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**JUDICIAL ACTIVISM UNDER ARTICLE 21 AND HOW IT PROTECTS
FUNDAMENTAL RIGHTS IN INDIA: AN OVERVIEW**

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sexual harassment, right to freedom.**

Abstract:

This paper outlines the fundamental rights enshrined in the Indian Constitution for people. The most fundamental rights needed for upholding human dignity are fundamental rights. This right affirms that nobody is above the law by giving people rights not to be taken by the government. This right further confirms the concept of natural law. Chapter III of the Constitution protects fundamental rights, which include rights such as the right to equality (Articles 14-18), independence (Articles 19-22), outreach (Articles 23-24), and religious freedom (Articles 24 to 28), (Articles 32-35) Fundamental rights were the foundation of the Constitution and were adjudicated extensively. This article highlights two instances of the fundamental right of freedom in India. This study looked at two cases of human rights violations and freedom of deference — the concept of human rights, justification standard, evidence burden, and cogency of argument — as well as a three-dimensional scale of not deference, moderation, and high deference. The article is intended for courts of common law that take account of the stage method of the award of rights. The courts first inquire whether the rights have been prima facie restricted and then proceed to evaluate this restriction using a proportionality test. In addition, it analyses the descriptive studies of the growing violation of India's human rights and judicial activism.

Introduction:

Judicial activism applies to court actions that exceed and are outside the jurisdiction of judicial review. In Part III, under the title 'Fundamental rights,' the Constitution of India of 1950 included a Bill of Rights and decreed that any legislation which would take away fundamental rights or abridge them would be void. Though such judicial review authority was vested in the High Courts and Supreme Court, however, maximum care had been taken to ensure that Indian courts were no more than legal auditors. It is said that an act above or without competence is from one point of view. No authority or jurisdiction for advocacy as such is conferred on the Court by the Constitution (U. K. Singh, 2021). It is said to be a breach of the division of powers by the judiciary in the areas of the Legislature and the Executive. But the drastic steps were taken by the judges due to the inactiveness and the ineffectiveness of the other state institutions (Supremacy et al., 2015). The court and the public interest litigations and the suo motu action have called attention to these; these courts have tried to resolve them. Thus, it is not shocking that the judiciary has repeatedly taken on the question of one of the vastest constitutional rights, i.e. Article 21 of the Constitution. (Studies, 2011)



Figure 1. Article 21: Protection of Life and Personal liberty Source-
Asthana S 2020

Objectives of the Study:

Fundamental justice is the central area of the universal declaration of human rights. The constitutional building blocks sought to transform India into an equally significant society, where the individual's protection and interests are important. The research focuses on basic rights and the citizens' knowledge and awareness in the judiciary system of a nation.

Article 21 (Figure 1) of the Indian Constitution reads thus:

“No one shall be deprived, other than by statute, of his life or personal freedom.”

This article includes numerous concepts and interpretations of freedom, education, sleep, the rights of the inmates, etc. In interpreting this article, both of these are the product of judicial activism. Judicial activism has therefore been influential in expanding the reach and context of this constitutional right in contemporary society. Pre-and post-emergency judgements vary greatly from one another; the emergency saw such a flagrant breach of rights that the judicial authorities took a stand and fulfilled their position as the constitutional defender (Studies, 2011). After the horrific experience of the notorious 1975 national emergency, a major change in the judicial attitude towards protecting personal freedom was observed. The two main cases that decide upon and extend the horizon for rights under Article 21 are **A.K Gopalan against Union of India and Maneka Gandhi v/s Union of India**. In providing adequate safeguards for the 'right to life and personal freedom,' guaranteed under Article 21 of India's Constitution, the judgment before the case of **Maneka Gandhi v/s Union of India (1978)**, was not satisfactory. Prior to the judgment of Maneka Gandhi, Article 21 granted only the arbitrary action of the executive and not legislative action the right to life and personal liberty.

“In the case of **Francis Coralie v/s Union Territory of Delhi**, The Supreme Court noted that "the right to life includes and does not include the rights to live with human dignity and the basic needs of life such as adequate nutrition, clothing and shelter and the right to read, write and express oneself in various forms, to move, mix and mix freely." In every regard, it should encompass the right to fundamental necessities of existence and also the right to carry out such functions and activities to make up the minimal necessities of human lives." The scope and content of the parts of this right would rely on the economic development of the land. [<https://blog.ipleaders.in/substantive-rights-flow-article-21>]” There are several terms used to define fundamental rights. They may be called universal human rights or fundamental and inalienable rights. Natural law is the basis of fundamental rights, as it stands today (Menon, 2020). The philosophy of such natural law is founded on the principle that such laws cannot be repealed and that under no condition can citizens be stripped of them. Fundamental rights position the State in its various ways a negative obligation not to violate human dignity. The constitutional declaration of fundamental rights serves to remind the competent government to safeguard certain rights and to restrict the extent of the state's actions in the relevant directions. The UN Charter of Human Rights 7 has provided a more concrete and universal texture to the definition of such fundamental rights (Chahande & Faculty, 2021).

Scope of the Study:

The rights were specified and limits were also precisely defined so that the courts could be left with the least discretion. In comparison to the Constitution of the United States, where unreserved rights were given, and courts were permitted to determine their borders and legitimize their restrictions, the Constitution of India enumerated the rights and limitations by reading the Fifth Amendment to America's Constitution. They intentionally evaded the terms of the proper law process to prevent the courts from overruling the laws by which judges could disagree with them. They desired limited judicial review and used legal procedures. (Democracy & Cardozo, 1998)

Most of the Indian leaders who sacrificed for national independence thought that Parliament was big, the courts simply being referees to ensure the parties played according to the rules of the game. It was meant to be interpreted by the courts not as what they ought to be, but as what they are. The courts may not have to worry about the impact of interpretation but what is law. The role of the legislature was to amend the law. The law in black letter law was not moral and the court's position as a mere constitutional interpreter was conceived with the emphasis placed on the letter rather than on the spirit of the Constitution. However, this view was not universally accepted. The majority rule implicit in such an agreement was apprehended by the representatives of minorities. For the courts, they had more influence. More judicial review was therefore endorsed. The rights were specified and limits were also precisely defined so that the courts could be left with the least discretion. In contrast to the US Constitution, the Constitution of India listed rights and limitations in unconditional terms and gave them to the courts to set their limits and to legitimize restrictions on them. By reading the Fifth Amendment of the Constitution of the United States' provision on 'the due process of justice,' the writers of the Indian constitution apprehended the wider stance of the US Supreme Court. They consciously avoided using the words 'the proper legal procedure' to prevent the courts from overruling legislation against which judges might disagree. They required restricted judicial examination and applied the legal terms procedure(Chan, 2016).

Methodology:

Two versions of the judicial review are available. One is the technocratic model where judges are technocrats and invalidate law if they break the law. In the second model, in view of its underlying spirit, a Court interprets the constitutional provisions and maintains the Constitution liberally. An activist court should offer a law new meaning to meet the changing social or economic situation or to broaden the horizons for the rights of individuals(Stone, 2011).Under a written constitution, judicial review of legislation must not be left solely democratic, because the sentence of the offer in this legislation is open and recognizes new concepts, with populations growing and social changes taking place, such as' equality before the law, 'the' equitable protection of law 'as well as' law procedure. ' A court that interprets a bill of rights is bound to be an activist and its decisions have a political effect (Kmiec, 2004).

Review of Related Studies:

(A. Singh & Dwivedi, 2021)defines the status of Constitutional literacy in India; highlights the importance and significance of constitutional literacy in India. Constitutional literacy simply means constitutional awareness and education and the laws established for citizens of a country.

(Sharma & Mitra, 2015)The protection of people's rights, the protection of life and the term "life," and an extended description and disruption of the basic environment, including animal life, have all been reviewed in Article 21 of the Constitution.

(Kumar & Choudhury, 2021)The document states that during the pandemic the constitutional and economic rights granted to domestic migrant workers and other labourers were violated extensively in accordance with the Indian constitution and that the policies of the country during the lockdown exacerbated the status of domestic migrant workers.

(Jain & Lilienthal, 2020)Basic groundwater rights in India are unlikely to change. There are now new rights in the Indian Constitution. The only derivative and unreported human rights for water; purpose of the research was to analyse water rights in India critically. The investigation questions whether and what kind of rights to water exist in India.

(Chahande & Faculty, 2021)Discussed the concept of legal advocacy, children's rights, and who are children? This article examines the foreign and national attempts made to safeguard the rights of children, including constitutional guarantees and legislative steps. This article

emphasized in particular the role of the judiciary in protecting and protecting children's rights.

Art 21: is the right to personal freedom as interpreted in England essentially implies, in some way that does not admit a legal excuse, the right of an individual not to be subject to jail, detention or other physical force. In other words, 'personal freedom' means freedom from the law's unauthorized physical restriction and coercion.

Case 1st

Protecting life and personal freedom:

While Article 21 begins with a negative term, the word No in respect of the deprived word has been used. The purpose of Article 21's fundamental right is to avoid invasions of personal freedom and life impoverishment except in accordance with the procedure laid down by law. This obviously suggests that this basic right was just against the state. In the case of **Maneka Gandhi v/s Union of India (1978)**, Art. 21 was given a new dimension by the Supreme Court. The right to live was held to be not limited solely to physical life, but also to human dignity. The Court also held that the right to live in the territory of Delhi in **Francis Coralie v/s Union** is not limited to animal life alone. It's more than life. In this case, the Supreme Court declared infringement of Articles 14 and 21 of Section 3 of the Conservation and Prevention Act, 1974. The challenged Section 3 states that an interview may only be conducted once a month after prior permission by the District Magistrate in Delhi and if the Customs Officer is present. The right to live cannot be restricted to the protection of any faculty or entity that is able to live or to communicate souls to the outside world but requires the right to everything that follows them, including the necessities of life, including proper nutrition and clothing.

Analysis:

This right is believed to exist, regardless of gender, race, nationality or the style of life, neither granted by the State nor established by the individual himself. It was given to every human being. Dignity is linked to human livelihood itself; this right to dignity cannot be taken away from anyone. This is not only the right of decent people but also of dictators, molesters and other social people. The honor of an unborn life in a mother's body is mortally ill. An individual does not participate in creating his or her dignity, the dignity is put as a prepared form away from him or her and that is like biological property, unleashed, uncreated or lost human property which also characterizes the unborn person in the body of a mother. The SC court, therefore, was unquestionably right to declare this right, in my opinion.

Case 2

Sexual harassment of female employee- violation of Article 14 and 21

In the **Vishakha vs. Rajasthan** case, the SC stated that sexual abuse of working women is a violation of fair justice for men and women and of the right to life and personal freedom. The logical result is that every occupation, work or trade is violated. Before the law was adopted, the SC set out such requirements to comply with all workplaces and other organizations. These instructions are processed in accordance with Article 141 of the SC Code. This case law relieved millions of working women who had to remain quiet in the face of sexual remarks, attacks etc. This case actually fills the gap to solve this form of problem faced by working women (Court et al., 2004).

Analysis:

Sexual assault is referred to as "even teasing" in India and is defined as "helpless sexual activity or conduct, whether directly or indirectly, sexual comments; physical contact and progress; pornograms; sexual favours or requests; sexual favour, sexual favours; sexual aggression, and unacceptable behaviours of any other physical, verbal, or nonverbal unwanted character. "The essential element is unwelcoming conduct and the effect on the recipient is therefore more important than the perpetrator's intention. So, in my opinion, the court's effort to pronounce a ruling on sexual assault was appreciable. Working women undoubtedly benefited and helped to consecrate their personal freedom.

Conclusion:

Justice advocacy is not a mistake. It is a key feature of a constitutional court's dynamics. The check against democracy is a counter-majority one. However, judicial activism does not entail judicial governance. It must also operate within the parameters of the court procedure. It has the function to legitimize the acts of the other government organs within those limits or, seldom enough, to stigmatize them. The court is the State's weakest body. Only when people have confidence in it becomes powerful. The legitimacy of the Court and of judicial activism constitutes certain confidence in the people. The court must work to maintain its integrity on an on-going basis. They must not bow to public pressure, but must stand firm against any pressure. This article describes a provisional approach for evaluating legal deference in common law jurisdictions in relation to rights reasoning. The system is designed to facilitate evaluations of the rights of deferential courts – mostly done by academics – and to provide a statistical basis for quantitative studies of legal deference, thus enhancing our understanding of this ever greater phenomenon.

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