical process focuses on the fairness of the law itself, not the methods used to enforce it. It protects people from laws that violate fundamental rights, even if the law is fair. This concept is especially true when it comes to rights not explicitly defined in the Constitution (such as the right to privacy).

Due Process in India: A Unique Constitutional Interpretation:

a. Article 21³: The Right to Life and Personal Liberty:

In India, the concept of due process is enshrined in Article 21 of the Constitution, which states that “no person shall be deprived of life or liberty except in accordance with law”. This language is similar to the Constitutional Charter in the United States, but its original interpretation was more restrictive. The Indian Constitutional system has chosen “due process” over “legislative process” to avoid overreach and to ensure that laws enacted by Parliament are not easily overturned by the judiciary. This choice stems from the experience of the United States, where courts have ruled to violate fundamental rights by abusing extralegal means.

³ INDIA CONST, art. 21

b. Early Interpretations: A.K. Gopalan Case:

In *A.K. Gopalan v. State of Madras* (1950)⁴, the Supreme Court of India took a narrow view of Article 21 and held that so long as Parliament makes a law, it can take away the life or liberty of a person. The courts have interpreted “procedures prescribed by law” to mean only those procedures prescribed by law, without requiring that such procedures be just, equitable or reasonable. This interpretation prevents judicial review under Article 21 and allows the state to enact laws that may violate human rights, but only if such laws are lawful.

c. The Expansion of Article 21: Maneka Gandhi Case:

The important *Maneka Gandhi v. Union of India* (1978)⁵ began developing a narrow interpretation of Article 21. In that case, the Supreme Court said that “due process” must be fair, just and reasonable. This happened when the government seized Maneka Gandhi’s passport without providing adequate justification or giving her a chance to present her side. The Court decided to broaden the interpretation of Article 21 to make it consistent with the American concept of due process. He said that any law which deprives a person of life or liberty must be subject to judicial review to ensure that it is not arbitrary or unjust. This decision represents a fundamental principle in Indian law which holds that the protection of life and personal liberty must be done in a just and reasonable manner.

d. Article 22: Safeguards Against Arbitrary Arrest and Detention:

Article 22 of the Constitution of India complements Article 21 and provides special protection against arrest and detention. It guarantees that those arrested are informed of the reason for their arrest, have the right to consult a lawyer, and are brought before a judge within 24 hours of arrest. These laws embody due process in India and ensure that the state cannot deprive a person of his liberty without following due process. The safeguards provided by Article 22 are particularly important in preventing the police from abusing their power.⁶

Landmark Cases Shaping Due Process in India and the U.S:

i. *Maneka Gandhi v. Union of India* (1978)⁷:

The *Maneka Gandhi* case marked a significant shift in how due process is understood in India.

⁴ *A.K. Gopalan v. State of Madras* AIR 1950 SC 27.

⁵ *Maneka Gandhi v. Union of India* AIR 1978 SC 597.

⁶ INDIA CONST, art.22

⁷ *Maneka Gandhi v. Union of India* AIR 1978 SC 597.

The Supreme Court's decision clarified that laws impacting life and liberty must adhere not only to established procedures but also be fair, just, and reasonable. This landmark ruling brought the idea of substantive due process into Indian law, allowing the courts to invalidate arbitrary laws.

ii. *Kesavananda Bharati v. State of Kerala* (1973)⁸:

In this context, the Supreme Court of India has laid down the “standard model principle” which prohibits the Parliament from amending the Constitution in a way that would affect the important message of the Constitution. Although the process is not directly addressed in the case, it is said that some important rights such as the right to life and the right to liberty are protected by the government's decision.

iii. *Brown v. Board of Education* (1954)⁹:

In the United States, the Supreme Court's decision *Brown v. Committee on Education* marked a significant change in the understanding of the law, particularly in terms of the Fourth Amendment's protection of justice. The Court ruled that racial segregation in public schools was unconstitutional, arguing that “separate but equal” facilities were inconsistent.

This important document emphasizes the important role of due process in ensuring equality before the law.

iv. *Miranda v. Arizona* (1966)¹⁰:

This important US document sets a precedent that police must inform people of their rights before questioning them. These rights, commonly known as the “Miranda rights,” include the right to remain silent and the right to have an attorney. This decision expands due process and ensures that individuals understand their legal protections when facing criminal charges.

Global Influence of Due Process:

The principle of due process extends beyond the United States and India; it serves as a fundamental element of legal systems globally. Numerous international human rights treaties and conventions, including the Universal Declaration of Human Rights (UDHR) and the

⁸ *Kesavananda Bharati v. State of Kerala* AIR 1973 SC 1461

⁹ *Brown v. Board of Education* 347 U.S.483

¹⁰ *Miranda v. Arizona* 384 U.S.436

International Covenant on Civil and Political Rights (ICCPR), acknowledge the significance of due process in delivering justice and safeguarding individual rights.¹¹

- **Universal Declaration of Human Rights (UDHR):**

Article 10 of the Universal Declaration of Human Rights states that everyone has the right to a fair and public hearing by an independent and impartial tribunal, and that their rights and responsibilities will be balanced against any criminal charge against them. This principle outlines the basis of due process by affirming that individuals deserve a fair hearing and a just decision.

- **International Covenant on Civil and Political Rights (ICCPR):**

The International Covenant on Civil and Political Rights is a legal treaty established by articles 14 and 15 of the United Nations, which further emphasizes the principle of equality. There is protection against repeated violations. The provisions of the International Covenant on Civil and Political Rights set world standards for the protection of individual rights in legal proceedings.

The Role of Due Process in Modern Society:

While the law remains, due process remains an important defense against the exercise of discretion. In a world where issues such as data privacy, surveillance, and crime prevention are often out of step with traditional law, due process ensures that the rights of those same People are protected, even in difficult situations.

- **Data Privacy and Surveillance:**

The digital age has brought new concerns about how to balance national security and personal privacy. Governments around the world are using extensive surveillance systems to combat terrorism, but these efforts often raise questions about how to monitor them. Reasonable procedures should include transparency and lawful monitoring of the observation or collection of information to ensure that individuals' privacy rights are not violated.

- **Counterterrorism and National Security:**

In the wake of violence, many countries have enacted laws that give the state special powers.

¹¹Global Influence of Due Process available at <https://www.iilj.org/> last seen on 18/12/23.

While these laws are necessary for security, they often limit personal freedom and undermine the protection of the law. The challenge for society today is to find a balance between protecting national security and ensuring that the system remains intact, even in times of crisis.

Conclusion:

The rule of law remains the fundamental source of justice in international law. It provides accountability mechanisms to protect individuals during legal proceedings and provides important safeguards to promote fundamental rights, ensuring that justice is fair and transparent rather than judgmental. In India, the scope of Article 21 has been expanded to include substantive procedures, reflecting the changing nature of this law. Challenges to important cases such as Maneka Gandhi have brought India's legal system more in line with international standards of justice and fairness. In the United States, due process is critical to the protection of civil liberties, especially as new issues of privacy, technology, and security emerge in the country. As a progressive society, due process will continue to be an important part of government power to ensure that the political system is enforced and individual rights are protected. Finally, due process is only overridden by law; fairness, transparency, and accountability will remain important as long as they remain central to the pursuit of justice.

