

# Article 21 at Epidemics Like Covid 19: A Stepping Stone for Judicial Creativity

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**Abstract -** The judiciary being independent in a democratic set up may have a tendency to tilt towards judicial activism where judges interrupt their own personal feelings and selfish motives into a sentence or conviction, instead of upholding the laws of the land. Judicial activism mostly harms the public at large. It is a deviation from the law that is passed by the legislature. Repeated interference of the courts can wear away the faith of the people in government institutions. The interventions of the court at a time like Covid 19 can be called judicial creativity than judicial activism since it is for the assistance of the people at large where the courts remind the government to act up to the standards expected by the people and the constitution of India especially in Article 21. The application of Article 21 at Covid 19 the courts become a humanitarian and become more nearer and dearer to the people. Article 21, right to life enables the Supreme Court and High Courts of India to give humanitarian verdicts by which state has to wake up and act for the welfare and attainment of basic needs like oxygen, affordable treatment, facilitation to live etc.

**Key Words:** Article 21, right to live, Judicial creativity, Covid 19, judicial activism, right to life, legislation at emergency, epidemic and law.

## INTRODUCTION

The article 21 of the Indian Constitution is said to be the heart and soul of the constitution and heart of the fundamental rights. Fundamental rights are the rights guaranteed in Part III, article 12 to 35 of the Indian Constitution. Right to life one among the fundamental rights that is guaranteed by the Constitution and it means the right has been provided by the state only. Thus, any private encroachment of the right would not come under article 21 and the opposite party in case of violation of article 21 would be state that is government, governmental bodies, legislature, local governments etc. The remedy for any violation of the article would be writ through article 226 in High Courts and article 32 in the Supreme Court of India. The meaning of right to life is much more than just to survive and it extends to able to

live complete life with dignity and honour. Thus, the right to life is a fundamental human right, central to the fulfilment of all other human rights. This Paper is mainly focussing the article 21 on the basis of the application humanitarian face of the article in various courts of India during Covid 19 and tries to state that covid 19 has assisted our judiciary to be a stepping stone for judicial creativity with the proper implementation of Article 21.

## THE ORIGIN OF THE CONCEPT RIGHT TO LIFE

Right to life is certainly the most important and vital concept of the protection of human rights. The thought of right to life as a fundamental right can be seen in many sources including England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man. Later the European convention for Human Rights and other international documents adopted the concept and enlightened it as that the very physical survival is precondition for promoting various right and liberties. It is to be noted that everyone's right to life is a direct reference and emphasis in the very wordings of Universal Declaration of Human Rights. The United Nations (UN) implemented the Universal Declaration of Human Rights in 1948 and the International Convention on Personal and Political Rights that has reiterated the same idea in 1966. The very provision is being expressed as "Everyone's right to life shall be protected by law" is inserted in Article 2 of the European Convention for Human Rights and this is the vital and core theme that is adapted in every Munsiff law including India. The International human rights law recognizes this basic right as accruing at birth (Echr-cedh, 2022).

## ARTICLE 21 A STEPPING STONE FOR JUDICIAL CREATIVITY

It is certain that the judiciary has advanced from a positive institution to an activist one in the 20<sup>th</sup> century and the trend is called judicial activism. Judicial activism is a judicial way of command holding that the courts can and should move beyond the application of law to consider broader societal implications in its decisions (Wolfe, Christopher (1997)). It is a ruling of the court based on the political and personal rational and prudence of the judges over an issue which is very much socially binding for the betterment of the society as a whole. However, when it emanates to the application of Article 21 of the Constitution of India in covid 19 pandemic related cases it is very visible that the judiciary has not only involved in judicial activism but rather judicial creativity in humanitarian aspect also.

#### ARTICLE 21 IMPARTS RIGHT TO HEALTH

The Court is of the opinion that the right life does not mean that maximum hospital care by the state however at least the minimum decencies of life consistent with human dignity and in *Suo Motu vs. State of Gujarat and Others* case the court says, “Article 21 of the Constitution clearly imposes a duty on the Government to take whatever steps are necessary to ensure that everyone has access to health facilities, goods and services so that they can enjoy, as soon as possible, the highest attainable standard of physical and mental health. By virtue of Article 21 of the Constitution, the State is under a legal obligation to ensure access to life saving drugs to patients. A reasonable and equitable access to life saving medicines is critical to promoting and protecting the right to health (Mr. Vikram Nath, 2020). In the very case the court has clearly said that court would not interfere with the functioning of the State but the court has to step in by *Mandamus* when the state fails to perform its duty. The court further said that a true test of an efficient Government can be determined from its performance in times where a government has to rise to the occasion and protect its citizen and it is the duty of the state to implement the order of the court in the right spirit bearing in mind the paramount importance of the health and wellbeing of the people as pre-emptorily understood in the right to life guaranteed under Article 21 of the Constitution of India (Burrell, 2019). In the very case itself the court said that the very good works of the government will be appreciated and at the same time court warned that the court would

come down heavily on any kind of remiss, negligence or carelessness from the part of the government at a crisis time of covid. The court also reminded the state that it is the duty and obligation of her towards her citizen very well and should be competent in discharging its duties. Under article 21 it is the duty of the state to be humane by being vigilant, careful and active to the welfare of its citizen’s health (Mr. Vikram Nath, 2020).

#### ARTICLE 21 APPLICABLE TO RIGHT TO RECIEVE OXIGEN AT HOSPITALS

The court unwaveringly directed the central government in *Ashok Dagliya v. The State of Madhya Pradesh* as “The right to life enshrined under Article 21 of the Constitution of India would be worthless in the contemporary situation without the continuous availability of oxygen. Here comes the role of State as a Constitutional obligation to supply for only the lifesaving drugs but also the oxygen” (*Ashok Dagliya vs The State Of Madhya Pradesh, 2021*). In this case the court had ordered that green corridors should be provided to tankers involving interstate transportation carrying Liquid Medical Oxygen and for this all the government machinery of all states should make sure that the tankers reach the destination without any failure or intervention. At the sporadic spread of covid 19 epidemic and to face the crisis of oxygen shortage at various hospitals, the court reiterated very clearly that no patient should lose life due to shortage or non-supply of oxygen and if so, it would become a violation of article 21 (*Ashok Dagliya vs The State Of Madhya Pradesh, 2021*). In a sitting of the division bench of Delhi High Court justice Vipin Sanghi and Rekha Palli said, “we cannot be idle while people dying due to deficiency of oxygen... you beg, borrow or steal but supply oxygen cylinders. You cannot claim that you have done everything possible and impossible to supply further... let the people die... why is the central government is not awakening up to the seriousness of the circumstances? We are stunned and disheartened to learn that the hospitals are running out of oxygen but steel plants consuming oxygen much of oxygen are still working” (Saif & Khan, 2021).

#### ARTICLE 21 EXHORTS STATE TO MAKE FACILITATION TO LIVE

Right to live with dignity is exhorted well in Article 21 with full wings of the constitution of India. Thus, the

state has the paramount duty and responsibility to make ample and sufficient set-up and facilities to cope with the circumstances of crisis like covid 19. The court enquired the State government of Madhya Pradesh what was the reason which prohibited the state not to install even a single oxygen plant which would cost only one Crore rupees. The state has 52 districts and it is high time to invest for Oxygen plants investing 50 crores since there is possibility of another wave of Covid or any other such epidemic. The court recapitulated “it is the duty of the State as per article 21 to take steps to ensure that such oxygen plants are constructed in the State as part of facilitation to right to live”(THE HIGH COURT OF MADHYA PRADESH, 2021). The Supreme Court other courts of the country are very much concerned about the suffering and death of the people and urges the governments to do all possible to fight against the pandemic. Court says, “Due to unprecedented Pandemic, everybody in the world is suffering, one way or the other. It is a world war against COVID-19. Therefore, there shall be Government Public Partnership to avoid world war against COVID-19”(JUSTICE ASHOK BHUSHAN, 2020). In Paschim Banga Khet Mazdoor Samity v. State of W.B. the Apex court has clearly stated that it is the constitutional obligation of the State to provide adequate and sufficient medical service to the people at need(S Agrawal, 1996). Karnataka High Court division bench presided by Chief Justice Abhay Oka and Justice Aravind Kumar held at the shortage of covid second dose vaccine, “we direct both the state government as well as the central government to submit on record specific and substantial materials to show what all steps are being taken to ensure that no beneficiary who has completed six weeks after taking the first dose of vaccine is denied the second dose. Necessary material shall be place on record. Don’t give false hope to the people that they would get the vaccine. In this case the court clearly said that the court would examine the issue of vaccination in the light of Right to Health, which is a vital part of Article 21 of the Constitution of India and it is the duty of the State to provide vaccination that has timelines that is decided by medical experts (Live Law, 2021)

**ARTICLE 21: RIGHT TO RECEIVE AFFORDABLE TREATMENT**

The Hon’ble Supreme Court of India headed by the division bench, Ashok Bhushan, R S Reddy and M R Shah reiterated that fundamental right to health includes right to medical attention, freedom from disease and affordable treatment and the powers are envisaged in Disaster Management Act (The Times of India, 2020). It is true that even if a covid patient get out of critical bed to life many times financially and economically he is finished. A crisis time like Covid 19 there can be number of ways in which the public can be looted and the court is very much concerned about the life of people especially in the case of accessibility of affordable treatment. It is essential that the state machinery should rise up to the situation and vigilant over any sort of pillaging at the time of Covid 19 by hospitals, laboratories, Oxygen plants etc. The court asks the state to stop the looting “...either more and more provisions are to be made by the state government and the local administration or there shall be a cap on the fees charged by the private hospitals which can be in exercise of the powers under the Disaster Management Act” (The Times of India, 2020). Right to life that is depicted in Article 21 of the Constitution be included in the cost of affordable medical care is stated in the verdict of by Justice Misra M. Rangnath of the Honourable Supreme Court of India in Vincent Panikurlangara vs. Union of India (Misra Rangnath, 1987).

**ARTICLE 21: RIGHT TO RECIEVE GOVT. WELFARE SERVICES AT ALL HOSPITALS**

The hon’ble Court has said that it is the duty of each and every private or government hospital to render service to Covid 19 patients if they have taken cashless facility of Ayushman Cards, BPL Cards and CGHS cards and the hospitals are approved of the same. It is the duty of every State Government to be vigilant and make sure that each and every hospital complies the welfare measures of the State. The Court in Suo Motu and Ors. Vs. Union of India case court said, “...treatment of the patients covered by those cashless schemes of the Government, shall not refuse to provide treatment to concerned patients and if any complaint in that behalf is received the State Government shall take appropriate action against such private Hospitals / Nursing Homes(Mohammad Rafiq, 2021).

**ARTICLE 21: CONCERN FOR CHILDREN**

The supreme court of India is very much concerned about the children who are kept in care of various houses since they are in conflict with law. Since the Covid 19 epidemic is sweeping in the country in the Suo Moto taken by the court says, “it was felt that the interest of these children should be looked into. Interest of these children all of whom fall within the ambit of Juvenile Justice (Care and Protection of Children) Act, 2015 should be protected and to prevent the same”(JUSTICE L. NAGESWARA RAO, 2020). The Hon’ble Supreme Court further instructed the Child Welfare committee’s to proactively engage to take adequate steps that has to be taken to in the light of Covid – 19. The proactive steps should include sufficient inspection, inquires and the same time their intervention should be at the very interest, safety and health consideration of children. The court also urges the CWC to take care and implement all possible means for the welfare of the children. They should also have the facility to adapt online counselling and conferences to support needs of the children(JUSTICE L. NAGESWARA RAO, 2020). The Court also asked the Child Care institution to maintain 1075 and 1800-112-545 as additional National Helpline on Covid19 in addition to 1098 for a better reach of assistance to Children in case of any sort of difficulty arises. The court is also very much concern about the staff, social distancing, sanitizing, disinfection, waste disposal etc of child caring centres(L. Nageswara Rao, 2020).

#### ARTICLE 21: COMMANDS APPLICATION OF LEGISLATIVE LAWS IN TIMES OF EMERGENCY

A successful democracy can only be one that safeguards its citizens’ the right to protect their own life. There are number of acts that are passed in the legislature with the aim of protecting the lives of its citizen. At the time of covid 19, realizing the importance of the provisions of Disaster Management Act, 2005 section 36 g (5) “provide shelter, food, drinking water, essential provisions, healthcare and services(J.B.Pardiwala, 2020) the court also reminded the responsibilities of ministries or government department of India and asked to wake up to the situation to protect the lives of citizen as that is envisages in Article 21. Judiciary asked the state government to step up in humanitarian way to the expectation of the constitution and Disaster Management Act(J.B.Pardiwala, 2020).

The court also says quoting IMC (Professional Conduct, Etiquette And Ethics) Regulation 2002 of doctors that “the prime object of the medical profession is to render service to humanity; reward or financial gain is a subordinate consideration. Whosoever chooses his profession, assumes the obligation to conduct himself in accordance with its ideals”(J.B.Pardiwala, 2020) . The prime object of the medical profession is to render service to humanity; reward or financial gain is a subordinate consideration. Who-so-ever chooses his profession, assumes the obligation to conduct himself in accordance with its ideals.

#### CONCLUSION

Article 21 of the Indian Constitution says, “No person shall be deprived of his life or personal liberty except according to procedure established by law”. Here the meaning of life is much more than mere physical act of breathing. It means right to live with human dignity, right to health, right to livelihood, right to pollution free air etc. The word right to live with human dignity is a flying word of the constitution where court can step up and act in a humanitarian way especially a time like Covid 19. Right to life is basic to our very survival without which we cannot live as a human being and it includes all those aspects of life, which makes man’s life meaningful, complete and worth living. Article 21 is a horizon of rights and the humanitarian application of the article courts can be creative, humanitarian and dearer to the hearts of each and every citizen who look up at the time of hopelessness as that is now with Covid 19. I being an advocate and a citizen of India, I am proud and happy to appreciate that the humanitarian application of Article 21 at the time of Covid 19, Hon’ble Supreme Court and High Courts of India has become very dearer and hopeful to its citizen especially those who are badly affected with Covid 19.

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