

Right to life and personal Liberty in United States

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The Constitution of the United States of America offers a more solid foundation for the right to life and liberty than any of the other written constitutions in the world. "Even though the original Constitution of 1787 did not include any charter on basic rights and freedoms, the first Ten Amendments adopted to the United States Constitution, 1791, which are often referred to as the Bill of Rights, include a number of rights that are inalienable and sacrosanct and are essential to the human existence. Even though the original Constitution of 1787 did not include any charter on basic rights and freedoms, the Bill of Rights is often referred to as the Bill of Rights. These rights include the right to life, the right to liberty, and the freedom to pursue pleasure in whatever way that one chooses. The Fifth Amendment to the Constitution of the United States of America, which was ratified in 1791, contains the following provision: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval force, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jail."

For the purpose of the discussion that is currently taking place, only the portion of the amendment that is highlighted would be relevant. An examination of both of these sources of the United States Constitution makes it abundantly clear that the two provisions, which are frequently referred to as the "due process clauses," need to be discussed in great detail in order to acquire an understanding of the concept of life and liberty in the United States of America as well as the response to it.

(i) **Due Process:-**

When it comes to the law, there are very few concepts that are as difficult to precisely comprehend as "due process." However, one cannot assert so since there is no history that can be found for the term. It was generally believed to have descended from the Latin phrase "per legem terrae" that was included in the Magna Carta in 1215. In chapter 39 of the Magna Carta, the King made the following promise: "No freeman shall be arrested or imprisoned or disseized, or outlawed, or exiled, or in any way molested; nor will we proceed against him, unless by the lawful judgement of his peers or by the law of the land". It's likely that this was the first time the phrase "due process" was used in the history of English law. "per legem terrae" eventually evolved into "due process of the law" as a result of the reaffirmation of the previously specified legal protections in the third edition of the Statute of Westminster (1354).¹ The Petition of Rights, which was submitted in 1628 by the people of England, included a request that "freeman be imprisoned or detained only by the law of the land or by due process of law, and not by the king's special command without any charge." The phrase "due process of law" has been construed by the Supreme Court of the United States of America on a number of different occasions, each time within the context of the United States of America.

As a consequence of this, it would seem that the phrases "due process of law," "law of the land," and "per legem terrae" have historically been understood in the same meaning; that is, as a method

of giving protection against the unlawful seizure of a citizen's life, liberty, or property. At the time that the Bill of Rights was being ratified, the phrase "law of the land" was used in each of the eight state constitutions that had already established such a guarantee for their citizens. Regardless of the terminology that was used, the guarantee that was being offered was the same: the government was prohibited from limiting in any manner the personal or property rights of an individual unless it did so in accordance with the appropriate processes. To put it another way, it was an assurance that the government could not violate an individual'

(ii) Substantive due process:

The term "due process" has been separated by the court system in the United States into two distinct subcategories: (1) substantive due process, and (2) procedural due process.

According to Edward S. Corwin, substantive due process is the legal concept that "every species of state legislation, whether dealing with procedural or substantive rights (is) subject to the scrutiny of the (Supreme) Court when the question of its essential justice (is) raised." Substantive due process is also known as "substantive due process of law." As Pritchett so astutely observes, the transformation of the due process clause from a guarantee of fair procedures.ⁱⁱ

The judicial system in the United States of America has, throughout the course of time,ⁱⁱⁱ acknowledged the fact that the "substantive due process" provision may be applied with regard to the police authority,^{iv} the Criminal Procedure^v, and the right to privacy^{vi}. An analysis of the subsequent cases makes it abundantly clear that the constitutional protection of 'due process,' in the form of substantive due process, has been invoked in the United States to defend rights that are protected by the constitution.

(iii) Procedural due process:-

Unlike the substantive "due process, which analyses what the government may do, the procedural due process investigates how the government operates and the enforcement mechanism that it utilises. If a person's life, liberty, or property interests have already been gained, the due process clause of the Fifth and Fourteenth Amendments require that the government follow fair processes before taking away such interests. These procedures must be followed before the government may take away such interests. The United States Constitution, beginning with the Fourth Amendment, includes a range of safeguards to protect the people's lives, liberties, and property. These safeguards may be found in the Fourth through the Eighth Amendments. A straightforward reading of the Bill of Rights, which can be found in the Constitution of the United States of America, makes this point plainly obvious. Some of the rights that are protected by these constitutional provisions, which are primarily procedural in nature, include the right against excessive bail and fines, the right against excessive bail and search, the right to trial by jury in criminal cases, protection against double jeopardy, protection against self-incrimination, right to life, liberty, and property, and right to just compensation, right to speedy and public trial, right to legal counsel, and right against unreasonable search and seizure". It has been said that the list of rights that was shown earlier is not exhaustive and that its primary purpose is to act as an illustration of rights of this kind.

Willis is of the opinion that "in order to have what he considers to be procedurally due process, the following components must be present: (1) notice; (2) the opportunity to be heard; (3) an impartial tribunal; and (4) an organised course of procedure."^{vii} Since that time, the courts in the United States have reached the conclusion that procedural due process mandates the following

requirements: (i) that the trial must take place in public; ^{viii} (ii) that the trial must not be tainted by pressure from any mob or other external factors such as negative newspaper comments or television broadcast of the confession of the accused; ^{ix} (iii) that the judge must be impartial^x; and (iv) that the court must have jurisdiction.” ^{xi}

In the end, a simple paraphrasing of Justice Felix Frankfurter's ideas about the concept of legal due process would be adequate. ^{xii} The word “due process of law” does not imply formal, defined, or restricted criteria, as he has said, according to what he has said. It is the all-encompassing word for all of the rights that our court system is bound to preserve since they are vital to the survival of a free society. ^{xiii} These rights include freedom of speech, freedom of religion, freedom of assembly, and freedom of the press. A free society will, both as a matter of course and because it is required to do so, continue to raise the bar in terms of what is seen as being reasonable and ethical. It is a notion that is generally understood and appreciated that the pattern of due process is decided by the particular facts and circumstances of each individual case. This is a principle that has been around for a very long time. The issue that has to be addressed is whether or not the standard of “due process” complies to “the fundamental principles of liberty and justice,” often referred to as the “essentials of a fair trial,” “fundamental fairness,” or “absence of conduct that shocks the conscience,” amongst other terms with very similar meanings.

The courts in the United States of America have often looked to both the procedural and the substantive due process clauses when determining whether or not certain pieces of legislation satisfy the constitutional requirements for validity. These parts cover the denial of a person's life, liberty, or property, as well as the need that there be a minimum guarantee of procedural fairness. Additionally, they address the necessity that there be a minimum guarantee of procedural fairness. These concepts have been put into practise in a range of spheres, including, amongst others, “the right to privacy,” “family rights,” “economic sphere,” and “civil rights.” In contrast, the “procedural due process” has been shown to be much more influential in the decision-making process than the “substantive due process” has been.

It has been stated that what has been discussed so far is, in essence, the dispute that applies to the concept of “due process” of law as it is understood by American jurists and the court. According to what has been mentioned, it is essential to have this conversation in order to properly understand the concepts of “personal liberty” and “procedure established by law” as they are used in Article 21 of the Constitution. In another section of this chapter, you will discover a discussion of the reasoning for deleting the word “due process” from Article 21. “However, at this juncture, it is necessary to point out that the absence of legislative clarity as to 'due process' in the fifth and fourteenth Amendments to the United States Constitution has made it possible for the American Supreme Court to play a very active role in regards to the civil, economic, political, and other fundamental rights of the American people, sometimes even at the expense of the other two political organs of the state, namely the Legislative and the Executive. This is necessary because the absence of legislative clarity It is imperative that this be brought to the reader attention”.

ENDNOTES

- i. Herman C. Pritchett, *The American Constitution* [New York : London, 1977) P. 292 & 293 and also “Encyclopedia of the American Constitution”, Vol. 2, (New York : London, 1986) pp. 589-591.
- ii. Edward S. Corwin, *Liberty Against Government : The Rise, Flowering and Decline of a Famous Juridical concept* (Baton Rough, LA, 1948) pp. 135-136.
- iii. Pritchett C. Herman : *The American Constitution*, 3rd ed. (New York, 1977), at p. 518.
- iv. *Munn v. Illinois*, 94 U.S. 133; 24 LEd. 77 (1817) and *Nebbia v. New York* 291 U.S. 502 : 54 S.Ct. 505 : 78 L. Ed. 940 (1934) and *Lochner v. New York* 198 U.S. 45; 25 S.Ct. 539 ; 49 LEd. 937 (1905).
- v. *Hurtado v. California* 110 U.S. 516; 4 S.Ct. 111 : 28 LEd. 232 (1884), and *powell v. Alabama* 287 U.S. 45; 53 S.Ct. 55; 77 LEd. 158 (1932).
- vi. *Griswold v. Connecticut*, 381 U.S. 479 (1965) and *Roe v. Wade* 410 U.S. 113 (1973).
- vii. Willis, *Constitutional Law*, P. 662.
- viii. *Gaines v. Washington* (1928) 277 U.S. 81.
- ix. *Moore v. Dempsey* (1923) 261 U.S. 86.
- x. *Stroble v. California* (1952) 343 U.S. 181 & *Ridean v. Lousiana*, (1962) 372 U.S. 723.
- xi. *Tumey v. Ohio*, (1927) 273 U.S. 510.
- xii. *Twining v. New Jersey* (1908) 211 U.S. 78.
- xiii. *Wolf v. Colorado*, (1949) 338 U.S. 25.