

1. Do you think 'due process of law' is an ethical legal principle? Substantiate your views.

Introduction

In case of dissension, never dare to judge till you've heard the other side."

—
Euripides

The doctrine of "Due process of law" originated under the US constitution. *Due process of law* doctrine not only checks if there is a *law* to deprive the life and personal liberty of a person but also see if the *law* made is fair, just and not arbitrary.

Body

'Due process of law' is an ethical legal principle

In *Maneka Gandhi vs Union of India* case (1978) SC held that – 'Procedure established by law' within the meaning of Article 21 must be 'right and just and fair' and 'not arbitrary, fanciful or oppressive' otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied. Thus, the 'procedure established by law' has acquired the same significance in India as the 'due process of law' clause in America

If SC finds that any law as not fair, it will declare it as null and void. This doctrine provides for more fair treatment of individual rights.

Under due process, it is the legal requirement that the state must respect all of the legal rights that are owed to a person and laws that states enact must conform to the laws of the land like – fairness, fundamental rights, liberty etc. It also gives the judiciary to access fundamental fairness, justice, and liberty of any legislation.

The power of judicial review implicit in the due process clause ensure protection of the fundamental rights of the citizens. It also prevents legislature from interfering into the rights of the citizens. Moreover, it helped to nullify draconian laws passed by the Legislature .eg: TADA, POTA, section 66A of IT act etc.

While laws carry with them a punishment for violations, ethics does not. In ethics everything depends on the person's conscience and self-worth. For example, driving carefully and within the speed limit because a person not wanting to hurt someone is ethical, but if one drives slowly because he/she sees a police car behind, this suggests fear of breaking the law and being punished for it. This way 'due process of law' is ethical legal principle.

However, the illegitimacy of the court's opinion in the *habeas corpus* case subsequently offered a sufficient moral basis for the rejection of the theory of original intent. The Supreme Court's current opinions on this strike a lethal blow to

the theory of original intent, and firmly recognise that constitutional “due process” is here to stay.

Conclusion

Though the term “procedure established by law” is used directly in the Indian constitution. Due Process of Law has much wider significance, but it is not explicitly mentioned in Indian Constitution. Even after six decades of making, the Indian sacred document has been proved successful because of its strong ethical foundations and continues to guide the state and its subjects in an ethical direction.

2. Comment upon the moral and ethical dimensions of India’s constitution.

Introduction

The constitution of India apart from being the fundamental law of the land is also liberating in nature and a source of ethical guidance. Constitution has incorporated our historic values, societal ethics and has upheld constitutional morality.

Body

Moral and ethical dimensions:

The constitutional provisions and parts have been a source of ethical and moral guidance to citizens, policy makers and various other stakeholders.

- Values:
 - The constitution upholds the principles of “Sarva dharma samabhava” through the secular provisions under various articles and preamble.
 - the preamble has been a source of ethical values that defines our society and nation which has to be incorporated by every citizen, government entity which includes India being a socialist, secular, democratic nation upholding justice, equality, fraternity.
 - Compassion: Constitution preaches equality, fraternity, compassion for weak and vulnerable through affirmative action. (E.g. Articles 15 & 16).
- Virtue ethics: Justice being the fundamental virtue for any nation is being upheld by the constitution. All form of justice – social, economic, political have been mentioned. This implicitly inspires for ‘distributive justice’.
- The constitution provides for equity principle through the provisions of reservations, affirmative directives under DPSPs, special provisions like the 5th and 6th schedule and so on.
- The constitution has provisions of utilitarianism upholding democratic principles but at the same time follows the John Rawls theory of justice with putting the last first which also protects minority rights.

- Duty based ethics: Article 51A of Constitution provides fundamental duties to give way to duty-based ethics for the citizens.
- Gandhian ethics: the principles of Ahimsa, Sarvodaya, Swarajya and so on is being promoted through DPSPs, local self-government and so on.
- Environmental ethics: is found in the constitution under Article 48A, 51A(g) promoting environmental conservation in accordance with the principle that “We don’t inherit the environment from our ancestors, but we borrow from future generations”.

The provisions of the constitution have enabled over the years to fulfil our philosophical aspects whether providing refuge to persecuted communities like Tibetans upholding ‘vasudhaiva kutumbakam’ or upholding ‘satyameva jayate’ defeating the authoritarian emergency imposed through democracy. It has empowered the citizens to take ethics and moral decisions eventually.

The constitution is based on Indian philosophical principles whether it is of Ashoka’s Dhamma or the gita’s Dharma paripalana. Indian constitution has also borrowed the modern philosophy evolved through the western revolutions of France, America and so on. Thus, it is a fountain of moral and ethical principles.

Conclusion

Indian constitution is, as Ambedkar envisaged has cultivated a constitutional morality guiding the government to run the country not only administratively but also ethically and morally. Even after seven decades of making, the Indian sacred document has been proved successful because of its strong ethical foundations and continues to guide the state and its subjects in an ethical direction.

3. There is a higher court than courts of justice and that is the court of conscience. It supersedes all other courts. Comment.

Introduction

Court of justice is where justice is delivered after hearing both confronting parties, based on ethical principles and legal jurisprudence.

Conscience is one’s inner compass, guide, inner voice that guides our behaviour. Court of conscience is our inner-self where we introspect our behaviour. It’s an honest account of our action, as our inner self has all the knowledge of us. We cannot lie there.

Body

There is a higher court than courts of justice and that is the court of conscience. It supersedes all other courts

- One cannot lie with one’s conscience.

- It doesn't take time to identify if one is guilty. One does not have to go through long court proceedings. One just has to honestly introspect, and the judgement is instant.
- As Immanuel Kant said, "In law a man is guilty when he violates the rights of others. In ethics he is guilty if he only thinks of doing so."
- Court of conscience is most easily accessible. It can be used to judge an action, before performing it. Court of justice mostly judges an action post-facto.
- Court of justice imposes physical punishments. Court of conscience punishes on much more deeper level – emotional, psychological, spiritual level. It creates inner dissonance, crisis of conscience and in general unhappy state of mind.
- Powerful people may be elusive from court of justice, but cannot escape court of Justice. Ashoka, being the king, himself was court of justice. However, after battle of Kalinga he realised his mistake of raising such a large battle. It was court of conscience that directed him to reform.

Conclusion

Hence court of conscience is the more important to direct ethical behaviour of people. However, conscience must be an awakened one. To develop conscience one must do ethical analysis of the situations around us. As Aristotle has said, "ethical competence develops as a result of practice".

4. The ongoing protest against the Citizenship Amendment Act (CAA) which has been the duly passed by a democratically elected Parliament is unethical. Do you agree? Critically comment.

Introduction

An unethical act is one that violates someone's right, leads to dereliction of someone's duty, and in general is against the normative ethical standard. Democratically elected government has constitutional authority to legislate. Parliamentary legislation also reflects popular voice of the nation.

Body

The ongoing protest against CAA which has been the duly passed by a democratically elected Parliament is unethical

- The constitutional authority to validate a law is with the courts. The right way is to approach the court to know the legal and constitutional validity of a law passed by the court.
- Protests cause inconvenience to citizens in commutation and free movement.
- Protests may even turn violent, causing loss of life and property.
- Protests also cause politicization of campuses and ideological divide.

- Sloganeering and rallies, if not done peacefully, may also lead to, disharmony in society.

The ongoing protest against CAA which has been the duly passed by a democratically elected Parliament is unethical

- Dissent and criticism of the government are essential ingredient of a robust public debate in a vibrant democracy.
- Gandhiji has said, “*An unjust law itself is specie of violence*”. Gandhiji has taught to protest against discriminatory laws.
- Rousseau in his **social contract** theory has said that people has the right to protest against sovereign authority if sovereign authority fails to protect their liberty.
- As per Edward Coke – for rule of law to operate, people must be the source of rule of law.
- Human Rights Declaration of the U.N states that man has the right to rebel against tyranny.

Conclusion

However, there must not be use of any violence in protests. Gandhi ji has said, “There is no hope for the aching world except through the narrow and straight path of non-violence.”

What is required presently is a dialogue between government officials and protesters. Government must clear their stand that the legislation is in the national interest and remove any fear and concern that people have. The real democracy can be achieved only when parliamentary majority is not used in every instance, but wider consultation and public opinion is taken into consideration.

5. With the help of suitable examples illustrate the manner in which laws, rules and regulations act as sources of ethical guidance.

Introduction

The individual in society achieves his quantum and standards of morality and ethics from two sources—from within himself and from without. While that which arises from within may be the more valid, yet from its nature it is weaker and less influential in each individual case than the standards and the influence and knowledge thereof that he receives from external sources.

Body

“The law is an ordinance of reason for the common good, promulgated by him who has care for society.”

- St. Thomas Aquinas

- Law is considered as a set of declared principles intended to secure justice for the individual and to promote peace and provide for the general welfare of the community. Laws are written in specific code so that they can be interpreted as required.
- Rules are made by firms and individuals. Rules are codes of conduct that are designed for specific situations, similar to customs but have immense importance because there is usually a punishment related with them.
- A regulation is a legal standard that has intention to shape conduct that is a by-product of imperfection. A regulation may be used to recommend or ban conduct, to standardise incentives or to change preferences.
- The laws and rules ensure that each individual must follow a set of guidelines and if/she ends up breaking any of those rules they must accept the consequences no matter their social standing or position. The laws and rules used to retain smooth and efficient functioning of the society.
- Regulation are of various types such as legal restrictions promulgated by a government authority, contractual obligations that bind many parties. Regulations are generally set by the executive for smooth functioning of the laws.
- Rules are also enforced by the person that is making the rule. For example, rules created in a household are enforced by the parent that created the rules.
- Similarly, rules established in a classroom are enforced by the teacher or the school administration. Rules enacted inside the household differ from the rules enacted inside the classroom. This is because rules are more detailed guidelines and must be changed depending on the situation.
- These measures help shape the individual and societal morality and consequently ethics towards such a scenario. For example, Japan and most of the east asian nations have laws and regulations towards respecting traditional aspects in society which makes the persons and society having such an ethical outlook.
- Many people often believe that rules that are established in childhood helps a person to understand laws that are created by the government and also makes him follow the laws strictly.
- The constitution of any country becomes an essential source of ethical guidance for its citizens as it shapes the general ethical outlook expected of its citizens. Indian constitution is such an ethical guide for treating people equally without discrimination.
- For people who work in government and nonprofit organizations, duty has a special importance. They must serve the public, fulfill the expectations of public office, and be trustees of public resources. These are the actions required by their occupation or role independent of but reinforced by other ethical considerations. The ethics of public administrators begins with and is grounded in duty.
- Corporate Social Responsibility (CSR) is one of the laws which plays a positive role in developing a philanthropic ethic in people where the corporate world is defined by the pursuit of money.

Laws can also affect ethics in people's opposition to it. If proper conditions are absent, citizens need not obey a particular civil law. This is the argument favoring civil disobedience, which was propounded by Mahatma Gandhi in India during India's struggle for independence. Such a movement shaped the larger ethics of society during that period.

Conclusion

Neither the external nor internal sources can alone provide a perfect solution for ethical conduct in a society where a combination of multiple factors become the sources of ethical guidance which should be further studied and focused upon.

