



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

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ABSTRACT

The constitution is a core element from where government or state derives its power. It sets the rules and regulations. India being the largest democracy having a multiple religions, cultures, geographical locations and different people has the longest written Constitution and has been prepared by taking several key features from different countries 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 and the discussion by the judiciary in interpreting Constitutional mechanism in various case laws. The researcher has compared the model applicable in India with the U.S.A, U.K, and Japan. Secondly, the article explains how journey took from procedure established by law to due process of law and why initially we had procedure established by law and what led the Constitutional lawmakers to add the due process of law, 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: Constitution debates, Judiciary, Due Procedure, Substantive Jurisprudence, PIL, etc.

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 in the Constitutional law, the assembly remained at 299. The drafting committee was headed by B.R Ambedkar. The Constitution 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 Rao¹. The task was to frame our country's foundation by keeping in mind "Objective Resolution" given by Pandit Nehru.²

The Indian Constitution is lengthiest of the world with 395 Articles, 22 parts, and 8 Schedule during the commencement.³ The Constitution makers while preparing Constitution had watched salient features which different countries adopted and thus, they took those features which could be added in our Constitution. ⁴

From the U.K. we borrowed a parliamentary form of government, President, Prime Minister, Speaker of Lok Sabha, from Canada, we borrowed Federalism, from Germany, we borrowed Suspension of Fundamental Right, from USSR, we borrowed Fundamental Duties and 5-year plan, from Australia, we borrowed Concurrent list, from Ireland, we borrowed Directive Principle of State Policy, from Japan, we borrowed Supreme Court function, and from America, we borrowed Supreme Court, Bills of Right, judicial review, Preamble and Fundamental Rights. However, the drafters of the Constitution did not consider adding "due process of law" to the final Constitution.⁵

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.

¹ <http://parliamentofindia.nic.in/Is/debates/facts.htm> [Last Visited November 26]

² Resolution Re: Aims and Objective, CONSTITUENT ASSEMBLY DEBATES. [DEC 13, 1946]

³ See, CONSTITUENT ASSEMBLY DEBATES. [DEC 1949]

⁴ <http://parliamentofindia.nic.in/Is/debates/facts.htm>. [Last Visited November 27]

⁵ <http://parliamentofindia.nic.in/Is/debates/facts.htm> [Last visited November 27]

The present research attempts to discuss the Constitutional law assembly debates regarding the selection of procedure established by law in contrast to due process of law in light of power possessed by Supreme Court. It explains the landmark cases to interpret procedures established by law. It also discusses how the course of amendment and adaptability of both the concept find places in the Indian context.

2. Constitutional Law Assembly Conundrum

Understanding the American stance on Due process of Law

The U.S.A. in 1791 by adding the 5th Constitutional Amendment provides "...nor [shall any person] be deprived of life, liberty or property, without due process of law...". To establish the concept the Supreme Court of USA gave a landmark decision in *Barron v. Baltimore*⁶ describing the 5th Amendment acting as a check on the unlimited power of the Federal Government and not on 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 authority: "...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 "per legem terrae" which means law of land as enshrined in Magna Carta of England during 1215, in Chapter 39. Supreme Court in case *Joint Anti-Fascist Refugee Comm v. McGrath* held "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".⁷

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 been developed as a substantive right by acting as a constitutional protection. Thus, due process of law worked

⁶ 32 U.S. [7 Pet.] 243 [1833]

⁷ Granville Austin, *The Indian Constitution Corner Stone of a Nation*, (New Delhi: Oxford University Press, 2010), p.103

for substantive and procedural limitation exercised by U.S.A. Supreme Court on legislature and executive.

Initial Deliberation of Constituent Law Assembly

The Advisory Committee on Minorities and Fundamental Right presented an interim report dealing on the concept of Fundamental Right to the Constituent assembly makers on 23 April 1947 under Article 15 Clause 9. It later had taken the form of Article 21 of the Constitution.

“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 foreigners⁸” Later on, 30 April 1947 the members of Constitutional law assembly makers amended – *“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”⁹*

Final Changes made by Drafters

The change made was of word personal before liberty. This would mean if this word was not added, then rights provided by our Constitution under Article 19¹⁰ 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 1946.¹¹ There was extensive discussion but the same was finally passed with Dr. Ambedkar 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 was that there was doubt of an abuse of power by the Supreme Court in the U.S.A. which was the reason why B.N. Rau put forth long before any draft was presented to 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 B.N. Rau to let him understand power

⁸ 3, CONSTITUENT ASSEMBLY DEB. [April. 29, 1947][Justiciable Fundamental Rights, Annexure] available at <http://parliamentofindia.nic.in/Is/debates/Vol3/P2.htm> [Last Visited November 26, 2020]

⁹ Supra.

¹⁰ See INDIAN CONSTITUTION art. 19 [1] Protection of rights regarding freedom of speech and expression.

¹¹ See Article 31 of Japan Constitution 'No person shall be deprived of his life or liberty nor shall any other criminal penalty be imposed, except according to procedure established by law.

under judicial review makes the guardian of law more powerful. Rau was successful in making Drafting Committee understand the due process of law but it was omitted without any considerate opposition.

There was another reason which arose 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 of “as per due procedure” acted as the vital mechanism. Govind Ballabh Pant suggested there 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 of Article 22 of the Constitution in cases resulting in arrest and detention.¹²

Result of Changes

The final aim was served by Constitutional law assembly makers which made them to introduce “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.¹³

By inclusion of “procedure established by law” as replacement of “due process of law”, the makers of the Constitution were in favor of giving more power to the judicial branch or in other words giving more importance to individual rights in contrast with beneficial social legislations. There were a lot of efforts taken to divide the rights given in Articles 14, 19, and 21. The reason being the word 'reasonable restriction' has been in the context of Article 19 and there is no connection because these rights were separately found in Article 14, 19, and

¹² See INDIAN CONSTITUTION Article 22 Protection against arrest and detention in certain cases.

¹³ A.S. Anand, *The Indian Judiciary in the 21st Century*, 26 INDIA INTERNATIONAL CENTER.Q.61,63 [1999]

21 as it was under the judges to extend the power of judicial review from Article 19 to Article 21.¹⁴ 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.¹⁵

This was the situation in the U.S.A. that irked the Constitutional 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 economic regulation. The Supreme Court, in the case, *Lochner v. New York*¹⁶, established 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, labor 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*¹⁷ and *Pierce v. Society of Sisters*¹⁸ 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 broadening up 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.¹⁹

¹⁴ Charles Henry Alexandrowicz-Alexander, *America Influence on Constitutional Interpretation in India*, 5 AM. J. COMP.L. 98,100 [1956].

¹⁵ H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA 485[3d ed.1983]

¹⁶ 198 U.S. 45 [1905]

¹⁷ 262 U.S. 390 [1923]

¹⁸ 268 U.S. 510 [1925]

¹⁹ Munshi, supra note 14, at 299

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 aggreging 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.²⁰

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 narrative-

1. Initial years
2. Emergency Period
3. PIL Mechanism.

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 Supreme Court in *A.K Gopalan v. the State of Madras* ²¹for the 1st time, the same thing was discussed after Constitution was adopted, the petitioner questioned the use of words 'procedure established

²⁰ Mendelson, supra note 29 at 502

²¹ 1950 SCR 88

by law' as per Article 21 arguing how is it different from 'due process of law' as the same has taken 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 1947.²² 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 he was served 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:

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. Article 21 includes the word 'law' which in Latin means 'jus in essential features of natural justice and not 'lex' or the law. There will be no other legislative action.

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 Article 31 of the Japanese Constitution but 'jus means law but the due process of law means as directed by Supreme Court. The non-inclusion of the word 'due' from Article 21 will prove the reasonable criteria and this will not be part of the Indian Constitution. The addition of the word 'procedure established by law' will be used by the legislature to use law.²³

Opinion of Judges

²² INDIAN CONSTITUTION Article 32 'right to constitutional remedies

²³ See INDIAN CONSTITUTION ARTICLE-21- Protection of life and personal liberty

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 21.²⁴

Chief Justice H.J Kania refereeing to 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.

The dissenting opinion came from Justice Fazl Ali's interpreting 'procedure established by law' undertaking Article 21 under 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, 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.

Judgement

The Supreme Court of India held that anything under the Preventive Detention Act, IV of 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.

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. In case the arrested person 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.

²⁴ See INDIAN CONSTITUTION ARTICLE- 19- Protection of certain rights regarding freedom of speech, etc

The court has to deal with the same question under *Ram Singh v. The State of Delhi*²⁵, 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 22.²⁶

*Kharak Singh v. the State of UP*²⁷, 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 but 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 has 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.

For better understanding, the court undertook help from American precedent in the case of *Munn v Illinois*²⁸ and *Wolf v Colorado*²⁹ 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 Sawhney v. Assistant Passport Officer* 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

²⁵ AIR 1951 451

²⁶ M.P. Jain, Indian Constitutional Law, 6th ed. (Nagpur: LexisNexis Butterworths Wadhwa, 2010), p.1183

²⁷ (1994) 3 SCC 569

²⁸ 94 U.S.A. 113 [1877]

²⁹ 338 U.S.A. 25 [1949]

decision given by the U.S. apex court in *Kent v. Dulles* and *Aptheker v, Secretary of State* to showcase liberty carry same value and meaning as given in the U.S.A. Constitution.

*R.C. Cooper v. Union of India*³⁰ was dealing with the matter of rights relating to the property under 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*³¹ 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.³²

H.M. Seervai criticized the reasoning given in this case famously know 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.

The Dark Days of 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*³³ 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

³⁰ 1970 S.C.R. [3] 530

³¹ 1950 SCR 88

³² See, *A.K Gopalan v. State of Madras*

³³ AIR 1976 SC 1207

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 be 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 4 Justices reversed 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.

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*³⁴ 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*.³⁵

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

³⁴ (1994) 3 SCC 569

³⁵ AIR 1976 SC 1207

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 of 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. the State of Madras*³⁶ 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 21³⁷ 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's 'due process of law' are 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 7 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

³⁶ 1950 SCR 88

³⁷ The golden triangle of the Indian Constitution

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 Supreme Court in *A.D.M. Jabalpur v. Shiv Kant Shukla*³⁸ 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* decided to enact the concept of Public Interest Litigation in India in the truest sense of substantive right jurisprudence.

The Supreme Court in *Francis Coralie Mullin v UT of Delhi*³⁹ 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 in 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.

1st PIL case in India was of *Hussainara Khatoon v. Home Secretary*⁴⁰, State of Bihar case dealing with under trail prisoner in Jail of Bihar who has been sentenced more than a required year of punishment. 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 in Court Opinion Article 21 is infringed upon when the accused does not get the speedy trial, free legal aid, releasing on bail from State and it cannot be denied because the resource is scarce.

Justice P.N. Bhagwati-led bench introduces epistolary jurisdiction, a word brought by Upendra Baxi, by placing PIL in response of letting the court as part of social reform leader. So, in *Bandhua Mukti Morcha v. Union of India*⁴¹ 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

³⁸ibid

³⁹ AIR 1981 SC 608

⁴⁰ [1996] 1 S.C.C 490

⁴¹ [1984] 3 S.C.C 161

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.

Now the case comes before the court in *Parmanand Katara v. Union of India*⁴² 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*⁴³ established 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 petroleum 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*⁴⁴ 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

Emergence of the idea, due process of law in the U.S.A. has been taken a role model for different nations but to use it 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 gives the judiciary overriding

⁴² [1984] 3 S.C.C. 161

⁴³ 1987 S.C.R. [1] 819

⁴⁴ A.I.R. `1997 S.C. 3011

power against legislative action. Thus, not taking due process of law decision was widely favoured with the concept to remove the property right 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.