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# Due Process in Administrative Law in India: A Critical Assessment

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## ABSTRACT

*This paper describes the rights and responsibilities of individuals and organizations when interacting with government agencies. A fair and transparent governance system must be guaranteed. It helps prevent citizens from being taken advantage of by the government and also helps ensure government agencies are following correct procedures and laws.*

*It discusses the importance of due process, its origins, India's transition from procedure established by law to due process of law, the implications of due process in administrative law, and various constitutional provisions and court decisions related to due process.*

*The origins of Due process can be traced back to the Magna Carta, a document signed by King John of England in 1215, in simple words, it says that before any decisions affecting individuals and organizations are made, they must be given the opportunity to be heard.*

*Due process has a significant impact on administrative law. Administrative law is the legal framework that controls a state's interactions with its population. Due process compels governments to observe specific criteria when making decisions that may impact the rights of individuals or organizations. The Indian Constitution and many judicial rulings protect the right to due process.*

*In conclusion, due process in administrative law protects citizens from arbitrary and coercive government action and ensures that individuals have a chance to be heard before decisions that may impact them are made.*

## I. INTRODUCTION

Before we can understand the role of due process in administration, we must first understand the due process of law and administrative law. Due process of law requires that existing laws or government decisions must be just, fair, and impartial and that they do not infringe on an individual's rights. It ensures that the administration of justice is fair by granting people rights that are based on the idea of natural justice and cannot be denied, such as the right to a fair trial, the right to legal representation, the right to appeal, and the right to be informed of the charges against them. Where administrative law is the law that governs the organisation and functioning of the government and its agencies, In India, it is primarily based on the Indian

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constitution and the principle of natural justice, which ensure that no one is treated unfairly or given preferential treatment based on race, gender, religion, or other factors.

Administrative law and due process of law are related in the sense that administrative law is the legal framework within which administrative agencies operate and make decisions, whereas the due process of law is a set of legal principles that ensures fairness in the administration of justice. Administrative law ensures that agencies follow due process of law by requiring agencies to provide procedural safeguards such as notice and a hearing before making a final decision.

This principle ensures that when making decisions affecting citizens' rights, the government does not act arbitrarily or oppressively. Administrative decisions must be based on facts and evidence, and the decision-making process must be transparent and impartial. Administrative decisions must also follow the law and any applicable regulations. Individuals must also be given notice of proceedings, an opportunity to be heard, and the right to appeal the decision under due process.

Due process of law is a fundamental right guaranteed by Articles 14 and 21 of the Constitution of India. This includes procedural rights such as the right to a fair hearing and substantive rights such as the right to due process of law.

## **II. ORIGIN OF DUE PROCESS OF LAW AND ITS EVOLUTION IN INDIA**

The Magna Carta is the earliest known reference to due process. Due process of law is thought to have initially developed as a result of the Magna Carta, which granted certain rights to the English people in 1215.

Clause 39 of the Magna Carta states that:

“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>2</sup>

Due process of law evolved over time, with thinkers such as John Locke and Montesquieu pushing for the concept of natural rights, which included the right to fair and impartial treatment by the government.

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<sup>2</sup> Mr A.H. Hawaldar, Evolution of due process in India - manupatra (2014), <http://docs.manupatra.in/newslines/articles/Upload/C64E2EB3-321D-470D-A4C8-0EE5E55BA21A.pdf> (last visited Dec 25, 2022).

The Fifth Amendment and the Fourteenth Amendment of the United States Constitution further codified the idea of due process, stating that no one shall be "deprived of life, liberty, or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, known as the Due Process Clause, to describe the legal obligation of all states.<sup>3</sup>

Due process of law was introduced in India by the British during the colonial period. The concept was introduced through the Indian Penal Code in 1860, which provided for trial by jury and laid down procedural rules for criminal trials.

the due process of law in India was further extended in the constitution of India, which was adopted in 1950.

The Constitution of India provides for a variety of fundamental rights, which guarantee citizens the right to life and personal liberty in article 21<sup>4</sup>, freedom of speech and expression in article 19<sup>5</sup>, equality before the law and equal protection of the law in article 14<sup>6</sup> and so on. These rights are protected by the judiciary, which is responsible for ensuring that the government respects them. Furthermore, the Constitution of India provides for a variety of procedural safeguards to protect citizens against arbitrary deprivation of their rights, such as the due process of law, the right to a fair trial, and the right to be informed of the reasons for any action taken against them. These procedural safeguards are intended to ensure that the government can only take action against citizens in accordance with the law, and not arbitrarily.

### **III. HOW DID INDIA GO FROM PROCEDURE ESTABLISHED BY LAW TO DUE PROCESS OF LAW?**

Article 21 of the Indian constitution provides that "No person shall be deprived of his life or personal liberty except according to procedure established by law."<sup>7</sup> here the framers of the constitution used the word procedure established by law and not the due process of law because of the influence of B.N. Rau.

B.N. Rau was the Constitutional Adviser to the Constituent Assembly of India, which was responsible for drafting the Indian Constitution. B.N Rau travelled to the U.S.A and met Justice Frankfurter who advised to avoid the due process clause in the Indian Constitution because it imposed an "undue burden" on the judiciary<sup>8</sup>. Frankfurter was of the view that it would give

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<sup>3</sup> Strauss, P. and Wex Definitions Team (2022) Due process, Legal Information Institute. Legal Information Institute. Available at: [https://www.law.cornell.edu/wex/due\\_process](https://www.law.cornell.edu/wex/due_process) (Accessed: December 29, 2022).

<sup>4</sup> THE CONSTITUTION OF INDIA, article 21. (Accessed: December 29, 2022).

<sup>5</sup> THE CONSTITUTION OF INDIA article 19. (Accessed: December 29, 2022).

<sup>6</sup> THE CONSTITUTION OF INDIA article 14. (Accessed: December 29, 2022).

<sup>7</sup> THE CONSTITUTION OF INDIA, article 21. (Accessed: December 29, 2022).

<sup>8</sup> ABHINAV CHANDRACHUD, A tale of two judgments, *theHindu*, May 12, 2016,

immense power to the judiciary to strike down legislation passed by the parliament, and further added that it would be a burden on the judiciary.<sup>9</sup> As a result, in 1949, the word "due process of law" was removed from the text of what would eventually become Article 21 of the Indian Constitution.

The text of article 21 reads that no person shall be deprived of his life or personal liberty except according to the procedure established by law which means it's not an absolute fundamental right that means you can be deprived of your life and personal liberty but only according to procedure established by law. Here, "procedure established by law" means that the relevant body must have followed the proper procedure in order for the law to be valid and to have been duly enacted by the legislature. There are several landmark cases that changed the interpretation of Article 21.

**(A) A.K. Gopalan vs The State Of Madras 1950 AIR 27<sup>10</sup>**

A.K. Gopalan was the government's political rival. He has been unlawfully imprisoned numerous times since December 1947, and the government has continued to hold him in custody even after the court ordered his release. He was once again imprisoned in 1950 in accordance with the Preventive Detention Act. Then, A.K. Gopalan challenged his detention under the Preventive Detention Act, of 1950, in a writ petition filed in accordance with Article 32 of the Indian Constitution.

The Preventive Detention Act of 1950 mandates that the detainee receives no explanation for his detention. As a consequence, A.K. Gopalan argued, this act is unconstitutional because it infringes on his fundamental rights under Articles 19(1)(d), which refers to the right to freedom of movement, and 21, which refers to the right to life and personal liberty.

The major issues raised were whether the Preventive Detention Act of 1950 violated Articles 19 and 21 of the Indian Constitution, as well as whether the 'procedure established by law' under Article 21 of the Indian Constitution is the same as due process of law.

Hon'ble Supreme Court rejected the petition filed by A.K. Gopalan and held the Preventive Detention Act of 1950 to be constitutional and stated that this Act does not violate Article 19(1)(d) and Article 21 of the Indian Constitution that provides fundamental rights to its citizens.

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<https://www.thehindu.com/opinion/lead/a-tale-of-two-judgments/article8586369.ece> (last visited Jan 5, 2023).

<sup>9</sup> Vineeth Krishna E, B.N. Rau's Draft Constitution and World Tour CAD (2018), [https://www.constitutionofindia.net/blogs/b\\_n\\_rau\\_s\\_draft\\_constitution\\_and\\_world\\_tour](https://www.constitutionofindia.net/blogs/b_n_rau_s_draft_constitution_and_world_tour) (last visited Jan 5, 2023).

<sup>10</sup> A.K. GOPALAN VS THE STATE OF MADRAS, 1950 AIR 27.

In Gopalan, the Supreme Court ruled that the phrase "procedure established by law" in Article 21 meant only the procedure as enacted by the Legislature. As a result, a person's "life" or "personal liberty" could be taken away in accordance with the procedure established by law.

Here supreme court cleared that the expression Procedure Established by Law was interchangeable with the expression Due process of law of the US Constitution.

**(B) After Maneka Gandhi v. Union of India on 25 January 1978 AIR 597<sup>11</sup>**

As stated above, "procedure established by law" refers to the proper steps taken by the relevant body in order for the law to be valid and properly enacted by the legislature. This interpretation was challenged after the case of Maneka Gandhi vs Union of India (1978).

According to the facts of the case, Maneka Gandhi was issued a passport under the Passport Act of 1967. On July 2, 1977, she received a letter from the Regional Passport Officer in New Delhi requesting that she surrender her passport under section 10(3)(c) within 7 days of receiving the letter. Mrs Gandhi wrote to the officer, requesting a copy of the order's statement of reasons. However, the office refused to provide any such reasons on the grounds of "interests of the general public".

Therefore, the petitioner had filed a writ petition under Article 32 of the Constitution of India stating the seizure of her passport was a violation of her fundamental rights; specifically, Article 14 (Right to Equality), Article 19 (Right to Freedom of Speech and Expression) and Article 21 (Right to Life and Liberty) guaranteed by the Constitution of India. One of the major issues raised in this case was determining the scope of "Procedure established by Law".

The Supreme Court ruled that the right to travel is a fundamental right under Article 21 and altered the landscape of the constitution by arguing that, while the language used in article 21 is "procedure established by law," such procedure must not be arbitrary and irrational. The constitution framers never intended that the procedure need not necessarily be fair, just and reasonable. The court overruled Gopalan's case and held that a process established by law as described in Article 21 must be right, just, and fair and not arbitrary, whimsical, or oppressive otherwise it won't be a procedure at all and the requirement of Article 21 won't be met. Following Maneka Gandhi's judgement, the Procedure established by law became very similar to America's due process of law.

#### **IV. HOW IS DUE PROCESS OF LAW ADMINISTERED IN INDIA?**

In India, due process in administrative law is followed through various means such as natural

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<sup>11</sup> Maneka Gandhi v. Union of India on 25 January 1978 AIR 597.

justice, procedural fairness, rule of law, and judicial review. These principles are enshrined in the Indian Constitution and are closely followed during administrative proceedings.

The Indian Constitution guarantees the right to life, liberty, and personal security, and due process must be followed to ensure that these rights are protected<sup>12</sup>. Due process requires that any decision taken by the government must be taken only after providing a fair and reasonable hearing to the affected parties. This includes the right to be heard, the right to appeal a judgement, and the right to legal representation. Additionally, the judgement must be reasonable, fair, and just, and it must be supported by facts. The Supreme Court of India has established the natural justice standards that must be adhered to when making any administrative decisions. These principles include that no one should be a judge in his own case and that no person should be condemned unheard. In addition, any decision taken by the government must meet the requirements of the principles of proportionality, reasonableness, and fairness. Decisions must be based on applicable laws and must not be arbitrary or biased in order to uphold the rule of law. The process of ensuring that administrative authorities' decisions are reasonable, fair, and in accordance with the law should be subject to judicial review as well.

#### **(A) Difficulties faced to enforce due process in administration.**

1. **Inadequate Political Will:** One of the major impediments to the proper implementation of due process in India has been a lack of political will. Inadequate political will refers to elected officials' failure to implement policies or act on issues that are important to the public. This is obvious when elected officials choose not to act on crucial policy problems out of worry for their political futures or out of a lack of urgency.

2. **Poor Infrastructure:** India's administrative infrastructure is weak and inadequate, with large numbers of government employees being overworked and underpaid. This has led to a situation where the bureaucracy is unable to effectively implement due process and adhere to the rule of law.

3. **Corruption:** India has a severe corruption issue, which has contributed significantly to the country's incapacity to preserve the rule of law. To begin with, corruption allows favouritism and nepotism to take precedence over the law, which can result in decisions made without regard for justice or fairness. Second, bribes and kickbacks can be used to influence decisions and impede the administration of justice. Finally, dishonest officials may use their authority to pervert the legal system for their own objectives, making the due process difficult or impossible

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<sup>12</sup> THE CONSTITUTION OF INDIA, article 21. (Accessed: Jan 6, 2023).

to enforce.

4. **Poor Public Awareness:** Due process is not applied as frequently as it ought to due to a lack of public awareness. People might not be aware of their rights or the protections afforded by due process. If they don't know their rights, they can't challenge administrative decisions that go against the rules of due process. Even if they are informed, they might not have the means to deal with the complicated legal system.

5. **overburdened Judicial System:** When the judicial system is overworked, there isn't enough capacity to guarantee that every case is heard and resolved in a timely manner. When this takes place, the rule of law is violated, which causes delays in the delivery of justice. This could hinder people from receiving the justice they deserve, which has major repercussions. The administration must clear the case backlog and bolster the judiciary in order to guarantee that the rule of law is upheld.

6. **Overburdened Administrative System:** The administrative system in administrative law is frequently overworked due to the enormous number of cases and the complexity of the legal issues involved. Administrative proceedings may be delayed as a result, and parties may not receive proper representation. Additionally, a lack of personnel and resources may lead to judgments that are not necessarily in the best interests of the individuals concerned due to a lack of experience. Insufficient staff training can further obstruct the due process of administrative processes if there is insufficient money. Last but not least, a lack of employees might result in backlogs in case processing, which would prolong the due course of administrative proceedings.

7. **Poor Implementation of Existing Laws:** Laws that are not properly implemented may be applied inconsistently or unequally, resulting in unfair treatment. Furthermore, poor implementation of existing laws can result in inadequate notice or lack of access to information, preventing individuals from understanding their legal rights and obligations. This can impede individuals' ability to exercise their right to due process and result in outcomes that are inconsistent with the intent of the law.

8. **Lack of Governance:** A lack of governance can disrupt the due process in several ways. Due process is the legal principle that states that when individuals are subjected to government action, they have the right to be treated fairly and have their rights protected. Without proper governance, administrative law can become biased and unfair, resulting in decisions that are not based on the merits of the case. This can lead to decisions that are illegal or violate the rights of those involved.

9. **Political Interference:** Political interference can cause decisions to be made that are



against long-established legal norms, regulations, and rules. This may result in biased, arbitrary, or unfair decisions. Political interference can also cause cases to take longer to process than they should, depriving people of their right to a fair trial.

**10. Lack of Accountability:** People's ability to challenge decisions is weakened when organizations are not held accountable for their decisions and actions. People may not receive the legal due process to which they are entitled, and decisions may be arbitrary, capricious, or unfair as a result. In addition, agencies won't be motivated to ensure that decisions are made in accordance with the law if they are not held accountable, which could result in decisions that are not in the best interests of the public.

**(B) Remedies available if administrative authorities fail to follow due process**

1. **Appeal to the Higher Judiciary:** In India, people who disagree with an administrative tribunal's ruling may appeal the decision to the higher judiciary. The High Court or the Supreme Court of India may receive the appeal. A special leave petition to the Supreme Court may be necessary for certain circumstances. For guidance on the procedure for submitting an appeal with the higher judiciary, a lawyer should be consulted.

2. **Complaint to the Ombudsman:** The Ombudsman has the authority to look into accusations that administrative authorities violated the law. An impartial agency known as the Ombudsman was created to look into and address public complaints regarding poor public administration. The Ombudsman is qualified to advise the proper authority on corrective measures to take. In India, the ombudsman is referred to as the Lokpal or Lokayukta.

3. **File a Complaint with CVC:** The Central Vigilance Commission, or CVC for short, is an impartial organization that the Indian government created in 1964 to investigate corruption and improper conduct in government-run organizations. In addition to monitoring how the Central Bureau of Investigation conducts its investigations, it is responsible for investigating and preventing corruption in government agencies. In the event that an administrative authority disregards due process, you may complain to the Central Vigilance Commission (CVC). The CVC is an independent agency with the authority to take complaints involving bribery and other serious misconduct against public servants and to conduct an investigation.

4. **File a Complaint with the Lokpal/Lokayukta:** The Lokpal/Lokayukta is an anti-corruption ombudsman appointed to investigate and resolve complaints against administrative authorities. You can file a complaint with the Lokpal/Lokayukta if the administrative authority fails to follow due process. Lokpal/Lokayukta is an anti-corruption authority or ombudsman who is appointed or elected to investigate allegations of public officials' corruption.

5. **Constitutional Remedies:** One can also avail constitutional remedies such as a writ of mandamus, writ of certiorari, writ of quo warranto, writ of prohibition and writ of habeas corpus.

- i) **Writ of habeas corpus** - A writ of habeas corpus is a court order requiring a person who is being held to appear in court so that the court can determine whether the detention is legal or not.
- ii) **writ of mandamus** - A writ of mandamus can be used to direct an administrative body to take certain actions. It is usually used when a body fails to act when it is legally required to do so.
- iii) **writ of certiorari** - A writ of certiorari is a legal order issued by a higher court instructing a lower court to deliver its case records for review.
- iv) **writ of quo warranto** - This type of writ is most commonly used to challenge a public official's authority or the legality of a law or regulation. In such cases, the writ of quo warranto requires the defendant to show by what authority they are carrying out the action at hand. If the defendant fails to provide adequate legal authority, the court may order that the action be annulled or reversed.
- v) **Writ of prohibition** - A writ of prohibition is an order issued by the High Court or Supreme Court to a lower court or tribunal prohibiting it from continuing with the hearing or trial of a specific case. It is issued when the lower court or tribunal lacks jurisdiction to hear the case or has overstepped its bounds. The prohibition writ is a discretionary remedy, and the court may refuse to issue it if it determines that the lower court or tribunal acted within its jurisdiction.

## V. CONCLUSION

In conclusion, the concept of due process in administrative law in India is a growing one that is slowly coming into the mainstream and being put into practice. Like any other law, due process is only as effective as how it is put into practice and how strictly the rule of law is followed. Although the Indian legal system is improving in this area, more has to be done to guarantee that everyone has access to a fair trial when interacting with the government. It is hoped that administrative law would be implemented more effectively in the future.

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