

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 5

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Doctrine of Due Process

YASHVI GOYAL¹

ABSTRACT

Due process is the legal requirement that the state must respect all legal rights that are owed to a person. Due process balances the power of law of the land and protects the individual person from it. When a government harms a person without following the exact course of the law, this constitutes a due process violation, which offends the rule of law.

Due process has also been frequently interpreted as limiting laws and legal proceedings so that judges, instead of legislators, may define and guarantee fundamental fairness, justice, and liberty. That interpretation has proven controversial. Analogous to the concepts of natural justice, and procedural justice used in various other jurisdictions, the interpretation of due process is sometimes expressed as a command that the government must not be unfair to the people or abuse them physically.

Due process of law doctrine not only checks if there is a law to deprive the life and personal liberty of a person but also see if the law made is fair, just and not arbitrary. If SC finds that any law as not fair, it will declare it as null and void. This doctrine provides for more fair treatment of individual rights. Under due process, it is the legal requirement that the state must respect all of the legal rights that are owed to a person and laws that states enact must conform to the laws of the land like – fairness, fundamental rights, liberty etc. It also gives the judiciary to access fundamental fairness, justice, and liberty of any legislation. Each amendment contains a due process clause, which prohibits the government from taking any action that would deprive a person of “life, liberty, or property without due process of law.” The due process clause provides several types of protection.

Keywords: - Doctrine, Due Process, law.

I. EXPLANATION

Due process is the legal requirement that the state must respect all legal rights that are owed to a person. Due process balances the power of law of the land and protects the individual person from it. When a government harms a person without following the exact course of the law, this constitutes a due process violation, which offends the rule of law.

Due process has also been frequently interpreted as limiting laws and legal proceedings (see substantive due process) so that judges, instead of legislators, may define and

¹ Author is a student at MIT WPU, India.

guarantee fundamental fairness, justice, and liberty. That interpretation has proven controversial. Analogous to the concepts of natural justice, and procedural justice used in various other jurisdictions, the interpretation of due process is sometimes expressed as a command that the government must not be unfair to the people or abuse them physically.

Due process of law doctrine not only checks if there is a law to deprive the life and personal liberty of a person but also see if the law made is fair, just and not arbitrary. If SC finds that any law as not fair, it will declare it as null and void. This doctrine provides for more fair treatment of individual rights. Under due process, it is the legal requirement that the state must respect all of the legal rights that are owed to a person and laws that states enact must conform to the laws of the land like – fairness, fundamental rights, liberty etc. It also gives the judiciary to access fundamental fairness, justice, and liberty of any legislation. Each amendment contains a due process clause, which prohibits the government from taking any action that would deprive a person of “**life, liberty, or property** without due process of law.” The due process clause provides several types of protection.

There are two types-

1. **Procedural due process**- Procedural due process requires that when the federal government acts in a way that denies a citizen of a life, liberty, or property interest, the person must be given notice, the opportunity to be heard, and a decision by a neutral decision-maker.

2. **Substantive due process**- Substantive due process is a principle allowing courts to protect certain fundamental rights from government interference, even if procedural protections are present or the rights are not specifically mentioned elsewhere in the U.S. Constitution. Due process in the U.S. also protects individuals from vaguely written laws and incorporates the Bill of Rights. Courts have taken an assertive approach to uphold due process, which has resulted in the executive and legislative branches of government adjusting how laws and statutes are written. Laws that are explicitly written not to violate due process are those that are least likely to be struck down by the courts. For example, **state law gives students a right to a public education**, but doesn't say anything about discipline. Before the state could take that right away from a student, by expelling her for misbehavior, it would have to provide fair procedures, i.e. “due process.”

II. ORIGIN OF DUE PROCESS

“Due process” originated in 1215 with the English **Magna Carta**, an important provision of which was that no freeman would be deprived of certain rights except “by the judgment of his peers and by the law of the land.” This guarantee was later codified by Parliament in a series

of statutes, one of which replaced “law of the land” with “due process of law.”

III. CASE LAW

Roe v. Wade, was a landmark decision of the U.S. Supreme Court in which the Court ruled that the Constitution of the United States protects a pregnant woman's liberty to choose to have an abortion without excessive government restriction. It struck down many U.S. federal and state abortion laws, and prompted an ongoing national debate in the United States about whether and to what extent abortion should be legal, who should decide the legality of abortion, what methods the Supreme Court should use in constitutional adjudication, and what the role of religious and moral views in the political sphere should be. *Roe v. Wade* reshaped American politics, dividing much of the United States into abortion rights and anti-abortion movements, while activating grassroots movements on both sides.

IV. RELEVANCE

Due process is a principle that dictates fairness in procedures and legal matters, with the rights and treatment of those involved being kept equal and free from prejudice. ¹ In the legal system, due process is in place as a safeguard of people's rights and to prevent prejudicial abuse. Due process balances the power of law of the land and protects the individual person from it. When a government harms a person without following the exact course of the law, this constitutes a due process violation, which offends the rule of law.

V. OPINION

The exercise of wide power of judicial review by the American SC in the name of 'due process of law' clause has made the critics to describe it as a 'third chamber' of the Legislature, a super-legislature, the arbiter of social policy and so on. This American principle of judicial supremacy is also recognised in our constitutional system, but to a limited extent.

Nor do we fully follow the British Principle of parliamentary supremacy. There are many limitations on the sovereignty of Parliament in our country, like the written character of the Constitution, the federalism with division of powers, the FRs and the judicial review. In effect, what exists in India is a synthesis of both, that is, the American principle of judicial supremacy and the British principle of parliamentary supremacy.
