



Long Article

Understanding the Constitutional Mechanism of Due Process of Law and Procedure Established by Law

Prakhar Dubey¹

¹University of Petroleum and Energy Studies, Dehradun

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Abstract: *The Constitution is a core element from which government or state derives its power. It sets the rules and regulations. India being the largest democracy has a different religion, culture, geographical location, and different people, and has the longest written Constitution. It has been prepared by taking several key features from a different country to gain its uniqueness. One of the two most prime features of our Indian Constitution is the 'due process of law' and 'procedures established by law'. This paper explains how the Constitutional Law Assembly discussed the concept and application of the above concept in our society. The discussion by the judiciary in interpreting constitutional mechanisms in various case laws. The author has also compared the model applicable in India and has compared it with the U.S.A., U.K, Japan. Secondly, the article explains the reason how the journey took from procedure established by law to due process of law and why initially we have procedure established by law and what led the constitutional lawmakers to add the due process of law later, and how these changes made difference in the light of substantive jurisprudence which was taken note by apex court during early years, followed by days of emergency and finally in PIL Jurisprudence.*

Keywords: *Constitutional Debates, Judiciary, Due Procedure, Substantive Jurisprudence, PIL.*

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1. Introduction

India gained Independence in 1947 but the process was incomplete till the adoption of our own Constitution. The task to frame Constitution was not an easy task initially there were 389 members but after the disintegration of total member, the Constituent Assembly remained 299. The drafting committee is headed by B.R Ambedkar. The Constituent Assembly also had members like N. Gopaldaswami Ayyangar, D.P. Khaitan, K.M. Munshi, A.K. Ayyar, B.L. Mitter, Saiyid Mohd. Saadulla, T.T. Krishnamachari, Madhav Rao. The task was to frame our country's foundation by keeping in mind "Objective Resolution" given by Pandit Nehru.

The Indian Constitution prepared is lengthiest of the world with 395 Articles, 22 parts, and 8 Schedule at the time of commencement. The Constitution makers while preparing draft had watched salient features which different countries adopted and thus, they took principle which could be added in our Constitution, as we all say our Constitution is the bag of borrowing.

From the U.K. we brought a parliamentary form of government, President, Prime Minister, Speaker of Lok Sabha, from Canada - Federalism, Germany - Suspension of Fundamental Right, USSR - Fundamental Duties, 5-year plan, Australia - Concurrent List, Ireland - Directive Principle of State Policy, Japan - Supreme Court function, and USA - Supreme Court, Bills of Right, Judicial Review, Preamble, Fundamental Rights. The most sceptical is the drafters of the Constitution did not consider adding "due process of law" to the final Constitution.

It was a million-dollar question to think that why did framer of the Constitution refrain from adding the concept which could very well find its essential character in a democratic country like India. Initially, it was considered that by adding "due process of law" they would strengthen the judicial branch as already the highest law-making body power the addition might result in the judiciary acting on the steps taken by the legislative government.

2. Constitutional Law Assembly Conundrum

2.1. Understanding the American stance on Due Process of Law

The United States in 1791 by adding the 5th Constitutional Amendment provided; "...nor [shall any person] be deprived of life, liberty or property, without due process of law...". To establish the concept United

States Apex court gave a historic decision in *Barron v. Baltimore*¹ describing the 5th Amendment acting as a check on the arbitrary power used by the Federal Government and not on the State Government. In 1868 as the Civil War finds its end there was the addition of the 14th Constitutional Amendment giving due process of law as a limitation to state governing body: “...nor shall any state deprive any person of life, liberty or property without due process of law...”.

The “due process of law” can find the place in “*per legen terrae*” which can be termed as law of land as enshrined in Magna Carta of England during 1215, in Chapter 39 which is guaranteed. US Supreme Court in case of *Joint Anti-Fascist Refugee Comm v. McGrath*² stated, “no freeman shall be arrested or imprisoned or disseized, or exiled or in any way molested; nor will we against him, unless by the lawful judgment of his peers or by the law of the land”.³

Supreme Court in case also held, “...due process as compare to any legal rules it is not a technical concept having fixed concept not having a relationship with time, space and situation. Law enforced for just treatment which develops over the time from American Constitutional history, due process cannot be imprisoned within an unreliable set of formula”.

The due process of law was initially a restriction on procedure especially considering judicial powers compare to the power that rests with the government and its use. At the first stance, it was for the person who is charged for crime but the accused was allowed to have a fair trial with time passing by Supreme Court used the process of applicability to use the due process of law in matters of life, liberty, and property. This concept has developed as a substantive right by acting as a constitutional protection. Thus, due process of law working for substantive and procedural limitation exercised by U.S.A. Supreme Court on legislature and executive.

2.2. Initial Deliberation of Constituent Assembly

It was when the Advisory Committee on Minorities and Fundamental Right came up with their interim report which dealt with the notions of Fundamental Right, which later had taken the form of Article 21 of the Indian Constitution.

¹ *Barron v Baltimore* [1833] 32 [U.S.] [7 Pet.] 243

² *Joint Anti-Fascist Refugee Comm v. McGrath* 341 [U.S.] 123 (1951)

³ Granville Austin, *The Indian Constitution Corner Stone of a Nation* (Oxford University Press 2010) 103

“No person shall be deprived of his life or liberty, without due process of law, nor shall any person be denied equal treatment within the territories of Union:

Provided that nothing here given shall decry from Union legislature concerning foreigners”⁴

Later on, 30 April 1947 the members of Constituent Assembly member amended it –

“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 territories of the Union.”⁵

2.3. Final Changes made by Drafters

The change that made was made are, the addition of word personal before liberty this would mean if this word was not added rights provided by our Constitution under Article 19⁶ would only comply to citizens but in addition to personal, it would now reach non-citizen also. The ‘due process of law’ was not distinct as enshrined in Article 31 of the Japanese Constitution of 1946.⁷ After that there was extensive discussion but the same was finally passed with Dr. Ambedkar was saying the condition before they are like sailing between Charybdis and Scylla, he decided not to take his stand to any situation but the ultimate question was power exercised by the legislature.

The main reason for a change in the final draft submission because there was doubt that there may be an abuse of power by the Apex Court of the United States and this was the reason why B.N. Rau to put forth his argument before any draft that was presented before the Constituent Assembly which makes the due process of law through beneficial legislation. There was a discussion between Justice Felix Frankfurter and B.N. Rau where former persuade the B.N. Rau to let him understand power under judicial review makes the guardian of law more powerful. Rau was successful in making Drafting Committee understand the due process of law was neglected without any considerate dissent.

There was another reason which arises due to communal violence as it was the time there was partition. The preventative detention policy at the time British colonial rule when there was no constitutional protection. Thus, introduction as per due procedure act as the vital mechanism. Govind Ballabh Pant suggested there

⁴ Constituent Assembly Debate, vol 3 <<http://parliamentofindia.nic.in/Is/debates/Vol3/P2.html>> accessed on November 26, 2020

⁵ *Ibid*

⁶ Constitution of India 1950, art 19

⁷ Japanese Constitution 1946, art 31

will be no bar on communal disorder if mischief doers cannot be put behind bars and resultant tyranny would be the outcome of the legislature.

The stance of opposition regarding the removal of “due process” was relatively related to preventive detention and there is an urgent need of protecting the liberty of individuals from excess use of executive actions. To deal with there was an introduction for Article 22 of the Constitution in cases resulting in arrest and detention.⁸

2.4. Results of Changes

The final aim was served by constitution makers which made them introduced “social revolution of national renaissance and these components taken as a note to achieve the target of the legislature, the executive excluding the judiciary and even the status of the judicial body in India was not to extent of elevating its status. During the time of Constitution was prepared Indian took lessons from British rule under the Parliamentary system and this was the reason why the judiciary was not made a strong command holder that can present a challenge to legislation arbitrary action by the substantive due process of law”.⁹

By inclusion of procedure established by law as replacement of due process of law. The makers of our Indian Constitution very in favour of giving more power to the judicial branch or in other words giving importance to individual rights in contrast with beneficial social legislations. There were a lot of efforts taken to divide the rights specified in Articles 14, 19, and 21. The reason being the word ‘reasonable restriction’ has been in the mentioned in the context of Article 19 and there is no connection because these rights were separately found in Article 14, 19, and 21 as it was under the judges to enlarge the power of judicial review from Article 19 to Article 21.¹⁰ The situation was present where judges go in the process of determining the reasonable criteria to judge which person has been deprived of life and liberty unless the situation where the specific person is deprived of the right of expression or movement. Examining the validity would mean comparing the reasonableness in the light of the due process of law as there no use of due process under the Constitution in the Indian context.¹¹

This was the situation in the U.S.A. that irked the constitution makers in India. If we talk about the U.S.A. the Supreme Court started reading due process under the guises of liberty concerning Contract and

⁸ Constitution of India 1950, art 22

⁹ A.S. Anand, ‘The Indian Judiciary in the 21st Century’ (1999) 26 (3) IICQ

¹⁰ Charles Henry Alexandrowicz-Alexander, ‘America Influence on Constitutional Interpretation in India’ (1956) 5 (1) AJCL 98, 100

¹¹ H.M. Seervai, *Constitutional Law of India* (3rd ed. Universal 1983) 485

economic regulation. Supreme Court in *Lochner v. New York*¹² establish the doctrine of economic regulation under the genesis of due process of law. The protection from the government in matters where private property right and liberty of any person is involved. It was time when Supreme Court took action against 200 economic regulations in the matters concerning price regulation in the market, basic wages, labour rights, etc. Even though matters involve economic regulation but values of due process of law were the inspiring condition which was involved.

In *Meyer v. Nebraska*¹³ and *Pierce v. Society of Sisters*¹⁴ brought the question before the Apex Court whether parents have to give education and other essentials? The liberty gives them the right to forgo their duty? The Supreme Court held parents have to give him essentials and these are his/her right as children. This was a time where due process of law will become incomplete if considering only the economic element thus it was observed that right needs to be broadened up by including matters concerning civil liberty.

The founding fathers of the Constitution were doubtful that the same thing would involve if the American model is made applicable to India. Alladi Krishnaswamy Iyer believed that by applying the concept of due process of law all power will rest with the Supreme Court of India this will lead to uncertain fluctuation between liberal and conservative interpretation and will be the reason for obstruction in social control.

K.M. Munshi put forth contention during the extensive debate on the subject relating the due process of law to Indian Condition this same subject would not apply to liberty of contract but will apply to liberty of person as 'personal' will be added before liberty. It was important to take into factor that India will be a socialist country and there was never a capitalist approach in the country governing policy which will be led by Nehruvian culture, we don't follow the laissez-faire approach of economics by values of due process of law, the guardian of law will be extremely become powerful.

It was thus confusing how the framers were considering the due process approach but later find not aggregating to go for it just because of its mechanism in economic regulation compare to civil-political or socio-economic rights. Such a step was generated fear that whether due process of law was presenting us values of procedural concept in the U.S.A. and same could be adopted to Indian circumstances.

¹² *Lochner v New York* [1905] 198 [U.S.] 45

¹³ *Meyer v Nebraska* [1923] 262 [U.S.] 390

¹⁴ *Pierce v Society of Sisters* [1925] 268 [U.S.] 510

3. Development in Substantive Rights

By far we have seen how Constitutional law assembly makers debated and the decision taken by the apex court delivered judgment. Initially, the framer of the doctrine did not intend to introduce this American concept to Indian society. But later we saw how Supreme Court from the 1970s and gradually improved its role. The change in situation saw how the due process of founding place in India as the concept even though have genesis in the U.S.A. but the light of increasing parliamentary role there was the need to establish a greater role for legal positivism thus was the reason why this concept was accepted in India. The Emergency was a big reason why the same accepted. The same can be classified and studied in 3 narratives: 1) Initial years, 2) Emergency Period, and 3) the PIL Mechanism.

3.1. Initial Years - The Gopalan Case

The struggle was for settling due process of law to India even after accepting the American concept there was an immense dilemma and the same thing came before Apex Court in the matter of *A.K Gopalan v. the State of Madras*¹⁵ for the first time, the same thing was discussed after Constitution was adopted, the petitioner questioned the use of words ‘procedure established by law’ as per Article 21 arguing how is it different from ‘due process of law’ as the same has adopted from the U.S.A. The petitioner in the case challenged the concept under Article 32 of the Constitution as *habeas corpus* the mechanism for preventive detention in Madras Jail where the same petitioner was detained since 1947.¹⁶ The arrest results in his imprisonment but later his conviction was set aside and the order under the Madras government again sent him for detention. Later A.K. Goplana was discharged an order under Section 3(1), Preventive Detention Act 1950 on March 1, 1950. He argued the process of preventive detention was violative of Fundamental rights as per rights guaranteed under Articles 21 and 22.

Gopalan said Indian Constitution also provides these rights in the same way as of America excluding the only fact in America Supreme Court is empowered as per the due procedure of law as the concept is covered widely in substantive and procedural law but same in India is protected under procedural law. The reasoning put henceforth:

¹⁵ *A.K Gopalan v The State of Madras* AIR 1950 SCR 88

¹⁶ Constitution of India 1950, art 32

1. The word ‘established’ was not the same as ‘prescribed’ the same has a broader sense. Article 21 gives procedure established by law is same as due process of law and the absence of the word ‘due’ from Article 21 will not change the entire meaning.
2. We can see Indian Constitution under Article 21 includes the word ‘law’ which in Latin means *jus* in essential features of natural justice and not *lex* or the law.

The apex court was not ready to accept his argument and thus rejected it. The same idea was taken from the American model and the word ‘procedure established by law’ has been taken as an idea from the Japanese Constitution as mentioned under Article 31 but *jus* means law but the due process of law means as directed by Apex Court. The non-inclusion of the word ‘due’ from Article 21 will prove the reasonable criteria and this will not be part of the Constitution. The addition of the word ‘procedure established by law’ will be used by the legislature to use law.¹⁷ The opinion of judges was:

1. There was a reference made to the Constitutional law assembly debate by Justice Mukherjee the intention was clear behind the qualification of the word ‘personal’ to liberty was to exclude the overlapping of Article 19 with Article 21.¹⁸
2. Late Chief Justice H.J. Kania was seen refereeing to the debates while drafting the Constitution to interpret the ideas made for legislative from the subtraction of word ‘due’ and use of word ‘procedure’ established by law. The Constitution while preparing Constitution has given more power to the legislature and said understanding the concept that the judiciary has limited scope.
3. The dissenting opinion came from Justice Fazl Ali’s interpreting the word ‘procedure established by law’ which can be inferred from Article 21 in the light of natural justice. He was the opinion that the Constitution of India uses the values taken from the Japanese Constitution there is an example from the U.K. and U.S.A. as precedent to understand the broad view of due process of law. It was all extended form of the principle of Natural Justice as part of Article 21. Understanding Section 12 and 14 of the Preventive Detention Act with respect to Article 22 of the Indian Constitution were challenged for violating rights under Article 21. Justice Mahajan was of a different opinion and Section 12 will be ultra vires considering the majority.

¹⁷ Constitution of India 1950, art 21

¹⁸ Constitution of India 1950, art 14, 19

The Supreme Court of India held that anything that falls in the Preventive Detention Act 1950 provision was violated under Part III Fundamental Right excluding Section 14 of Preventive Detention Act which restricts the reason of detention. Thus, Section 14 will be *ultra vires* thus court declares will not make the whole Section void but only a part of it will void which is Section 14.

1. Article 19, 21, and 22 are independent and Article 19 will not apply to any law affecting ‘personal liberty’ under Article 21. In the Gopalan Case, it was held Article 19 will be applied to free people. If the case is like any arrested person while making his speech, holding an assembly, forming a part of the association, or entering into anyone’s territory the arrested person will check with respect to Article 21.
2. “Law” to life, liberty will not be unconstitutional if it is lacking values of natural justice or due procedure. Thus Article 21 would not protect from legislative action.

The Court has to deal with the same question under *Ram Singh v. The State of Delhi*¹⁹, here the petitioner was detained under the Preventive Detention Act for passing his comment over lack of ‘public order’ as even the fundamental rights do not have a restriction for making a speech as enshrined in Article 19[2] during those days. Though order under preventive detention was present keeping in mind public order. Finally, the Supreme Court held the same validity applying in an aforementioned case under Article 19 for free speech. This thing is separate and independent of Article 21 and 22.²⁰

*Kharak Singh v. the State of UP*²¹, this case marked the window for the right to privacy. As during this time, no mention of privacy in any of Article 19 or 21 therefore the substantive part should find its value under Article 21 thus UP Police Regulation 236 which has open the gate for night domiciliary visit and police inspection of doubtful person were violative of Article 21. It was held right to privacy was not present in Constitution initially but it was found the whole process of being violative of Part III of the Constitution. The majority believed still now the concept of privacy was not clear under Articles 19 and 21. It was taken note of the fact that Article 21 have residuary right not particularly covered under Article 19.

There was the dissenting opinion given by Justice Subba Rao and Justice Shah privacy right under Article 21 terming it as an essential component of ‘personal liberty’ thus rights under Article 19 and 21 should be distinctively studied as part of fundamental right and there should be no overlapping between these two rights thus for establishing the values of the law anyone right cannot be left untouched.

¹⁹ *Ram Singh v The State of Delhi* AIR 1951 SC 451

²⁰ M.P. Jain, *Indian Constitutional Law* (6th edn., Lexis Nexis Butterworths Wadhwa 2010) 1183

²¹ *Kharak Singh v The State of UP* AIR 1962 SC 1295

For better understanding, the Court undertook help from American precedent in the case of *Munn v. Illinois*²² and *Wolf v. Colorado*²³ to check the nature of the right to liberty. While majority of them view to uphold visit upon the same right under Article 21. Justice Subba Rao's decision resulted in a majority in the case of *Satwant Singh Sawbney v. Assistant Passport Officer*²⁴ the case discussed the abridgment of the right to travel by taking away the rights of passport. Chief Justice Subba Rao has taken precedent help by relying on the decision given by the U.S. Apex Court in *Kent v. Dulles*²⁵ and *Aptheker v. Secretary of State*²⁶ to showcase liberty carry same value and meaning as given in the U.S.A. Constitution.

Now coming to *R.C. Cooper v. Union of India*²⁷ was dealing with the matter of rights relating to the property under Article 19 (1)(f) for personal freedom. The court links Article 31(2) with 19 (1)(f) to derive a connection between Articles 19, 21, and 22. The logic is given in *A.K Gopalan v. State of Madras*²⁸ the case is incorrect in respect to the mutually exclusive right, Here the petitioner being an owner of 14 commercial banks but these were undertaken by Banking Companies [Acquisition and Transfer of Undertaking] Act 1969.

The Gopalan case derives us the reasoning that limits on protection in matters concerning fundamental rights will be undertaken as per state orders not according to the rights of the individual. Thus, the same thing will be applicable in case of matters dealing with property. The majority of the judges believed this concept is inconsistent as far as considering Constitution and overruled the idea derived from A.K. Gopalan Case.²⁹

H.M. Seervai criticized the reasoning given in this case famously known as the Bank Nationalisation Case pointing out that the court has interpreted things differently as preventive detention is different from property rights of individual then also the bench in the above case used the Gopalan case and this proved vital fundamental rights. Now the Supreme Court is shifting dynamics from legal positivism to Universalism.

²² *Munn v Illinois* [1877] 94 [U.S.] 113

²³ *Wolf v Colorado* [1949] 338 [U.S.] 25

²⁴ *Satwant Singh Sawbney v Assistant Passport Officer* AIR 1967 SC 1836

²⁵ *Kent v Dulles* 357 U.S. 116 (1958)

²⁶ *Aptheker v Secretary of State* 378 U.S. 500 (1964)

²⁷ *R.C. Cooper v Union of India* AIR 1970 SC 564

²⁸ *A.K. Gopalan* (n 15)

²⁹ *R.C. Cooper* (n 27)

3.2. The Dark Days – Emergency Era

The dark days of Indian post freedom history arose during the Emergency period and there was the big question on individual fundamental rights. The same things were highlighted in *A.D.M. Jabalpur v. Shiv Kant Shukla*³⁰ case Supreme Court has suffered from self-inclined wound these words came from C.J. Charles Evan Hughes. The Supreme Court has received a great bunch of *habeas corpus* petitions under Article 32 and these petitions also include well-known people politics Indira Gandhi challenges her preventive detention orders claiming that these order does not fall under Maintenance of Internal Security Act 1971 as this was illegal and lacking consideration. Even we have Article 21 providing freedom to life and liberty against State Action but the same rights carrying fundamental features are suspended during an Emergency any enforcement of any of them is not possible as the same order has been passed from the President of India.

There was an exchange of dialogue between government counsel and Justice Khanna though the rights of life and liberty are absent during the time of Emergency and courts cannot do much even if anyone's life is illegally taken let's say in any matter. The concept under 'rule of law' is enshrined as the key value to the Constitution and these rights cannot be taken so easily by any arbitrary order.

The *ratio decidendi*, in this case, was 4:1 in the five judges Constitutional law bench and the only dissenting opinion was of Justice Hans Raj Khanna who said Article 21 cannot sole medium of any right as 'no one shall be deprived of his life and liberty without the authority of law was not gift given by Constitution' but the same ideas and its value were still in place even before the Constitution came in force.

If there is no room for Article 21 no one can be deprived of his life or liberty without any authority from the law as no court in the country in the world accept such an idea whether the same situation whether pre-Constitution or post-Constitution coming into force. Justice Khanna was of vision to extend the right in favour of the right to life as means to establish Universalism.

The other four justices reverse the growing trend regarding reading the substantive right jurisprudence in the light of the due process of law shown in Article 21 even if holding it cannot contain both rights either substantive or procedural.

³⁰ *A.D.M. Jabalpur v Shiv Kant Shukla* AIR SC 1976 1207

3.3. From Maneka Gandhi to PIL Emergence

Now the concept of substantive right jurisprudence with respect of the due process of the law came from *Maneka Gandhi v. Union of India*³¹ this time the question was dealt with rights of individual liberty after the Emergency came to end. The era is marked for judicial populism which can be understood by factors ranging from improving the reputation of the Court after the erroneous judgment of *A.D.M Jabalpur v. Shiv Kant Shukla Case*³².

The case started as in this Maneka Gandhi Passport was seized by Section 10(3)(c) of Passport Act, 1967 which mentions “the passport authority may seize or cause to be seized or revoke passport or travel document. If the passport authority thinks it is necessary for the light of sovereignty and Integrity of India, friendly relation with the foreign state for the general public”. No reason will be given as to why a passport shall be confiscated. Supreme Court in the *Satwant Singh Sawhney* expressed that right to go abroad as part of personal liberty as given to us in Article 21 of the Constitution. Petitioner contended that Section 10(3)(c) of Passport Act, 1967 is arbitrary as it does present things in detail for any procedure of seizing and thus it same be struck down.

The rule of natural law itself expresses that *audi alteram partem* and in this case Maneka Gandhi passport seizing was without her being given chance to express thus same is a violation of the principle of natural justice. She said her rights given to her by Constitution under Article 14, Article 19 (1)(g) and Article 21 were violated by the Passport Act, 1976.

However, all things were kept in mind during the entire judgment. The doctrine of separability as finding a place in *A.K. Gopalan v. State of Madras*³³ stating Article 19 and 21 have all the way different path and this create Waterdown or tug of the war situation in matters concerning rights. It was being observed that the Article 21 should possess both substantive and procedural values. Light is thrown on Article 14, 19 and 21³⁴ and it was decided Constitution must be read to the fullest manner rather than reading it in parts and a harmonious approach must be taken of Article such that due process of law value is not lost.

The other factor to be noted was ‘procedure established by law’ as part of Article 21 of the Constitution. In the *A.K. Gopalan* case it was decided ‘procedure establish by law’ and America ‘due process of law’ are

³¹ *Maneka Gandhi v Union of India* AIR 1994 SC 1978

³² *A.D.M. Jabalpur* (n 30)

³³ *A.K. Gopala* (n 15)

³⁴ Constitution of India 1950, art 14, 19, & 21

different from each other but the Supreme Court overruled the precedent value and held that the American Concept of due process of law and India 'procedure established by law' have the same value. The Supreme Court said laws that are eccentric and arduous do not contain value all laws must satisfy the nature possessing the value of just, fair and reasonable.

The seven judges Constitutional bench showcase a shifty approach from legal positivism to normative approach focusing more on the rationale behind particular law instead of the following command from the sovereign. The judiciary has established it is a separate body from the whims and fancies of the legislative body and the legislature has to pass the test before passing the judgment and criteria is simple law must be propionate or in other words, it should be just, fair and reasonable.

The logic seems unclear as the black letter of the approach taken by apex court in *A.D.M. Jabalpur v. Shiv Kant Shukla*³⁵ case the decision was mutually exclusive and independent of many Articles of Constitution but the rule of Parliament rather than rule of law. Justice P.N. Bhagwati and Justice Krishna Iyer who came forward during the majority ruling of *Maneka Gandhi v. Union of India*³⁶ decided to enact the concept of Public Interest Litigation (PIL) in India in the truest sense of substantive right jurisprudence.

The Supreme Court in *Francis Coralie Mullin v. UT of Delhi*³⁷ gave the logic any kind of torture or inhumane act will lead to offence against the dignity of human as the right to life cannot be compromised in any violation of this will be against fundamental right as procedure established by law and does not pass the test of reasonability and thus this will be void.

The first PIL case in India was of *Hussainara Khatoon v. Home Secretary, State of Bihar*³⁸ case dealing with the matter related to under trail prisoner in Jail of Bihar who has been sentenced more than a required year of punishment awarded. Besides relaxing the requirement journalist Kapila Hingorani came forward representing the counsel for petitioner under the Article 32 habeas corpus petition for under trail prisoners the Court. Here the Court formulated the concept of 'continuing mandamus' permitting relief by orders and not questionable judgment so that it remains in continuous judgment. Justice P.N. Bhagwati held that in the opinion of court Article 21 is infringed when the accused does not get the fair trial, free legal aid, releasing on bail from State and it cannot be denied because the resource is scarce.

³⁵ *A.K. Gopalan* (n 15)

³⁶ *Maneka Gandhi* (n 31)

³⁷ *Francis Coralie Mullin v UT of Delhi* AIR 1981 SC 746

³⁸ *Hussainara Khatoon v Home Secretary* AIR 1996 SC 1369

Now, this time Justice P.N. Bhagwati-led bench introduces epistolary jurisdiction a word brought by Upendra Baxi by placing PIL in response of letting send by the court as part of social reform leader. So, in *Bandhua Mukti Morcha v. Union of India*³⁹ the Apex Court said rights under Article 21 also include the right not to be treated as ‘bonded labour’ and right to rehabilitate once he is released the mere reading suggest this right acquiring same values under Article 21 rather than Article 23 and the failure to instrumentalize the former under Bonded Labour System Abolition Act, 1976 bar to the emerging power of substantive rights finding a place in due process.

Later, the case comes before the court in *Parmanand Katara v. Union of India*⁴⁰ the submission of a newspaper report in the light of hit and run case the Court have asked the State to provide medical aid to the citizens who were injured and were brought to a government hospital. Justice Ranganath Mishra-led bench decided that Article 21 made mandatory obligation to stop undue action on matters involving life and there must be criteria to set rules. It is not up to the State where police are contacted and procedure and study should be there to how the death occurred negligently when any human being’s life is at stake. The court has left behind the time when we ask question method of causing loss of life of any human being by law that Article 21 have negative and positive rights.

*M.C. Mehta v. Union of India*⁴¹ to establish the right to a clean environment, by expanding its scope in the light of Article 21 and state power to restrict hazardous industries for protecting the lives of citizens and compensation to victims of tragedy arising out of oleum leak especially in that context which can apply to different situation per se. People living in any part of the country have the right to breathe air unpolluted.

Then we have *Vishakha v. State of Rajasthan*⁴² PIL against the Sexual Harassment of Women at Work Place were challenged under Article 14, 19, and 21 which made Parliament establish guidelines through Sexual Harassment of Women at Workplace Prevention, Prohibition and Redressal Act, 2013.

4. Conclusion

The idea emerging of due process of law in the U.S.A. is used as role model for different nations but to use in constitutional features many nations were not in favour. In the case of the Indian Constitution, they were in favour of getting the Japanese Concept to be accepted rather than the American model as the due process

³⁹ *Bandhua Mukti Morcha v Union of India* AIR 1984 SC 802

⁴⁰ *Parmanand Katara v Union of India* AIR 1984 SC 2039

⁴¹ *M.C. Mehta v Union of India* AIR 1987 SC 1086

⁴² *Vishakha v State of Rajasthan* AIR 1997 SC 3011

gives the judiciary overriding power against legislative action thus not taking due process of law decision was widely favoured with the concept to remove the property right remove as fundamental right from Article 21 features. But then came the Emergency period in the 1970s which changed the course of thinking and we made attempt to use the U.S.A model of due process as we saw expansion in substantive and procedural rights dually under Article 21 and guardian of people rights judiciary power becomes strengthen for a better future.