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A Comparative Study with Respect to Procedure Established by Law and Due Process of Law with Reference to the USA and India

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*The fundamental difference between 'Due Process of Law' and 'Procedure Established by Law' is what gives the Constitution its protection of individual liberty and life. This comparative study explores how these doctrines have been conceptualised, interpreted, and applied in the constitutional frameworks of India and the United States. While the U.S. Constitution explicitly incorporates 'due process' in its Fifth and Fourteenth Amendments, granting both procedural and substantive safeguards against arbitrary state action,¹ the Indian Constitution originally adopted the narrower 'procedure established by law' under Article 21.² Judicial interpretation in India, especially after *Maneka Gandhi v Union of India* (1978),³ has expanded the meaning of this phrase to align closely with the American doctrine, requiring that laws must be just, fair, and reasonable.⁴ Through a detailed analysis of key judgments and constitutional texts, this paper examines the philosophical and practical implications of these doctrines. The evolution from a formalist to a more substantive rights-based approach in India is critically compared to the well-entrenched due process jurisprudence of the United States.⁵ The study concludes that while both nations have taken different historical paths, their modern legal systems converge on the principle that state action must*

¹ The US Constitution 1789, s 1

² Constitution of India 1950, art 21

³ *Maneka Gandhi v Union of India* (1978) SCR (2) 621

⁴ *Sunil Batra v Delhi Administration* (1980) SCR (2) 557; *A K Gopalan v State of Madras* (1950) SCR 88

⁵ *Roe v Wade* [1973] 410 US 113; *Planned Parenthood of Southeastern Pennsylvania v Casey* [1992] 505 US 833

respect individual liberty through fair procedures and just laws.⁶ The comparative perspective highlights the growing importance of judicial review, constitutional morality, and human dignity in safeguarding rights in both democracies.⁷ This analysis is particularly relevant in contemporary debates around privacy, preventive detention, and digital surveillance.⁸

Keywords: *due process, article 21, judicial activism, fundamental rights.*

INTRODUCTION

The procedure established by law is a doctrine of the Indian Constitution, whereas ‘due process’ is an American Doctrine. But with the passage of time, the boundaries between the two have been narrowed down. In the Indian Constitution, Article 21 talks about the protection of life and personal liberty, which no person shall be deprived of except according to the procedure established by law.⁹ In the Indian Constitution, ‘procedure established by law’ is expressively used, whereas ‘due process of law’ is not explicitly mentioned in the Constitution, but has much wider significance. Due process of law in recent times has been seen to be used in most of the Supreme Court Judgments. A procedure established by law means a law duly enacted by the legislature is valid if followed by a precise procedure. A person can be deprived of their life or personal liberty as per the procedure established by law.¹⁰ So, according to the provisions and procedures established by law, a person can be deprived of their life and personal liberty.

The Doctrine of due process of law checks if there is any kind of deprivation of life and personal liberty by the law, and it also keeps a check on whether the law is fair, just, and non-arbitrary.¹¹ This doctrine of due process of law is fair and provides just treatment to an individual’s life. The Supreme Court can declare any law null and void if it is found that any law is not fair and just.¹² The state must respect the legal requirement of due process of law, which respects a person’s legal rights, and the state-enacted law must conform to the law of

⁶ *Justice K S Puttaswamy v Union of India* (2017) 10 SCC 1

⁷ *Kesavananda Bharati v State of Kerala* AIR 1973 SC 1461; Ronald Dworkin, *Taking Rights Seriously* (Bloomsbury Publishing India Private Limited 2013)

⁸ *Carpenter v United States* [2018] US 585; *Anuradha Bhasin v Union of India* AIR 2020 SC 1308

⁹ The Constitution of India 1950, art 21

¹⁰ *A K Gopalan v State of Madras* AIR 1950 SC 27

¹¹ *Maneka Gandhi v Union of India* (1978) SCR (2) 621

¹² *Justice K S Puttaswamy v Union of India* (2017) 10 SCC 1

the land, which is fairness, fundamental rights, liberty, etc.¹³ It provides access to the Judiciary for fundamental fairness, Justice, and liberty. The major distinction between due process of law and procedure established by law, in layman's terms, is that a due process of law represents a procedure established by law, while it must also be fair, just, and non-arbitrary.¹⁴ The concept of 'due process' is an English concept from the Magna Carta clause 39, which was upheld in America.¹⁵ The constituent assembly of India has expressly used the term 'procedure established by law' after Sir B.N. Rau (Advisor to the Constituent Assembly) and Justice Frankfurter of the Supreme Court of America, flagged that the clause of 'due process' is undemocratic and troublesome to the judiciary, as it empowers judges to invalidate legislation enacted by a democratic majority.¹⁶ There was an intended avoidance by the constituent assembly to avoid the unpredictability of the word 'due', which has created irregularity in the U.S and fortified the Judiciary against the legislature.¹⁷ The adoption of 'procedure established by law' was also a very serious issue in the context of communal violence faced by the country, owing to the partition of the country.¹⁸ The preventive detention policies that existed during the British Colonial rule were believed to be without the Constitutional guarantees of due process and would be greatly effective in curbing the communal violence, which was resolved after the implementation of Article 22 of the Constitution. In *R.C Cooper v Union of India*¹⁹ case, the honourable Supreme Court departed from its earlier rigid approach in *A.K. Gopalan v State of Madras*²⁰ and adopted a more liberal and expansive attitude towards fundamental rights.²¹ The Court emphasised that what matters is not merely the *object* of a law but its *effect* on individual freedoms, thereby allowing state action to be tested across multiple fundamental rights simultaneously. It recognised the interrelationship of rights, holding that a single law could infringe both property and business rights, and further liberalised locus standi by allowing shareholders to challenge the validity of nationalisation, even though the corporate entity itself was affected. This marked a decisive shift from a compartmentalised to a holistic reading of

¹³ *Anuradha Bhasin v Union of India* AIR 2020 SC 1308

¹⁴ *Sunil Batra v Delhi Administration* (1980) SCR (2) 557

¹⁵ Magna Carta 1215, c 35

¹⁶ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (2nd edn, OUP 1999)

¹⁷ Constituent Assembly Debates 1948, vol VII

¹⁸ *Ibid*

¹⁹ *R C Cooper v Union of India* AIR 1970 SC 564

²⁰ *A K Gopalan v State of Madras* AIR 1950 SC 27

²¹ *Ibid*

rights, paving the way for a more rights-oriented jurisprudence that culminated in later cases like *Maneka Gandhi v Union of India*.²²

The judgment of the Gopalan's Case was overruled in the case of *Maneka Gandhi v UOI*, in which it was held that procedure established by law must be fair, just, and reasonable. The Constitution of India guarantees protection to life, liberty, and property, following the fair and reasonable procedure, and an opportunity to defend or hear a fair legal proceeding was given in contravention of the unrestrained and under-regulated power of the government to lessen the civil sovereignty.²³ In this case, the judiciary has made a liberal interpretation, and after 1978, efforts were made to make the term 'procedure established by law' collateral and similar to the term 'due process' whenever the issues involve the protection of an individual's right.

PROCEDURE ESTABLISHED BY LAW IN INDIA

The meaning of the term 'procedure established by law' means a procedure that is laid down through a statute or a procedure that is stipulated by the law. The question of the elucidation of 'procedure established by law' emerged following the adoption of the Indian Constitution in 1950, in the case of *A.K. Gopalan v State of Madras*. The validity of the Preventive Detention Act, 1950, was challenged because of the words that are used in Article 21 of the Constitution of India. It was held that 'lex' and 'Jus' are not the same; therefore, the legislature passed legislation that was vague, ambiguous, and theoretical as judged by the rationality and principles of Natural Justice standards. Articles 19, 21, and 22 were mutually exclusive through the adoption of a formalistic approach by the Constitution. The interpretation of Article 21 was done in a way that made it ineffective against the powers of the legislature, which could enact any laws, no matter how forceful or extreme, to exert control on the personal liberty of an individual without being duty-bound to provide any rational procedure for the cause.²⁴

However, Fazal Ali J, while giving a dissenting opinion, adopted an exceedingly extensive interpretation of the phrase 'procedure established by law' in Article 21 and held that the principles of natural justice form part of the general laws of the land, and the same must be

²² *Maneka Gandhi v Union of India* (1978) SCR (2) 621

²³ H M Seervai, *Constitutional Law of India* (vol 1, 4th edn, Law & Justice Publishing 1991)

²⁴ *Ibid*

read into Article 21 of the Constitution of India. He suggested having a wide and systematic reading of the Constitution, by which the reading of the fundamental rights under Article 19 is in concurrence with Article 21 and Article 22. There was a disconnection of Article 19 from Article 21 and Article 22 done by the Supreme Court of India. This view was held for quite a long time, leading to certain aberrant outcomes. A procedure established by law was interpreted by the court as a legal framework stipulated by the legislature impulsively, without any substantial notion of fairness, and disregarded practical interpretation by entirely depending upon the debates of the Constituent Assembly.

Similarly, a person was detained under the Preventive Detention Act, 1950, in the case of *Ram Singh v The State of Delhi*.²⁵ At that time, Article 19(2) did not impose any constraints on the right to free speech on the grounds of 'public order.' But the order was issued on the grounds of making speeches that were harmful to maintaining the public order.

In *Kharak Singh v State of Uttar Pradesh*²⁶, it was observed by Justice Subba Rao that there is an infringement of a person's fundamental rights under Article 21. The state may rely on a law to support the action, but it cannot be considered a comprehensive response unless the law ensures that the test established under Article 19(2) is relevant to the characteristics protected under Article 19(1). This case marked the beginning of the right to privacy in India. While the majority opinion considered it superfluous to decide the exact connection between Articles 19 and 21, it held that Article 21 included the buildup of the rights not explicitly covered under Article 19, in this manner taking a view unique in relation to the one taken in the *Gopalan Case*. The lack of consensus between Justice Subba Rao and Justice Shah led to a Constitutional right to privacy in Article 21, expressing that a right was a fundamental element of individual liberty.²⁷ They further maintained that, despite the fact that Articles 19 and 21 protected two distinct and independent basic rights, there was substantial overlap between them. The upbraided law or guideline had to ensure that neither of these rights was violated in this way. The fact that both the majority and minority opinions cited the American cases of *Munn v Illinois* and *Wolf v Colorado* to determine the concept of the right to liberty is interesting to note. The minority opinion went one step further and examined a significant due process right under Article 21, whereas the majority opinion extended this analysis to

²⁵ *Ram Singh v State of Delhi* (1951) SCR 451

²⁶ *Kharak Singh v State of Uttar Pradesh* (1964) 1 SCR 332

²⁷ *Ibid*

simply hold that domiciliary visits infringed on the aforementioned right. The majority conclusion in *Satwant Singh Sawhney v Assistant Passport Officer*, a case that controlled the infringement of the freedom to travel by temperance, was based on this divergent assessment of then-Justice Subba Rao. To maintain that 'liberty' in the Indian Constitution had the same broad significance as that granted to it in the fifth and fourteenth amendments of the U.S. Constitution, Chief Justice Subba Rao once more relied on the American rulings in *Kent v Dulles* and *Apthecker v Secretary of State*.

The ruling in *R.C. Cooper v Union of India*²⁸, the landmark judgment in the bank nationalisation case, the law diverged from traditional rigid positivism and was concerned to safeguard the right to property with the right to personal liberty. The court associated Article 31(2) with Article 19(1) (f) and laid down the foundation to set up a link between Articles 19, 21, and 22. However, the well-known Habeas Corpus case *ADM Jabalpur v Shivakant Shukla*²⁹ is a blot on the Indian judiciary's history during times of emergency. Legality of Preventive detention was challenged, or the scope of Judicial review of the detention order under the Maintenance of Internal Security Act, 1971. Views expressed by various High Courts were overruled by the Supreme Court of India, which held that to move any petition under Article 226 for Writ of Habeas Corpus cannot take place, as no person has any locus standi to challenge the legitimacy of a detention order.³⁰ Under any grounds or in accordance with the Act, or was not legal or was based on irrelevant contemplation. Justice Khanna described that Article 21 is not the only storehouse of the right to life and personal liberties. This decision was an unconcealed ignorance of the position of Article 21 to protect the civil liberties and rule of law, and backpedalled on the progress made by the judicial proclamation from the *A.K. Gopalan's Case*.

NEXUS BETWEEN ARTICLES 14, 19, AND 21 TO THE GENERAL PRINCIPLES OF NATURAL JUSTICE AND THE RULE OF LAW

The landmark Judgment of the Post-emergency period, *Maneka Gandhi v Union of India*, demonstrated an alteration from the intentions of the framers of the Constitution and provided soul to the body of Article 21. The ethos of judicial activism is accounted in the

²⁸ *R C Cooper v Union of India* AIR 1970 SC 564

²⁹ *A D M Jabalpur v Shivakant Shukla* (1976) SCR 172

³⁰ *Ibid*

Judgment by giving intensified powers and significant meaning to ‘procedure established by law’. The extent of Article 21 was widened when the right to travel abroad was included in the right to personal liberty. It gave fresh directions to the meaning of Article 21. It was held that the provisions under Article 21 must be fair, just, and reasonable and not extravagant, tyrannical, and arbitrary. The ‘due process’ is an American standard that took a back door entry and demonstrated links between Article 14, Article 19, and Article 21. It was also brought to light that any law contemplated under Article 21, which abridges or takes away any fundamental right under Article 19, has to meet the ‘reasonableness’ test put down under Article 14. So, the procedure alone does not need to be fair and reasonable, but the law also has to be fair and reasonable.

Evolutionary History of Procedure Established by Law: An interim report was presented by the advisory committee on minorities and fundamental rights to the Constituent Assembly on 23 April 1947.³¹ The report comprised clause 9, which afterwards became Article 21 of the present Constitution of India, read as: *“No person shall be deprived of his life or liberty without due process of law, nor shall any person be refused the equal treatment of the laws within the territory of the Union.”*

On 30 April 1947, clause 9 was amended by the Constituent Assembly, which read as: *“No person shall be deprived of his life or liberty without due process of law, nor shall any person be denied equality before the law within the territory of the Union.”*

When a complete draft Constitution was submitted by the Drafting Committee in February 1948, clause 9 of the draft Article 15 was inserted as Article 21, except that the word ‘personal’ is attached before the word ‘liberty and ‘without due process of law’ has been replaced by the procedure established by law.³²

Reasons behind the Changes made to Clause 9: Two reasons were given in relation to the changes made to Clause 9. The first reason is that the absence of the word ‘personal’ before liberty would amount to the protection given by Article 19. Secondly, the clause ‘due process of law’ differed from the one borrowed from Article 31 of the Constitution of Japan, 1946.³³ This amendment was passed even after considerable opposition and debate. However, the

³¹ B Shiva Rao, *The Framing of India's Constitution: A Study* (Indian Institute of Public Administration 1968)

³² The Constitution of India 1950, art 21

³³ Constitution of Japan 1946, art 31

real reason to change the provisions was because of the nature of the relationship between the Judiciary and the Legislature.³⁴ Another reason for the change was the problem associated with communal violence. It was believed that the preventive detention policies used during the rule of the British were most effective.³⁵ Mr Govind Ballabh Pant observed that there would be no end to the communal violence disorder if those who create nuisance and misconduct are not put behind bars, and that insurrection would result in restraining the discretion of the legislature.³⁶

The objection to eradicating the 'due process' clause was essentially in relation to Preventive Detention and the fundamental principle of safeguarding individual liberty from the surplus and whimsical actions of the executive.³⁷ This problem was solved through the introduction of draft Article 15A, which partly resolved this issue and later became part of the Indian Constitution through Article 22.³⁸ By substituting the 'due process' clause with 'procedure established by law,' the framers of the Constitution desired to anticipate the probability of the Judiciary putting more emphasis on the right of an individual over beneficial social legislation.³⁹

This fear was evoked due to the events that took place all across the USA. The Supreme Court of the USA started reading the meaningful due process rights in the realm of freedom to contract and monetary regulation. In *Lochner v New York*,⁴⁰ the idea of economic substantive due process began when it was decided that 'due process' protected the freedom of contract and private property from unwarranted and reckless government intervention.

It's interesting to note that the American cases of *Munn v Illinois* and *Wolf v Colorado* used both the majority and minority views to determine the concept of the right to liberty. While the majority opinion stretched out this examination to just hold that domiciliary visits encroached upon the said right, the minority opinion went a step further to pursue a considerable due process directly into Article 21. This disagreeing assessment of the then Justice Subba Rao proceeded to turn into the majority opinion in *Satwant Singh Sawhney v*

³⁴ Austin (n 16)

³⁵ C A Bayly, *Indian Society and The Making of the British Empire* (CUP 1988)

³⁶ Constituent Assembly Debates 1947, vol VII

³⁷ *Ibid*

³⁸ *The Constitution of India* 1950, art 22

³⁹ Austin (n 16)

⁴⁰ *Lochner v New York* [1905] 198 US 45

Assistant Passport Officer,⁴¹ a case that controlled the infringement of the right to travel by temperance. Chief Justice Subba Rao relied again on decisions in *Kent v Dulles*⁴² and *Aptheker v Secretary of State*⁴³ to hold that 'liberty' in the Indian Constitution bore similar far-reaching importance as given to it in the Fifth and Fourteenth amendments of the U.S. Constitution.

Due Process of Law in the USA: Well before the entry of the Fourteenth Amendment, the due process provision of the Fifth Amendment was perceived as a restriction upon the Government, however, just in the limited sense that an assembly expected to give procedural 'due process' for the implementation of law.⁴⁴ Albeit individual Judges proposed from the beginning that specific enactments could be so in conflict with statutes of natural law as to render them completely unconstitutional, the capability of the due process of the Fourteenth Amendment as a considerable limitation on state activity seems to have been thought little of in the years quickly following its appropriation.

As early as the 1877 Granger Cases⁴⁵, the Supreme Court maintained different administrative state laws without raising any issue regarding whether a corporation could bring up due process claims.⁴⁶ Further, there is no uncertainty that a corporation may not be denied its property without due process of law.⁴⁷ Although different decisions have held that the 'liberty' ensured by the Fourteenth Amendment is the liberty of natural, not artificial persons, however, in 1936, a newspaper organisation effectively protested that a state law denied it freedom of the press.⁴⁸

In this way, early summons of 'considerable' due process was ineffective. In the Butcher House Cases, which were previously discussed in relation to the privileges and immunity clause, a group of butchers challenged a Louisiana law that granted one company the exclusive right to butcher cows in New Orleans.⁴⁹ In investigating the legitimacy of this

⁴¹ *Satwant Singh Sawhney v D Ramarathnam, Assistant Passport Officer* 1967 SCR (2) 525

⁴² *Kent v Dulles* [1958] 357 US 116

⁴³ *Aptheker v Secretary of State* [1964] 378 US 500

⁴⁴ *Murray's Lessee v Hoboken Land & Improvement Co.* [1856] 59 US 272

⁴⁵ *Munn v Illinois* [1876] 94 US 113

⁴⁶ *Chicago, Burlington & Quincy R R v Iowa* [1876] 94 US 155

⁴⁷ *Dartmouth College v Woodward* [1819] 17 US 518; *Santa Clara Country v Southern Pacific Railroad Co.* [1886] 118 US 394

⁴⁸ *Grosjean v American Press Co. Inc.* [1936] 297 US 233

⁴⁹ *The Slaughter-House Cases* [1872] 83 US 36

monopoly, the Court noticed that the preclusion against a hardship of property without due process has been in the Constitution since the adoption of the Fifth Amendment, as a limitation upon the Government's power. It is likewise to be found in certain types of articulation in the constitutions of practically every State, as a restriction upon the force of the States. We are not without judicial interpretation; consequently, both State and National, of the significance of this provision. It is adequate to say that under no development of that provision that we have at any point seen, or any that we consider allowable, can the restriction forced by the Province of Louisiana upon the activity of their trade by the butchers of New Orleans be held to be a deprivation of property within the importance of that provision.'

After four years, in *Munn v Illinois*, the Court assessed the regulation of rates charged for the transportation and warehousing of grain, and again would not decipher the due process provision as discrediting meaningful state legislation.⁵⁰ Dismissing disputes that such enactment affected an illegal deprivation of property by keeping the owner from procuring a sensible compensation for its utilisation and by transferring an interest in a private enterprise to the general population, Chief Justice Waite underlined that 'the incredible office of Statutes is to cure defects in the common law as they are created. For protection against maltreatments by governing bodies, individuals should fall back on the polls, not to the courts.'⁵¹

In *Davidson v New Orleans*, Chief Justice Miller additionally advised against a departure from these traditional applications of due process, in spite of the fact that he recognised the trouble of showing up at an exact, comprehensive meaning of the proviso.⁵² 'It's anything but somewhat noteworthy,' he noticed, 'that while this provision has been in the Constitution of the US, as a restriction upon the authority of the government, for almost a century, and keeping in mind that, during all that time, the way where the powers of the government have been practiced has been watched with desire, and exposed to the most unbending analysis in the entirety of its branches, this extraordinary limit upon its powers has seldom been summoned in the legal forum or the more broadened theater of public conversation. In any case, while it has been important for the Constitution, as a limitation upon the powers of the

⁵⁰ *Munn v Illinois* [1876] 94 US 113

⁵¹ *Ibid*

⁵² *Davidson v New Orleans* [1878] 96 US 97

States, just a not very many years, the agenda of this court is packed with cases in which we are approached to hold that State courts and State legislature have denied their own citizens of life, freedom, or property without due process of law. There is ample evidence that there is some strange misunderstanding regarding the scope of this clause, which is located in the Fourteenth Amendment. The fact that the condition viable is seen as a way to test the theoretical opinion of each unsuccessful litigant in a state court of the justice of the ruling against him and of the benefits of the legislation on which such a choice might be established is evident from the nature of many of the cases before us and the arguments made in them. Assuming, along these lines, it was feasible to characterize what it is really going after State to deny an individual of life, freedom, or property without fair treatment of law, in wording which would cover each activity of force subsequently taboo to the State, and prohibit those which are not, not any more helpful development could be outfitted by this or some other court to any piece of the crucial law. Be that as it may, aside from the inescapable danger of an inability to give any definition which would be on the double perspicuous, exhaustive, and palatable, there is intelligence, we think, in the finding out of the expectation and use of a particularly significant expression in the Federal Constitution, by the continuous interaction of judicial consideration and avoidance, as the cases introduced for decision will need, with the reasoning on which such decision might be founded.

In *Hurtado v California*, the Judges gave a cautionary note of an approaching change of their views.⁵³ Justice Mathews, representing the Court, noticed that due process under the US Constitution varied from due process in English customary law in that the latter applied uniquely to executive and judicial acts, though the former likewise applied to authoritative demonstrations. Thus, the constraints of the due process under the Fourteenth Amendment couldn't be assessed exclusively as far as the 'assent of settled use' under common law. The Court at that point proclaimed that 'arbitrary powers, implementation of declarations to the injury of the people and property of its subjects, is not law, regardless of whether shown as the decree of an individual monarch or of an original multitude. Furthermore, the restrictions forced by our Constitution upon the Action of the governments, both state and national, are fundamental for the conservation of public and private rights, despite the delegate character of our political organisations.'⁵⁴ The requirement of these constraints by judicial process is

⁵³ *Hurtado v California* [1884] 110 US 516

⁵⁴ *Ibid*

simply the gadget overseeing networks to ensure the privileges of people and minorities, also against the power of numbers, as against the viciousness of public agents rising above the restrictions of legal authorities, in any event, when acting in the name and using the power of the public authority.⁵⁵ By this language, the states were notified that a wide range of state legislation, regardless of whether managing procedural or substantial rights, was currently dependent upon the examination of the Court when questions of fundamental justice were raised.

Justice Holmes didn't dismiss the essential idea of meaningful due process, but rather the Court's assumption against monetary regulation.⁵⁶ Consequently, Justice Holmes, if deliberately, was set up to help, alongside his adversaries in the larger part, an 'interminable censorship' over state legislation. The essential differentiation, consequently, between the positions taken by Justice Peckham for the majority and Justice Holmes, for what was then the minority, was the utilisation of the doctrine of judicial notice by the former and the doctrine of presumed legitimacy by the latter.⁵⁷

DIFFERENCE BETWEEN PROCEDURE ESTABLISHED BY LAW AND DUE PROCESS OF LAW

Procedure Established by Law	Due Process of Law
1) It implies that a law that is properly enacted by the legislature or the body being referred to is legitimate if the procedure established has been effectively followed. ⁵⁸	1) Due Process of Law checks if there exists any law in question that is just and non-arbitrary ⁵⁹ .
2) The judiciary would survey whether the legislature is capable of outlining the law and whether it had followed the	2) If the Supreme Court of India thinks that any law is not reasonable, it will declare it invalid and void. This doctrine

⁵⁵ *Palko v Connecticut* [1937] 302 US 319

⁵⁶ *Lochner v New York* [1905] 198 US 45

⁵⁷ *Ibid*

⁵⁸ *A K Gopalan v State of Madras* (1950) SCR 88

⁵⁹ *Maneka Gandhi v Union of India* (1978) SCR (2) 621

method set down to legislate, and would not evaluate the intent of the said law.	accommodates a more reasonable treatment of individual rights. ⁶⁰
3) Contrasted with 'due process of law, it is tapered in scope as it doesn't address whether the law concerned is in opposition to standards of equity and justice.	3) The due process of law gives a broad scope to the Supreme Court to safeguard the rights of its citizens. ⁶¹
4) The Supreme Court, while deciding the constitutionality of the law, looks at just the meaningful question, i.e., regardless of whether the law is within the powers of the position concerned or not	4) The Supreme Court can announce laws violative of fundamental rights and render them void on considerable grounds of being unlawful as well as on procedural grounds of being outlandish. ⁶²
5) A rigid and unyielding approach established by the law may raise the danger of compromise to life and individual freedom of people because of unjustifiable laws made by the law-making body. In this manner, procedures established by law safeguard the person against the discretionary action of the executive.	5) Under due process, it is the lawful necessity that the state should regard the entirety of the lawful rights that are owed to an individual, and laws enacted should conform to the laws of the land. ⁶³

⁶⁰ *Ibid*

⁶¹ *Mohd Arif @ Ashfaq v Supreme Court of India & Ors* (2014) 9 SCC 737

⁶² *Kharak Singh v State of Uttar Pradesh* (1964) 1 SCR 332

⁶³ *Justice K S Puttaswamy v Union of India* (2017) 10 SCC 1

CONCLUSION

The judiciary adhered rigidly to legal positivism and parliamentary supremacy, remaining a detached, ivory-tower institution. It prioritised formal law and order over the principles of natural justice, showing indifference to the social realities around it. It acknowledged the first intention and the importance of 'procedure established by law' in a confined style as declared by the constitution composers by depending on the guidance of Justice Frankfurter. The ramifications of the previous doctrine in the pre-emergency period traded off with the civil liberties, as there was no appeal to natural justice. The hesitance and tentative design of the judiciary can be shown in the mechanical translation and utilisation of the authorised laws, with the inclination of the security of the state over individual life and rights. Regardless, the inability of the judiciary to evaluate or challenge administrative powers to enact laws that go against natural justice and law and order constitutes the misrepresentation of Article 21.

The main judicial activism described in Menaka's case, after the emergency, prompted the liberal understanding of 'procedure established by law' to the broadest adequacy and changed the American doctrine of 'due process of law.' It has permitted building up the trinity of Article 14, Article 19, and Article 21 by which a strategy or law isn't simply an established law, but needs to go through the test of reasonableness and must be fair, just, and sensible. It prompted the foundation of the system of free and rapid trial of the lawful procedures, with a huge effect on the Constitutional law as well as on the criminal law.