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DOCTRINE OF DUE PROCESS OF LAW



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Evolution:

The doctrine of due process of law is invoked as a common legal system and later becomes the customary practice. Subsequently, the US legal system gives the legal approach for the due process of law in the fifth and fourteenth Amendment of the US Constitution and has applied due process of law. In India, the due process of law was first developed under Article 21 of the Indian Constitution.

Meaning:

The term due process has derived from the law of the land used in the Magna Carta which means the government must give respect to the legal right owned by the individual in the State according to the law. The due process of law simply means the person should not be deprived of their legal rights without proper application of the law. This doctrine acts as a check whether the government has taken the life and liberty of the person with the due process of law. The person's life and liberty can be protected by the doctrine of due process of law which shall otherwise amount to a violation of due process and the rule of law.

Kinds Of Due Process Of Law:

Due process may be either procedural or substantive.

- The procedural due process of law means the life and liberty of the individual shall be taken by the government only with the due procedure of law. The procedural due process of law emphasis on the principle of equality and fairness.
- Substantive due process of law means the judicial determination of the law which is embodied in the Constitution. In this case, the Court concerns with the Constitutionality. The due process of law other than procedural shall be substantive due process of law.



Provision Relating To Constitution:

The concept of procedure established by law is to be fair, just and reasonable under Article 21 is interconnected with Articles 20, 22, 14, and 19 of the Indian Constitution. Some of the important articles deal with due process of law under the Indian Constitution.

Article 14 - The State shall not deny to any person equality before the law or the equal protection of the laws within its territory of India.

Article 19 - Protection of person rights regarding freedom of speech and expression, profession etc.

Article 20 - Protection of person Conviction for offences.

Article 21 - No person shall be deprived of his life and personal liberty except according to the procedure established by law.

Article 22 - Protection against arrest and detention in certain cases.

CASE LAWS

Case 1

Tofan Singh V. The State Of Tamil Nadu, 2020 SCC Online SC 882.

Held - Power to make search and seizure as also to arrest an accused is founded upon and subject to satisfaction of the officer as the term reason to believe has been used. Such belief may be founded upon secret information that may be orally conveyed by the informant. Draconian provision which may lead to a harsh sentence having regard to the doctrine of due process as adumbrated under Article 21 of the Constitution of India requires striking of balance between the need of law and enforcement thereof, on the one hand, and protection of citizen from oppression and injustice on the other.



Case 2

Indian Social Action Forum (Insaf) (S) V. Union Of India (S), 2020 AIR SC 1363.

Held - If the law is open to diverse construction, that construction which accords best with the intention of the legislature and advances the purpose of legislation, is to be preferred. Where however the law admits of no such construction and the persons applying it are in a boundless sea of uncertainty and the law prima facie takes away a guaranteed freedom, the law must be held to offend the Constitution, this is not application of the doctrine of due process.

Case 3

Kerala Legal Service Authority V. State of Kerala, WP.181 of 2021 & MWP.No.245 of 2021.

Held - The Authority deal with the right to property of the citizens of the this Country need to be told that right to property has a close nexus to right to life within the meaning of Article 21 of the Constitution of India. By their action they have denied the right of these citizens at least for 10 years and to that effect they have transgressed the quality of life of the citizens of this Country within the meaning of Article 21 of the Constitution of India.

Case 4

Shukle Kar V. The Calcutta Electric Supply Corporation Limited, W.P.A.No.10534 of 2020.

Held - Even a trespasser, unless evicted by due process of law is entitled to electricity. The bench also clarified that the electricity connection, if granted to the petitioner (alleged trespasser), wouldn't create any right in her favor as regards the property.



Case 5

Kesher Singh Ramkrishna Patil and Ors V. State of Maharashtra and Ors., Writ petitioner (L) No.3334 of 2017.

Held - If illegal structures are demolished after following due process of law, there cannot be a violation of rights under Article 300-A of the Constitution. The Court directed the BMC to follow due process of law before demolishing any structure built on private land or public land. The bench also directed the State to give an offer to those eligible for rehabilitation within three weeks and thereafter, one month time will be given to the residents of these privately-owned structures to accept BMC's offer.

DISCLAIMER

This write up has been sent to you for information purposes only and is intended merely to highlight legal maxims. The information and/or observations contained in this issue do not constitute legal advice and should not be acted upon in any specific situation without appropriate legal advice. The views expressed in this issue do not necessarily constitute the final opinion of M/s.Wallcliffs Law Firm and should you have any queries in relation to any of the issues set out herein or on other areas of law, please feel free to contact us on mail@wallcliffs.com.



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