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Judicial Assertion of Due Process of Law in India

AKASH TANDON¹

ABSTRACT

The Judiciary has aided the evolution of the 'Due Process of Law' in India. The Judiciary has contributed its consequential role in the establishment of the supremacy of the Article 21 of the Constitution of India, and interpreted 'procedure established by law' as equivalent to the concept of 'Due Process of Law'. It aided in the enrichment of the substantive as well as procedural laws and by the usage of the power conferred by the Constitution, the Supreme Court has managed to assist the Constitution in providing the protection to the citizens. The Judiciary has changed the perspective of Article 21 and expanded its dimensions and granted the basic rights to the people of India.

The Supreme Court in the case of Maneka Gandhi v. Union of India, has expanded the scope of Article 21, in which the conceptualization has been changed, many new dimensions have been added to the 'procedure established by the law' and it is being read as the alike to the American 'Due Process of Law'. The seven judges' bench of apex court in Maneka Gandhi case upheld the contentions of petitioner that the procedure established under Article 21 should be "just, fair and reasonable". The Supreme Court has expressed the inter-relationship between the Articles of the Constitution and for the establishment of the true and rightful meaning of the provision provided in Article 21; the Article 14, 19, 20, 21 and 22 must be read together in the consensus.

The new dimensions can be summed up and expressed as the right to have 'fair and speedy' Court proceedings, that must be ascertained in the public, including the required 'legal assistance' through the 'counsel of own's choice' and an induction of the principle of 'Audi Alteram Partem'; it also includes the protection against 'illegal detention' as well as the 'self-incriminating laws'; it also includes the safeguard against the 'Ex-post facto laws' and 'excessive punishments'.

I. INTRODUCTION

The term 'Liberty' is the word which defines or expresses one's 'Freedom'. It is the term which prescribes the capacity of an individual person to act in the society lawfully, it is the

¹Author is a LLM student at Law College Dehradun, Uttarakhand University, Dehradun, Uttarakhand, India.

situation where a person has a free-will to act upon, whatsoever, manner he may think fit for his freedom. But the term liberty is accompanied with the restrictions, no person can act in such manner which may be devastating in the interest of the Nation or State or public order at large. The unchecked liberty can create a chain of conflict of interest in the society and disturb the public order and peace. Thus, attracting the restriction put on by the State on the actions of the man.

Liberty of an individual person is a subject of the State and a State is to be empowered by its law of the land to put the restrictions on the freedom of an individual person. A balance needs to be maintained between the freedom and restrictions, to sustain peace in the society and smooth functioning of the State. Thus, a State is capable of defining and putting the restrictions on the liberty of a person. A State may put restriction on its subjects on exercising its own will, but it may not go beyond the Constitutional Limits. Such limitations on the Liberty cannot be arbitrary and ultra vires to the Constitutional edict.

The evolution of the such concept of liberty is the essential ingredient of the '*Principle of Natural Justice*' which states about the inclusion of equitable, appropriate, virtuous and scrupulous framework in the democratic setup, in the safeguarding of the liberty against the arbitrariness, not only when it is in crisis but in the regular course of the polity. for the '*Due Process of Law*'.

In a democratic setup, where there are Fundamental Rights, Judicial Review, Administrative autonomy, rigidity in its structure provided by its own Constitution, then a question of human dignity arises which can be only conceived by the inclusion of the concept of 'Liberty'.

The liberty is the key to unlock the features of the democracy. A democracy is the complex setup, it is a continuous process in which new norms are added and obsolete are eradicated for its smooth functioning. Thus, defining the ambit of the laws it may possess. It may categorize the laws into 'Substantial' and 'Procedural' laws. The Substantial law provides the basis, while defining the ambit of the law; whereas the Procedural law provides the basis for the procedure or process it may involve in the execution of the such defined laws.

The concept of '*Due Process of Law*' is the one such concept which prescribes the limitations of the State while exercising its abundant powers without infringing the rights of the subjects of the State. It is a concept of safeguard, it provides the protection against the arbitrary acts conceived by the State and violating the rights of Liberty given to the citizens in a free polity. '*Due Process*' simply means that a set procedure must be followed while exercising the functions of the government and by not conducting the functions beyond the Constitutional

limits and infringing the rights of the citizens.

This concept of *'Due Process of Law'* is also in conformity with the Albert Venn Dicey's concept of *'Rule of Law'*, which is the ingredient of the Common Law of England. *'Rule of Law'* provides that there must be supremacy of the law instead of the man, a man may be biased and may work in its own interest rather than in the interest of the Nation. Also, the concept provides for the protection of the person who may be a subject of the State as "*no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. In this sense the rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary, or discretionary powers of constraint*"². This is also known as Albert Venn Dicey's first principle of rule of law.

II. DUE PROCESS OF LAW – HISTORICAL PERSPECTIVE

The concept may have many forms one such is *'Due Process of Law'* which originates from the Common Law of Great Britain. *'Due Process of Law'* is a part of history as this concept had its origin in the Magna Carta itself. *'Due Process of Law'* is a constitutional guarantee that prevents governments from impacting citizens in an abusive way.³In its modern form, due process includes both substantial and procedural standards that courts must uphold in order to protect people's personal liberty and a range of liberty interests that statutes and regulations must not infringe.⁴ Its origin can be traced to Chapter 39 of King John's Magna Carta which provides that "*no freeman will be seized, dispossessed of his property, or harmed except by the law of the land*", an expression that referred to customary practices of the court.⁵ The wording *'Due Process of Law'* was penned down for the first time after a century in statute of 1354 by King Edward III that explicitly restated the guarantee stated in the Magna Carta of 1215. The charter of 1215, originally issued by King John of England states that "*No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land*".⁶ The great charter of 1215 provided the basis for the evolution and conceptualization of the *'Due Process of Law'*. Though the wording used in charter of 1215

²(May, 10, 2020) <https://publications.parliament.uk/pa/ld200607/ldselect/ldconst/151/15115.htm>.

³(May, 10, 2020) <https://www.loc.gov/exhibits/magna-carta-muse-and-mentor/due-process-of-law.html>.

⁴*Ibid.*

⁵*Ibid.*

⁶Cl.XXXIX, MAGNA CARTA, 1215, (May, 12, 2020) <https://web.archive.org/web/20070905014018/http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=157519>.

were different, it expressed as '*law of the land*' but after more than a century King Edward III changed it to the '*Due Process of Law*' in the re-issue in 1354.

Later, in the Great Britain it was inducted the same in its legal system and it became the fundamental part of the Common Law system in England and every person came in the ambit of the concept of '*Due Process of Law*'.

III. PROCEDURAL AND SUBSTANTIAL DUE PROCESS OF LAW

'*Due Process of Law*' can further be classified into the two categories of law, i.e., '*Substantive Law*' and '*Procedural Law*'.

"*Substantive Due Process of Law*" is the protection provided under the concept against the arbitrary enactments and legislations which exceeds the Constitutional limitations as prescribed by the law of the land, in Courts of the law, the enforcement of such laws is recalcitrant, as opposed to the Constitutional safeguards, regardless of the procedure followed was '*fair*'.

"*Procedural Due Process of Law*" is the protection provided under the Apex Law to its citizens from the extraterritorial exercise of the authority conceived by the State. It is a safeguard from the arbitrary implementation of the invalid legislations and evading the established procedure, which must be followed before depriving the rights of a person. It is intended to provide with the fair and impartial hearing, before a competent Court or Tribunal, providing with '*Audi Alteram Partem*' in its core, under a law which is in consensus with the prescribed provisions of the Constitution of the State.

Thus, both the aspects of '*Due Process of Law*' are inter-dependent on each other for the safeguarding of the rights of the subjects of the State, concluding it to be protection against extraterritorial exercise of the authority by the State.

IV. DUE PROCESS OF LAW IN UNITED STATES

The Constitution of the United States established America's national government and fundamental laws, and guaranteed certain basic rights for its citizens.⁷ Today, the United States Constitution is the oldest, written constitution that has continuously remained in effect in the world.⁸ It also established the first federal form of government, as well as the first system of checks and balances to prevent any one branch of government from acquiring too

⁷(May, 16, 2020) <https://www.history.com/topics/united-states-constitution/constitution>.

⁸(May, 16, 2020) <https://supreme.findlaw.com/documents/consthist.html>.

much power.⁹

The concept of ‘*Due Process of Law*’ has its modern origin in the United States. The Constitution of United State, initially did not contain the clause of ‘*due process*’. It was James Madison, Jr. who proposed the amendments in the Constitution of America commonly known as, ‘*Bill of Rights*’. James Madison, Jr. was the fourth most influential President of the United States and is known as the Father of the Constitution because of his pivotal role in the document’s drafting as well as its ratification.¹⁰ James Madison, Jr. had also drafted the amendments the Bill of Rights.¹¹ On June 8, 1789, James Madison addressed the House of Representatives and introduced a proposed Bill of Rights to the Constitution.¹² The House agreed on a version of the Bill of Rights that had 17 amendments, and later, the Senate consolidated the list to 12 amendments, in the end, the states approved 10 of the 12 amendments in December 1791.¹³

The fifth amendment of the Bill of Rights, which amends the Constitution and provides for the ‘*Due Process of Law*’. But, the Supreme Court of America at that time period concluded in the *Barron v. Baltimore*,¹⁴ that the applicability of the fifth amendment is limited to the federal government and ruled the precedent, until the fourteenth amendment was ratified. The fourteenth amendment forbids states from denying any person “*life, liberty or property, without Due Process of Law*” or to “*deny to any person within its jurisdiction the equal protection of the laws*”.¹⁵ By directly mentioning the role of the states, the fourteenth Amendment greatly expanded the protection of civil rights to all Americans.¹⁶

The basic premise of ‘*Due Process of Law*’ is that all persons are entitled to the benefits, protections, and privileges of the law of the land.¹⁷ According to Chief Justice John Marshall stated in the landmark case of *Marbury v. Madison*,¹⁸

“*The very essence of civil liberty certainly consists in the right of every individual to claim*

⁹*Ibid.*

¹⁰<https://www.loc.gov/wiseguide/may05/constitution.html#:~:text=James%20Madison%20is%20known%20as,%2D%2D%20the%20Bill%20of%20Rights>.

¹¹*Ibid.*

¹²(May, 16, 2020) <https://constitutioncenter.org/blog/on-this-day-james-madison-introduces-the-bill-of-rights#:~:text=On%20June%208%2C%201789%2C%20James,to%20present%20to%20the%20states>.

¹³*Ibid.*

¹⁴ 32 U.S. 243.

¹⁵(May, 16, 2020) <https://guides.loc.gov/14th-amendment#:~:text=The%2014th%20Amendment%20to%20the,included%20former%20slaves%20recently%20freed>.

¹⁶*Ibid.*

¹⁷ Edward D. Re, *Due Process, Judicial Review, and the Rights of the Individual*, vol. 39, issue 1, Clev. St. L.Rev. p.7, (1991), (May, 17, 2020) <https://engagedscholarship.csuohio.edu/clevstlrev/vol39/iss1/3>.

¹⁸ 2 L. Ed. 60, 5 U.S. 137 (1803).

the protection of the laws..."¹⁹

According to Justice Felix Frankfurter of the Supreme Court:

*"'Due process', unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. Expressing as it does in its ultimate analysis respect enforced by law for that feeling of just treatment which has been evolved through centuries of Anglo-American constitutional history and civilization, "due process" cannot be imprisoned within the treacherous limits of any formula. Representing a profound attitude of fairness between man and man, and more particularly between the individual and government, 'due process' is compounded of history, reason, and past course of decisions, and stout confidence in the strength of the democratic faith which we profess. Due process is not a mechanical instrument. It is not a yardstick. It is a process. It is a delicate process of adjustment inescapably involving the exercise of judgment by those whom the Constitution entrusted with the unfolding of the process."*²⁰

A federal court of appeals in US has stated that, *"whenever a governmental body acts so as to injure an individual, the Constitution requires that the act be consonant with Due Process of Law."*²¹

V. DUE PROCESS OF LAW IN INDIA

India adapted the parliamentary form of the government to govern the Nation based on the Britain's Common Law system. India also adopted the adversarial system of governance from Britain. In India, the all the laws of the Nation are empowered by the great Constitution of India. It is one of the greatest Constitution in the world as compared to the other world's Constitutions, as it tried to explore every possible area in which laws are required to maintain the smooth functioning of the democracy.

Indian form of democracy is in itself is one of a kind, as its Apex law have ability and capacity to deal any extraordinary situation arises in the legal and political system. India attained its sovereignty late as compared to other world's countries, so the framers built Indian Constitution as the core of the democratic setup, which will empower India to stay high in the world's polity and for internal matters they also built it is strong enough to deal with extraordinary situations arising out of the long run of the democracy.

In India, the Constitution also provides for the similar feature to the American Constitution as

¹⁹*Ibid.*

²⁰*ibid.*

²¹*Id* at p.9.

in regards to the '*Due Process of Law*'. In Indian context, Article 21 of the Constitution of India is the core provision, which safeguards the right relating to liberty and dignity of an individual person in India.

In India, the democratic setup is distinguished in three tiers or wings or pillars. Each having its own area of interests and functionality. The job of the First Pillar is to make laws for the governance of the Nation, Second Pillar is empowered to actual execution or implementations of such laws made by the first and the Third Pillar is the kept entrusted with the Constitution to protect the existence of the spirit or essence of the core structure of the Apex Law. The duties of the third wing are very trust worthy as it acts as the protector guardian of the Constitution, irrespective of the arbitrary acts the first wing or the second wing. Every person is equal and possess equal opportunity as conferred by the Constitution of India.²² The Apex authority of the third pillar is The Supreme Court of India, which acts as the guardian of the Constitution as well as Indian polity. It is being entrusted by the framers of the Constitution and explicitly empowers the Supreme Court with the power of Judicial Review,²³ which can nullify or invalidate the acts validated by the first pillar, if found ultra-vires to the Constitutional edict. It is the question of Justice which prescribes the equitable, appropriate, virtuous and scrupulous framework for the '*Due Process of Law*'.

Also, despite the deliberate omission of including the words '*Due Process of Law*' by the makers of the Indian Constitution, the Supreme Court of India by a process of interpretation of two Articles of the Constitution, namely Articles 14 and 21, tries to read the due process in the Constitution of India.²⁴

VI. CONSTITUENT ASSEMBLY DEBATES ON DUE PROCESS OF LAW

Originally, the Article 21 of the present Constitution was drafted as Article 15 which was at that moment was highly influenced by the Constitution of US and worded as that "*No person shall be deprived of his life or liberty without the Due Process of Law*".²⁵ Subsequently, it never made through the deliberation and two amendments were proposed by the drafting committee in respect of the Article 15.

- Amendment number 1, proposed to mention "*personal*" as prefix to the word "*liberty*".

²²INDIA CONST. art.14.

²³INDIA CONST. art.137.

²⁴A.H. Hawaldar, *Evolution of due process in India*, B.L.R, p.117 (2014).

²⁵Constituent Assembly Debates, Vol. VII, Para no. 172, (May, 20, 2020)https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-06.

- Amendment number 2, proposed to substitute the expression “*without Due Process of Law*” with the expression “*except according to procedure established by law*”.

On the 6th December, 1948, the assembly congregates and examines the introduction of akin provision of American Constitution i.e. ‘*Due Process of Law*’ into the Indian Constitution. Originally, the Article 21 of the current Constitution of India, which furnishes the safety against the “*deprivation of life*” and “*personal liberty*”, which was primarily drafted as Article 15 by the drafting committee. The Advisory Committee of the Constituent Assembly on Fundamental Rights had suggested that “*no person shall be deprived of his life or liberty without Due Process of Law*”.²⁶ But the assembly changed the expression and got stuck with the wordings as, “*No person shall be deprived of his life or personal liberty except according to procedure established by law*”.²⁷

Kazi Syed Karimuddin in the assembly deliberation was of the notion that if the intended proposed amendment is approved and the article is allowed to stand than it will open a sad chapter in the history of constitutional law.²⁸ He opposed the amendment and contended that in proposed Article 15, for the words “*..... except according to procedure established by law*” the words “*..... without Due Process of Law*” be substituted”.²⁹ He cautioned that if the words “*according to procedure established by law*” are used, then there will be a very great injustice to the people and nation and it will not be open to the courts to look into the injustice of a law or into a capricious provision in a law.³⁰ He had submitted two amendments to the drafting committee, first intended to insert prefix “*personal*” before the words “*liberty*”, and the other about substitution of the expression “*without Due Process of Law*” for the words “*except according to procedure established by law*”.³¹ But the assembly adopted his first proposal and inserted the word “*personal*” before the words “*liberty*” and left out the proposed second amendment by the member.

Mahboob Ali Baig Sahib Bahadur, in the assembly said that words “*without Due Process of Law*” should be inserted in Article 15. He opined that the words “*without Due Process of Law*” would authorize the courts to go into the subject of the substantive as well as

²⁶*Ibid.*

²⁷INDIA CONST. art.21.

²⁸Constituent Assembly Debates, Vol. VII, Para no. 170, (May, 20, 2020) https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-06.

²⁹*Id* at Para no. 172.

³⁰Constituent Assembly Debates, Vol. VII, Para no. 173, (May, 20, 2020) https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-06.

³¹*Id* at Para no. 175.

procedural law.³²

In the deliberation, Pandit Thakur Das Bhargava, also supported the amendment proposed by the member Sayed Karimuddin Kazi and in the assembly deliberation said,

*“Though these words “without Due Process of Law” which are sought to be substituted for the words in the section have not been defined anywhere, their meanings and implications should be understood fully. By using these words “without Due Process of Law” we want that the courts may be authorised to go into the question of the substantive law as well as procedural law. When an enactment is enacted, according to the amendment now proposed to be passed by this House, the courts will have the right to go into the question whether a particular law enacted by parliament is just or not, whether it is good or not, whether as a matter of fact it protects the liberties of the people or not. If the Supreme Court comes to the conclusion that it is unconstitutional, that the law is unreasonable or unjust, then in that case the courts will hold the law to be such and that law will not have any further effect.”*³³

Z. H. Lari spoke and said *“that it is necessary not only in the interest of individual liberty but in the interest of proper working of legislatures that such a clause as ‘Due Process of Law’ clause should find a place in the Constitution.”*³⁴

On 13th December 1948, the Dr. B. R. Ambedkar acknowledged that he was in a little perplexed situation to settle with the consideration to the proposed amendment drafted by the Drafting Committee regarding the wording of Article 15 and on the other hand, the deliberation by the members of the assembly and their notion for the deletion of the words ‘procedure according to law’ and the substitution of the words ‘Due Process of Law’.³⁵

In the word of Dr. B.R. Ambedkar,

“We are therefore placed in two difficult positions. One is to give the judiciary the authority to sit in judgment over the will of the legislature and to question the law made by the legislature on the ground that it is not good law, in consonance with fundamental principles. Is that a desirable principle? The second position is that the legislature ought to be trusted not to make bad laws. It is very difficult to come to any definite conclusion. There are dangers on both sides. For myself I cannot altogether omit the possibility of a Legislature

³²Constituent Assembly Debates, Vol. VII, Para no. 192, (May, 20, 2020) https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-06.

³³Constituent Assembly Debates, Vol. VII, Para no. 198, (May, 20, 2020) https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-06.

³⁴*Id* at Para no. 240.

³⁵Constituent Assembly Debates, Vol. VII, Para no. 55, (May, 23, 2020) https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-13.

packed by party men making laws which may abrogate or violate what we regard as certain fundamental principles affecting the life and liberty of an individual. At the same time, I do not see how five or six gentlemen sitting in the Federal or Supreme Court examining laws made by the Legislature and by dint of their own individual conscience or their bias or their prejudices be trusted to determine which law is good and which law is bad. It is rather a case where a man has to sail between Charybdis and Scylla and I therefore would not say anything. I would leave it to the House to decide in any way it likes.”³⁶

Clearly, the Constituent Assembly members were persuaded by the arguments presented by Dr. B.R. Ambedkar in the Constituent Assembly, that the provisions of Article 21 would be sufficient in providing protection to the people of India.

Thus, the matter was left in the hands of the Constituent Assembly to decide and take decision regarding the insertion of the clause, which may seem in the maximum interest of the Nation. Aftermath, the Constituent Assembly, had extensive deliberation and did not include the words ‘*Due Process of Law*’ in the Constitution of India.

VII. JUDICIAL ASSERTION OF THE SUPREME COURT

The Judiciary have a vital and consequential role in the evolution of the ‘*Due Process of Law*’, as the subject matter of law and questions arising out of the law is rejoined by the Judicial interpretation. The Judiciary in most of the democracies are empowered with the Judicial Review of the laws enacted by the Legislature, more the power rendered by the Constitution, much the stronger is due procedure, in that State. Thus, due procedure is subject to judicial interpretation of the laws in consensus with its apex authority of law. If the Constitution of the State provides for the protection the rights of the citizens, then it is the duty of the guardian of state, i.e. The Judiciary, to protect such rights conferred by its own Apex authority.

Substantive law defines the ambit or extent to which a legislation can act upon, the Procedural law on the other hand, defines the path of achieving such extent prescribed under the substantive law. Once the rights of citizens, duties of citizens and liabilities of citizens and similarly of the State are expressed by the legislations, then it is the procedural aspect to implement the same in the legal system. If any deformity still finds its way to existence then it is the consequential role of the Judiciary for its eradication from the legal system and clear the path for the achievement of ‘*Justice*’.

³⁶Constituent Assembly Debates, Vol. VII, Para no. 58, (May, 23, 2020)
https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-13.

The Supreme Court of India made tremendous contribution towards the Indian legal system, by interpreting the Constitution in the light of the principle of '*Natural Justice*' and the principles of '*Rule of Law*'. The Supreme Court in India gave such major landmark judgments which shift-turned the fate of the legal system in India, whether it may be the case of *KesavanandaBharati v. State of Kerala*,³⁷ in which SC held that '*Basic Structure*' of the Constitution cannot be annulled by the amendments; or it may be *Maneka Gandhi v. Union of India*,³⁸ in which the Supreme Court has expanded the scope of Article 21 and read it as the concept of '*Due Process of Law*'.

After the decision came out in Maneka Gandhi case, the conceptualization has been changed ever since, many new dimensions have been added in relation to the '*procedure established by the law*'³⁹ and it is being read as the alike to the American '*Due Process of Law*'. The seven judges' bench of apex court in Maneka Gandhi case⁴⁰ upheld the contentions of petitioner that the procedure established under Article 21 should be "*just, fair and reasonable*".⁴¹ Justice Krishna Iyer, observed that "*law prescribing a procedure for deprivation of life and personal liberty in Article 21 could not be any sort of procedure but it had to be one that was neither arbitrary nor unfair nor unreasonable.*"⁴² Also, KrishanIyer, J., in *Sunil Batra v. Delhi Admistration*,⁴³ concluded that "*our Constitution has no 'due process' clause but in this branch of law, after Cooper and Maneka Gandhi, the consequence is the same*"; and added that Article 21 is the counterpart of the procedural due process in the United States.⁴⁴

Further, the Supreme Court of India has concluded in the consensus that any such procedures must be scrutinized and be tested under the provisions of Articles 14, 19 and 21 of the Constitution. The dynamic approach of the Supreme Court in respect of procedural law under Article 21 has led liberalization of bail procedures, restricting the solitary confinement, speedy disposal of criminal trials, strict procedure for arrest of person, liberalizing the rule of locus standi, ensured the legal assistance to the needy people, and awarding death sentences in rarest of rare case.⁴⁵

Thus, the Indian '*procedure established by law*' under Article 21 must be read similarly to

³⁷ (1973) 4 SCC 225, AIR 1973 SC 1461 (India).

³⁸ AIR 1978 SC 597, (1978) 1 SCC 248, (1978) 2 SCR 621 (India).

³⁹ INDIA CONST. art.21.

⁴⁰ *Supra* note 37.

⁴¹ *Supra* note 23.

⁴² *Ibid.*

⁴³ (1978) 4 SCC 409, (1979) 1 SCR 392 (India).

⁴⁴ *Supra* note 23.

⁴⁵ *Ibid.*

the American concept of '*Due Process of Law*' and the procedure must be equitable, appropriate, virtuous and scrupulous.

VIII. MANEKA GANDHI CASE – 'THE NEW DIMENSION'

The new dimensions can be summed up and expressed as the right to have '*fair and speedy*' Court proceedings, that must be ascertained in the public, including the required '*legal assistance*' through the '*counsel of own's choice*' and an induction of the principle of '*Audi Alteram Partem*'; it also includes the protection against '*illegal detention*' as well as the '*self-incriminating laws*'; it also includes the safeguard against the '*Ex-post facto laws*' and '*excessive punishments*'.

The induction of the wordings in the Article 21 is the gift of the Japanese Constitution. Article 31 possess the same wording as in the Indian Constitution.⁴⁶ For more than 30 years, *A.K. Gopalan v. State of Madras*,⁴⁷ gave legislature a carte blanche to enact a law to provide for arrest of a person without much procedural safeguards.⁴⁸ It empowered the legislature absolutely and gave authority to take all and any actions in regards of the provision of the Article 21. In this case the Apex Court interpreted that the word 'law' used in the provision is not a part of the Principles of Natural Justice and these two concepts are not equivalent. Also, this provision is far from the US Constitution's '*Due Process of Law*' which is not applicable in the Indian context. It was held by the majority decision that procedure established is in the nature of '*Lex*' and not '*Jus*'.⁴⁹ Jurisprudentially speaking Gopalan reflected the sway of positivism the superior authority of law - the thoughts of Austin.⁵⁰

In the times of emergency during the reign of Indira Gandhi, once on the basis of Presidential order Article 21 was suspended. On June 27, 1975, in exercise of powers conferred by Clause (1) of Art. 359 the President declared that the right of any person (including a foreigner) to move any court for the enforcement of the rights conferred by Articles 14, 21 and 22 of the Constitution and all proceedings pending in any court for the enforcement of the above mentioned rights shall remain suspended for the period during which the proclamation of emergency made under Clause (1) of Act. 352 of the Constitution on December 3, 1971, and on June 25, 1975, are both in force.⁵¹

⁴⁶ Constituent Assembly Debates, Vol. VII, Para no. 188, (May, 20, 2020) https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-06.

⁴⁷ AIR 1950 SC 27, 1950 SCR 88 (India).

⁴⁸ Chhavi Agarwal, *Due Process of Law and Natural Justice*, p.4., <http://www.manupatra.com/>.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Additional District Magistrate v. Shivkant Shukla*, AIR 1976 SC 1207, (1976) 2 SCC 521 (India).

In *Maneka Gandhi v. Union of India*,⁵² the Supreme Court held that,

*“procedure which deals with the modalities of regulating, restricting or even rejecting a fundamental right falling within, Art. 21 has to be fair, riot foolish, carefully designed to, effectuate. not to subvert, the substantive right itself. Thus understood, ‘procedure’ must rule out anything arbitrary freakish or bizarre.”*⁵³

The Seven Judges Bench in case, observed that,

*“The concept of reasonableness must be projected in the procedure contemplated by Article 21. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the best of reasonableness in order to be in conformity with Article 14. It must be ‘right and just and fair’ and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied. The provision has to be tested in regard to its reasonableness with reference to Article 19. The provisions have to be read down into constitutionality, tailored to fit the reasonableness test and humanised by natural justice.”*⁵⁴

This case is one of the most prestigious decision rendered by the Supreme Court and fine interpretation, which recognizes the principle of Natural Justice in the Article 21, which the framers deliberately omitted from the edict of the Constitution.

Aftermath, the decision diminished the supremacy of the Parliament and changed the legal scenario in India. Presently, with the edict of the Judgment, the ‘*procedure*’ of any law must be within the conformity of the ‘*reasonability test*’ and the State is brought under the scrutiny of the test and all the questionable actions of the State relating to the deprivation of the ‘*liberty*’ of an individual, must be answerable to the Courts. The decision has made it clear that ‘*personal liberty*’ is not one of the rights secured under Article 19 and, therefore, liable to be restricted by the legislature according to the procedure established by law.⁵⁵ This case has over-riding effects on the previous Supreme Courts’ judgments and laid the foundation of the harmony in regards to the provisions of Article 14, 19, 20, 21 and 22.

The dynamic approach of the Supreme Court in respect of procedural law under Article 21 has led liberalization of bail procedures, restricting the solitary confinement, speedy disposal of criminal trials, strict procedure for arrest of person, liberalizing the rule of locus standi,

⁵²*Supra* note 37.

⁵³*Ibid.*

⁵⁴*Ibid.*

⁵⁵*Ibid.*

ensured the legal assistance to the needy people, and awarding death sentences in rarest of rare case.⁵⁶ And, the most importantly, the case dealt with the interpretation of the ‘*due process*’ clause in the Article 22 of the Constitution. The clear meaning of Article 22 is that the requirements of ‘*Due Process of Law*’, in cases of preventive detention, are satisfied by what is, provided by Article 22 of the Constitution itself.⁵⁷ Vide American Journal of International Law, Magarry, J., describes natural justice “as a distillate of *Due Process of Law*”. It is the quintessence of the process of justice inspired and guided by fair play in action.⁵⁸

Thus, the Article 21 of Constitution of India is the sole repository of rights to life and liberty,⁵⁹ along with the other fundamental rights.

IX. CONCLUSION

In the process of the development of the Article 21, the Supreme Court has also established that the supremacy of the Part III of the Constitution and interpreted the ‘*due process*’ clause in the Indian Constitution. The Seven Judges bench recorded the ‘*Due Process of Law*’ in conformity with the principles already our Constitution preserves and interprets it alike to the American version of the Clause. The Supreme Court went beyond mere black letters of provision and reads and interpreted, it liberally, and expanded its horizon of the Constitutional safeguard.

The Court has explained in its various judgments, especially after the Maneka Gandhi’s case, the significance of the fair procedure and its relation with the Justice and its inter-relation with the principle of Natural Justice. Formally, our Constitution does not procure the clause of ‘*Due Process of Law*’, but in the light of the Supreme Courts’ judgment this concept is the part of the Indian legal system. The narrow view in the Gopalan case⁶⁰ of has been diminished and buried and new dimensions has been added in the edict of the Maneka Gandhi case.⁶¹ The judicial interpretation has led to the development of the new dimensions such as ‘*right to fair and speedy trials*’, ‘*right to legal aid*’, ‘*right to counsel*’, ‘*right to public and open trials*’, ‘*right to be heard*’, ‘*right to notice*’, ‘*right to defend*’, ‘*right to bail*’, and many more.

The judicial interpretation has rendered hefty responsibility on the shoulders of the Apex

⁵⁶Supra note 23.

⁵⁷Maneka Gandhi v. Union of India, AIR 1978 SC 597; (1978) 1 SCC 248, (1978) 2 SCR 621 (India).

⁵⁸Ibid.

⁵⁹Ibid.

⁶⁰Supra note 46.

⁶¹Supra note 37.

Authority to look into such matters of law and decide for the reasonableness of the laws, which are in contravention with the Constitutional edict and read them in the light of '*Due Process of Law*'. The Apex Court has benevolently in the exercise of its jurisdiction may make such order(s) as it seems necessary for doing complete justice in any cause or matter presented before it, and such order shall be enforceable throughout the territory of India.⁶² Thus, the Supreme Court is empowered to take actions against the laws which intent to deceive the good faith in the Justice system.

The Supreme Court has always looked and held '*Justice*' as the foremost consequence of the legal system, even if it required to invalidate the laws of the Legislature, in its judicial powers. Though, these acts of the Apex Court have ignited series of allegations and debates on the autonomy of the third pillar of the democracy in the due course of great history of united and free India. Still, the acts of the Judiciary are covered in the ambit of the golden letters of the Constitution of India, which defines the true spirit and sense of the provisions provided by the framers after prolonged deliberation in the making of the CONSTITUTION OF INDIA.

⁶²INDIA CONST. art.142, Cl.1.