

## EVOLUTION OF DUE PROCESS IN INDIA

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### Introduction

The history of democratic countries unfolds that realization of justice is the ultimate end of every nation. Obviously the realization of justice much depends upon the quality of legal system it has accommodated. Indeed the nation's quality of legal system is measured by its commitment to the rule of law, fairness of laws and respect for human rights. Second World War has made the international community to think seriously the promotion and implementation of human rights across the universe. India being democratic nation, committed to rule of law cannot be indifferent to promotion of human rights. In fact, the greatest heritage of democracy to mankind is the right of personal liberty.<sup>1</sup> The right to life and liberty is the most important rights among the human rights because existence and protection of life is precedent condition for the enjoyment of rest of human rights. The importance of right to life and personal liberty can be measured by the fact that it cannot be suspended even during emergency.

Unlike Constitution of United States of America (hereinafter US Constitution), the Constitution of India, 1950 does not explicitly mention the familiar constitutional expression of 'due process of law' in any part of it. Fourth and Fifteenth Amendment has inserted the due process law to the US Constitution. Undoubtedly this concept has given vast and undefined powers to the American judiciary over federal and state legislatures and their actions. Despite its deliberate omission 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. Thereby Indian judiciary acquired vast power to supervise and invalidate any union or state action, whether legislative or executive or of any public authority perceived by the court to be 'arbitrary' or 'unreasonable'.<sup>2</sup> The process of realization of justice over the period of time has transited savage and crude

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<sup>1</sup> P.J. FITZGERALD, SALMOND ON JURISPRUDENCE 102 (New Delhi: Universal Law Publishing Co. Pvt. Ltd. 2013).

<sup>2</sup> T.R. Andhyarujina, *The Evolution of Due Process of Law by the Supreme Court in SUPREME BUT NOT INFALLIBLE* 193 (B.N. Kripal et al. eds., New Delhi: Oxford University Press 2011).

procedure of law into refined and civilized procedure. Further due process concept has strengthened procedure of law by integrating all of its components and by addressing each of them with the principle of equality and fairness.<sup>3</sup>

### History of Due Process

Dicey's rule of law is unique characteristic of the English Constitution which suggest that 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 other words, 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.<sup>4</sup> Dicey's rule of law is nothing but the due process of a law which is emerged from the customary rules of common law. Due process has ancient history which is traceable from the *Magna Carta*. *Magna Carta* was not a statute but was merely a personal treaty between King John and the enraged upper classes.<sup>5</sup> Section 39 of the *Magna Carta* of 1215 has led the foundation for the terminology of due process which runs as follows:

“No freeman shall be taken and imprisoned or disseized or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers and by the law of the land.”<sup>6</sup>

The due process in common legal system is shaped and nursed by customary practice. But the American legal system went one step ahead and gave a statutory recognition to the due process. The terms 'the law of the land' and 'due process of law' were transplanted to American soil by English colonists. US Congress incorporated the human rights in the Constitution by first ten Amendments that are known as Bill of Rights. The Fifth Amendment is most important because it lays down that person's life, liberty or property would not be deprived without due process of law.<sup>7</sup> The history of the Bill of Rights clearly showed that the authors of the amendments to Constitution intended to apply only to federal laws but not to state laws. Therefore, 14th Amendment has applied due process to state.

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<sup>3</sup> P. ISHWARA BHAT, FUNDAMENTAL RIGHTS 90 (Kolkata: Eastern Law House Private Ltd. 2004).

<sup>4</sup> A.V. DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION 110 (Indianapolis: Liberty Classics, 8th ed. 1982).

<sup>5</sup> MOTT, DUE PROCESS OF LAW 4 (New York: DA CAPO PRESS 1973).

<sup>6</sup> *Id.* at 3.

<sup>7</sup> JOHAN NOWAK, CONSTITUTIONAL LAW 387 (St Paul Minnesota: St Paul Minn., West Publishing Co. 1978).

## Meaning and Kinds of Due Process of Law

The due process has derived its meaning from the word ‘the law of the land’ used in the Section 39 of *Magna Carta* of 1215. Due process is the principle that the government must respect all of the legal right that is owed to a person according to the law. Due process holds the government subservient to the law of the land and protects individuals from the excesses of state. Due process is either procedural or substantive. Procedural due process determines whether governmental entity has taken an individual’s life and liberty without the fair procedure required by the statute.<sup>8</sup> When a government harms a person without following the exact course of the law it constitutes a due process violation that offends against the rule of law. It may involve the review of the general fairness of a procedure authorized by legislation. Substantive due process means the judicial determination of the compatibility of the substances of a law with the Constitution. The court is concerned with constitutionality of the underlying rule rather than the fairness of the process of the law.<sup>9</sup> Therefore, every form of review other than that involving procedural due process is a form a substantive review.

This interpretation has been proven controversial, and is analogous to the concepts of natural justice. This interpretation of due process is sometimes expressed as a command that the government shall not be unfair to the people. Various countries recognize some form of due process under their legal system but specifics are often unclear. The process of government, which deprives a person’s life and liberty, must comply with the due process clause. However, the ‘due process’ is not a term with a clear definition and the nature of the procedure clause depends on many factors.

## Indian Experience of Due Process Revolution

The due process development in India has enriched mainly by two principal spheres: First, the concept of ‘procedure established by law’ under Article 21 is required to be just, fair and reasonableness because of the interactions of Articles 14, 19 and 21; secondly, inter relationships among Articles 20, 21 and 22, as corollary of development under Article 21, has furthered this phenomenon to a considerable extent.<sup>10</sup> Article 21 of the Constitution provides that: “No person shall be deprived of his life or personal liberty except according to procedure established by law”. Although Article 21 does not specifically prescribe any quality or standard for the procedure,

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<sup>8</sup> JOHAN E. NOWAK, *op. cit. supra* note 7, at 381.

<sup>9</sup> *Id.*

<sup>10</sup> *Supra* note 3, at 107.

its place as a basic postulate of criminal justice system, compels it to receive radiation from the companion provisions like Articles 20, 22, 14 and 19 in order to respond to the claims of justice.<sup>11</sup>

### **Constituent Assembly Debates on Draft Article 15**

Constituent Assembly debated in depth over drafting of Article 15 which finally becomes Article 21 of the Indian Constitution in the background of the many amendments was moved over the Article 15. Kazi Syed Karimuddin who was Constituent Assembly member contented that if the words ‘according to procedure established by law’ are retained it would open a sad chapter in the history of constitutional law.<sup>12</sup> The Advisory Committee on Fundamental Rights appointed by the Constituent Assembly had endorsed Kazi Sayed Karimuddin’s opinion by suggesting that no person shall be deprived of his life or liberty without due process of law.<sup>13</sup> Kazi Syed Karimuddin cautioned that if the words ‘according to procedure established by law’ are enacted, then there will be very great injustice to the people and nation. Once the legislature lays down procedure by enacting law and such procedure is complied by the authority. Then the courts cannot question the decision of the authority even though that decision is unjust or taken malafidely. Therefore, he suggested that the words ‘except according to procedure established by law’ should be replaced by the words ‘without due process of law’.

On the other hand, B.N. Rao, the Constitutional Advisor to the Constituent Assembly, believed that due process would provide excessive powers to the courts. He stated that: “The courts, manned by an irremovable judiciary not so sensitive to public needs in the social or economic sphere as the representatives of a periodically elected legislature, will, in effect, have a veto on legislation exercisable at any time and at the instance of any litigant”.<sup>14</sup> Further B.N. Rao warned that 40% of the litigation before the United States Supreme Court during the past 50 years had centered on due process and due process meant only what court meant it.<sup>15</sup>

The words ‘without due process of law’ have been taken from the American Constitution and they have come to acquire a particular connotation. The term ‘without due process of law’ has a necessary limitation on the powers of the state, both executive and legislative. The doctrine implied by ‘without due process of law’ has a long

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<sup>11</sup> *Id.* at 110.

<sup>12</sup> 3 INDIA CONST. ASSY. DEB. 842-43.

<sup>13</sup> *Id.*

<sup>14</sup> *Supra* note 2, at 195.

<sup>15</sup> T.R. Andhyarujina, *op. cit. supra* note 2, at 195.

history in Anglo-American law. It does not lay down a specific rule of law but it implies a fundamental principle of justice. These words have nowhere been defined either in the English Constitution or in the American Constitution but meaning can be found through reading the various antecedents of this expression. Due process means that the substantive provisions of law are fair and just and not unreasonable or oppressive or capricious or arbitrary. That means that the judiciary is given power to review legislation. In America that kind of power which has been given to the judiciary undoubtedly led to an amount of conservative outlook on the part of the judiciary and to uncertainty in legislation.

Due process phrase is to guarantee a fair trial both in procedure as well as in substance. The procedure should be in accordance with law and should be appealable to the civilized conscience of the community. It also ensures a fair trial in substance, that is to say, that substantive law itself should be just and appealable to the civilized conscience of the community. The various decisions of the American Supreme Court when analyzed, will stress the four fundamental principles: First, that a fair trial must be given; second, the court or agency which takes jurisdiction in the case must be duly authorized by law to such prerogative; third that the defendant must be allowed an opportunity to present his side of the case; and fourth that certain assistance including counsel and the confronting of witnesses must be extended. These four fundamental points guarantee a fair trial in substance.<sup>16</sup> Shri K.M. Munshi also supported the words 'without due process of law' because it would strike the balance between individual liberty and social control. Even Shri Alladi Krishnaswami Ayyar lent his support for 'due process'.<sup>17</sup> Mr. Z.H. Lari 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 should find a place in the Constitution.<sup>18</sup>

Even Dr. B.R. Ambedkar confessed that he was in a somewhat difficult position with regard to the words 'procedure established by law' and 'due process'. One point of view was that due process of law must be there in this article; otherwise the article is a nugatory one. The other point of view is that the existing phraseology is quite sufficient for the purpose. He further commented that the question of 'due process' raises, the question of the relationship between the legislature and the judiciary. In a federal constitution, it is always open to the judiciary to decide whether any particular law passed by

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<sup>16</sup> T.R. Andhyarujina, *op. cit. supra* note 2, at 850.

<sup>17</sup> *Id.* at 853.

<sup>18</sup> *Id.* at 857.

the legislature is *ultra vires* or *intra vires* in reference to the powers of legislation which are granted by the constitution to the particular legislature. The 'due process' clause, would give the judiciary the power to question the law made by the legislature on another ground. That ground would be whether that law is in keeping with certain fundamental principles relating to the rights of the individual. In other words, the judiciary would be endowed with the authority to question the law not merely on the ground whether it was in excess of the authority of the legislature, but also on the ground whether the law was good law, apart from the question of the powers of the legislature making the law. The law may be perfectly good and valid so far as the authority of the legislature is concerned. But it may not be a good law, that is to say, it violates certain fundamental principles; and the judiciary would have that additional power of declaring the law invalid. We have no doubt given the judiciary the power to examine the law made by different legislative bodies on the ground whether that law is in accordance with the powers given to it. The question now raised by the introduction of the phrase 'due process' is whether the judiciary should be given the additional power to question the laws made by the state on the ground that they violate certain fundamental principles.

There are two views on this point. One view is that the legislature may be trusted not to make any law which would abrogate the fundamental rights of a man. Another view is that it is not possible to trust the legislature; the legislature is likely to err, is likely to be led away by passion, by party prejudice, by party considerations, and the legislature may make a law which may abrogate what may be regarded as the fundamental principles which safeguard the individual rights of a citizen. 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. Further Dr. Ambedkar opined that it is not possible to omit the possibility of a legislature 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, he expressed another view that, how five or six gentlemen sitting in the federal or the 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 therefore would

not say anything. Finally, he left the matter to the House to decide in any way it likes.<sup>19</sup> Finally the House adopted the Clause as drafted by the Drafting Committee, rejecting ‘due process’. The result is that Article 21 gave ‘a carte balance to make and provide for the arrest of any person under any circumstances as Parliament may think fit’. Article 22 was introduced with a view to imposing some limitations upon the legislature.<sup>20</sup>

### **Judicial Interpretation of Procedure Established by Law**

The expression ‘procedure established by law’ means procedure laid down by statute or procedure prescribed by the law of the state.<sup>21</sup> The Supreme Court of India immediately after Indian government adopting the Constitution of India, faced the task of interpretation of words used in the Article 21 in the famous *Gopalan*’s case in which the validity of the Preventive Detention Act, 1950 was challenged.<sup>22</sup> The petitioner questioned his detention on the grounds that his detention has affected his rights guaranteed under Article 19(1) and the provisions of the Act have imposed unreasonable restrictions on the exercise of those rights. Further petitioner contended that the freedom of movement is the part of right to personal liberty protected under Article 21. Therefore law under Article 21 has to be *jus* and not *lex*.

The majority of judges held that Article 19 and 21 are independent and exclusive. Kania, C.J., joined by Mukherjee, J., propounded the doctrine of directness of legislation. Kania, C.J., observed that any legislation not directly violated any article but indirectly encroaches upon any articles of the Constitution then that does not mean that legislation is *ultra vires*. The true approach is only to consider the directness of the legislation and not what will be the result of the detention.<sup>23</sup> Once the majority of the judges arrived at a conclusion about the non-application of Article 19 in to the sphere of Article 21 on the above reasoning, they considered that the requirement of reasonableness either of law or of procedure could not be superadded on Article 21.<sup>24</sup> The judges of the Supreme Court relied on the principle of literal interpretation in respect of ‘procedure established by law’ and ignored the principle of functional interpretation.

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<sup>19</sup> *Id.* at 1001.

<sup>20</sup> DURGA DAS BASU, COMENTRORY ON THE CONSTITUTION OF INDIA 3159 (New Delhi: Lexis Nexis Butterworths Wadhwa, 8th ed. 2008).

<sup>21</sup> V.N. SHUKLA, CONSTITUTION OF INDIA 215 (Lucknow: Eastern Book Company, 12th ed. 2013).

<sup>22</sup> A.K. Gopalan v. State of Madras, A.I.R. 1950 S.C. 27.

<sup>23</sup> *Id.* at 96.

<sup>24</sup> *Id.* at 102.

Pantanjali Sastri, J., observed that the word ‘procedure’ connotes both the act and the manner of proceeding to take away a man’s life or personal liberty.<sup>25</sup> B.K. Mukherjea, J., said that ‘procedure’ means the manner and form of enforcing the law.<sup>26</sup> Das, J., observed that the word ‘procedure’ in Article 21 must be taken to signify some step or method or manner of proceeding leading up to the deprivation of life or personal liberty.<sup>27</sup> Kania CJ., Pantanjali Sastri, B.K. Mukherjea and Das JJ., said that the word ‘law’ in Article 21 has not been used in the sense of ‘general law’ connoting what has been described as the principles natural justice outside the realm of positive law.<sup>28</sup> A three pronged argument was developed in this case:

- i.** The word ‘law’ in Article 21 does not mean merely enacted law but incorporates principles of natural justice so that a law to derive a person of his life or personal liberty cannot be valid unless it incorporates these principles in the procedure laid down by it.
- ii.** The reasonableness of the law of preventive detention ought to be judged under Article 19.
- iii.** The expression ‘procedure established by law’ introduces in to India the American concept of procedural due process which enables the courts to see whether the law fulfils the requisite elements of a reasonable procedure.

Thus, in *Gopalan*<sup>29</sup> an attempt is made to read the ‘due processes’ into ‘procedure established by law’ under Article 21. The apex court, by majority, rejected all these arguments and held that the word ‘law’ in Article 21 could not be equated to the principles of natural justice because it considered these principles are vague, indefinite and abstract. Incorporation of such vague principles in the law leads to confusion and uncertainty, therefore the word ‘law’ is used in the sense of *lex* (state-made) and not *jus*. The expression ‘procedure established by law’ would therefore mean the procedure as laid down in an enacted law. On the other hand, Fazl Alli, J., disagreeing with the majority view, held that the principles of natural justice are part of the general law of the land the same should be read into Article 21. The Supreme Court had delinked Article 19 from Articles 21 and 22. This view held the field for quite some time which led to anomalous results.<sup>30</sup>

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<sup>25</sup> *Id.* at 71.

<sup>26</sup> *Id.* at 97.

<sup>27</sup> *Id.* at 114.

<sup>28</sup> *Id.* at 102.

<sup>29</sup> A.I.R. 1950 S.C. 27.

<sup>30</sup> M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1183 (Nagpur: Lexis Nexis Butterworths Wadhwa, 6th 2010).



The Supreme Court in *Kharak Singh*<sup>31</sup> struck down an administrative direction authorizing ‘domiciliary visits’ of police authorities in to the houses of habitual offenders as violative of Article 21. The majority, by following the *Gopalan* approach, refused to examine the issue under Article 19 (1)(d). However the separate but concurring judgment of Subba Rao, J., is worthy to be noted which laid foundation for integrated approach of fundamental rights in future:

“If a person’s fundamental rights under Article 21 are infringed, the state can rely upon a law to sustain the action; but that cannot be a complete answer unless the said law satisfies the test laid down in Article 19(2) in so far as the attributes covered by Article 19(1) are concerned. In other words, the state must satisfy that both the fundamental rights are not infringed by showing that there is a law and that it does amount to a reasonable restriction.<sup>32</sup>”

In *Satwant Singh Sawhney v. Union of India*<sup>33</sup> finally the minority judgment of Subba Rao, J., in *Kharak Sing* becomes majority judgment. *Satwant Singh Sawhney* case dealt with withdrawal of passport and travel privileges from an import/export businessman by the authority.<sup>34</sup> The Ministry of External Affairs impounded the passport of Sawhney on the ground that he had violated conditions of the import license that had been granted to him by the Indian Government which was under investigation for offences under the Export and Import Control Act. Sawhney challenged the action on the grounds that it infringed his fundamental rights under both Article 21 and Article 14 of the Constitution. The Supreme Court invalidated the Government act of impounding the Sawhney’s passport on the grounds that such actions violated both Articles 14 and 21.<sup>35</sup>

The beginning of this new trend is further strengthened by the *Cooper* case in which the constitutional validity of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969 was challenged.<sup>36</sup> The constitutional bench of the Supreme Court quashed the legislation as violative of Articles 14, 19 and 31. Shah, J., for the majority, laying down the new approach of interrelationship of fundamental rights and observed that it is the effect of the law that

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<sup>31</sup> *Kharak Singh v. State of U.P.*, A.I.R. 1963 S.C. 1295.

<sup>32</sup> *Id.* at 1305.

<sup>33</sup> (1967) 3 S.C.R. 525.

<sup>34</sup> Manoj Mate, *The Origins of Due Process in India: The Role of Borrowing in Personal Liberty and Preventive Detention Cases*, 28 BERKELEY JOURNAL OF INTERNATIONAL LAW 216, 240 (2010).

<sup>35</sup> *Supra* note 33.

<sup>36</sup> *R.C. Cooper v. Union of India*, A.I.R. 1970 S.C. 564.

attracts the jurisdiction of the court to grant relief.<sup>37</sup> The apex court observed that 'law' under Article 21 should be read with Articles 19, and 14, whenever necessary with a view to strengthen the right to personal liberty and to overcome the weakness of the guarantee of 'procedure established by law'. The ratio of *Bank Nationalization* case makes inference that procedure established by law needs to be justifiable. The difference between the *Gopalan* and *Cooper* approach is very clear. While the former laid emphasis on the nature and object of the legislation but not affect of the law, but the latter looked to the effect of the law in order to determine which articles are to be linked in determining the constitutional validity of the legislation.

Ratio of *Cooper* cleared the way for integrated application of fundamental rights. In *Jagmohan Singh v. State of U.P.*<sup>38</sup> petitioner challenged the constitutional validity of Section 302 of Indian Penal Code, 1860 which imposed death penalty or life imprisonment for murder convicts on the ground that it violates Articles 14, 19 and 21. The petitioner argued that conferment of discretion power to judges to impose death penalty was unguided and uncontrolled, and hence abridged the right to equality was rejected by the Apex Court on the ground that the power conferred upon judges is not arbitrary but it has to be exercised after scrutinizing the aggravating and mitigating circumstances. Further the court observed that it is not ideal to lay down standards for exercise of such power otherwise it amounts to rigidity because facts of each case differ. Although *Jagmohan* case did not give rise to any startling result, it is a significant decision inaugurating the approach of requiring a reasonable procedure by means of applying Articles 14 and 19 into the domain of Article 21, without entering into the dichotomy between *Gopalan* and *Cooper*.<sup>39</sup>

### **From 'Procedure Established by Law' to 'Due Process of Law'**

#### ***Maneka Gandhi: The New Approach***

*Maneka Gandhi v. Union of India*<sup>40</sup> is such land mark case in the era of Indian legal system that it can be classified as pre and post *Maneka Gandhi*. Maneka Gandhi questioned the constitutional validity of Section 10(3)(c) of the Passport Act, 1967 which empowered the authority to impound the passport of person on the public interest. She contended that this section gives discretionary power to the authority to impound the passport without being heard which is unjust process and violative of right to equality and right to personal

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<sup>37</sup> *Id.* at 596.

<sup>38</sup> A.I.R. 1973 S.C. 947.

<sup>39</sup> P. ISHWARA BHAT, *op. cit. supra* note 3, at 123.

<sup>40</sup> A.I.R. 1978 S.C. 597.

liberty. The seven judges bench of apex court upheld the contentions of petitioner that the procedure established under Article 21 should be just, fair and reasonable. Further such procedure should be tested under Articles 14 and 19 of the Constitution. Krishna Iyer, J., 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.<sup>41</sup> Thus the due process concept is read under Article 21 by articulating that ‘procedure established by law’ must be fair, just and reasonable. Krishan Iyer, J., in *Sunil Batra v. Delhi Admistration*<sup>42</sup> conceded that: “True, 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.<sup>43</sup> The apex court in *Ranjan Dwivedi v. Union of India*<sup>44</sup> reiterated the ratio of *Maneka Gandhi* case by expressing that it is difficult to hold that the substance of the American doctrine of due process has not been introduced in the conservative text of Article 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.

## Conclusion

Legal positivism and the theory of ‘original intent’ of the makers of the Constitution propounded in *Goplan* case was abandoned in favor of an interpretation that would ensure just and fair laws under the Constitution.<sup>45</sup> It means the procedure prescribed by law must embody the principles of non discriminatory and non arbitrary. Arbitrary procedure would be no procedure at all and the requirements of Article 21 would not be complied with. The object of substantive law is to provide justice to people and that is an end of law. On the other hand procedural law provides means to achieve justice. The end and means are inter-related. Justice cannot be justified unless the means are fair. Equally the means cannot be justified unless the end is fair. The relation between the end and means is entrenched in Article 21 of the Constitution. Ascertaining true meaning of life, personal liberty, and procedure established by

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<sup>41</sup> (1978) 2 S.C.R. 621 at 658.

<sup>42</sup> (1978) 4 S.C.C. 494.

<sup>43</sup> *Id.* at 541.

<sup>44</sup> (1983) 2 S.C.R. 982.

<sup>45</sup> T.R. Andhyarujina, *op. cit. supra* note 2, at 203.

law under Article 21 is an endless process. The scope of Article 21 is in the mode of expansion particularly after *Maneka Gandhi*. The narrow interpretation of Article 21 made by the Supreme Court in *Gopalan*<sup>46</sup> case is gradually watered down and finally buried. The liberal interpretation of procedural established by law in *Maneka Gandhi* marks the beginning of a new dimension of procedural due process especially in criminal justice system under Article 21 of the Constitution. Now the courts do not hesitate to quash the law if such law offends due process requirements. The re-interpretation of Articles 21 and Article 14 by the court after 1978 marks a watershed in the development of Indian constitutional law. The vast extent of public law and public interest litigation and the court's routine intervention in administration which is seen in Indian courts today is the result of the due process of law in the Indian Constitution. It has been aptly said that judicial review is always a function, so to speak, of the viable constitutional law of a particular period. The viable constitutional law of India since 1978 has been the concept of 'due process' of law in the Constitution.<sup>47</sup>



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<sup>46</sup> A.K. Gopalan v. State of Madras, A.I.R. 1950 S.C. 27.

<sup>47</sup> T.R. Andhyarujina, *op. cit. supra* note 2, at 211.