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Judicial Activism With Special Reference To Article 21 Of The Indian Constitution

Dr T.N.Mishra*

Vandana Singh*

Dr O.P. Singh*

Dr Alok Kumar *

*Assistant Professor,Department of Law,DDU Gorakhpur University Gorakhpur.

Abstact: Article 21 is one of the precious and fundamental rights under the Indian Constitution. Although it is not an exhaustive right but this article includes within ambit various other fundamental rights. Due to growth in every field of human right this article is very important.This paper focuses the expanding horizon of Article 21 and the need as well as the role of judiciary.

Key words: Judicial Activism, Fundamental Rights, Human Rights, Separation of power, Personal liberty.

The term judicial activism' has not been defined anywhere in the Constitution of India nor it has been defined in any Indian statute. It is the power by which the judiciary examines or determines the unconstitutionality of the legislative and executive orders. Judicial Activism has always been a source of heated debate, especially in the light of recent developments in this regard. Last few decades various controversial decisions, judges of the Supreme Court as well as various High Courts have once again triggered off the debate that has always generated a lot of heat. But still, what the term "judicial activism" actually connotes is still a mystery. From the inception of legal history till date, various critics have given various definitions of judicial activism, which are not only different but also contradictory.

Doctrine of separation of powers provides that none of the organ of the Government shall usurp the power of the other organ. Thus, the legislature cannot exercise executive or judicial power, the executive cannot legislative or judicial power and the judiciary cannot exercise legislative or executive power of the Government. According to the theory of separation of powers, these three powers

and functions must, in free democracy, always be kept separate and be exercised by separate organs of the Government.

Article 13(2)[i] declares that State shall not make any law which contravenes the Fundamental Rights and any law made in contravention of Fundamental Rights shall be void. Under Article 13(3) the term "law" has been described to include even any ordinance, order, bye law, rule, regulation, notification, custom or usage having

in the territory of India the force of law. From here it becomes clear that the Constitution has vested the judiciary with power of judicial review. It is by virtue of this power of judicial review, provided specifically under the Constitution that [1]the judiciary has been capable to protect the Fundamental Rights from the legislative and executive encroachments. Since judiciary through its power of judicial review has been able to protect the Fundamental Rights enshrined in the Constitution, the judiciary has been termed as the extension of these rights. The power of judicial review under the constitution has never been questioned since the commencement of the Indian Constitution.

The nature of the Indian Constitution is organic like a living organ; it is ongoing and with the passage of time, must change. Law must therefore constantly be on the move adapting itself to the fast changing society and not lag. Constitution is a living organism and the latent meaning of the expressions used can be given effect to only if a particular situation arises. It is not that with changing times the meaning changes but changing times illustrate and illuminate the meaning of the expressions used. The connotation of the expressions used takes its shape and colour in evolving dynamic situations behind. The principle of transformative constitutionalism also places upon the judicial arm of the state a duty to ensure and uphold the supremacy of the Constitution, while at the same time ensuring that a sense of transformation is ushered constantly and endlessly in the society by interpreting and enforcing the Constitution as well as other provisions of law in consonance with the avowed object. Therefore, it is necessary to conduct a study about whether judiciary usurps functions allotted to the other organs through the judicial activism or the judiciary merely performs their legitimate functions.

Article 21[ii] is the most important outfit of the fundamental rights guaranteed by the Constitution of India. Liberty of a citizen is a most important right won by our forefathers after long, historical and arduous struggles. Our Founding Fathers realised its value because they had seen during the freedom struggle civil liberties of our countrymen being trampled upon by foreigners, and that is why they were determined that the right to individual liberty would be placed on the highest pedestal along with the right to life as the basic right of the people of India. The Supreme Court in recent decade has been asking major pronouncements with respect to right to life and personal liberty under Article 21 of the Indian Constitution, which are not only raising the status of Fundamental Rights but are also bringing about a significant change in India's Constitutional jurisprudence.

Maneka Gandhi's[iii] case has been exerting multidimensional impact on development of constitutional law in India. In course of time Article 21 has proved to be a very fruitful source of rights of the people. Article 21 provided four crucial expression viz. "life', 'personal liberty', 'procedure' and "law' each of these expression has been explained through the several judgments of the Supreme Court and different High Courts of India. Therefore, this study analyze the Indian judiciary has time and again interpreted Article 21 of the Indian Constitution in new innovative ways in order to bring relief to the oppressed and current trend of the creative interpretation of the right to life and personal liberty.

Judicial Creativity is a Boon for Article 21 is substantially verified. In fact Article 21 of the Constitution of India is literally a smallest Article but by judicial creativity its scope has been widened to such an extent that all the rights which are not specifically enumerated in our Constitution can also be asked for by a person within the purview of Article 21. This Article included variety of rights although they were not included in part III of the Constitution, they were necessary for the full development of the various aspects of the personality and liberty of the individual. Although, in the case of A.K. Gopalan,[iv] the more formal positivist interpretive approach was applied and its scope was extended through creative judicial process in Maneka Gandhi's case.

In this case Article 21 got an expansive approach adopted by the Apex Court, in which the Court performed an activist role to interpreting fundamental rights and effectively created new doctrines of due process and non-arbitrariness. Maneka Gandhi's case[v] has been exerting multidimensional impact on development of constitutional law in India.

The idea of judicial activism has been around far longer than the term. Before the twentieth century, legal scholars encountered over the concept of judicial legislation, that is, judges making positive law. Blackstone favored judicial legislation as the strongest characteristic of the common law. Bentham regarded this as a usurpation of the legislative function and a charade or miserable sophistry." Bentham, in turn, taught John Austin, who rejected Bentham's view and defended a form of judicial legislation in his famous lectures on jurisprudence.' In the first half of the twentieth century, a flood of scholars discussed the merits of judicial legislation, and prominent scholars took positions on either side of the debate.

One basic fundamental question that confronts every democracy run by a rule of law is what is role or function of a judge. It is the function of a judge merely to declare law as it exists or to make law? This question is very important for on it depends the scope of judicial activism. Judicial activism is an inherent feature of judicial review and the judicial review is an essential component of rule of law. The power of judicial review means that the courts have authority and obligation to determine the legitimacy of the executive and legislature act and if the court found them to be contrary to the constitutional principles can declare void. The power of judicial review is necessary to ensure that the power of the state exercised in accordance with the rule of law and the provisions of our Constitution or intent of founding fathers.

The power of judicial review refers to the courts independence from other branches of the government. The role of the courts as adjudicators of the dispute, Interpreters of the law and the protector of the Constitution. In this capacity, the courts act as a shield against unwarranted deprivations of life and personal liberty of the individuals by the state. To fulfil this role judges are called upon to determine a complex issues, the resolution of these disputes often embraces social and moral questions that are profound importance to society. Every state action has to be tested on the anvil of rule of law and that exercise is performed, when occasion arises by reason of doubt raised in that behalf in the courts. The judiciary has to take on a more proactive role to interpret the laws and in cases where laws do not exist.

In Marbury v. Madison,[vi] Chief justice Marshall held that, *"It is emphatically the powers and duty of the judiciary to say what the law is. He is further asserted that the federal court has power to refuse to give effect to congressional legislation if it is inconsistent with the court's interpretation of the constitution. He also said, judges by taking oath, as directed by the constitution, bind themselves to uphold the sanctity of the constitution and any act or action that violates the paramount law will be declared void by the law."*

Although the American Constitution does not mention that the Supreme Court has the power to invalidate acts of Congress that are contrary to the Constitution, Chief Justice Marshall held that such power was implied. This assertion of power was criticized severely, but its legitimacy and desirability were finally accepted. An American academic wrote in his book[vii] " The Constitution Law of the United States judicial review of legislative acts as "product of American law".

In England, Parliament is sovereign and there is no written Constitution to control or limit that sovereignty and therefore the courts lack the power to adjudicate upon the constitutionality of the laws of parliament though they may restrict their reach and scope through interpretation in the light of constitutional principles.

In India, The Supreme Court has characterised judicial review as a "basic feature of the Constitution". The doctrine of judicial review has been expressly provided in the Constitution of India that says that all laws in

force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void. Further says that the State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

Judicial review in India bears resemblance to that available in the United States where the Supreme Court and other courts have endowed themselves with the power to declare a law unconstitutional if it is found not to be in conformity with the provisions of the Constitution. In the context of judicial activism the role of the doctrine of rule of law is also of' vital importance. The two great values which emanate from the concept of rule of law in modern times are: (1) no arbitrary government; and (2) upholding individual liberty. According to Diecy,[viii] the rule of law is one of the fundamental principles of the English Legal System. It is embodied in the concept of rule of law that:

(1) Absence of Arbitrary Power

(2) Equality before Law

(3) Individual Liberties.

Absence of arbitrary power means, No man is above law. No man is punishable except for a distinct breach of law established in an ordinary legal manner before ordinary courts. The government cannot punish anyone merely by its own fiat. Explaining the second principle of rule of law, Diecy states that there must be equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts, and third, the general principles of the British Constitution, and especially the liberties of the individual, are judge-made, i.e., these are the result of judicial decisions determining the rights of private persons in particular cases brought before the courts from time to time.

The Constitution is not the source but the consequence of the rights of the individuals. Principle of rule of law leaves it to the courts to determine and pronounce what the law is. If the court did not have power to determine what the law is, so it will be difficult to give any protection to liberty against any arbitrary action or unreasonable exercise of power by the state. Dicey emphasised the role of the courts of law as guarantors of liberty and suggested that the rights would be secured more adequately if they were enforceable in the courts of law than by mere declaration of those rights in a document. According to Dicey,mere incorporation or inclusion of certain rights in the written constitution is of little value in the absence of effective remedies of protection and enforcement.

Dicey's rule of law has been adopted and incorporated in the Constitution of India. The preamble itself enunciates the ideals of justice, liberty and equality. These concepts are enshrined as fundamental rights and are made enforceable in chapter three of the Constitution. All three organs of the government viz. legislature, executive and judiciary are subordinate to the constitution and have to act in accordance with it, Constitution is supreme. The Constitution guarantees right to equality before law. The principle of judicial review has been guaranteed through several constitutional provisions. A significant derivative from 'Rule of Law' is judicial review. Judicial review is an essential part of Rule of Law. Judicial review involves determination not only of the constitutionality of the law but also of the validity of administrative action. The actions of the state public authorities and bureaucracy are all subject to judicial review; they are thus all accountable to the courts for the legality of their actions.

Doctrine of separation of powers provides that none of the organ of the Government shall usurp the power of the other organ. Thus, the legislature cannot exercise executive or judicial power, the executive cannot legislative or judicial power and the judiciary cannot exercise legislative or executive power of the Government. According to the theory of separation of powers, these three powers and functions must, in free democracy, always be kept separate and be exercised by separate organs of the Government.

Montesquieu formulated this doctrine in his book[ix] "The Spirit of Laws" in the year 1748, said that:

> *"When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty, because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again, there is no liberty if the judicial power be not separated from the legislative and the executive. Where it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would then be the legislator. Where it joined with the executive power. the judge might behave with violence and oppression. Miserable indeed would be the case, were the same man or the same body whether of the nobles or of the people, l0f exercise those three powers, that of enacting laws, that of executing the public resolutions and that of judging the crimes or differences of individuals."*

The theory holds that if a person or body is given power to do two or all three of these functions, it would be very easy to go against the people's wishes and deny freedom unjustly. In this context, Lord Acton rightly said: "Every power tends to corrupt and absolute power tends to corrupt absolutely".

The doctrine of separation of powers stated in its rigid form means that each of the powers of government, namely, executive, legislative and judicial should be confined exclusively to a separate department or organ of Government. There should be no overlapping either of functions or of persons.

The doctrine of separation of powers has been accepted and strictly adopted by the Founding Fathers of the Constitution of the United States of America. There the legislative powers are vested in the Congress, the executive powers in the president and the judicial powers in the Supreme Court and the court subordinate thereto. In American Constitution there is a system of 'checks and balances and the powers vested in one organ of the Government cannot be exercised by any other organ. On the contrary, in England no separation of powers accepted in its strict sense. Though the three powers are vested in three organs and each has its own peculiar features, it cannot be said that there is no 'sharing out' of powers of the Government. Thus, the Lord Chancellor is the Head of the Judiciary, Chairman of the House of Lords, a member of the Executive and often a member of the Cabinet. The Indian Constitution has not recognised the doctrine of separation of powers in its absolute form but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the state, of functions that essentially belongs to another. The executive indeed can exercise the powers of department or subordinate legislation when such powers are delegated to it by the legislature. It can also, when so empowered, exercise judicial functions in a limited way.

In America, the evolution of judicial activism could be seen since 1801 when chief justice Marshall, in Marbury v Madison highlighted and reaffirmed he power of U.S. Supreme Court to go against the state and invalidate an act of Congress.

Once again in 1856 in the case of Dred Scott v. Standford[x] the U.S. Supreme Court invalidated the Missouri Compromise and interpreted the Constitution as expressly allowing slavery, and held that people of American descent, whether or not they were slaves, could not citizens of the United States. This was in direct contrast to the will of Congress, and set the scene for the civil war.

In 1954 Brown v. Board of Education of Topeka,[xi] was a landmark decision of the U.S. Supreme Court in which the Court ruled that U.S. state laws establishing racial segregation in public schools are unconstitutional, even if the segregated schools are otherwise equal in quality. Handed down on May 17, 1954, the Court's unanimous decision stated that: Separate educational facilities are inherently unequal, and therefore violate the equal protection clause of the fourteenth amendment of the U.S. Constitution. Chief Justice Earl Warren Court expanded the rights of African Americans, the conservatives called the Court adventurist.

In Plessy v. Ferguson,[xii] the Supreme of U.S. upheld segregation in railway coaches and laid down the well known doctrine of 'separate but equal'. According to this doctrine, the right to equality was not violated when black citizens of the United States were not allowed to the same coaches as the white citizens as long as separate and equally good coaches were available to the blacks.

The Constitution of Canada was modelled on the British tradition of unwritten principles and conventions governing the exercise of legal power to produce a constitutional monarchy, parliamentary democracy, and responsible government, as well as the American paradigm of constitutional supremacy embodied in written provisions, required in turn by the federal rather than unitary structure of the state. It outlines Canada's system of government. Its contents are an amalgamation of various codified Acts, treaties between the Crown and indigenous people, uncodified traditions and conventions.

Canadian Courts have a long tradition of attempting to separate law and politics and therefore they also have a long tradition of attempting to avoid judicial activism. As Carl Baar stated in Judicial Activism in Comparative Perspective (1991), "The judiciary played an important but largely invisible role in the Canadian political system for over a century."

The passage of Canadian Charter of Rights and Freedoms in 1982 changed the perception and the role of the Courts as policy makers, The Charter gave the Canadian Courts much greater power of judicial review. Because, it included difficult concepts and provisions, the Canadian Courts were almost forced to interpret the new constitutional rights contained within it in order to clarify issues of human rights in complex modern society.

In Australia, the Mason Court marked a new era of constitutional decision making in the High Court of Australia. By rejecting the legalistic approach which characterized the High Court's earlier jurisprudence, the Mason Court created new possibilities for Australian constitutional adjudication, including the rise of constitutional rights and freedoms jurisprudence, specifically recognizing an implied freedom of political communication.

The Mason Court's increased willingness to interpret the Constitution in a more "creative" or "activist" fashion. The implied freedom is now an established part of Australia's constitutional doctrine, which, given the absence of an express right to free speech in the Constitution, is remarkable. The Gleeson Court has significantly retreated from the Mason Court's activist approach to the exercise of judicial review and, in doing so, has sought to reaffirm the Court's commitment to constitutional legalism.

In England, the Courts did not have the power to review the Acts of Parliament; the Acts of Parliament are unchallengeable, because existence of Parliamentary supremacy which represents an English incarnation of Austin's theory of sovereignty, but the judicial review of administrative action existed. In England judicial review gets its legitimacy by making higher authority of reason and natural justice.

In the absence of written Constitution, the decisions made by the judges in the United Kingdom declare important rules of public law which often would not have been enacted by Parliament; such decisions provide

the legal foundation of British constitutionalism. Therefore, the power of the courts to determine the law applicable in a dispute or matter brought before them for adjudication has always had an important legislative element. The exercise of this legislative power has not only enhanced the prestige of the English courts, but has also lent efficacy to their role as the protectors of liberty of the individual.

In1922, Ireland obtained its independence from Great Britain. Parliamentary Sovereignty was a key element of common law tradition which was followed by Ireland. Ireland adopted a new Constitution in 1937 which substituted parliamentary sovereignty with the notion of popular sovereignty express through a written constitution adopted by the people in a referendum and being amended only by the people in a referendum. The sole and exclusive power of making laws vested in the parliament provided by the Constitution of Ireland. Any Law which is any respect repugnant to the Constitution or any provision of it, the parliament might not enact and to the extent of that repugnancy any such law is invalid. The High Court is competent to make orders concerning the validity of any law having regard to the provisions of the Constitution, and no other court can deal with such a matter except the Supreme Court on appeal.

After the landmark judgment of Ryan v. Altoney General[xiii] in 1965, the Supreme Court of Ireland established a new basis for assertion of human rights in the Irish Constitution due to the expansive interpretation of Article 40 of the Irish Constitution. The Supreme Court recognised unremunerated rights were seen to serve important social objectives. In recent development in which the courts became active in giving judicial recognition in social and economic rights. Between 1965 to 1990 this activism concentrated on the identification of fundamental rights which had not been expressly provided in the Constitution of Ireland. Now the courts have tended to show greater restraint in the recent years, concentrating on building on established jurisprudence rather than seeking to new rights.

Judicial Activism in India, is concludes that the constitutional provision relating to judicial activism , concept of Public Interest Litigation and its development and position of judicial activism in pre emergency period and post emergency period .

Constitution of India, a written constitution is the formal source of all constitutional law in country. lt is regarded as supreme or fundamental law of the land. Every organ in the country must act in accordance with the Constitution. This means that the institutions of government acted by the constitution have to function in accordance with it. The judiciary is endowed with the function of protecting the individual's rights. In India neither the constitution of India nor any statute defines the term judicial activism but there are some provisions which directly or indirectly related to judicial activism.

The doctrine of judicial review provided under Art. 13 of the Constitution. It means that the constitution is the supreme law of the land and any law inconsistent therewith is void. The courts perform the role of expounding the provisions of the constitution and exercise power of declaring any law or administrative action which may be inconsistent with the constitution as unconstitutional and hence void the judicial function stems from a feeling that a system based on a written constitution can hardly be effective in practice without an authoritative, independent and impartial arbiter of constitutional issues and also that it is necessary to restrain governmental organs from exercising powers which may not be sanctioned by the constitution.

Writ jurisdiction of the Supreme Court and High Courts vested under Articles 32 and 226. It constitutes one of the major constitutional safeguards against the state tyranny and can be said to confer ample scope for judicial activism on Supreme Court and High Courts, which is evident from a chain of pronouncements made by it while giving a contemporary meaning to the fundamental rights and thereby creating new rights and obligations from time to time.

Power to do complete justice under Article 142 of the Constitution of India vests in the Supreme Court. This power is very wide in amplitude. The plenary jurisdiction is the residual source of power which the Supreme Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties while administering justice according to law. Other important provision under the Indian Constitution which is indirectly relating to judicial activism is provided under Articles 131, 132, 133, 134, 136, 141.

Preamble to the Constitution of India envisages Social, Economic and Political justice. One of the objectives of Indian legal system is to deliver justice to all. Every individuals has right to access the courts of justice, who an aggrieved by the actions of others. In order to achieve this spirit of Justice, the judicial activism has led to the birth of Public Interest Litigation. The object of Public Interest Litigation explained by Justice Bhagwati in Bandhua Mukti Morcha,[xiv] observed: *"Where one of the parties to a litigation belongs to a poor and deprived section of the community and does not possess adequate social and material resources, he is bound to be at a disadvantage as against a strong and powerful opponent under the adversary system of justice, because of his difficulty in getting competent legal representation and more than anything else, his inability to produce relevant evidence before the Court. Therefore, when the poor come before the Court particularly for enforcement of their fundamental rights, it is necessary to depart from the adversarial procedure and to evolve a new procedure which will make it possible for the poor and the weak to bring the necessary material before the Court for the purpose of securing enforcement of their fundamental rights."*

The expanded concept of locus standi in connection with PIL, by judicial interpretation from time to time, has expanded the jurisdictional limits of the courts exercising judicial review. This expanded role has been given the title of 'judicial activism' by those who are critical of this expanded role of the judiciary.

During pre-emergency era the Supreme Court of India began as a positivist court and strictly followed the traditions of British Courts. In A.K. Gopalan v State of Madras,[xv] Supreme Court exemplified a more formal, positivist interpretative approach to the Indian Constitution. The Court gave narrow interpretation to words such as "personal liberty" and "procedure established by law" contained in Article 21 of the Constitution of India.

The Court seems to have gradually become bolder in the late sixties. The court challenged Parliaments power to amend the Constitution. This brought about the major conflict between the Parliament and the Court in Golaknath v State of Punjab in 1967. The case decided that the Constitution did not provide for a specific power to take away or abridge the fundamental rights enshrined in part III of the Constitution, even by amendment under Article 368. Parliament through by passing 24th constitutional amendment made significant changes in Article 368. Parliament is thus, empowered to amend any provision of the Constitution including the fundamental rights. The validity of this amendment was challenged in Keshwananda Bharati v. State of Kerala.[xvi] In this case judges were of the view that 24th constitutional amendment is valid, and that by virtue of Article 368, as amended by the 24th constitutional amendment, Parliament has power to amend any or all the provisions of the Constitution including those relating to the fundamental rights, but it could not alter the basic structure of the Constitution. By the ruling party during the emergency in 1975 passed laws and their application was excessively harsh and severe with the help of its majority and absence of any political opposition that the limitation upon Parliament's power of constitutional amendment acquired legitimacy. In Indira Gandhi v. Raj Narain,[xvii] the Supreme Court had an occasion to make a reference to Keshvanand Bharati and accepted the majority opinion on the doctrine of basic structure or framework of the Constitution. This decision conferred legitimacy on the basic structure doctrine. This doctrine established a thought that the power of constitutional amendment could not be equal to the power of making a constitution. This doctrine

imposes a restriction upon the amending power of the parliament. That power made Indian Supreme Court as a most powerful apex Court of the world.

After the end of the dark period of internal emergency, during which total deprivation of right to life and personal liberty received the judicial approval from the highest court of the land,[xviii] the supreme court in recent years has been asking major pronouncements with respect to right to life and personal liberty under Article 21 of the Indian Constitution, which are not only raising the status of Fundamental Rights but are also bringing about a significant change in India's jurisprudence.

The Supreme Court in the post- emergency era, particularly from Maneka Gandhi's case[xix] onward, has adopted innovative and activist role while interpreting the right to life and personal liberty. The Court has taken to interpret these rights in the life of the Directive Principles of State Policy as incorporated in Part IV of the Constitution as well as the values underlying the U.N.O's Universal Declaration of Human Rights, 1948 and other international covenants. As a result of this judicial activism, the concepts of "life" and "personal liberty" embodied in Article 21 of the Constitution have gradually broadened.

After creative Interpretation of Article 21 of the Constitution of India, concludes that Article 21 is the most important of the fundamental rights guaranteed by the Constitution of India. Maneka Gandhi's case has been exerting multidimensional impact on development of constitutional law in India. In course of time Article 21 has proved to be a very fruitful source of rights of the people. In this context this study deals with the tems 'life, 'liberty', 'procedure established by law' and 'due process of law' relating to Article 21 and expanding horizons of Article 21 of the Constitution of India are also dealt.

In A.K. Gopalan Case[xx] it was held that the expression 'procedure established by law' means procedure enacted by law made by the state. In this case Apex Court exemplified a more formal, positivist interpretive approach to the Indian Constitution. In the case of R.C. Cooper,[xxi] the more formal positivist interpretive approach to the Indian Constitution in the judgment of Gopalan was overruled and its principle was extended to Article 21 through creative judicial interpretation in Maneka. It was the first major decision of the Supreme Court involving personal liberty in the post- emergency period. In this case Article 21 got an expansive approach adopted by the Apex Court, in which the Court performed am activist role to interpreting fundamental rights. In this case a majority of Judges found that the expression "procedure established by law" did not mean any procedure howsoever arbitrary or fanciful. The procedure had to be fair, just, and reasonable.

After the judgment of Maneka Gandhi, the Court has taken an active interest in seeking to improve a system which is cruel and insensitive to human pain and suffering. Through judicial activism the Court has expounded the new constitutional jurisprudence of personal liberty and widened the horizons of prison justice. In Sunil Batra v. Delhi Administration,[xxii] Desai, J. pointed out that the conviction of a person for a crime did not reduce him to a non-person vulnerable to major punishment imposed by the jail authorities without observance of procedural safeguards.

The Supreme Court has taken a big innovative step forward in humanizing the administration of criminal justice by suggesting that free legal aid be provided by the State to poor prisoners facing a prison sentence .In Hussainara Khatoon vState of Bihar[xxiii] , Justice Bhagwati observed that: *"Now, a procedure which does not make available legal services to an accused person who is too poor to afford a lawyer and who would ,therefore,have to go through the trial without legal assistance, cannot possibly be regarded as reasonable, fair and just."*

In Kartar Singh v. State of Panjab[xxiv] the Supreme Court observed that:The concept of speedy trial is read into Article 21 as an essential part of the Constitution . In Rudal Shah v. State of Bihar [xxv],The Supreme Court

has held that the only effective remedy open to judiciary to prevent violation of the right guaranteed under Article 21 of the Constitution of India is payment of compensation under Article 32 of the Indian Constitution.

In Francis Coralie Mullin v.Union Territory of Delhi,[xxvi] Bhagwati, J.observed that:

> *" ....we think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessaries of life such as adequate nutrition ,clothing and shelter and facilities for reading ,writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings it must in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights."*

The judicial grammar of interpretation of has further broadened the scope and ambit of Article 21 and now "right to life" includes the "right to livelihood". So much so that even right to earn livelihood is also considered as a part of right to life under Article 21 of the Constitution, was recognized by the Supreme Court of India in Olga Tellis v. Bombay Municipal Corporation.[xxvii]

In Shantisar Builders v. Narayan Khimlal Totame,[xxviii] has ruled that the right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to cloth. Once again in Chameli Singh v. State of Uttar Pradesh[xxix], the Court observed: "Shelter for human being, therefore, is not mere a protection of his life and limb It is home where he has opportunities to grow physically, mentally intellectually and spiritually e.g, the right to decent environment and a reasonable accommodation to live in.

The Constitution of India does not grant in specific and express terms any right to privacy as such. Right to Privacy is not enumerated as a Fundamental Rights in the Constitution. However, such a right has been called by the Supreme Court from Article21. In R. Rajagopal v. State of Tamil Nadu,[xxx] the Court had to decide on the rights of privacy vis-a-vis the freedom of the press 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". In Justice K S Puttaswamy (Retd.), and Anr. v. Union of India and Ors.,[xxxi] The Supreme Court held that: Right to privacy is intrinsic to life and liberty and is inherently protected under the various fundamental freedoms enshrined under Part Ill of the Indian Constitution.

The Supreme Court first recognised the right to education as a fundamental right in Mohini Jain v. Union of India[xxxii] .In the case of P Unnikrishnan vs. State of Andhra Pradesh,[xxxiii] The Court observed that: Right to education is not stated expressly as a Fundamental Right in Part III of the Constitution of India. However, having regard to the fundamental significance of education to the life of an individual and the nation, right to education is implicit in and flows from the right to life guaranteed by Article 21.

Going a step further after its historic judgment in Aruna Ramchandra Shanbaugh v. Union of India,[xxxiv] a five- judge Constitution Bench of the Supreme Court in Common Cause (A Regd. Society) V. Union of India and Another,[xxxv] made it legal for a terminally ill patient to decline to prolong his/her life with life support measures and provided for the "living will" which is advance directive in which is "advance directive" in which an individual can express his/her will in advance whether she/he would like to live with life support system in a vegetative state or would like to die. Recently, in a nine Judges judgment in K.S. Putaswamy and Another Vs. Union of India and Others[xxxvi], Justice J. Chelameswar elaborating the concept of right to life as enshrined in Article 21 under the Constitution of India has observed: "An individual's right to refuse the life

prolonging medical treatment or terminate life is another freedom which falls within the zone of right of privacy."

In Bodhisattwa Gautam vs. Subhra Chakraborty,[xxxvii] the Supreme Court held that if the Court trying an offence of rape has jurisdiction to award compensation at the final stage, the Court also has right to award interim compensation.

In Suchita Srivastava v. Chandigarh Administration[xxxviii] ,the Supreme Court held that, a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India. The Supreme Court for the first time discussed right to sleep as a fundamental right acknowledged under Article 21 of the Constitution of India in the landmark judgment of In Re: Ramlila Maidan Incident v. Home Secretary, Union of India & Ors[xxxix]. In Shakti Vahini v. Union of India,[xl] Supreme Court held that the right to choose life partner is part of Articles 19 and 21. Kerala High Court in landmark judgment Faheema Shirin R.K. V. State of Kerala & Ors.[xli], held that the right to have access to internet becomes part of right to education as well as right to privacy Article 21 of the Constitution of India.

[i] .The Constitution of India.
[ii] .Ibid
[iii] .AIR 1978SC597
[iv] .AIR 1950SC27
[v] .AIR 1978SC597
[vi] .5,U.S.137
[vii] .H.VON LOST,BIBLIOLIFE,2009
[viii] .Introduction to the Law of Constitution,London, Macmillan and co.1889
[ix] .The Spirit of Law ,Prometheus Books(2002)revised adition
[x] .60,U.S.393
[xi] .347,U.S.483
[xii] .163,U.S.537
[xiii] .1965,I.R.S.C.294
[xiv] .Bandhua Mukti Morcha v. Union of India ,AIR 1984SC815
[xv] .Supra 4
[xvi] .AIR 1973SC1461
[xvii] .AIR 1975SC2299
[xviii] .ADM Jabalpur v.Shivakant Shukla AIR1976SC1276
[xix] .Supra 5
[xx] .Supra 4
[xxi] .AIR1970564
[xxii] . SCC(1978)494
[xxiii] .AIR1979SC1373
[xxiv] .1994(3SCC569)
[xxv] .AIR1983SC1086
[xxvi] .(1981)1SCC608
[xxvii] .AIR1986SC180
[xxviii] .AIR1990SC603
[xxix] .AIR 1995,827
[xxx] .(1994)6SCC632
[xxxi] .(2017)10SCC1
[xxxii] .(1992)3SCC666
[xxxiii] .(1993)1SCC645
[xxxiv] .(2011)15SCC480
[xxxv] . AIR2018SC1665
[xxxvi] .Supra 31
[xxxvii] .AIR1996SC922
[xxxviii] .(2009)9SCC1
[xxxix] .(2012)5SCC1
[xl] .(2018)7SCC192
[xli] .W.P.(C)No.19716 of 2019