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## **Impact of Indian Judicial Activism:- Protection & Enlargement of Article 21**

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“The fundamental rights are not gift from the State to citizens. Part III doesn't confer fundamental rights but confirm their existence and give them protection. Individuals possess basic human rights independently of any Constitution by reason of basic fact that they are the human race. These rights are important as they possess intrinsic values. Its purpose is to withdraw certain subjects from the area of political controversy to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the Courts.”

➤ M. Nagraj v/s. Union of India”<sup>1)</sup>

Judicial activism is one of the most activating topics among the socially conscious citizens in general and the law knowing community not also in India but in the world. So the Indian judiciary can be considered an effective means for creating awareness among the common people. There are broad or expansive other cases wherein the Supreme Court and different High Courts have shown a lot of judicial impact towards protection & promotion of individual rights and liberties. The different decisions given by the Supreme Court, Human Rights Commission or Human Rights Courts are themselves protectors of human rights, and safeguards against any violation of them. Most of the basic human rights have been evolved by the judiciary.

The main research article here would be given enlargement of basic principle or element in the Article 21 by the Indian judiciary and see how far the judiciary in India has achieved success in discharging the heavy responsibility of safeguarding Constitutional rights and/or Fundamental Rights in the light of our Constitutional mandate?

## **Enlargement & Protection of Article 21-**

The right guaranteed in Article 21 is available to ‘citizens’ as well as ‘non- citizens’ of India. Increase of basic selected principle or ideas of Article. 21 by Indian Judiciary (in short)-“The expression ‘personal liberty’ in Article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have raised to the status of distinct fundamental rights and given additional protection under Article 19.”

➤ Justice Bhagwati P.N. <sup>2)</sup>

“Right to life and Personal Liberty” guaranteed under Article 21 of the Indian Constitution and increase or include its essential right, concept, and idea’s by the Indian Judiciary. Few example are given as under-

- i. Right to Privacy available to a women-**“State of Maharashtra v/s. Madhukar Narain,” AIR 1991 SC;
- ii. Right to live with human dignity-**“Chandra Raja Kumari v/s. Police Commissioner Hyderabad,” AIR 1998 AP 302;
- iii. Right to livelihood-**“LIC of India v/s. Consumer Education & Research Centre,” (1995) SCC 482;
- iv. Right to get pollution free water and air-**“Rural Litigation and Entitlement Kendra v/s. State of U.P.,” AIR 1988 SC 2187;
- v. Right to education-**“Unni Krishnan v/s. State of A.P.,” (1993)1 SC 645;
- vi. Right to major voluntarily inter-cast marriage-**“Lata Singh v/s. State of U.P.,” AIR 2006 SC 2522;
- vii. Right to Fair Trial-**“Rattiram v/s. State of M.P. through Inspector of Police,” AIR 2012 SC 1485;
- viii. Right to Speedy Trial-**“Raghubir Singh v/s. State of Bihar,” (1996) 4 SCC 481 & “Sunil Batra (No. - 2) v/s. Delhi Administration,” AIR 1980 SC 1579;
- ix. Non- citizens also entitled to right to life-**“Babubhai Bhimbhai Bokhiria v/s. State of Gujarat,” AIR 2013 SC 3648;
- x. Right to food- starvation Death: state to provide free food-**“PUCL v/s. Union of India,” 2000 (5) SCALE 30;
- xi. Compensation to Rape victims-**“Chairman, Railway Board v/s. Chandima Das,” AIR 2000 SC 988;
- xii. Right to sleep-**“Ramlila Maidan v/s. Home Secretary, Union of India,” 2012 Cr. Lj. (Criminal Law Journal) P. 3516 (Supreme Court).

Etc.

Some important direction or decision issued by the judiciary in different types of cases/issues related in public welfare with governance or local administration for Article 21 of the Indian Constitution are given as under-

**(a) Noise Pollution-**

In the modern days noise has become one of the major pollutants and it has serious effects on human health. Effects of noise depend upon sound's pitch, its frequency and time pattern and length of exposure. It may even lead to the madness of people. In a distinguished judgement in case, "In Re Noise Pollution,"<sup>3)</sup> Supreme Court said that: - "Article 21 of the Constitution guarantees life and personal liberty to all persons. It is well settled by repeated pronouncements of this Court as also the High Courts that right to life enshrined in Article 21 is not of mere survival or existence. It guarantees a right of persons to life with human dignity. The human life has its charm and there is no reason why the life should not be enjoyed along with all permissible pleasures. Anyone who wishes to live in peace, comfort and quiet within his house has a right to prevent the noise as pollutant reaching him."

**(b) Protection of Health Workers-**

In In this case, "Occupation Health and Safety Association v/s. Union of India"<sup>4)</sup> the writ petitioner respondent about 130 CFTPPs (Coal fired Thermal Power Plants) in India, spread over different States. The lack of proper health, delivery system, evaluation of occupational health status of workers, their safety, and protection caused serious health hazards. The Honourable Supreme Court held that-"Right to health i.e., right to live in a clean, hygienic, and safe environment is a right flowing from Articles 21, 39 (e) & (f), 41, and 42. Protection of health and strength of workers and just humane conditions of work include in these Articles are minimum requirements which must exist to enable a person to live with human dignity. Every States has an obligation and duty to provide at least the minimum condition ensuring human dignity. When workers are engaged in such hazardous and risky jobs, the responsibility and duty of the State is double-fold."

**(c) Protection of privacy**

The judiciary protects the fundamental rights conferred by the Indian Constitution like a guardian, gives strict instructions to the government on the need. As the "right of privacy" on this subject, the judiciary highlighted twice, for the first time in the matter of Auto Shankar Case (right to alone) and for the second time on August 24, 2017 (right to privacy). -

### First Time-

R. Rajagopal v/s State Of T.N on 7 October, 1994 (Equivalent citations: 1995 AIR 264, 1994 SCC (6) 632) Bench: Jeevan Reddy, B.P. (J)-The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a “right to be let alone.” A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

### Second Time-

Supreme Court of India in a historic judgment has upheld the right to privacy as an inherent fundamental right, read into Article 21 of the Indian Constitution. The Supreme Court on 24.08.2017 unanimously declared right to privacy as a “guaranteed fundamental right.”<sup>5)</sup>

The verdict by a nine-judge Constitution bench could now test the validity of Aadhaar, the controversial biometric identification project the government has been pushing but critics have opposed as intrusive. Issuing the ruling, the bench said right to privacy was at par with right to life and liberty, and that the verdict will protect citizens’ personal freedom from intrusions by the state. The bench, headed by chief justice JS Khehar, comprises justices J Chelameswar, SA Bobde, RK Agrawal, RF Nariman, AM Sapre, DY Chandrachud, SK Kaul and S Abdul Nazeer. Excerpts of the key conclusions –

- I. Life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human existence. The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Indian Constitution;
- II. Judicial recognition of the existence of a constitutional right of privacy is not an exercise in the nature of amending the Constitution nor is the Court embarking on a constitutional function of that nature which is entrusted to Parliament;
- III. Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home, and sexual orientation. Privacy also connotes a right to be left alone;
- IV. Personal choices governing a way of life are intrinsic to privacy;

- V. Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right. A law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights.
- VI. Etc.

❖ **Impact (Outcome): - Hon'ble Courts orders/directions and effective steps had taken by the Indian Government.**

Indian Parliament has passed the Act/Amendment Related article 21 of Indian Constitution:-

1. **61<sup>th</sup> Amendment - March 28, 1988 - Reduce age for voting rights from 21 to 18;**
2. The Constitutional (86<sup>th</sup> Amendment) Act, 2002 has added a new Article 21 (A) - **December 12, 2002 - Provides Right to Education until the age of fourteen and early childhood care until the age of six;**
3. *Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003;*
4. *Right of Children to Free and Compulsory Education Act, 2009;*
5. *National Food Security Act, 2013.*
6. *Etc.*

**Conclusion:-**

This is a new welcomed, above all the ruling of the Indian judiciary on which Legislative and/or Executive were compelled to take appropriate action. There are broad or expansive other cases wherein the Supreme Court and different High Courts have shown a lot of judicial impact towards protection & promotion of individual rights and liberties. The different decisions given by the Supreme Court, Human Rights Commission or Human Rights Courts are themselves protectors of human rights, and safeguards against any violation of them. Most of the basic human rights have been evolved by the judiciary. Because the violation of human rights by the organised authority is not only a personal problem but it also affects the society, the Supreme Court has observed in many cases that right to life as well as personal liberty means something more than animal existence.

It is the foremost duty of the society and all of its organs to provide justice and correct institutional and human errors affecting basic needs, dignity and liberty of human beings. It can thus be aspired that in the times ahead, people's right to live, as a true human beings will further be strengthened. It has forged new tools and devised new remedies for the purpose of vindicating the most precious 'Fundamental Rights & Human Rights' through judicial activism.

The judiciary acts as a guardian of the people and tries to sustain the Constitution in its true spirit. Indian Supreme Court alone enjoys power of judicial activism.

### **References:-**

- 1) AIR 2007 SC 71.
  - 2) In Supreme Court's case, "Maneka Gandhi v/s. Union of India, AIR 1978 SC 1295." The Court has not only overruled "A.K. Gopalan v/s. Union of India, AIR 1950 SC 27" case but has widened the scope of the words 'personal liberty' considerably, Bhagwati, J. (as he then was) observed.
  - 3) AIR 2005 SC 3136, A two judge Bench: Chief Justice Lahoti R.C. & Bhan Ashok; Date of Judgment: 18/07/2005.
  - 4) AIR 2014 SC 1469.
  - 5) Writ Petition (Civil) No 494 OF 2012; Justice K S Puttaswamy (Retd.), and another. V/s. Union of India and others.
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