

Difference between Procedure Established by Law and Due Process of Law

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The principles of "Procedure Established by Law" and "Due Process of Law" are pivotal in shaping the constitutional and legal frameworks of democratic nations. While both terms deal with protecting the life and liberty of individuals, their scope, interpretation, and application vary significantly.

Procedure Established by Law

The phrase "Procedure Established by Law" is discussed in Article 21 of the Indian Constitution, which guarantees protection of life and personal liberty. According to this principle:

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

This means that if a law is duly enacted by the legislature and proper procedure is followed, the state can deprive a person of life or liberty. It does not require that the law itself be just, fair, or reasonable.

Key Features

- Emphasis on legislative procedure.
- Focuses on enacted law, not its fairness.
- More narrow and formalistic in approach.

Due Process of Law

Due Process of Law, a broader concept primarily used in the United States Constitution, ensures not only that a law is followed but also that it is just, fair, and reasonable. It contains two components:

1. Procedural Due Process – Whether fair procedures were followed.
2. Substantive Due Process – Whether the law itself is fair and just.

In India, though not explicitly mentioned in the Constitution, the Supreme Court has gradually incorporated Due Process principles through judicial interpretations of Article 21.

Difference between Procedure Established by Law and Due Process of Law

The Difference between Procedure Established by Law and Due Process of Law reflects the evolution of constitutional protection in India. What began as a strict adherence to legislative procedure has transformed into a more people-centric approach, ensuring that laws do not merely exist, but that they also uphold the values of justice, fairness, and liberty. The table below includes the Difference between Procedure Established by Law and Due Process of Law:

Difference between Procedure Established by Law and Due Process of Law		
Aspect	Procedure Established by Law	Due Process of Law
Origin	Derived from British legal system	Originates from the U.S. Constitution
Mention in Indian Constitution	Explicitly mentioned in Article 21	Not mentioned directly; interpreted by judiciary
Focus	Checks if the procedure is legally enacted	Checks if the law is fair, just, and not arbitrary
Scope	Narrower; focuses on legal procedure	Broader; includes substantive fairness
Judicial Review	Limited; courts can't question the morality of law	Extensive; courts can strike down unfair laws

Protection of Rights	Weaker protection against unjust laws	Stronger protection of individual rights and liberty
Current Application in India	Interpreted broadly post-Maneka Gandhi case (1978)	Partially adopted in Indian jurisprudence via Article 21

Important Supreme Court Judgments

A.K. Gopalan v. State of Madras (1950):

- Held that any law made by the legislature is valid if the procedure is followed.
- Applied narrow interpretation of Article 21—Procedure Established by Law only.

Maneka Gandhi v. Union of India (1978)

- Landmark case where the Supreme Court ruled that the procedure must be fair, just, and reasonable, not arbitrary.
- Expanded Article 21 to include Due Process elements.
- Connected Article 21 with Articles 14 and 19, making fundamental rights more integrated and powerful.

Justice K.S. Puttaswamy v. Union of India (2017)

- Recognized Right to Privacy as a part of Article 21.
- Reinforced the need for laws to meet the test of reasonableness and fairness.

Difference between Procedure Established by Law and Due Process of Law Key Points

- India originally adopted only the “Procedure Established by Law”, unlike the U.S., which follows “Due Process of Law”.
- Through judicial activism and progressive interpretations, Indian courts have incorporated the essence of due process.
- Today, Article 21 is not limited to procedural legality; it also ensures fairness and non-arbitrariness of laws.
- This evolution has strengthened the protection of civil liberties in India.

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