



## DUE PROCESS OF LAW: APPLICATION OF PRINCIPLE OF NATURAL JUSTICE

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**Brief Introduction :** In India, with the introduction of concept of substantive and procedural due process in Article 21 in Maneka Gandhi Vs Union Of India there is growing trend in the judiciary to apply PRINCIPLE OF NATURAL JUSTICE while interpreting statutes. This has often created uproar with the legislature which looks it as undue interference on their sphere by judiciary commonly termed as Judiciary Activism. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed there under. The principles are deeply engrained in our Constitution and very fundamental for human existence in a civilized society.

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### Due Process Of Law

Article 14,19 and 21 of the Constitution are termed as golden triangle of Indian Constitution.

They are the most basic among the Fundamental Rights which every citizen of India should enjoy as a part of their existence in a democratic society. These rights are part of Basic Structure of the Constitution. Hence inviolable as per rules laid down by Supreme Court in **Kesavananda Bharati** Sripadagalvaru and Ors. v. State of Kerala and Anr(case citation: (1973) 4 SCC 225).

The Principles Of Natural Justice are firmly grounded in these Articles.

Article 14 speaks of Equality Before Law and Equal Protection Of Law throughout the territory of India.

Article 19 gives Right to Freedom . There are bunches of such rights with reasonable restriction on public interest mentioned in 19(2). Examples of such rights are freedom of speech and expression, freedom to move freely throughout the territory of India.

Article 21 states about Protection of life and Personal Liberty.

No person shall be deprived of his life or personal liberty except according to procedure established by law.

The mentioning of the clause “ Procedure Established By Law” came for interpretation before the Apex Court just after emergency in **Maneka Gandhi v Union Of India** .

In brief the fact of the case was that the passport of Ms Maneka Gandhi was impounded by the State under the Passport Act for public interest. She was not allowed to travel abroad. The government turned down her request seeking the reasons why the order had been passed, stating that it was not ‘in the interest of the general public’.

In reaction she filed a writ petition challenging the decision before Apex Court on violation of Article 14, 19 and 21.

However the Court did not pass any ‘formal order’ in the case since the Government gave assurance that Maneka Gandhi would get an adequate opportunity to be heard. The majority upheld the impounding of her passport and held that her passport should remain in judicial custody in the meantime.



Several landmark observations were made which make this case a milestone in the history of Indian Judiciary System and initiate the process of Application of Principles of Natural Justice in codified laws by the judges thereon.

1. For the first time the Court imported the concept of Due Process Of Law from the Constitution of United States Of America to give life to Article 21. The SC stated that during the time of drafting of the Constitution by the Constituent Assembly the members were in belief that our legislatures will abide by the spirit of our constitution and will not cross the boundary limit set up by the constitutional provisions.

However judiciary felt that in the current scenario there is a growing dangerous trend among the legislature to bring laws overriding the constitutional parameters thus threatening the political democratic set up.

We have to remember that the case was heard just after post emergency and after 42<sup>nd</sup> Amendment of the Constitution was passed to curb the power of judiciary in retaliation of the judgment in **Kesavananda Bharati** case. Even after withdrawal of the Emergency there is growing trend among the political rulers to pass laws which are autocratic & unjust and in flagrant violation of fundamental rights as enshrined in the Constitution to satiate their vested interest and to take retaliatory action to stop democratic protest from opponent.

The reason beyond harassing Maneka Gandhi by the State was that as an editor of a political magazine Surya she is using the platform to restore the images of the Congress party and discredit leaders of the new Janata Party government in power. The most notable instance of this was when Surya carried photographs showing the son of then defence minister Jagjivan Ram engaging in sexual intercourse with a student of Delhi University. In 1977, around the time she wished to leave India to fulfil a speaking engagement. Maneka Gandhi received a letter stating that the Government of India had decided to impound her passport in public interest under Section 10(3)(c) of the Passports Act. No reason was given for such decision.

The SC viewed that the Due Process Of Law is firmly established in Article 21. The majority on the seven-judge bench stated that any procedure established by law under Article 21 would have to be 'fair, just and reasonable' and could not be 'fanciful, oppressive or arbitrary'. The Apex Court's observation in this Case effectively meant that 'procedure established by law' under Article 21 would have the same effect as the expression 'Due Process Of Law'. In a subsequent decision, the Supreme Court stated that Article 21, interpreted according to Maneka Gandhi, would read as: 'No person shall be deprived of his life or personal liberty except according to fair, just and reasonable procedure established by valid law'.

Another major observation of the Court in this case is that Article 21 is not to be read in isolation; all violations and procedural requirement under Article 21 are to be tested for Article 14 and Article 19 also. The Supreme Court in the present case had adopted the widest possible interpretation of the **right to life and personal liberty**, guaranteed under Article 21 of the Constitution.

The Court held that Article 21 is controlled by Article 19, i.e., it must satisfy the requirement of Article 19. The Court observed: "The law must therefore now be settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of personal liberty, and there is consequently no infringement of the fundamental right conferred by Article 21 such a law in so far as it abridges or takes away any fundamental right under Article 19 would have to meet the challenges of that



Article.”Thus a law “depriving a person of ‘personal liberty’ has not only to stand the test” of Article 21, but it must stand the test of Article 19 and Article 14 of the Constitution as well.

This is the reason it is called the golden triangle of the Indian constitution and are inviolable under any circumstance.

### **An Altered Constitutional Climate**

Maneka Gandhi is a reflection of dynamic constitutional interpretation. It signifies the court’s changing approach towards the Constitution and widest application of Principle of Natural Justice in codified laws to catch the spirit and essence of our Constitution and its Preamble.

In *Canara Bank Vs V.K. Awasthi* (2005) 6 SCC321, the Apex Court observed that the administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties.

The expressions “natural justice” and “legal justice” do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality grammatical pedantry or logical prevarication.

The most striking aspect of the Supreme Court’s introduction of substantive due process was that it empowered courts to expand the limited phraseology of the right to life under the Constitution, to include a wide range of un-enumerated rights. Since *Maneka Gandhi*, courts have included the following rights within the embrace of the right to life and personal liberty under Article 21:-

1. Rights of Prisoners including protection from handcuffing without adequate reasons, protection from custodial violence, the right to treatment with dignity and humanity;
2. Environmental Rights including the right to a humane and healthy environment, the right to sustainable environment, protection from pollution hazards etc.
3. Other Rights including the right to live with human dignity including access to nutrition ,clothing and shelter, the right to free education of children up to the age of fourteen years, the right to livelihood, protection of one’s reputation, access to just and humane conditions of work etc.

Another effect of *Maneka Gandhi* judgement is that the old distinction between judicial act and administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of Natural Justice that is, it must follow Due Process of Law. The expression “civil consequences” encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

In a very recent judgement Supreme Court fined Bengal Government Rs.20 lakh for ‘blocking’ film. The Apex Court stated that the state is constitutionally bound to protect people’s freedom.



The Court said that West Bengal police had misused its power by obstructing the public screening of the film which was cleared by censor board.

“The Constitution does not permit those in authority who disagree to crush the freedom of others to believe, think and express. The ability to communicate ideas is a legitimate area of human endeavour and is not controlled by the acceptability of the views to those to whom they are addressed. When the ability to portray art in any form is subject to extra-constitutional authority, there is a grave danger that fundamental human freedoms will be imperiled by a cloud of opacity and arbitrary state behaviour,”

Giving a boost to artistic freedom, the court held that the police cannot claim to be self-appointed guardians of public morality and directed the state to compensate the filmmakers for the loss.

“Power has been entrusted to the state by the people under a written Constitution. The state holds it in trust and its exercise is accountable to the people. The state does not entrust freedoms to the people: the freedoms which the Constitution recognizes are inseparable from our existence as human beings. Freedom is the defining feature of human existence. Freedoms are not subject to power. Public power is assigned by the people to government. Ours is a controlled Constitution, a Constitution which recognizes the fullest element of liberty and freedom and of the answerability of power to freedom,” it said.

The court said governments are duty-bound to create and maintain conditions for people to enjoy their freedom, otherwise there is a real danger that art and literature would become victims of intolerance. “In the space reserved for the free exercise of speech and expression, the state cannot look askance when organized interests threaten the existence of freedom. The state is duty bound to ensure the prevalence of conditions in which of those freedoms can be exercised. The instruments of the state must be utilized to effectuate the exercise of freedom,” it said.

Dismissing the action of West Bengal government whose “higher authorities” had asked theatre owners to pull down the screening of the film, the bench said that it was an “unconstitutional attempt to invade the fundamental rights of the producers, the actors and the audience” and to “silence criticism and critique”.

To sum up , post Maneka Gandhi, application of Due Process Of Law as a part of Principle Of Natural Justice is now well established within the judiciary and the Court often use the same to block the legislative action. However the critics are of opinion that it is not good for Indian Democracy. Members of legislature are directly elected by people and interference on their area by members of judiciary is a very dangerous trend. Though the Apex Court has got authority to protect and interpret the Constitutional mandate yet our Constitution has made clear separation of power between judiciary and legislature. Judges are not elected by people and they are not directly answerable to them. So growing interference is one way hampering the smooth functioning of political democratic set up of our country.

At the same time it has to be kept in mind that our political ruling class should also abide by their constitutional obligation. They should behave in a responsible manner to protect democracy and the interest of the people.

Under the current scenario functioning of democracy for people’s interest is hampered by corrupt practices and autocratic functioning of our ruling political class thus degrading the sanctity and ethos of Constitution. In such situation Judiciary cannot remain silent and has to take the role of savior of the Constitution for people’s interest and to protect our Democratic setup.

