

**“A STUDY OF EXPANDING HORIZONS OF  
FUNDAMENTAL RIGHTS: UNDER ARTICLE - 21 OF  
INDIAN CONSTITUTION”**

A

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SUBMITTED BY

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**DECLARATION**

I, Aishwarya Kamya Singh declare that the dissertation entitled “**A Study Of Expanding Horizons Of Fundamental Rights : Under Article 21 Of Indian Constitution**”, Submitted by me for the Degree of LLM under the guidance of Dr Ujjawala S Bendale and has not formed the basis for the award of any degree, diploma, associate ship, fellowship, titles in this or any other University or other similar institutions of higher learning.

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## **CERTIFICATE**

This is to certify that work entitled “**A Study Of Expanding Horizons Of Fundamental Rights : Under Article 21 Of Indian Constitution**”, submitted for the award of Degree of Master of Law(LLM) of New Law College, Bharati Vidyapeeth Deemed University,Pune,India, is a record of the research work done by Aishwarya Kamya Singh, under my guidance and supervision .

I certify that this is a bonfide work of Aishwarya Kamya Singh.

**(U S Bendale)**

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**(Aishwarya Kamya Singh)**

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## **ABBREVIATIONS**

All England Reporter	All.E.R
All India Reporter	A.I.R.
Appeal Cases.	A.C.
Criminal Law Journal	Cr.L.J.
Federal Court Reports	F.C.R.
Indian Law Report	I.L.R.
Indian Report	I.R
Law Reports	L.R
Lawyers Edition	(U.S.S.C.R.)
Lawyers Edition 2nd series	L.E.d 2d.
Punjab Law Reporter	P.L.R

Supreme Court Cases	S.C.C.
Supreme Court Journal	S.C.J.
United States Supreme Court Reports	U.S.
Academy Journal of Comparative Law	A.c.L.R.
Annual Survey of Indian Law	A.J.C.L.
Banaras Law Journal	Ban.L.J.
Cochin University Law Review	C.U.L.R.
DelhiLaw Review	Del.L.Rev.
Harvard Law Review	H.L.R.
Indian Bar Review	I.B.R.
Journal of the Bar Council of India	J.B.C.I
Journal of Indian Law Institute	J.I.L.I.
Kurukshetra Law Journal	Kur.L.J
The Lawyers Collective	The Lawyers.
Law Quarterly Review	L.Q.R
Modern Law School Journal	M.L.R.
National Law School Journal	N.L.S.J
Supreme Court Cases ( Journal) (jour)	S.C.C
Yele Law Journal	Yele. L.J

## **ABSTRACT OF RESEARCH**

Fundamental Rights is a charter of rights contained in the Constitution of India. It guarantees civil liberties for all Indians to lead their lives in peace and harmony as citizens of India. Right to life and personal liberty is the most exquisite and essential fundamental human rights around which other rights of the individual swivel and, therefore, the study assume great significance. The study of Right to Life is in fact a study of the Supreme Court role guardian of fundamental rights. Article 21 is the idol provision of the Indian Constitution and occupies a distinctive place as a fundamental right. It guarantees right to life and personal liberty to citizens and as well as aliens and is enforceable

against the State. The new interpretation of Article 21 in Maneka Gandhi's case has led to a new era where the right to life and personal liberty horizons expand. The broad and liberal facet came into the view in respect of these rights, now covers various aspects which the founding fathers of the Constitution might or might not have foreseen.

The above stated revolution in the basic concept makes it essential that the concept of right to life and personal liberty should be examined with their expanding horizons along with judicial interpretation, justification for such liberal interpretation, and relation of Article 21 with the provisions of Article 32 and Directive Principles of the State Policy and International Human Rights Instruments. One of the burning topics of today is protection of personal life and liberty of an individual. So an attempt has been made through this dissertation to examine the expanding horizons of Right to life and personal liberty.

## **IMPORTANCE OF RESEARCH**

Fundamental Rights are the pivotal rights guaranteed by the constitution of India. These facets are increasing day by day. When we specifically deal with the expanding horizon of Article-21 of the Constitution of India, which provides the Right to Life and Personal Liberty to citizens as well as non-citizens. We find that with the expanding horizon new interpretations come into the view. We need to study and analyze the new interpretations given by the Supreme Court of India to see what extent succeed in protecting the human rights.

Horizon of right to personal liberty and meaningful life extended in society is a sign of development and progress. The current study, judicial interpretations, laws and other subject matter, articles and books written by intellectuals brings out various aspects and opinions. Studies of these aspects are necessary to see where our society is going. Is everybody get benefited by right to life and personal liberty. With changing society and changing concept of Right to life and liberty, we need to analyze through study is there need of more dimensions comes into the picture to serve its purpose to all.

## **SCOPE OF RESEARCH**

Scope of fundamental rights is very wide and vast. We will study it in context of Article-21 of constitution .which deals with Right to Life and Personal liberty of an individual. We go through our research as follows:

- 1) Understand the meaning of Concept Right to Life and Personal Liberty
- 2) Look at the trend of cases in Article 21
- 3) Examine in detail the different facets of Article 21 and related case laws.
- 4) Examine the views of Supreme Court in detail in respect of the Right to Life and Personal Liberty in India.



## **HYPOTHESIS**

The study proposes to test the following hypotheses:

- 1) Concept of Right to Life And Personal Liberty and is there any correlation between them.
- 2) Article 21 covers the entire fundamental rights of Individuals or not.
- 3) Socioeconomic status of the Human being and Society is having a significant effect of Article- 21 on them or not?
- 4) Is there need to re-evaluate the position of right to life and personal liberty if so why?
- 5) Whether there is Article 21 of Indian Constitution is equally empowered in comparison with developed Countries Bills of Rights?

## **RESEARCH METHODOLOGY**

Research methodology is a systematized investigation to gain new knowledge about the phenomena or problems after finalization of subject matter or study .

### Methodology to Be Used

There are two types of methodologies,

- 1) Doctrinal / Non-Empirical Legal Research.
- 2) Non - Doctrinal / Empirical Legal Research.

According to S. N. Jain,

"Doctrinal research involves analysis of case law, arranging, ordering & systematizing legal propositions and study of legal institution through legal reasoning or rational deduction."<sup>1</sup>

Empirical research is research using experiential, experimental and imperative evidence. It is a way of gaining knowledge by means of direct and indirect observation or experience.<sup>2</sup>

During the research we will take **doctrinal research methodology approach.**

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<sup>1</sup> [http://www.academia.edu/7692842/Right\\_to\\_Health\\_in\\_India\\_A\\_Study\\_of\\_Constitutional\\_and\\_Judicial\\_Attitude](http://www.academia.edu/7692842/Right_to_Health_in_India_A_Study_of_Constitutional_and_Judicial_Attitude)

<sup>2</sup> <http://www.hindawi.com/journals/job/2012/546459/>

## **SOURCE OF DATA COLLECTION**

The next step is to Research Methodology - the method, of data collection. Data Collection is the process of obtaining valuable information for the purpose of research. It is primary and secondary. Primary deals with first hand information and secondary are collected indirectly through books etc.

An exclusive research was done secondary source of books newspapers, internet searches, and articles.

A Comprehensive Bibliography and webliography is provided at the end of this project.

## CHAPTER- I

### CONCEPT OF FUNDAMENTAL RIGHTS

#### 1.1 MEANING AND CONCEPT OF FUNDAMENTAL RIGHTS



**Fundamental rights** are a generally regarded set of legal safeguards in the relation to legal system, wherein such system is itself based upon this same set of basic, fundamental, inalienable rights. Such rights thus belong without deduction or cost of privilege to all human beings under such jurisdiction. The concept of human rights has been promoted as a legal notion in large part owing to the idea that human beings have such "fundamental" rights,

such that transcend all jurisdictions, but are typically armoured in different ways and with different emphasis within different legal systems.<sup>3</sup>

The concept of human basic rights can be traced back to the Natural law philosophers, such as Locke and Rousseau. The Natural law philosophers gave philosophies over such inherent human rights and sought to protect these rights by propounding the theory of 'Social Contract'. According to Locke, man is born "with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the Law of Nature." and he has by nature a power – "to preserve his property- that is, his life, liberty and estate against the injuries and attempts of other men."<sup>4</sup>

The Fundamental Rights, embodied in Part III of the Constitution, assured civil rights to all Indians, and put a stop to the State from invading on individual liberty while simultaneously placing upon it a duty to protect the citizens' rights from infringement by society. Seven fundamental rights were initially provided by the Constitution – right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, right to property and right to constitutional remedies. However, the right to property was removed from Part III of the Constitution by the 44th Amendment in 1978.<sup>5</sup>

The purpose of the Fundamental Rights is to protect individual liberty and democratic principles based on equality of all members of society. They act as restrictions on the powers of the legislature and executive, under Article 13, and in case of any infringement of these rights, the Supreme Court of India and the High Courts of the states have the power to pronounce such legislative or executive action as unconstitutional and void. These fundamental human rights are largely enforceable against the State, which as per the wide definition provided in Article 12, includes not only the legislative and executive arms of the central and state governments, but also local administrative authorities and other agencies and institutions which discharge public functions or are of a governmental character. However, there are certain rights – such as those in Articles 15, 17, 18, 23, 24 – that are also available against private individuals. Further, certain Fundamental Rights – including those under Articles 14, 20, 21, 25 – apply to persons of any nationality upon

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<sup>3</sup> [http://en.wikipedia.org/wiki/Fundamental\\_rights](http://en.wikipedia.org/wiki/Fundamental_rights)

<sup>4</sup> *ibid*

<sup>5</sup> [http://en.wikipedia.org/wiki/Fundamental\\_Rights,\\_Directive\\_Principles\\_and\\_Fundamental\\_Duties\\_of\\_India](http://en.wikipedia.org/wiki/Fundamental_Rights,_Directive_Principles_and_Fundamental_Duties_of_India)

Indian soil, while others – such as those under Articles 15, 16, 19, 30 – are applicable only to citizens of India.<sup>3</sup>

The Fundamental Rights are not absolute and are subject to reasonable restrictions as essential for the protection of public interest. In the *Kesavananda Bharati v. State of Kerala* case in 1973, the Supreme Court, overruling a previous decision of 1967, held that the Fundamental Rights could be amended but such amendment will not violate the basic structure of the Constitution. The Fundamental Rights can be improved, removed or otherwise altered through a constitutional amendment, passed by a two-thirds majority of each House of Parliament. The imposition of a state of emergency may lead to a temporary suspension any of the Fundamental Rights, excluding Articles 20 and 21, by order of the President. The President may, by order, suspend the right to constitutional remedies as well, thereby barring citizens from approaching the Supreme Court for the enforcement of any of the Fundamental Rights, except Articles 20 and 21, during the period of the emergency. Parliament may also restrict the application of the Fundamental Rights to members of the Indian Armed Forces and the police, in order to ensure proper discharge of their duties and the maintenance of discipline, by a law made under Article 33.

## **1.2 EARLIER RECOGNITION OF BASIC RIGHTS: -<sup>6</sup>**

As early as in 1215, the English people exacted a guarantee from King John for respect of the then ancient liberties. The MAGNA CARTA is the evidence of their achievement, which is a written document. This is the first written document relating to the fundamental rights of citizens. In 1689, the BILL OF RIGHTS was written consolidating all important rights and liberties of the English people. The DECLARATION OF THE FRENCH REVOLUTION, 1789 provided that, “the aim of all political association is the conservation of the natural and inalienable rights of man.”

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<sup>6</sup> [http://papers.ssm.com/sol3/papers.cfm?abstract\\_id=2296804](http://papers.ssm.com/sol3/papers.cfm?abstract_id=2296804)

### **1.3 CONSTITUTIONAL RECOGNITION: -<sup>7</sup>**

The course by which basic rights became fundamental rights is the fundamental idea in entrenching certain basic rights is to take them out of the reach of the transitory political majorities. It has therefore, come to be regarded as essential that these rights be deep-rooted in such a way that they may not be sullied, tampered or interfered with by an oppressive government. With this end in view, some written constitution's guarantee a few rights to the people and forbid governmental organs from with the same. In that case, a guaranteed right can be limited or taken away only by the elaborate and formal process of the constitutional amendment rather than by ordinary legislation. These rights are characterized as fundamental rights.

### **1.4 FUNDAMENTAL RIGHTS IN INDIA-<sup>8</sup>**

Coming to India, a few good reasons made the enunciation of the fundamental rights in the Constitution rather inevitable. Firstly, Congress has been for long demanding these rights against the British rule. During the British rule in India, the human rights were infringed by the rules on a very wide extent. Therefore, the framers of the Constitution, many of whom had suffered imprisonment during the British rule, had a very optimistic attitude towards these rights.

Secondly, the Indian society is fragmented into many religions, cultural and linguistic groups and it was necessary to declare fundamental rights to give to the people a sense of security and confidence.

### **1.5 IMPACT OF THE US CONSTITUTION-<sup>9</sup>**

The constitution of USA has been the source of inspiration for the insertion of fundamental rights in the Constitution. The novel US Constitution did not contain any provision relating to fundamental rights, however, in the year 1791 the Bill of Rights was included in the US

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<sup>7</sup>ibid

<sup>8</sup> ibid

<sup>9</sup>ibid

Constitution in the form of ten amendments, and thus, the Americans became the first to give the Bill of Rights a constitutional status.

When the Indian constitution was framed, the background for the incorporation of Bill of Rights was already present. The framers took stimulation from this and incorporated a full Chapter in the Constitution dealing with fundamental rights. However, the fundamental rights contained in Part III of the Constitution of India vary from the US Bill of Rights.

### **1.6 DIFFERENCE BETWEEN PART III OF THE INDIAN CONSTITUTION AND THE US BILL OF RIGHTS-**<sup>10</sup>

While the declarations in the American Bill of Rights are absolute and the power of the state to impose restriction upon the fundamental rights of the individual in the collective interests had to be evolved by the Judiciary.

In India, this power of imposing restrictions has expressly bestowed upon the legislature by the Constitution itself, in the case of the major fundamental rights, of course, leaving a power of judicial review in the hands of the judiciary to determine the reasonableness of the restrictions imposed by the legislature.

### **1.7 NEED FOR FUNDAMENTAL RIGHTS-**<sup>11</sup>

Fundamental rights were deemed essential to protect the rights and liberties of the people against the encroachment of the power delegated by them to their government. They are limitations upon all the powers of the government, legislative as well as executive and they are essential for the preservation of public and private rights.

These rights regarded as fundamental because they are most essential for the attainment by the individual his full intellectual, moral and spiritual status. The negation of these rights will keep the moral and spiritual rights stunted and his potentialities underdeveloped. Part III of the Constitution serves, as remainder to the government in power that certain liberties assured to the people by the Constitution needs to be respect. The object behind the inclusion of Part III in the Constitution is to establish a government of law and not of man.

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<sup>10</sup>ibid

<sup>11</sup> ibid



## **1.8 NEED FOR FUNDAMENTAL RIGHTS AND OBSERVATION OF THE SUPREME COURT<sup>12</sup>**

In **Daryao v. State of U.P.**<sup>13</sup> the SC observed that, “the fundamental rights are intended not only to protect individual’s rights but they are based on high public policy. Liberty of the individual and the protection of his fundamental rights are the very essence of the democratic way of life adopted by the Constitution...”

In **GolakNath v. State of Punjab**<sup>14</sup>, the SC held that, Part III of the Constitution of India guarantees certain fundamental rights because they are considered necessary for the development of human personality. These rights enable a man to chalk out his own life in the manner he likes best.

In **Maneka Gandhi v. Union of India**,<sup>15</sup> SC observed that, “fundamental rights are calculated to protect the dignity of the individual and creates conditions in which every human being can develop his personality to the fullest extent”.

## **1.9 FUNDAMENTAL RIGHTS- TO WHOM AVAILABLE-**

Part III of the Constitution of India deals with various fundamental rights in its Articles 12-35. The fundamental rights in Articles 15, 16, 19, 29 and 30 are available only to citizens, while the rights guaranteed by other Articles are available to the citizens and non-citizens alike.

### **1.10 FUNDAMENTAL RIGHTS- AGAINST WHOM AVAILABLE-<sup>16</sup>**

Generally, the fundamental rights in Part III of the Constitution of India are available against the State only but some are also available against the private individuals. For example- the

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<sup>12</sup> ibid

<sup>13</sup> AIR 1961 SC 1457

<sup>14</sup> AIR 1967 SC 1643

<sup>15</sup> AIR 1978 SC 597

<sup>16</sup> [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2296804](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2296804)

fundamental rights guaranteed in Articles 14, 15(1), 16, 18(1), 19, 20, 21, 22, 25, 26, 27, 28, 29 and 30 are available against the State only. While the fundamental rights guaranteed in Articles 15(2), 17, 23(1) and 24 are available against the State as well as against the private individuals.

### 1.11 CLASSIFICATION OR KINDS OF FUNDAMENTAL RIGHTS IN INDIA-<sup>17</sup>

The fundamental rights guaranteed in Part III of the Constitution have been classified in the following categories-

1. Right to Equality (Articles 14-18);
2. Right to Freedom (Articles 19-22);
3. Rights against Exploitation (Articles 23-24);
4. Right to Freedom of Religion (Articles 25-28);
5. Cultural and Educational Rights (Articles 29-30);
6. Right to Constitutional Remedies (Articles 32-35).

It is to be noted that, the Right to Property guaranteed by Article 31 has been excluded from fundamental rights by the Constitution (Forty fourth Amendment) Act, 1978 with effect from 20-06-1979.

The seven fundamental rights recognised by the Indian constitution are:<sup>1819</sup>

**1. Right to equality:** Which includes equality before law, prohibition of discrimination on grounds of religion, race, caste, gender or place of birth, and equality of opportunity in matters of employment, abolition of untouchability and abolition of titles.

**2. Right to freedom:** Includes right to speech and expression, assembly, association or union or cooperatives, movement, residence, and right to practice any profession or occupation (some of these rights are subject to security of the State, friendly relations with foreign countries, public order, decency or morality), right to life and liberty, **right to education,**

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<sup>17</sup> ibid

<sup>18</sup> Constitution of India-Part III Fundamental Rights.

<sup>19</sup>[http://en.wikipedia.org/wiki/Fundamental\\_rights\\_in\\_India](http://en.wikipedia.org/wiki/Fundamental_rights_in_India)

protection in respect to conviction in offences and protection against arrest and detention in certain cases.

**3. Right against exploitation:** Prohibits all forms of forced labour, child labour and traffic of human beings.

**4. Right to freedom of religion:** Which includes freedom of conscience and free profession, practice, and propagation of religion, freedom to manage religious affairs, freedom from certain taxes and freedom from religious instructions in certain educational institutes.

**5. Cultural and Educational rights:** Preserve the right of any section of citizens to conserve their culture, language or script, and right of minorities to establish and administer educational institutions of their choice.

**6. Right to constitutional remedies:** Which is present for enforcement of Fundamental Rights.

**7. Right to life:** Which gives the right to live with human dignity. This includes rights such as right to education, health, shelter and basic amenities that the state shall provide.

Fundamental rights for Indians have inserted to aim at overturning the inequalities of pre-independence social practices. Specifically, they have used to abolish untouchability and thus prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth. They also forbid trafficking of human beings and forced labour. They also protect cultural and educational rights of ethnic and religious minorities by allowing them to preserve their languages and also establish and administer their own education institutions.<sup>20</sup>

## **1.2 REMEDIES IN CASES OF VIOLATION OF FUNDAMENTAL RIGHTS** **(ENFORCEMENT OF FUNDAMENTAL RIGHTS) –**

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<sup>20</sup> [http://en.wikipedia.org/wiki/Fundamental\\_rights\\_in\\_India](http://en.wikipedia.org/wiki/Fundamental_rights_in_India)

In the case of violation of the fundamental rights, special remedy has provided. Articles 32-35 deals with right to constitutional remedies in the cases of violation or infringement of fundamental rights guaranteed in Part III of the Constitution.

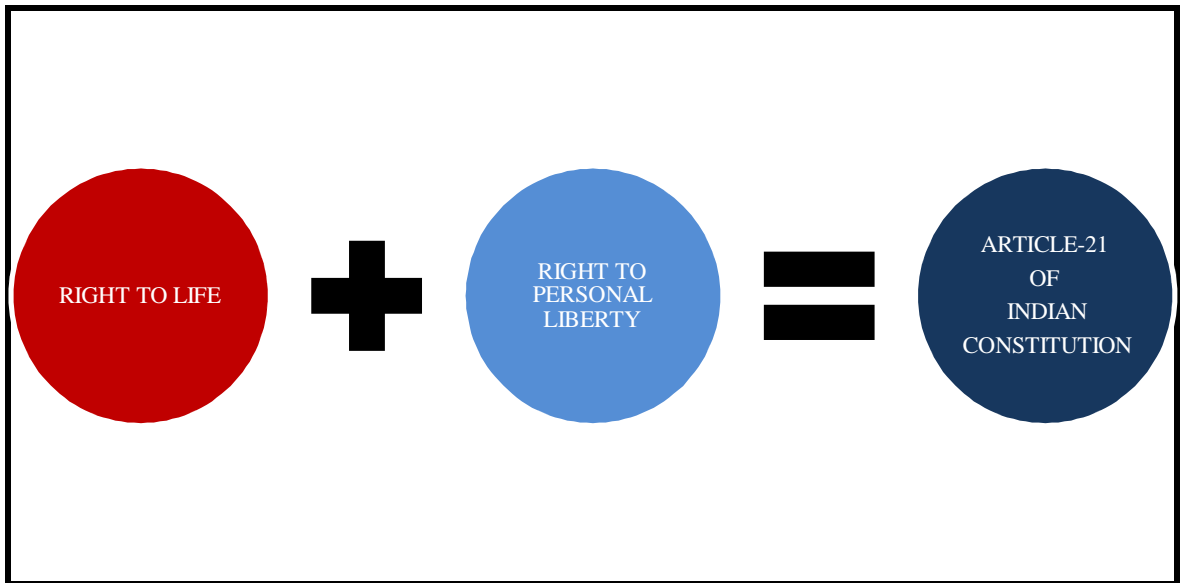
## CHAPTER-II

### RIGHT TO LIFE AND PERSONAL LIBERTY:

#### UNDER ARTICLE- 21 OF CONSTITUTION OF INDIA

##### 2.1 INTRODUCTION

“Unlike a drop of water which loses its identity when it joins the ocean, man does not lose his being in the society in which he lives. Man's life is independent. He is born not for the development of the society alone, but for the development of his self.” – Dr.B. R. Ambedkar.<sup>21</sup>



As well said above by Dr. B.R Ambedkar, Man’s life is not only for development of society but for himself as well. For the development of human being, life and liberty are two essential ingredients, which enshrined in constitution of India fundamental right under Article-21.

Life and Liberty is the utmost civilization in the modern sense of the child. In an organized and law-abiding society, turbulent wave raised stagnates. In society extend the right to meaningful life and liberty is a sign of advancement, progress and development. It inherited from generations.

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<sup>21</sup>[http://www.brainyquote.com/quotes/authors/b/b\\_r\\_ambedkar.html#eSYeFVheiQAVrOsz.99](http://www.brainyquote.com/quotes/authors/b/b_r_ambedkar.html#eSYeFVheiQAVrOsz.99)

Country's culture and civilization can be measured by the current state of life and liberty and all events for preservation and prosperity of individual human freedom, status of that freedom prevailing in society. It is chained, so cribbed, cabined or assumed in society independence plant becomes lifeless.

The founding fathers publicized the Indian Right to life and personal liberty clause, when they draft the anxiety and fears of human being. Article - 21 of the Constitution study the Magna Charta 'We the people of India. While study of the Constitutions of world we find that Right to Life and Personal Liberty clause Constituent Assembly include in Indian constitution found in world constitutions of the world as prime note.

We are like a frog in well and believer of Vasudhaivakutumbakam (world is our home) so can't close our eyes what's going on at international level in particularly related to the right to life and personal liberty under international law. We come within international wavelength so that this study can make the section will broaden our vision. A new horizon of life and personal liberty comes into existence as Supreme Court of India take cognizance of these developments.

In India, the fundamental right to life and personal liberty that is commendable of a detailed study of the British rule to Swaraj has a long history. Study of tug war between two opposite interests: American and British structure motivates Constituent Assembly and give a clear picture on life and personal liberty. Based on this we inspired to build a successful model for tomorrow. Historical background pointed out an important aspect on right to life and personal liberty and help us to understand its facets. It will further help us in giving broad interpretations where life and personal liberty question arise.

A constitutional provision can work in isolation and is self-contained code. However, as a part of the basic structure of the constitution contain fundamental rights, directive principles, rights enforcement, suspension of enforcement of rights, including the right to amend and other provisions of the Constitution, it is necessary to reveal the interrelation for the proper functioning, enforceability and protection of one's life and personal liberty.

Legislatures and Indian courts in relation to Right to Life and Personal Liberty did an significant contribution to the field, but many times, they have constricted their development. However, dynamics in judicial approach and activism more on some occasions expanding its concept were there.

The current study will drop light on the changing state of affairs; Majority and minority view were in isolated and consensus opinion and judicial test approaches is to make

these ideas. Aspects have yet their but did not reach the whole community as poor's are still struggling for their rights. Big question arises is there need to re-evaluate the position of fundamental human right to life and liberty in India. Is it equally empowered as in other constitutions of world. This aspect is examined in this research.

Fundamental Rights is a charter of rights contained in the Constitution of India. It guarantees civil liberties for all Indians to lead their lives in peace and harmony as citizens of India. Right to life and personal liberty is the most exquisite and essential fundamental human rights around which other rights of the individual swivel and, therefore, the study assume great significance. The study of Right to Life is in fact a study of the Supreme Court role guardian of fundamental rights. Article 21 is the idol provision of the Indian Constitution and occupies a distinctive place as a fundamental right. It guarantees right to life and personal liberty to citizens and as well as aliens and is enforceable against the State. Fundamental Rights are the pivotal rights guaranteed by constitution of India. There facets are increasing day by day. When we specifically deals with expanding horizon of Article-21, which provides the Right to Life and Personal Liberty to citizen as well as non-citizen. We find that with expanding horizon new interpretations comes in the view. We need to study and analyze the new interpretations given by Supreme Court of India to see what extent succeed in protecting the human rights.

The **scope of Article 21** was a bit narrow till 50s as it was held by the Apex Court in *A.K.Gopalanvs State of Madras*<sup>22</sup> that the contents and subject matter of Article 21 and 19 (1) (d) are not identical and they proceed on total principles. In this case, the word deprivation was interpreted in a narrow sense and it was held that the deprivation does not restrict upon the right to move freely which came under Article 19 (1) (d). at that time Gopalan's case was the leading case in respect of Article - 21 along with some other Articles of the Constitution. However, post Gopalan case the scenario in respect of scope of Article 21 has been expanded or modified gradually through different decisions of the Apex Court and it was held that interference with the freedom of a person at home or restriction imposed on a person while in jail would require authority of law. Whether the reasonableness of a penal law can be examined with reference to Article 19, was the point in issue after Gopalan's case in the case of *Maneka Gandhi v. Union of India*<sup>23</sup>, the Apex Court opened up

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<sup>22</sup>1950 AIR 27, 1950 SCR 88

<sup>23</sup> 1978 AIR 597, 1978 SCR (2) 621

a new dimension and laid down that the procedure cannot be arbitrary, unfair or unreasonable one. Article 21 imposed a restriction upon the state where it prescribed a procedure for depriving a person of his life or personal liberty.<sup>24</sup>

The new interpretation of Article 21 in **Maneka Gandhi's case** has led a new era where right to life and personal liberty horizons expand. The broad and liberal facet came into the view in respect of these rights, now covers various aspects, which the founding fathers of the Constitution might or might not have foreseen.

The above stated revolution in the basic concept makes it essential that the concept of right to life and personal liberty should be examined with their expanding horizons along with judicial interpretation, justification for such liberal Interpretation, and relation of Article 21 with the provisions of Article 32 and Directive Principles of the State Policy and International Human Rights Instruments. One of the burning topics of today is protection of personal life and liberty of an individual. Horizon of right to personal liberty and meaningful life extended in society is a sign of development and progress. The current study, judicial interpretations, laws and other subject matter, articles and books written by intellectuals brings out various aspects and opinions.

Studies of these aspects are necessary to see where our society is going. Is everybody is benefited by right to life and personal liberty. With changing society and changing concept of Right to life and liberty, we need to analyse through study is there need of more dimensions came into the picture to serve its purpose to all. Article 21, provides Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law. Though the phraseology of Article 21 starts with negative word but the word No has been used in relation to the word deprived. The object of the fundamental right under Article 21 is to prevent encroachment upon personal liberty and deprivation of life except according to procedure established by law. It clearly means that this fundamental right has been provided against state only. If an act of private individual amounts to encroachment upon the personal liberty and deprivation of life of other person. Such violation would not fall under the parameters set for the Article 21. in such a case the remedy for aggrieved person would be either under Article 226 or 32 of the constitution or under general law. However, where an act of private individual supported by

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<sup>24</sup> <http://www.legalserviceindia.com/articles/art222.htm>



the state infringes the personal liberty or life of another person, the act will certainly come under the ambit of Article 21. This article deals with encroachment upon personal liberty and deprivation of life of a person.<sup>2526</sup>

The state cannot be defined in a restricted sense. It includes Government Departments, Legislature, Administration, Local Authorities exercising statutory powers and so on so forth, but it does not include non-statutory or private bodies having no statutory powers. For example; company, autonomous body and others. Therefore, the fundamental right guaranteed under Article 21 relates only to the acts of State or acts under the authority of the State, which is not according to procedure established by law. The main object of Article 21 is that before a person is deprived of his life or personal liberty by the State, the procedure established by law must be strictly followed.<sup>27</sup>

## **2.2 MEANING AND CONCEPT OF “RIGHT TO LIFE”**

Right to Life means the right to lead meaningful, complete and dignified life. It does not have restricted meaning. It is something more than surviving or animal existence. The meaning of the word life can't be narrowed down and it will be available not only to every citizen of the country.<sup>28</sup>

“Life, liberty and security of each person is.”, indisputably the most Fundamental right of all is the rights in constitution part III. If Article 21 not interpreted in its original meaning as a other fundamental right lost their worth. Supreme Court of India has interpreted, applied and examines the right to life. Supreme Court as guardian of fundamental rights come up with its different facets and expands its horizon and give new meaning to Right to Life.

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<sup>25</sup> <http://www.legalserviceindia.com/articles/art222.htm>

<sup>26</sup> <http://www.meritnation.com/ask-answer/question/s-article-21-of-the-constitution-say/understanding-our-criminal-justice-system/8988155>

<sup>27</sup> *ibid*

<sup>28</sup> <http://www.meritnation.com/> supra 23

With constitution comes into the existence, Article 21 comes into picture provides that, "No person except according to procedure established by law shall be deprived of his life or personal liberty."

Article 21 of the Constitution expanded and now meaning of "life" is not only the physical act of breathing. Court often quoted the following observation in the **Munn v Illions** by *Field, J.*, in an American case, "by the term 'life' as here used something more is meant than mere animal existence. The inhabitation against its deprivation extends to all those limbs and faculties by which life is enjoyed."<sup>29</sup>

Supreme Court of India included in 'Right to life' so many dimensions. The right to health, right livelihood, right to live with human dignity, which includes a very broad sense, free air, and the right to pollution free environment. It has received of is the only article in the Constitution broad interpretation.

*Krishan Iyer, J.* while giving emphasis on right to life Said, "The plenitude of possibilities and the fullness of faculties, if life is enriched propitious circumstances, persuaded our founding fathers and the United Nations to accord the highest priority to the right to life."<sup>30</sup>

*Sabyasachi Mukharjee .J.*, in **Ramsaran v. Union of India** said<sup>31</sup>, ".....Life in its expanded horizons today includes all that give meaning to a man's life including his tradition, culture and heritage and protection of that heritage it in its full measure would certainly come within the encompass of an expanded concept of Article 21 of the Constitution."

*Pathak .J.*, in **Keher Singh v. Union of India**<sup>32</sup> emphasised on right to life and personal liberty in this case mentioned, "To any civilized society, there can be no attributes more important than the life and personal liberty of its members. That is evident from the paramount position given by the courts to Article 21 of the Constitution. These twin attributes enjoy a fundamental ascendancy over all other attributes of the political and social order and consequently the legislative, the executive and the judiciary are more sensitive to these than to any other attributes of daily existence."

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<sup>29</sup>M,P Jain , Indian constitutional law, page no. 1189

<sup>30</sup> Krishna Iyer, J., *The Dialectics and Dynamics of Human Rights in India*, (Calcutta: Eastern Law

<sup>31</sup> AIR 1989 SC 549 para 13.

<sup>32</sup> AIR 1989 SC 653 para 7.

In **Unni Krishnan case**<sup>33</sup> that Article 21 is the heart of Fundamental Rights and it has extended the Scope of Article 21 by observing that the life includes the education as well as, as the right to education flows from the right to life. The meaning of the word life includes the right to live in fair and reasonable conditions, right to rehabilitation after release, right to livelihood by legal means and decent environment.<sup>34</sup>

The expanded scope of Article 21 has been explained by the Supreme Court in the case of *Unni Krishnan v. State of A.P.* and the Court itself provided the list of some of the rights covered under Article 21 on the basis of earlier pronouncements such as the right to go abroad; the right to privacy; the right against solitary confinement; the right against hand cuffing; the right against delayed execution; the right to shelter; the right against custodial death; the right against public hanging and Medical assistance.<sup>35</sup>

Article 21 of the cover under the canopy so many rights, development and found nourishment. In *Maneka Gandhi case* 'individual freedom' means to expand the right to life.

**In Francis Coralie Mullin v The Administrator, Union**<sup>36</sup>, *Justice Bhagwati* increase in the dimensions of Maneka Gandhi case. He said in relation to Article – 21, 'the right to life includes the right to live with human dignity and all that goes along with it. Namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country. But 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.'<sup>37</sup> He also emphasised in this case that the fundamental right to life is the most precious human right and forms the arc of all other rights.

Francis ratio implemented in Asiad workers, concept of ' basic human dignity developed. Supreme Court while consider about contract workers expand Right to Life

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<sup>33</sup> 1993 AIR SC 217

<sup>34</sup> <http://www.lawtopus.com/academike/judicial-activism-article-21/>

<sup>35</sup> *ibid*

<sup>36</sup> AIR 1981 SC 746.

<sup>37</sup> <http://indiankanon.org/docfragment/78536/?formInput=%20right%20to%20life>

necessities compliance with the provisions of 'individual freedom' in the interpretation of basic human dignity. Individual freedom and social welfare protection provided to workers are provided under the different laws.

Livelihood under Article 21 included the word "life" as the question was for the first time before the Supreme Court in **Re Sant Ram's case**<sup>38</sup>. Supreme court's, *Chief Justice Sinha*, the held, "Individual freedom cannot be suppressed, and this life into the concept of "right livelihood" court did not rule out entirely the right was rejected." The Chief Justice Sinha was of the opinion that as "right livelihood" mentioned in Article 19, freedom or Article 16 in the limited sense"

Right to life and personal liberty 'livelihood' is involved in? The question then fixing the ceiling on agricultural holdings, land reform challenge was against the law where **BegullaBapiRaju V. Andhra Pradesh**, was raised in. Sant Ram following the court again, "life and personal liberty" in the "liveliness" of Maneka and Francis Coralie rejected and the decision was not examined in the light of the above claims.<sup>39</sup>

However, in the case of street dweller *Chandarchud*, chief justice, the right to life includes the right to livelihood. He will deny, cancel observed. As an aspect of life under Article 21 developed by the court's right to livelihood, so far "personal freedom" means to extend the reach would result in<sup>40</sup>

Only one person has the right to protect the livelihood of the standard. The court in **Durgapur Projects Ltd. V. Shankar** "decent housing" extended to include the right to live. The standard of living of the petitioner was entitled. To ensure minimum standards of human dignity for women and children in care homes "quality of life" was included in the.<sup>41</sup>

So many new meaning and interpretation of right to life comes in existence we will discuss later in further chapter.

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<sup>38</sup> AIR 1960 SC 932

<sup>39</sup> [shodhganga.inflibnet.ac.in/handle/10603/13812](http://shodhganga.inflibnet.ac.in/handle/10603/13812)

<sup>40</sup> *ibid*

<sup>41</sup> *ibid*

## **2.3 MEANING OF PERSONAL LIBERTY**

Personal liberty scope widened with time and era. General meaning of 'personal liberty' is according to law dictionary, 'The right of freedom of a person to behave as they would like. Though following the conduct code of the society in which a person resides is important'. However, in Indian constitution this liberty is not absolute but with reasonable restrictions.

The expression 'personal liberty' got its full meaning in *Maneka Gandhi v. Union of India*.<sup>42</sup> In this case the court has given the widest possible interpretation to personal Liberty. It is only with the decision in *Maneka's case* that a new phase of development has been comes into picture. The decision stands as a beacon- lamp adding new horizon to the interpretation of the fundamental rights. If Article 21 horizon expanded in accord with interpretative principle pointed out in *Maneka Gandhi* as follows:, "No person shall be deprived of his life and personal liberty except according to fair, just and reasonable procedure established by valid law".

*Maneka Gandhi* has overlaid the approach for realising new outlook of personal freedoms like right to speedy trial, right to bail, right to appeal, right to humane treatment inside prison, right against torture, right to live with basic human dignity and right to compensation to the victims etc. These new dimensions came in as judiciary did the inclusion of directive principles under Article-21. The impact of the decision in *Maneka's Case* is very important for introducing the concept of 'reasonableness' into 'procedure established by law' in Article 21. It conveyed "due process" into the Article 21 by extends the application of natural law in right to life and personal liberty.

### **Procedure Established by Law**

Article 21 clearly stands that a person can be deprived of his life and personal liberty 'procedure established by law'. This expression in Article 21 is the result of deliberate choice by the Constituent Assembly in place of the phrase 'due process of law'. Initial set back to the judicial protection of right to life and personal liberty as a human right was suffered by

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<sup>42</sup>Maneka Gandhi v. Union of India ,AIR 1978 SC 597

the interpretation of Article 21 by the Supreme Court in **A. K. Gopalan v. State of Madras**.<sup>43</sup>

In *Gopalan* the Supreme Court was divided on the meaning of the phrase “procedure established bylaw”. In that, case the Attorney General had reminded the Judges that the Constituent Assembly had consciously rejected ‘due process’ in Article 21 and therefore the unreasonableness of law (of Preventive Detention) could not be examined by the court, whatever the procedure prescribed by enacted law (even if unfair or unreasonable), that itself was sufficient justification for deprivation of life or liberty.<sup>44</sup> The majority held that it must mean that the procedure prescribed or enacted by the state—either Parliament or state legislations. That means any procedure that has legislative sanction. Thus, Article 21 was to guarantee protection against executive action and possibly against judicial action and not against the legislative action, unless legislature transgressed any other provisions of the Constitution. Minority opinion was in favour of making principles of natural justice applicable as under American Constitutional provisions of due process.

The decision of *Gopalan's case* considerably inhibited judicial protection of human rights in its first two decades of the working of the Constitution of India. It took the Supreme Court more than twenty-five years to free itself from the shackles of *Gopalan*, which it ultimately did in *Maneka Gandhi's case* in 1978.<sup>45</sup> Till then Supreme Court did not include principles of natural justice or implications of due process clause in Article 21 of the Constitution. In *Maneka* the majority held that the mere prescribing of some procedure cannot even meet the mandate of Article 21. The procedure prescribed by law has to be fair, just and reasonable and not fanciful, oppressive or arbitrary,<sup>46</sup> thus substantially introducing the principles of natural justice in procedural protection of right to life (and personal liberty). Now procedure under Article 21 is fair procedure and reasonable law, not any procedure under any enacted piece.<sup>47</sup>

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<sup>43</sup> AIR 1950 SC 27; 1950 SCR 88.138

<sup>44</sup>FaliS.Nariman, “Protection of Personal Liberty in India”, in *Reflections on Emerging International Law - Essays in Memory of Late Subrata Roy Chowdhury*, (Bangalore: National Law School of India University), p.5.

<sup>45</sup>*Ibid.*, p.6.

<sup>46</sup>*Maneka Gandhi v. Union of India*, *supra* no 23 , at.613

<sup>47</sup>*Ibid.*, per Krishna Iyer J., at p.659

The decision in Maneka became the starting point, the springboard for a spectacular evolution of law relating to judicial intervention of individuals human rights cases. This fresh look at Article 21 has helped the Apex Court in its new role as the institutional ombudsman of Human Rights in India.<sup>48</sup> The trend began with Manekagandhi case regarding “due process” in context of right to life and personal liberty is further continued in ***Sunil Batra v. Delhi Administration***. Wherein it was observed that the expression the word ‘law’ in ‘procedure established by law’ under Article 21 has been interpreted in *Maneka Gandhi’s case* that the ‘law’ must be right just and fair and not arbitrary, fanciful or oppressive but it would be no procedure at all if the requirement of Article 21 would not be satisfied. If it is arbitrary, it will be considered as violation of Article 14. It was again reiterated in **Bachan Singh v. State of Punjab**, where the court by majority took the view that Article 21 after Maneka would read to say that: “No person shall be deprived of his life of personal liberty except according to fair, just and reasonable procedure established by valid law”.<sup>49</sup> This view makes it clear that reasonableness under Article 21 is of procedure as well as of law. Now Article 21 not confined to procedure established by law only but also covers substantive laws.

## **2.4 THOUGHTS OF THE PIONEERS:**<sup>50</sup>

There were many important people throughout history that contributed to the notion and understanding of human rights. These are some of the pioneers of the concepts.

### **Plato**

Plato believed in universal truth and virtue. This idea has continued on to become universalism that human rights are universal, and as such are above the laws of individual states.

### **Aristotle**

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<sup>48</sup> M.C. Mehta v. Union of India (1987) ISCC 395 at 406

<sup>49</sup> A. N. Sen. J., endorses the view of Pathak J., but is less specific than Pathak J., in identifying the special circumstances or exceptional cases. He takes it to be a matter of discretion of the Court depending upon facts and circumstances of each case.

<sup>50</sup> shodhganga.inflibnet.ac.in/handle/10603/13812

Aristotle's view of the world included the existence of different social classes, accepting that there will always be an underclass and even a slave class and that this is perfectly normal.

### **St. Thomas Aquinas**

He saw that basic human needs such as self-preservation require fundamental human rights.

### **Thomas Hobbes and Jeremy Bentham**

Positive law is the idea that law and human rights come from the state. Hobbes and Bentham were positive law theorists who believed that human rights needed strong laws to protect them. One difference from previous viewpoints is that these rights can be given and taken away by the state, they are not universal. Bentham believed in utilitarianism, that there should always be the greatest amount of good for the greatest number of people.

### **John Locke**

The positive law view was changed to include the idea that the state's law stemmed from a constitution, the legal framework of the society. The constitution however, was itself based on natural law, which includes a natural right to self-preservation. Therefore, the power of the state was still subject to inalienable human rights. The state should protect individuals from the actions of others that would impinge on their freedoms. Citizens should be empowered to revolt if they felt that the state was abusing its power. This became the underlying idea behind the French and American revolutions and their subsequent development of new nations.

### **Jean-Jacques Rousseau**

Rousseau came up with the social contract theory, that stated that all individuals in a society had entered into a contract to form a civilized society in exchange for the government giving them equality.

### **Immanuel Kant**

In his book *On Liberty*, Mill strongly disagrees with utilitarianism, and sees it as a type of tyranny by the majority. Liberties such as freedom of expression and association should not be absolute, but that they should exist in such a way as not to deprive others of their ability to achieve their own liberties.



## **Karl Marx and Friedrich Engels**

Marx and Engels, the fathers of communism, saw rights in an entirely different view, namely that they were unconnected to the reality of the exploitation of the working class. Unlike Mills, Marx had another definition for liberalism as something to be gained through government, rather than as a freedom from interference. Equality was more important than liberty, especially in the ownership of private property (fundamental tenet of communism). Only one fundamental right existed under their system, that of revolution.

## **Ronald Dworkin**

Dworkin's philosophy disagrees with Bentham's rejection of natural rights. He sees human rights not as being absolute and universal, but as being a creation of politics that try to treat all people equally. Therefore, all members of society have the same voice, which is not dependent on their social status. Utilitarianism, with its idea of ignoring the rights of minorities in the name of the greatest good for the majority threatens to destroy the entire concept of individual human rights.

## **2.5 HISTORICAL BACKGROUND OF ARTICLE-21 OF INDIAN CONSTITUTION :<sup>51</sup>**

Article-21 provides protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.

### **Genesis and Growth**

Drafts on fundamental rights prepared by Dr. Ambedkar and KM. Munshi in March 1947, both contained a provision to the effect that no person shall be deprived of life, liberty or property without due process of law. The Sub-committee on fundamental rights, in its report of 16 April 1947 contained the following clause:

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<sup>51</sup>Dr. SubashKashyap, constitutional law in india, vol I, page 669-71

‘No person shall be deprived of his life, liberty or property without due process of law nor shall any person be denied the equal treatment of the laws within the territories of the Union:

Provided that nothing herein contained shall prevent the Union Legislature from legislating in respect of foreigners.’

The clause was very largely adopted from the Fifth and the Fourteenth Amendments of the U.S. Constitution. The Constitutional Adviser, B.N. Rau drew attention to the plethora of litigation in the United States generated only by the “due process of law” provision because “due process” could hardly be defined and ultimately meant what the U.S. Supreme Court said it meant in a particular case.

In the Advisory Committee, Alladi Krishnaswami Ayyar pointed out the serious difficulties that the “due process” clause had caused in the United States. Judges gave different interpretations from time to time. From confining it to procedure, they had come to extend it to substantive rights. G.B. Pant expressed his opposition to the use of the phrase “due process of law” as he thought; it was ambiguous and amenable to different interpretations. Also, it would mean that the future of the country was to be determined not by the representatives of the people in the legislatures but by “the whims and vagaries of lawyers elevated to the judiciary”. He was particularly concerned about the adverse effect of the clause on social legislation and land reforms, zamindari abolition, acquisition of property etc. As a way out, K.M. Panikkar suggested the Omission of ‘right to property’ from the clause.

Panikkar’s suggestion was finally accepted and the Report of the Advisory Committee reproduced the amended clause as its clause 9, which read as follows:  
No person shall be deprived of his life, or liberty, without due process of law nor shall any person be denied the equal treatment of the laws within the territories of the Union.

Provided that nothing herein contained shall detract from the power of the Union Legislature in respect of foreigners.

The provision was adopted by the Constituent Assembly on 30 April 1947 after some debate but without any amendment being moved. The Constitutional Adviser’s October 1947 Draft Constitution reproduced it as its clause 16 with the addition of the word ‘personal’ before ‘liberty’. Unless so qualified, he thought, liberty might be construed too widely to include even matters like price control, contracts etc.

The Drafting Committee had accepted the Amendment. Meanwhile, the Constitutional Adviser had met Justice Frankfurter of the U.S. Supreme Court who advised

him not to adopt the “due process” clause. It gave a few judges the power to veto laws passed by the representatives of the people, which was undemocratic. In addition, it put an unfair burden on the judiciary.

In the February 1948 Draft Constitution prepared by the Drafting Committee, the words “without due process of law” were substituted by the words “except according to procedure established by law”. The latter phrase was borrowed from the Constitution of Japan. Draft article 15 read as follows:

No person shall be deprived of his life or personal liberty except according to procedure established by law nor shall any person be denied equality before the law or the equal protection of the law within the territory of India.

The draft article came for consideration of the Constituent Assembly on 6 December, 1948. There were powerful protagonists of both the competing expressions. Their respective merits and demerits came to be discussed in depth. K.M. Munshi, supported by Syed Karimuddin, Mehboob Ali Baig and Z.H. Lari, defended the “due process of law” provision.

Munshi thought that with the omission of ‘property’ and adding of ‘personal’ before ‘liberty’, the clause had become unexceptionable and no more prone to creating the difficulties it had done in the United States. Munshi was afraid of the legislative majorities passing legislation in haste to establish social control over individual liberty by giving sweeping powers to the executive and the police. He wanted the courts to have the power to determine whether a law infringed personal liberty of the individual and this, he said, could happen only if “due process of law” was adopted.

On the other hand, Alladi Krishnaswami Ayyar said that three or five gentlemen sitting as a court of law and deciding what was the due process of law in each case could not be regarded a more democratic than the expressed wishes of the representatives of the people in their Legislature. Alladi appealed to the House in the name of “the future progress of India, the well-being and security of the State, the necessity of maintaining a minimum of liberty, the need for coordinating social control and personal liberty”.

In view of the strong disagreement on the floor of the Constituent assembly, consideration of the draft article was deferred. When it was taken up, again on 13 December 1948, Dr. Ambedkar referred to the sharply divergent views and said that the controversy largely centered round the question whether the legislatures could be trusted not to make laws trampling the personal liberties of the individual. He added:

For myself I cannot altogether omit the possibility of a Legislature packed by party men

making laws which may abrogate or violate what we regard as certain fundamental principles affecting the life and liberty of an individual. At the same time, I do not see how five or six gentlemen sitting in the Federal or Supreme Court examining laws made by the Legislature and by dint of their own individual conscience or their bias or their prejudices be trusted to determine which law is good and which law is bad. It is rather a case where a man has to sail between Charybdis and Scylla and I therefore would not say anything.

When the amendments — about 20 of them — seeking substitution of the words “except in accordance with law” by “without due process of law” or some such expression were put to vote, they were all negative by the Assembly and draft article 15 as proposed on behalf of the Drafting Committee was adopted to stand part of the Constitution. Although, even thereafter, the debate and the controversy continued, the basic text of draft article 15 with the “in accordance with law” expression survived. As a corrective or compromise another provision providing protection to personal liberty against arbitrary arrest and detention was later added.

**CHAPTER-III**  
**EXPANDING HORIZON OF RIGHT TO LIFE AND**  
**PERSONAL LIBERTY UNDER ARTICLE - 21**

**3.1 EXPANDING HORIZON OF LIFE AND PERSONAL LIBERTY WITH**  
**JUDICIAL INTERPRETATION OF ARTICLE - 21.**<sup>52</sup>

Article -21 provides Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.

*No person:* Rights guaranteed by article 21 are for all persons, citizens and aliens. This is the import of article 21 saying ‘no person shall be deprived’ etc. It seems improper to read article 19 as dealing with the same subject as article 21. Article 19 gives the rights specified therein only to the citizens of India while article 21 is applicable to all persons. The word citizen is expressly defined in the Constitution to indicate only a certain section of the inhabitants of India. The protection given by article 21 is very general. It is of “law” –whatever that expression is interpreted to mean. The legislative restrictions on the law-making powers of the legislature are not here prescribed in detail as in the case of the rights specified in article 19. Therefore, article 19 should be read as a separate complete article. Article 21 extends the protection of life and personal liberty to ‘all persons’ — citizens and non-citizens alike.’<sup>53</sup> Where deportation proceedings are started against a foreigner under the Citizenship Act, it is not a case of depriving any person of his life or liberty. It is, therefore, not open to the Union of India or the State of Assam or for that matter any one to contend that the procedure prescribed in the aforesaid enactment is not just, fair and reasonable and thus violative of article 21 of the Constitution.<sup>54</sup>

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<sup>52</sup>Dr. SubashKashyap, constitutional law in india,voll,page no 671-78

<sup>53</sup>*AK. Gopalanv. State of Madras*, AIR 1950 SC 27: (1950) SCR 88.; *Chairman Railway Boarilv. Chandrima Das*, AIR 2000 SC 988: (2000) 2 SCC 465: 2000 (1) SCALE 279; *N.H.R.C. v, Stat, ' of Arunachal Pradesh*, AIR 1996 SC 1234: (1966) 1 SCC 742: (1996) 1 SCR 278; *V.D. Roy v. Stat, ' of Kerala*, AIR 2001 SC 137.

<sup>54</sup>*SarbanandaSonowalv. Union of India*, AIR 2005 SC 2920: JT 2005 (6) SC 9: (2005) 5 SCC 665.

***Shall be deprived of,*** Deprivation (total loss) of personal liberty, which *inter alia* includes the right to eat or sleep when one likes or to work or not to work as and when one pleases and several such rights sought to be protected by the expression “personal liberty” in article 21, is quite different from restriction (which is only a partial control) of the right to move freely (which is relatively a minor right of a citizen) as safeguarded by article 19(1)(d). Deprivation (it personal liberty has not the same meaning as restriction of free movement in the territory of India. This is made clear when the provisions of the Criminal Procedure Code in Chapter VIII relating to security of peace or maintenance of public order are read. Therefore, article 19(5) cannot apply to a substantive law depriving a citizen of personal liberty. The word “deprivation” would not include within its scope “restriction” when interpreting article 21.<sup>55</sup>

***Right to life:*** ‘Life’ in article 21 is not merely the physical act of breathing. Article 21 has given protection to life as a substantive right and the article properly understood does not prescribe any particular procedure.<sup>56</sup>

While arriving at the proper meaning and content of the right to life, it has to be remembered that it is a constitutional provision and moreover it is a provision enacting a fundamental right and the attempt of the court should always be to expand the reach and ambit of the fundamental right rather than to attenuate its meaning and content. This principle of interpretation which requires that a constitutional provision must be construed, not in a narrow and constricted sense, but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that the constitutional provision does not get atrophied or fossilized but remains flexible enough to meet the newly emerging problems and challenges, applies with, greater force in relation to a fundamental right enacted by the Constitution. The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person.<sup>57</sup>

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<sup>55</sup>A.K. Gopalan v. State of Madras, AIR 1950 SC 27: (1950) 5CR 88, Kania, J.

<sup>56</sup>A.K. Gopalan v. State of Madras, AIR 1950 SC 27: (1950) SCR 88; Sarmath v. State of A.P., AIR 1997 SC 3297: 1997 (4) SCALE 746: (1997) 8 SCC 191: (1997) Supp 2 SCR 305.

<sup>57</sup>Francis Coralie Mullin v. Administrato., Union Territory of Delhi, AIR 1981 SC 746 (1981) 1 SSC 608.

**Personal liberty:** “Personal liberty” is used in article 21 as a compendious term to include within itself all the varieties of rights which go to make up the “personal liberties” of man other than those dealt with in the several clauses of article 19(1). In other words, while article 19(1) deals with particular species or attributes of freedom, personal liberty in article 21 takes in and comprises the residue. ‘Life’ in article 21 means not merely the right to the continuance of a person’s animal existence, but a right to the possession of each of his organs—his arms and legs etc. Is then the word ‘personal liberty’ to be construed as excluding from its purview an invasion on the part of the police of the sanctity of a man’s home and an intrusion into his personal security and his right to sleep which is the normal comfort and a dire necessity for human existence even as an animal? ((In the words of the preamble, the Constitution is designed to “assure the dignity of the individual” and cherished human values as the means of ensuring his full development and evolution..))The concepts underlying the Constitution would point to such vital words as ‘personal liberty’ having to be construed in a reasonable manner and to be attributed that sense which would promote and achieve those objectives and by no means to stretch the meaning of the phrase to square with any preconceived notions or doctrinaire constitutional theories.”

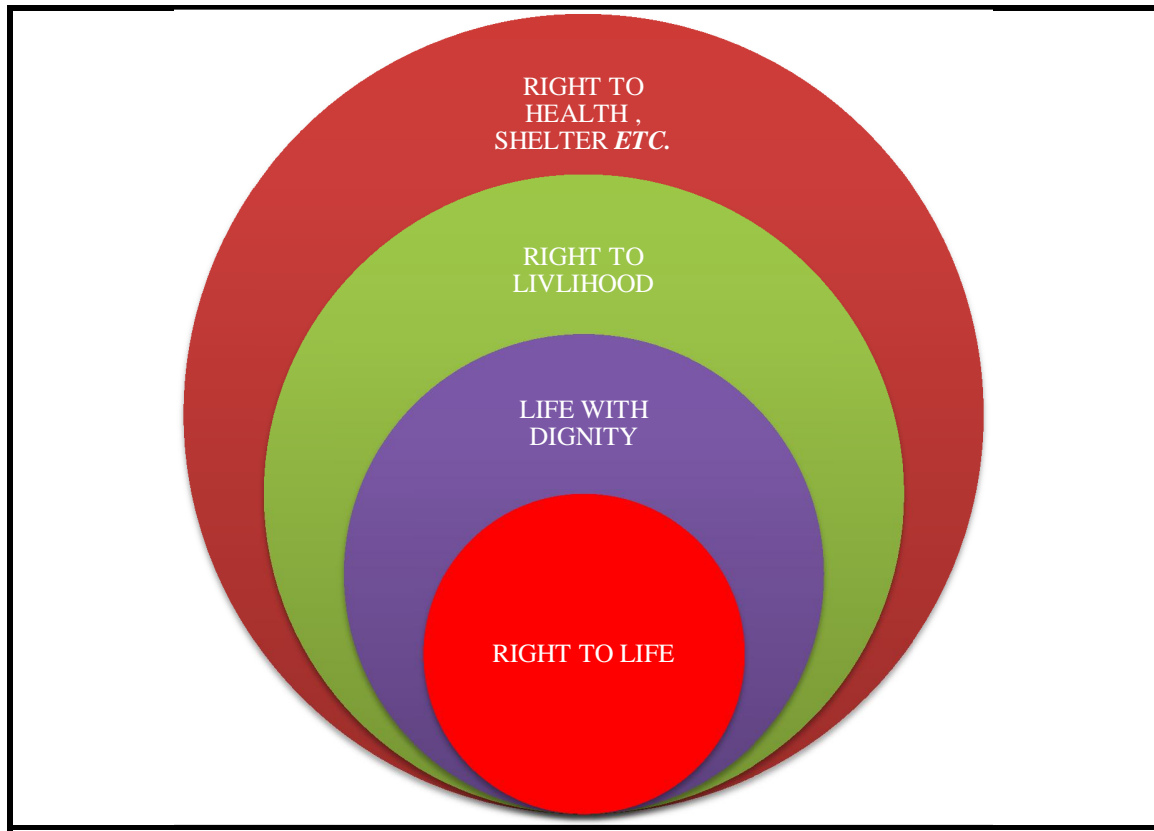
**Procedure established by law:**The word “law” in article 21, referred to State made law and ‘procedure established by law’ means procedure established by law made by the State, that is to say, by the Union Parliament or legislations of the States. It did not mean law in the abstract or general sense embodying the principles of natural justice. It was not the same as the due process clause in the American Constitution.<sup>58</sup>

Natural justice is implicit in article 21. Article 14 like a *brooding* omnipresence and the procedure contemplated by article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be “right 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.

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<sup>58</sup>. *Vidyaverma v. Shiv Narain Verma*, AIR 1956 Cr LJ , 283: (1955) 2 SCR 983.

### **3.2 EXPANDING HORIZON OF LIFE**



The onset of the democratic movements all over the world and emergence of the idea of Human Rights led to the trend of guaranteeing basic human rights in the basic laws<sup>59</sup> namely the Constitutions. Soon it was witnessed that mere incorporation of these rights would not suffice, as, every country in the world faces the problem of human rights violation in some form or the other. Most of the world's population has been suffering from violation of human rights.<sup>60</sup>

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<sup>59</sup>A.P.Singh, "Human Rights: The Indian Context" *AIR* 2000 Jour, p.8

<sup>60</sup>N.V.Anandram, "Situating Human Rights in the Media", in *Human Rights in India Historical Social and Political Perspectives*. Chiranjivi J. Nirmal (Ed.), (New Delhi: Oxford University Press, 2000), p.123.



India is no exception. Statistically speaking, the Supreme Court or a High Court in the country delivers at least one judgement everyday touching upon the human rights of the people. The performance of the courts matches the rise in the violations of human rights.<sup>61</sup> When there is any discussion on human rights in the country, the role of judiciary in giving a new dimension to these rights through its activism cannot be ignored.

Fundamental right under Article 21 of the object personal liberty except according to procedure established by law is to prevent encroachment on and loss of life. Deprivation of Personal liberty or to intrude on another person's life is an act of private individual amounts. Such violations would not fall under Article 21 for the set parameters. Measures for victim in such a case under article 226 of the Constitution or the common law will either. Article 21 of the Constitution, individual liberty or deprivation of a person's life is on the prevention of encroachment.

The state cannot be defined in a restricted sense. Government departments, legislature, administration, and therefore the exercise of jurisdiction over the local authorities, but it is not statutory authority does not include non-statutory or private bodies, including. For example: Company, autonomous bodies and others.

'Life' in article 21 is not merely the physical act of breathing. Article 21 has given protection to life as a substantive right and the article properly understood does not prescribe any particular procedure.<sup>62</sup>

While arriving at the proper meaning and content of the right to life, it has to be remembered that it is a constitutional provision. Moreover, it is a provision enacting a fundamental right and the attempt of the court should always be to expand the reach and ambit of the fundamental right rather than to attenuate its meaning and content. This principle of interpretation which requires that a constitutional provision must be construed, not in a narrow and constricted sense, but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that the constitutional provision does not get atrophied or fossilized but remains flexible enough to meet the newly emerging problems and

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<sup>61</sup> M.J. Antony, "Annual Digest of Human Rights Judgments" (2002) p. (iii), cited in Furquan Ahmad. "Compensation for Arbitrary Arrest and Custodial Death; A Basic Human Right" (2000) C.U.L.R. Vol.XXIII.

<sup>62</sup> A.K. Gopalanv. State of Madras, AIR 1950 SC 27: (1950) SCR 88; Sarnathav. State of A.P., AIR 1997 SC 3297: 1997 (4) SCALE 746: (1997) 8 5CC 191: (1997) Supp 2 SCR 305.

challenges, applies with, greater force in relation to a fundamental right enacted by the Constitution. The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person.<sup>63</sup>

Kidnapping is an *offence* against right to life under article 21 and against human rights. It deserves deterrent punishment.<sup>64</sup> In *Olga Tellis V. Bombay Municipal corporation*<sup>65</sup> and *Maneka Gandhi v. Union of India*<sup>66</sup>, Supreme court conferred in relation to right to life that the sweep of the right to life conferred by article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right of life.

“By the term ‘life’ as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all these limits and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the outer world.”<sup>67</sup>

Every limb or faculty through which life is enjoyed is protected by article 21 and *a fortiori*, this would include the faculties of thinking and feeling. The expression ‘life’ in this article on does not connote mere animal existence or continued drudgery through life; it means something much more than just physical survival. It has a much wider meaning, which includes right to livelihood, better standard of living, hygienic conditions in the workplace

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<sup>63</sup>*Francis Coralie Mullin v. Administrato., Union Territory of Delhi*, AIR 1981 SC 746 (1981) 1 SSC 608.

<sup>64</sup>*Tarun Bora v State of Assam*, AIR 2002 SC 2926: (2002) 7 SCC 39: (2002) Supp I SCR 458

<sup>65</sup> AIR 1986 SC 180: 1985 (2) SCALE 5: (1985) 3 SC

<sup>66</sup> AIR 1978 SC 597: (1978) 1 SCC 248: (1978) 2 SCR 621.

<sup>67</sup>*Munn v Illinois*, Field J., quoted with approval in *Kharak Singh's case*, AIR 1963 SC 1295: 1963 Cri LJ 329: (1964) I SCR 332; *D.Bhuvan Mohan Patnaik v. State of Andhra Pradesh*, AIR 1974 SC 2092: (1975) 3 SCC 185: (1975) 2 SCR 24; *Govind v. State of Madhya Pradesh*, AIR 1975 SC 1378: (1975) 2 SCC 148: (1975) 3 SCR 946; *Sunli Batrav. Delhi Administration* AIR 1978 SC 1675' (1978) 4 SCC 494: (1979) 1 SCR 392; *Delhi Transport Corporation v. D.T.C. Mazdoor Congress*. AIR 1991 SC 101: 1991 Supp (I) SCC 600: (1990) Supp I SCR 142; *Consumer Education & Research Centre v. Union of India*, AIR 1995 SC 922: (1995) 3 SCC 42: (1995) 1 SCR 626.

and leisure<sup>68</sup>

A dynamic meaning must attach to life and liberty. Article 21 of the Constitution of India has been interpreted to include the right to live with human dignity and all that goes along with it, namely the bare necessities 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. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but 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,? very act which offends against or impairs human dignity would constitute deprivation *pro (onto* 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.<sup>69</sup>

This right to live with human dignity enshrined in article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of article 39 and articles 41 and 42 and at the last, therefore, it must include protection of the health and strength of workers, men-and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State—neither the Central Government nor any State Government—has the right to take any action which will deprive a person of the enjoyment of these basic essentials. “Right to life” is the compendious expression for all

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<sup>68</sup>*Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746: (1981)1 SCC 608; *Consumer Education & Research Centre v. Union of India*, AIR 1995 SC 922: (1995) 3 SCC 42: (1995) 1 SCR 626.

<sup>69</sup>*Sunil Batrav. Delhi Administration*, AIR 1978 SC 1675: (1978) 4 SCC 494: (1979) 1 SCR 392; *Mohnijain, v. State of Karnataka*, AIR 1992 SC 1858: (1992) 3 SCC 666: (1992) 3 SCR 658; *Consumer Education & Research, Centre v. Union of India*, AIR 1995 SC 922: (1995) 3 SCC 42: (1995)1 SCR 626; *Francis coralie Mullin,, v. Administrator, union Territory of Delhi*, AIR 1981 SC 746: (1981) 1 SCC (08).

those rights, which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct, which the individual is free to pursue.<sup>70</sup>

- Just because courts have relied upon some of the directive principles to locate parameters of some of the rights implicit in article 21, it does not follow automatically that each and every obligation referred to in Part IV get's automatically included within the purview of article 21. Some rights have been, held to be implicit in the right to life because of its inherent fundamental importance, for example right to education by referring to articles 41, 45 and 41 The mere fact that the State as at present is not taking away a right implicit iii right to life would not mean that right would not be read into article 21. The content of right to life is not to be determined on the basis of existence or absence of threat of deprivation. Hence the argument that article 21 is negative in character and is attracted only if and when the State makes a law taking away the rights implicit in it is rejected.<sup>71</sup>

### **3.2.1 Right to protection against torture:**

Any punishment, which is too cruel, or torture some is unconstitutional.<sup>72</sup> Any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and Article 21 would on this view, prohibit it. unless it is in accordance with procedure prescribed by law, but no law which authorises and no procedure which leads to such torture or cruel, inhuman or degrading treatment can ever stand the test of reasonableness and nun arbitrariness: it would plainly be unconstitutional and void as being violative of articles 14 and 21. It would thus be seen that there is implicit in article 21 the right to protection against torture or cruel, inhuman or degrading treatment which is enunciated in article 5 of the Universal Declaration of Human Right and guaranteed

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<sup>70</sup>*Bandhua Mukti Morcha v Union of India*, AIR 1984 SC 802: (1984) 3 SCC 161: (1984) 2 SCR 67, *Francis Coralie Mullin v. Administrator. Union Territory of Delhi*. AIR 1981 SC 746: (1981) 1 SCC 608; *consumer Education & Research Centre v. Union of India*, AIR 1995 SC 922: (1995) 3 SCC 42: (1995) 1 SCR 626; *Samathav. State of AP.*, AIR 1997 SC 3297: 1997 (4) SCALE 746: (1997) 8 SCC 191: (1997) Supp 2 SCR 305; *Mohini Jain v. State' of Karnataka*, AIR 1992 SC 1858: (1992) 3 SCC 666: (1992) 3 SCR 658.

<sup>71</sup>*InderjeetV. State Of Uttar Pradesh*, AIR 1979 SC 1867: (1979) 4 SCC 246: (1980) 1 SCR 255: (1979) 4 SCC 246: (1980) 3 SCR 255.

<sup>72</sup>*InderjeetV. State Of Uttar Pradesh*, AIR 1979 SC 1867: (1979) 4 SCC 246: (1980) 1 SCR 255: (1979) 4 SCC 246: (1980) 3 SCR 255.

by article 7 of the International Covenant on Civil and Political Rights. This right to live, which is comprehended within the broad connotation of the right to life can concededly be abridged according to procedure established by law and therefore when a person is lawfully imprisoned, this right to live is bound to suffer attenuation to the extent to which it is incapable of enjoyment by reason of incarceration.<sup>73</sup>

*Article 7 of the ICCPR* is reflected in *Article 21 of the Indian Constitution*, which is a non-derogable right. Article 21 was a derogable right until the 44<sup>th</sup> Amendment to the Constitution, 1978. It includes right against torture and assault by State or other functionaries. This right is even available to foreign citizens, under-trials, prisoners and detainees in custody. In recent times there is an increasing concern of the international community about the practice of torture of prisoners and detainees. Torture is a well established tool used by the Indian Police for investigation.<sup>74</sup>

In tune with international human rights instruments against torture, the Constitution also emphasizes respect and honour of human dignity and fundamental rights. Torture has not been defined in the Constitution or in other penal laws. *Article 21* of Constitutional only provides “no person shall be deprived of his life or personal liberty except according to procedure established by law”. Life or personal liberty has been held to include the right to live with human dignity and includes within its ambit a personal guarantee against torture or to cruel, inhuman or degrading treatment or punishment can move to the higher courts for judicial remedies under *Article 32 & 226* for deprivation of Fundamental Rights. *Article 22* guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed about the grounds of such arrest and cannot be denied to consult and defend himself by legal practitioner of his choice. A22 directs that person arrested and detained in custody shall be produced before nearest Magistrate within 24 hrs of such arrest. Article 20(3) provides that accused shall not be compelled to witness against himself as this would amount to self-incrimination.

In early eighties were investigative journalism which exposed the practice of torture. The other was public interest litigation, based on press reports. The process of accountability

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<sup>73</sup> Francis Coralie Mullin v. Administrator, Union Territory of Delhi, AIR 1981 SC 746: (1981) 1 SCC 608; Munsingh v. State of Madhya Pradesh, AIR 2005 SC 402: (2005) 9 SCC 631: 2004 (9) SCALE 390.

<sup>74</sup> <https://indialawyers.wordpress.com/2010/07/22/india%E2%80%99s-response-against-the-act-of-torture/>

was strengthened with the enactment of **Protection of Human Rights Act, 1993**. Sec 3 of the Act set up National Human Rights Commission.<sup>75</sup>

The problem of police torture and violence is of universal nature. The concern regarding the problem was one of the reasons leading to provisions against torture and inhuman and degrading treatment and punishments in the Magna Carta and Constitutions of U.S.A and other countries of the world. Though there is no separate and specific protection in the Indian Constitution against torture, the combined effect of rights against self incrimination and of life and liberty is too evident.<sup>76</sup>

In *Nandini Satpati v. P.L Dani* (AIR 1978 SC 1025), the Court held that not only physical threats or violence but psychological torture, atmospheric pressure, environmental coercion, tiring interrogation by police are violation of law.

The clear case of prohibition against torture was delivered by the Court in *Sunil Batra v. Delhi Administration* (1978 (4) SCC 494). The Supreme Court did not find itself handicapped by absence of specific provisions against torture in the Constitution and gathered support from Article 14 & 19 in holding against the permissibility of torture vis-à-vis persons suspected and accused of crime.<sup>77</sup>

In *Ragbir Singh v. State of Haryana* (1980 (3) SCC 70), where the violence employed by the police to extract a confession resulted in death of a person suspected of theft, the court observed that the lives and liberty of citizens are at peril when the guardians of law stab human rights to death. Vulnerability of human rights assumes a traumatic, torturesome poignancy, the violent violence is perpetrated by the police arm of the State whose function is to protect the citizen and not to commit gruesome offences against them. The court awarded life sentence to the police officer responsible for the death of the suspect in police lock up.

*Khatri v. State of Bihar* (AIR 1981 SC 928)/ *Bhagalpur Blinding case*, was an example of cruel and inhuman treatment to the prisoners which are insulating the spirit of Constitution and human value as well as Article 21. Supreme Court in this case tackled the blinding of under-trial prisoners by the police by piercing their eyeballs with needle and

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<sup>75</sup> ibid

<sup>76</sup> ibid

<sup>77</sup> ibid

pouring acid in them. This case shows the pattern of torture, the sanction of torture by state and local judicial authorities, the routine concealment of torture.

Formidable problem in an alleged case of police torture is to establish the guilt of the perpetrators of violence. The wrongdoers may either be able to escape conviction due to lack of required degree of proof or maybe found guilty of lesser offence than the one warranted by the actual facts. This is primarily due to the situation that the warranted by the actual facts. This is primarily due to the situation that the offenders are the comrades and colleagues of the prosecutors and the complete lack of neutral witness.

*State of U.P v. Ram Sagar Yadav* (1985 (1) SCC 552 ), is a case indicative of extreme limits to which police violence and highhandedness may extend. The victim made a complaint against a policeman who demanded bribe from him. He was arrested for his 'audacity' and shortly afterwards while in custody was found in a serious condition with 19 injuries on his body eventually causing his death. The Supreme Court while affirming the punishment of 7 years rigorous punishment for culpable homicide not amounting to murder under Sec 304, expressed his regret that the trial judge did not find policeman guilty of murder as indicated by the facts.<sup>78</sup>

In *D.K Basu v. State of West Bengal* (AIR 1997 SC 610), the Court laid down 11 guidelines (procedural measures) to be followed while, during and after arrest of person till he is in the custody of police. This case came up before the Court through a petition under art 32 of the Constitution by an NGO. The Executive Chairman of this NGO had written to Chief Justice of India drawing his attention to news items published in a newspaper, regarding deaths in police lock up and in jail in the State of West Bengal. Here the Court observed that Custodial Torture is a naked violation of human dignity and degrading which destroys individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, the Civilization takes a step backward.

However, mere formulation of guidelines and safeguards would not be sufficient, therefore Supreme Court in *D.K Basu case* warned that:

*Failure to comply with the requirements mentioned shall apart from rendering the concerned official liable for departmental action liable to be punished for contempt of Court*

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<sup>78</sup> ibid

may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

In *Joginder Kumar v. State of U.P* (1994 (4) SCC 260), Joginder Kumar was called to the police station in connection with a case. Thereafter, his whereabouts became unknown to his family members. His family members filed a writ of *habeas corpus* before the Supreme Court, pursuant to which he was produced before the court.

Alarming increase in cases of torture, assault and death in police custody and non availability to punish the culprits in such cases have been an vexed problem as the investigation into such matters have been by the custodians themselves. It is therefore, of utmost necessity that an objective and independent enquiry should be made. Keeping it in view, the Supreme Court in *Secretary, Hailakandi Bar Association v. State of Assam (1995) Supp (3) SCC 736*, directed the CBI to register and investigate the instant case of custodial death. Again in Supreme Court in *Ajab Singh v. State of UP* (2000) 3 SCC 521, where the police examination of a custodial death was a concocted story, directing the CBI to register the case and conduct an investigation into the circumstances of custodial death. It also directed the CBI to complete investigation expeditiously and file a copy of the investigation report in the court.

The **UN Convention against Torture** provides for redress and compensation to the tortured victim. Article 14 of the convention categorically emphasizes that every State party to the Convention must ensure that the tortured victim is provided fair & adequate compensation and rehabilitation. If death results in the event of torture, the family is to be provided with compensation. In *Nelabati Behara v. State of Orissa (1993 (2) SCC 746)*; the principle of state liability and the need for state to make reparations for such liability was recognized. It was highlighted that court under Art 32 and 226 of the Constitution has wide amplitude to provide any remedy under Public Law for any contravention of Fundamental Rights.<sup>79</sup>

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<sup>79</sup> ibid



### **3.2.2 Right to livelihood:**

An important facet of right to life is the right to livelihood because; no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. Yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right of life. That, which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live: Only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood.<sup>80</sup>

Article 39(a) of the Constitution, which is a Directive Principle of State Policy, provides that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Article 41, which is another Directive Principle, provides, *inter alia*, that the State shall within the limits of its economic capacity, and development, make effective provision for securing the right to work in cases of unemployment and of undeserved want. Article 37 provides that the Directive

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<sup>80</sup>*Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180; 1985 (2) SCALE 5; (1985) 3 SC 545; *Delhi Transport Corporation v. D.T.C. Mazdoor Congress*, AIR 1991 Supp 1 SCC 600; (1990) Supp I SCR 142; *Consumer Education & Research Centre v. Union of India* 1995 SC 922; (1995) 3 SCC 42; (1995) I SCR 626; *Unni Krishna., JP, v. State of Andharapradesh* AIR 1993 Sc 2178; JT (1993) 1 Sc474; (1993) 1 SCC 645; *MadhuKasihwar v State of Bihar* AIR 1996 Sc 1864; (1996) 5 SCC 125; (1996) Supp 1 SCR 442; *L.I.C. of India v Consumer education & Research Centre*, AIR 1995 SC 1811; (1995) 5 SCC 482; *Narender Kumar v State Of Haryana* JT (1994) 2 Sc 94; (1994) 4 SCC 460.

Principles, though not enforceable by any court, are nevertheless fundamental in the governance of the country. The principles in articles 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right of life. The State may not by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred under article 21. People lived in slums and pavements because they had small jobs to nurse in the city and there is nowhere else to live. Evidently, they choose a pavement or a slum in the vicinity of their place of work, the time otherwise taken in commuting and its cost being forbidding. To lose the pavement or the slum is to lose the job. The conclusion, therefore, in terms of the constitutional phraseology is that their eviction will lead to deprivation of their livelihood and consequently to the deprivation of life.<sup>81</sup>

Right to livelihood as contemplated under article 21 of the Constitution cannot be so widely construed as to result in defeating the purpose sought to be achieved by the aforesaid article. It is also true that the right to livelihood would include all attributes of life but the same cannot be extended to the extent that it may embrace or take within its ambit all sorts of claims relating to the legal or contractual rights of parties completely ignoring the person approaching the court and the alleged violation of the said right.<sup>82</sup>

Right to life would include right to continue in permanent employment which is not a bounty of the employer nor can its survival be at the volition or mercy of the employer. Income is the foundation to enjoy many fundamental rights and when work is the source of income, the right to work would become a much a fundamental right. Fundamental rights can ill afford to consign to the limbo of undefined premises and uncertain application. That will be mockery of them.<sup>83</sup>

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<sup>81</sup> Supra note 76

<sup>82</sup> *State of Himachal Pradesh v. Raja Mahendra Pal*, AIR 1999 SC 1786: 1999 (2) SCALE 381 : 1991 4 SSC 43

<sup>83</sup> *Delhi Transport Corporation v. D.T.C. Mazdoor Congress*, AIR 1991 SC 101: 1991 Supp (I) SCC 600: (1990) Supp I SCR 142, *Samantha v. State of Andhra Pradesh*, AIR 1997 SC 3297: 1997 (4) SCALE 746: (1997) 8 SCC 191: (1997) Supp 2 SCR 305

### **3.2.3 Agriculture:**

Agriculture is not a singular vocation. It is, more often than not, a joint venture, mainly of the tiller's family members. Some of them have to work hard and the others harder still. Everybody, young or old, male or female has chores allotted to perform; a share in the burden of toil. Traditionally and historically, the agricultural family is identified by the male head. Their right to livelihood a right constitutionally recognised a right which the female enjoyed in common with the last male holder of the tenancy. It is in protection of that right to livelihood, that the immediate female relatives of the last male tenant have the constitutional remedy to stay on holding the land so long as they remain dependent on it for earning their livelihood, for otherwise it would render them destitute. It is on exhaustion of, or abandonment of land by, such female descendant can the males in the line of descent take over the holding exclusively.<sup>84</sup>

### **3.2.4 Life insurance:**

Life insurance coverage is against disablement or in the event of the insured economic support for the dependents, social security to livelihood to the insured or the dependents. The appropriate life insurance policy within the paying capacity and means of the insured to pay premium one of the social security measures envisaged under the Constitution to make right to life meaningful, worth living and right to livelihood a means for subsistence.<sup>85</sup>

### **3.2.5 Right to health care:<sup>86</sup>**

The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social

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<sup>84</sup>*MadhuKishwar v. State of Bihar*, AIR 1996 SC 1864: (1996) 5 SCC 125: (1996) SUPP 1 SCR 442

<sup>85</sup>*L.I.C. of India v. Consumer Education & Research Centre*, AIR 1995 SC 1811: (1995) 5 SSC 482

<sup>86</sup>Nirvani, Sharada T., 2005, "A Critical Study of Judicial Enforcement of Human Rights in India Through Public Interest Litigation with special Reference to Right to Life", thesis PhD, Saurashtra University

condition.<sup>87</sup> The very existence of human beings who are prone to sickness and diseases, very often depends on availability of efficient health care services at affordable cost. Right to live with dignity and the philosophy behind all human rights laws will be meaningless, unless medical services are made available to all. It is conceivable that there can not be an absolute right to enjoy all fruits of modern medical technology. But what can be considered as part of humanright element is reasonable provision for medical services which is free from deficiency.<sup>88</sup> Availability of basic medical facilities are part of individuals human rights.

Article 25 of Universal Declaration of Human Rights provides as under: (1)Every one has the right to a standard of living adequate for the health and wellbeing of himself and of his family including ... medical care...<sup>89</sup>

Article 12 of International Covenant on Economic, Social and Cultural Rights in para(2) provides that :

(2) The steps to be taken by the State Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- a) .....
- b) The improvement of all aspects of environmental and industrial hygiene;
- c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.<sup>90</sup>

The Constitution of India requires the State to raise the level of nutrition andthe standard of living of its people and the improvement of public health.<sup>91</sup>

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<sup>87</sup> Preamble to the *Constitution of World Health Organisation (WHO)*.

<sup>88</sup> A.M.Verkey, "Deficiency in Health Services: Human Rights Law Approach," (2000) *C.U.L.R.* vol. XXIV, p.78.

<sup>89</sup> Article 25 of *Universal Declaration of Human Rights*.

<sup>90</sup> Article 12(2) of *International Convention on Civil and Political Rights*.

<sup>91</sup> Article 47(1) of *Constitution of India*.

Health is thus a state of complete physical, mental and social wellbeing. Article 21 of the Constitution imposes an obligation on the state to safeguard the right to life of every citizen.<sup>92</sup> Of late, the right to health and access to medical treatment has been included in the plethora of rights brought under the ambit of Art.21. The attitude of the judiciary in expanding the horizons of Article 21 has been analysed with special reference to the right to health and medical assistance as a right under Article 21.<sup>93</sup>

But the Constitution does not confer an enforceable fundamental right to medical assistance to have better health. This is achieved by judicial interpretation in public interest litigation and it is Article 47 under Part IV of the Constitution which imposes a primary duty upon the state to raise the level of nutrition and the standard of living and to improve public health, and by harmonious construction of the fundamental rights and directive principles has prescribed the modality of access to medical treatment.<sup>94</sup>

The Supreme Court, in *Paschim Banga Khet mazdoor Samity&ors v. State of West Bengal &ors*,<sup>95</sup> while widening the scope of art 21 and the government's responsibility to provide medical aid to every person in the country, held that in a welfare state, the primary duty of the government is to secure the welfare of the people. Providing adequate medical facilities for the people is an obligation undertaken by the government in a welfare state. The government discharges this obligation by providing medical care to the persons seeking to avail of those facilities. Article 21 imposes an obligation on the state to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The government hospitals run by the state are duty bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment, results in violation of his right to life

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<sup>92</sup> Dr A. Raghunandh Reddy, "Liability of the Government Hospitals and Breach of Right To Life." *AIR* 1998 Jour.153.

<sup>93</sup>C Manickam and S Sajith, "Right to health And Access to Medical Treatment under the Indian Constitution," *AIR* 1997 Jour 104.

<sup>94</sup>*Ibid.*

<sup>95</sup>(1996) 4 SCC 37

<sup>96</sup> <http://www.legalindia.com/right-to-health/>

guaranteed under Article 21. The Court made certain additional direction in respect of serious medical cases:<sup>9798</sup>

1. Adequate facilities be provided at the public health centers where the patient can be given basic treatment and his condition stabilized.
2. Hospitals at the district and sub divisional level should be upgraded so that serious cases be treated there.
3. Facilities for given specialist treatment should be increased and having regard to the growing needs, it must be made available at the district and sub divisional level hospitals.
4. In order to ensure availability of bed in any emergency at State level hospitals, there should be a centralized communication system so that the patient can be sent immediately to the hospital where bed is available in respect of the treatment, which is required.
5. Proper arrangement of ambulance should be made for transport of a patient from the public health centre to the State hospital.
6. Ambulance should be adequately provided with necessary equipments and medical personnel.

The Supreme Court in its landmark judgment in *Paramanand Katara v Union of India*<sup>99 100</sup> ruled that every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or state action can intervene to avoid delay, the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute, and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained, and must, therefore, give way. The Court laid down the following guidelines for doctors, when an injured person approaches them:

**I. Duty of a doctor when an injured person approaches him:** Whenever, on such occasions, a man of the medical profession is approached by an injured person, and if he finds that whatever assistance he could give is not really sufficient to save the life of the person, but some better assistance is necessary, it is the duty of the man in the medical profession so

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<sup>97</sup>*Ibidem*, at 47-48

<sup>98</sup> Supra note 91

<sup>99</sup> AIR 1989 SC 2039

<sup>100</sup> <http://www.legalindia.com/right-to-health/>

approached to render all the help which he could, and also see that the person reaches the proper expert as early as possible.

**II.** Legal protection to doctors treating injured persons: A doctor does not contravene the law of the land by proceeding to treat an injured victim on his appearance before him, either by himself or with others. Zonal regulations and classifications cannot operate as fetters in the discharge of the obligation, even if the victim is sent elsewhere under local rules, and regardless of the involvement of police. The 1985 decision of the Standing Committee on Forensic Medicine is the effective guideline.

**III.** No legal bar on doctors from attending to the injured persons: There is no legal impediment for a medical professional, when he is called upon or requested to attend to an injured person needing his medical assistance immediately. The effort to save the person should be the top priority, not only of the medical professional, but even of the police or any other citizen who happens to be connected with the matter, or who happens to notice such an incident or a situation.

### **3.2.6 Right to health:**<sup>101</sup>

The Directive principles of state policy are only the directives to the State. These are non-justifiable. No person can claim for non-fulfilling these directives. But the Supreme Court has brought the right to health under the preview of Article 21. The scope of this provision is very wide. It prescribes for the right of life and personal liberty. The concept of personal liberty comprehended many rights, related to indirectly to life or liberty of a person. Now a person can claim his right of health.<sup>102</sup> Thus, the right to health, along with numerous other civil, political and economic rights, is afforded protection under the Indian Constitution. The debate surrounding the implementation of the human right to health is fresh and full of possibility for the developing world. In fact, Indian has been able to create a legal mechanism whereby right to health can be protect and enforced. The early of 1970s, witnessed a watershed in human rights litigation with the *Keshvanandbharti v. State of kerela*<sup>103</sup> ushering in a unprecedented period of progressive jurisprudence following the

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<sup>101</sup> <http://www.legalindia.com/right-to-health/>

<sup>102</sup> SheerajLatif Ahmad Khan, "right to health". (1995) 2 SCJ 29-34, at 30.

<sup>103</sup> (1973) 4 SCC 225.

recognition fundamental rights. At the same time, standing rules were relaxed in order to promote PIL and access to justice. So there were two developments in 1980's, which led to a marked increase in health related litigation. First was the establishment of consumer courts that made it cheaper and speedier to sue doctors for medical negligence. Second, the growth of PIL and one of this offshoots being recognition of health care as a fundamental right. Through PIL the Supreme Court has allowed individual citizen to approach the court directly for the protection of their Constitutional human rights.<sup>104</sup>

The Constitution guarantees the some fundamental rights having a bearing on health care. Article 21 deal with "No person shall be deprived of his life or personal liberty except according to procedure established by law."<sup>105</sup> Right to live means something more than mere animal existence and includes the right to live consistently with human dignity and decency.

In 1995, the Supreme Court held that right to health and medical care is a fundamental right covered by Article 21 since health is essential for making the life of workers meaningful and purposeful and compatible with personal dignity. The state has an obligation under Article 21 to safeguard the right to life of every person, preservation of human life being of paramount importance. The Supreme Court has in the case of *ParmanandKatravs Union of India*,<sup>106</sup> held that whether the patient be an innocent person or be a criminal liable to punishment under the law, it is the obligation of those who are in charge of the health of the community to preserve life so that innocent may be protected and the guilty may be punished.<sup>107</sup>

Article 23 is indirectly related to health. Article 23(1) prohibits traffic in human beings. It is well known that traffic in women leads to prostitution, which in turn is to major factor in spread of AIDS. Article 24 is relating to child labour it deal with "No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment."<sup>108</sup> Thus this article is of direct relevance to child health.

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<sup>104</sup>Kumar Avanish "Human Right to Health" satyam law pub. 2007 at 171

<sup>105</sup> Constitution of India.

<sup>106</sup>AIR 1989 SC 2039

<sup>107</sup>ibid

<sup>108</sup>Constitution of India



In addition to constitutional remedies, sensitizing of the relevant ordering law towards later health for all adds to the of right to health. Legal prohibition of commercialized transplantation of human organ and effective application of consumer protection act to deal with deficient medical services have animated right to health.<sup>109</sup>

With the recognition that both the Indian Constitution and the fundamental right of life emphasize human dignity, began to address the importance of health to Indian citizen. In the Directive principles of state policy, Art.47 declares that the State shall regard the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. Since Directive principles of state policy are not enforceable by the court, implementation of the guarantee has remained illusory.<sup>110</sup> However, in a series of cases dealing with the substantive content of the right to life, the court has found that the right live with human dignity including right to good health.<sup>111</sup> In *Consumer Education and Research Center v. UOI*,<sup>112</sup> the Court explicitly held that the right to health was an integral factor of a meaningful right to life. The court held that the right to health and medical care is a fundamental right under Article 21. The Supreme Court, while examining the issue of the constitutional right to health care under arts 21, 41 and 47 of the Constitution of India in *State of Punjab v Ram LubhayaBagga*,<sup>113</sup> observed that the right of one person correlates to a duty upon another, individual, employer, government or authority. Hence, the right of a citizen to live under art 21 casts and obligation on the state. This obligation is further reinforced under art 47; it is for the state to<sup>114</sup> secure health to its citizens as its primary duty. No doubt the government is rendering this obligation by opening government hospitals and health centers, but to be meaningful, they must be within the reach of its people, and of sufficient liquid quality. Since it is one of the most sacrosanct and valuable rights of a citizen, and an equally sacrosanct and sacred obligation of the state, every citizen of this welfare state looks towards the state to perform this obligation with top priority, including by way of allocation of sufficient funds. This in turn will not only secure the rights of its citizens to

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<sup>109</sup>Spring Meadow Hospital VsHarijolAhluwalia, AIR 1998 SC180

<sup>110</sup> BandhuaMuktiMorcha AIR 1984 SC 812

<sup>111</sup> Ibid at 811

<sup>112</sup>AIR 1995 SC 636

<sup>113</sup>1998) 4 SCC 177: AIR 1998 SC 1703.

<sup>114</sup>

their satisfaction, but will benefit the state in achieving its social, political and economic goals.

In *CESC Ltd. vs. Subash Chandra Bose*<sup>115</sup>, the Supreme Court relied on international instruments and concluded that right to health is a fundamental right. It went further and observed that health is not merely absence of sickness: “The term health implies more than an absence of sickness. Medical care and health facilities not only protect against sickness but also ensure stable manpower for economic development. Facilities of health and medical care generate devotion and dedication to give the workers’ best, physically as well as mentally, in productivity. It enables the worker to enjoy the fruit of his labour, to keep him physically fit and mentally alert for leading a successful economic, social and cultural life. The medical facilities are, therefore, part of social security and like gilt edged security, it would yield immediate return in the increased production or at any rate reduce absenteeism on grounds of sickness, etc.

### **3.2.7 Right to legal aid:**<sup>116</sup>

Humanism, which is the source and strength of legality, is writ large in the theme of legal services to the poor in that part of our planet where backwardness and indigence have struck the hardest blows through the legal process itself on the lowly and the lost. “Pre-British India had practiced “constitutional monarchy” and the days of the Hindu and Muslim rulers had witnessed unsophisticated methodology of dispensing justice to the poor, inexpensively and immediately. In short, justice to the citizens-high and low-has been an Indian creed of long ago.<sup>117</sup>

“After Independence schemes of legal aid was developed under the aegis of Justice N.H. Bhagwati, then of Bombay High Court and Justice Trevore Harris of Calcutta High Court. The matter of legal aid was also referred to the Law Commission to make recommendations for making the legal aid program an effective instrument for rendering social justice. Coming up with recommendation in its XIV report, under the leadership of leading jurist M.C. Setalvad, the Commission opined that free legal aid is a service, which

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<sup>115</sup> AIR 1992 SC 573,585

<sup>116</sup> <http://www.legalserviceindia.com/article/I340-Legal-Aid-In-India.html>

<sup>117</sup> *ibid*

should be provided by the State to the poor. The State must, while accepting the obligation, make provision for funds to provide legal aid. The legal community must play a pivotal role in accepting the responsibility for the administration and working of the legal aid scheme. It owes a moral and social obligation and therefore the Bar Association should take a step forward in rendering legal aid voluntarily. These would include representation by lawyers at government expenses to accused persons in criminal proceedings, in jails, and appeals. "The Commission also recommended the substitution in Order XXXIII, Civil Procedure Code of the word 'pauper' with 'poor persons'. Acting on the recommendations of the Law Commission, the Government of India in 1960 prepared a national scheme of legal aid providing for legal aid in all courts including tribunals. It envisaged the establishment of committees at the State, District and Tehsil level. However, due to the inability of States to implement the scheme because of lack of finances the scheme did not survive.

Meanwhile the judicial attitude towards legal aid was not very progressive. In **Janardhan Reddy v. State of Hyderabad**<sup>118</sup> and **Tara Singh v State of Punjab**<sup>119</sup>, [the court, while taking a very restrictive interpretation of statutory provisions giving a person the right to lawyer, opined that this was, "a privilege given to accused and it is his duty to ask for a lawyer if he wants to engage one or get his relations to engage one for him. the only duty cast on the Magistrate is to afford him the necessary opportunity (to do so). "Even in capital punishment cases the early Supreme Court seemed relentless when it declared that "it cannot be laid down in every capital case where the accused is unrepresented the trial is vitiated." Thus it can be pointed out that newly Independent India was not clear about the broad perspective of its legal aid programme.

For again trying to revive the programme, the Government of India formed an expert committee, the Krishna Iyer Committee, in 1973 to see as to how the states should go about devising and elaborating the legal aid scheme. The committee came out with the most systematic and elaborate statement regarding establishment of legal aid committees in each district, at state level and at the Centre. It was also suggested that an autonomous corporation be set up, law clinics be established in Universities and lawyers be urged to help. The Government of India also appointed a committee on judicature under the chairmanship of Justice P.N. Bhagwati to effectively implement the legal aid scheme. It encouraged the

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<sup>118</sup> AIR 1951 SC 217

<sup>119</sup> AIR 1951 SC 411

concept of legal aid camps and Nyayalayas in rural areas. The committee in its report recommended the introduction of concept of legal aid in the Constitution of India.

Accepting this recommendation in the 1976, Article 39-A was introduced in the Directive Principles of State Policy by 42nd Amendment of the Constitution. With the object of providing free legal aid, the Government of India had, by a resolution dated 26th September, 1980 appointed a Committee known as “Committee for Implementing Legal Aid Schemes” (CILAS) under the chairmanship of Chief Justice P.N. Bhagwati to monitor and implement legal aid programs on a uniform basis in all the States and Union Territories. ‘CILAS’ evolved a model scheme for legal aid programs applicable throughout the country by which several legal aid and advice Boards were set up in the States and Union Territories.

Although legal aid was recognized by the Courts as a fundamental right under Article 21 reversing their earlier stance, the scope and ambit of the right was not clear till this time. The step was taken in **Sunil Batra v. Delhi Administration**<sup>120</sup>, where the two situations in which a prisoner would be entitled for legal aid were given. First to seek justice from the prison authorities and second, to challenge the decision of such authorities in the court. Thus, the requirement of legal aid was brought about in not only judicial proceedings but also proceedings before the prison authorities which were administrative in nature. The court has reiterated this again in **Hussainara Khatun v. State of Bihar**<sup>121</sup> and said: “it is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation through the court’s process that he should have legal services available to him. Free legal service to the poor and the needy is an essential element of any reasonable, fair and just procedure.” The court invoked Article 39-A which provides for free legal aid and has interpreted Article 21 in the light of Article 39-A. The court upheld the right to free legal aid to be provided to the poor accused persons ‘not in the permissive sense of Article 22(1) and its wider amplitude’ but in the peremptory sense of article 21 confined to prison situations’

Two years thereafter, in the case of **Khatri v. State of Bihar**<sup>122</sup>, Justice P.N. Bhagwati while referring to the Supreme Court’s mandate in the aforesaid Hossainara Khatun’s case, made the following comments, in paragraph 4 of the said judgment:

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<sup>120</sup> (1978) 4 SCC 494

<sup>121</sup> (1980) 1 SCC 98

<sup>122</sup> Khatri v. State of Bihar AIR 1981 S.C. at page 926 (Bhagalpur Blinded Prisoners’ case)

“It is unfortunate that though this Court declared the right to legal aid as a fundamental right of an accused person by a process of judicial construction of Article 21, most of the States in the country have not taken note of this decision and provided free legal services to a person accused of an offence. The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence, and whatever is necessary for this purpose has to be done by the State.”

In 1986, in another case of **Sukhdas v. Union Territory of Arunachal Pradesh**<sup>123</sup>, Justice P.N. Bhagwati, while referring to the decision of HossainaraKhatun’s case and some other cases had made the following observations in paragraph 6 of the said judgment:-

“Now it is common knowledge that about 70% of the people living in rural areas are illiterate and even more than that percentage of the people are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and benefits from which the poor suffer in this land. Their legal needs always stand to become crisis oriented because their ignorance prevents them from anticipating legal troubles and approaching a lawyer for consultation and advice in time and their poverty because magnifies the impact of the legal troubles and difficulties when they come. Moreover, of their ignorance and illiteracy, they cannot become self-reliant; they cannot even help themselves. The Law ceases to be their protector because they do not know that they are entitled to the protection of the law and they can avail of the legal service programs for putting an end to their exploitation and winning their rights. The result is that poverty becomes with them a condition of total helplessness. This miserable condition in which the poor find themselves can be alleviated to some extent by creating legal awareness amongst the poor. That is why it has always been recognized as one of the principal items of the program of the legal aid movement in the country to promote legal literacy. It would be in these circumstances made a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal service, legal aid would become merely a paper promise and it would fail of its purpose.”

It was in the above backdrop that the Parliament passed the Legal Services Authorities Act, 1987, which was published in the Gazette of India Extraordinary Part II, Section I No.

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<sup>123</sup> AIR 1986 S.C. 991

55 dated 12th October, 1987. Although the Act was passed in 1987, the provisions of the Act, except Chapter III, were enforced with effect from 9.11.1995 by the Central Government Notification S.O.893 (E) dated 9th November 1995. Chapter III, under the heading “State Legal Services Authorities” was enforced in different States under different Notifications in the years 1995-1998.

### **3.2.8 Right To Fair Trial:**

Right to fair trial is *sine qua non* of article 21 of the Constitution. It is trite the justice should not only be done but it should also be seen to have been done. Denial of a fair trial is as much injustice to the accused as it is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge a fair prosecutor and an atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause, which is being tried, is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial. The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power. who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty.<sup>124</sup>

There are various facets to the right to a fair trial. The Hon’ble Supreme Court in the case of **Zahira Habibullah Sheikh & Anr vs State Of Gujarat ((2004) 4 SCC 158)** has held that, “ the principle of fair trial now informs and energizes many areas of the law. It is reflected in numerous rules and practices.... fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated.” Most of these safeguards to ensure a fair trial are contained under the Code of Criminal Procedure, 1973, which contains and defines the procedure, which has to be followed in criminal cases.<sup>125</sup>

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<sup>124</sup> *K. Anbazhagan v. Suptd. Police*, AIR 2004 SC 524; *Zahir Habibulla H Sheikh v. State of Gujarat*, AIR 2004 SC 3114.

<sup>125</sup> <http://www.thehoot.org/web/home/cyber2.php?cid=51&sid=6286>

The concept of a fair trial cannot be limited to a statute and the Courts have gradually expanded it to include various aspects of criminal procedure. For instance, the Supreme Court has also in the past transferred cases from one state to another when it is reasonably anticipated that the accused will not be afforded a fair trial or the court process may be interfered with by extraneous considerations.<sup>126</sup>

### **3.2.9 Right To Life With Human Dignity:**

The preamble of the International Covenant on Civil and Political Rights mentions that “recognition of the inherent dignity and of the equal and inalienable rights of all the members of the human family is the foundation of freedom, justice and peace in the world” and recognizes “that these rights derive from the inherent dignity of the human person.” Everyone – including those deprived of their liberty-has a right to be treated with respect for the inherent dignity of the human person. The Constitution of India has not expressly enumerated this right as a fundamental right, but the Supreme Court has recognized this right to dignity as emanating from Article 21 read with Articles 14 and 19.<sup>127128</sup>

In **Francis Coralie v. Union Territory of Delhi**,<sup>129</sup> the Supreme Court enunciated the law that the right to life guaranteed under Article 21 of the Constitution is not confined merely to right to physical existence, but also included within its fold, the right to the use of every faculty or limb through which life is enjoyed as well as the right to live with basic human dignity. This decision of the Supreme Court upheld the human right guaranteed under the International Covenant on Civil and Political Rights, to the status of fundamental right under Article 21 of the Constitution. The Court observed that no one can be deprived of his right to live with basic human dignity except by just, fair and reasonable procedure prescribed by law. Indeed no procedure, which deprives a person of his right to live with human dignity, can possibly be reasonable, fair and just. Therefore, the State cannot by law or otherwise deprive any person of the right to live with basic human dignity. Such a law and

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<sup>126</sup> *ibid*

<sup>127</sup> See Article 10 (1) of International Covenant on Civil and Political Rights.

<sup>128</sup> Nirvani, Sharada T., 2005, “A Critical Study of Judicial Enforcement of Human Rights in India Through Public Interest Litigation with special Reference to Right to Life”, thesis PhD, Saurashtra University

<sup>129</sup> AIR 1981 SC 746.

the action of the State, which encroaches human dignity, is not permitted under Article 21 of the Constitution. Thus judicial decisions of the Apex Courts and different High Courts, which are judge made laws have added to a new vista and dimension to the protection of human rights against their possible encroachment and infraction, even from inconceivable quarters.<sup>130</sup><sup>131</sup>

In **Peoples Union for Democratic Rights v. Union of India**,<sup>132</sup> the Supreme Court held that non-payment of minimum wages to the workers employed in various Asiad Projects in Delhi was a denial to them of their right to live with basic human dignity. Bhagwati, J., speaking for the majority held that the rights and benefits conferred on workers employed by a contractor under various labour laws are “clearly intended to ensure basic human dignity to workmen and if the workmen are deprived of any of these rights and benefits, that would clearly be a violation of Article 21.” Thus non-implementation by the private contractors and non-enforcement by the State Authorities of various labour laws was held violative of the fundamental right of workers to live with human dignity. The Court has held that everyone in this country has a right to live with human dignity, free from exploitation. This right enshrined in Article 21 derives its life breath from the Directive Principles in Articles 39 (a) and (f), 41 and 42.<sup>133</sup> Even failure to rehabilitate the bonded labourer, the Court held, would amount to violation of Article 21 which guarantees the right to a dignified life.<sup>134</sup>

In **State of Himachal Pradesh v. A Parent of Student of Medical College Shimla**,<sup>135</sup> in a letter by a parent to the Shimla High Court, it was complained of rampant ragging of freshers in the Campus of Medical College, Shimla. High Court pressed the Chief Secretary to pass a law to prevent ragging. State of Himachal Pradesh preferred an appeal. The Supreme Court in this case observed that ragging is subversive of human dignity and prejudicially affects the students.<sup>136</sup>

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<sup>130</sup>HridayaBallab Das, “Human Rights-A Dicta of Civilized Society,” AIR 2004 Jour p.60 at 61-2.

<sup>131</sup>Nirvani, Sharada T., 2005, “A Critical Study of Judicial Enforcement of Human Rights in India Through Public Interest Litigation with special Reference to Right to Life”, thesis PhD, Saurashtra University

<sup>132</sup> AIR 1982 SC 1473.

<sup>133</sup>BandhuaMuktiMorcha v. Union of India, AIR 1984 SC 802; (1984) 3 SCC 161; also MuktiMorcha v. State of TamilNadu, 1986 supp. SCC 541

<sup>134</sup>Neeraja Chaudhary v. State of Madhya Pradesh, AIR 1984 SC 1099; (1984) 3 SCC 243.

<sup>135</sup>(1985) 3SCC 169.

<sup>136</sup> Supra note 128



In **VikramDeo Singh Tomar v. State of Bihar**,<sup>137</sup> it was brought to the notice of the court that the female inmates of the 'Care home, Patna' were compelled to live in inhuman conditions in an old ruined building. They were ill treated and provided insufficient and poor quality food and no medical attention was provided to them. The Supreme Court held that, 'the right to live with human dignity is the fundamental right of every citizen and the State is under a duty to provide at least the minimum conditions ensuring human dignity'. Accordingly the court directed the state to take immediate steps for the welfare of the inmates of the care home. The Court also directed that until a new building is constructed, the existing building must be renovated and sufficient necessary amenities must be provided.<sup>138</sup>

In **Vishaka v. State of Rajasthan**<sup>139</sup> also, the court emphasized on the right to live and right to work with dignity. It held that each incident of sexual harassment results in the violation of fundamental right to life. Right to life means the right to live with human dignity and an indignified life at one's workplace means deprivation of one's precious right to life, freedom to choose one's profession. In Vishakha a writ petition was filed by Vishakha a nongovernmental organization by way of public interest litigation seeking enforcement of fundamental rights of working women under Articles 14,19 and 21 of the Constitution. Court relying upon International Conventions and norms which are significant in interpretation of rights held that right to life with human dignity as well as right to work with human dignity as included in Article 21.<sup>140</sup>

### **3.2.10 RIGHT TO SHELTER**<sup>141</sup>:

Today, India is still grappling with unmet basic housing needs of hundreds of thousands of its citizens. While we represent the world's largest democracy and have a truly remarkable Constitution, millions of people are still living in sub-human conditions on pavements, in squatter settlements, bastis, jhuggies or unauthorised slums and are under constant threat of being evicted.

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<sup>137</sup> AIR 1988 SC 1782

<sup>138</sup> Supra note 128

<sup>139</sup> AIR 1997 SC 3011

<sup>140</sup> Supra note 128

<sup>141</sup> <http://indiatgether.org/opinions/rhousing02.htm>

*'...The eviction of the pavement or the slum-dweller not only means his removal from the house but the destruction of the house itself. And the destruction of a dwelling house is the end of all that one holds dear in life.'*

(J. Chandrachud in *Olga Tellis v. Bombay Municipal Corporation*, 1985 (3)SCC 545)

In view of the acute need for housing and the frequent and forceful evictions of so many slum-dwellers, it is important to understand how our Constitution and courts have interpreted the enforceability of social rights, especially the right to adequate housing. The Supreme Court has elaborated at great length on the right to adequate housing, shelter and livelihood as part of the all-encompassing Right to Life under Article 21 of the Constitution in the landmark case of *Olga Tellis v. Bombay Municipal Corporation (BMC)*<sup>142</sup>, as also in some of the judgements following *Olga Tellis*.

Our Fundamental Rights are listed in Part III of the Constitution, and consist mainly of civil and political rights. Part IV, on the other hand, houses the Directive Principles of State Policy. While these are not enforceable rights, they do provide guiding principles for the working of the Constitution. They cover all the socio-economic rights, such as education, right to work, equal pay for equal work, etc. These rights were considered non-enforceable or non-justifiable, as they are dependent on resources available with the state.

During the 1970s and 1980s, India witnessed a very interesting phenomenon: due to strong judicial activism, several socio-economic rights were brought within the sphere of the fundamental rights. Therefore, while earlier there existed merely the negative duty not to interfere with the life or liberty of an individual without the sanction of law, activist judges now imposed a positive obligation upon the state to take steps for ensuring to the individual a better enjoyment of life and dignity.

One of the first, and perhaps most important, housing rights cases to go up to the Supreme Court in India was the *Olga Tellis* case in 1985. This petition to the Bombay High

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<sup>142</sup> 1985 (3)SCC 545

Court was in the form of a public interest litigation by thousands of pavement dwellers of Bombay city. The petitioners argued that they could not be evicted from their squalid shelters without being offered alternative accommodation. They further argued that they had chosen a pavement or slum to live in only because it was nearest to their place of work, and that evicting them would result in depriving them of their livelihood. The petitioners (living in around more than 10,000 hutments) were to be evicted under the Bombay Municipal Corporation Act, which empowered the Municipal Commissioner to remove encroachments on footpaths or pavements over which the public have a right of passage or access.

The judgement handed down in this case expanded the right to life guaranteed under Article 21 of the Constitution to include within its scope, the right to livelihood, which in this context translated into the right to be allowed to remain on the pavements. And although the final orders in *Olga Tellis* found that the BMC Act was valid and that pavement dwellers should be evicted, the Supreme Court also laid down that this could be done only after arranging alternative accommodation for them. In a sense, therefore, by imposing this strong condition of providing alternate accommodation before eviction, the Supreme Court was in fact upholding the right of the pavement dwellers to shelter. More interesting is the fact that more than 15 years after the Supreme Court judgement in 1985 was passed, due to the strong activism and pressure from NGOs and the pavement dwellers themselves, most of them have still not been evicted by the BMC.

However, after this remarkable judgement, later decisions of the Supreme Court and some High Courts of the country have not been very consistent. While many judgements have vigorously upheld this ruling, there have been some rulings which have completely disregarded the basic right to housing and shelter that has been interpreted to be a crucial part of an individual's right to life.

Afterwards, there was a whole spate of cases that upheld the *Olga Tellis* judgement, the most important ones being *Shantistar Builders v. Narayan K. Totame*<sup>143</sup>, *Chameli Singh v. State of UP*<sup>144</sup> and *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*<sup>145</sup>. In all these cases, the Supreme Court reiterated the right to adequate housing as a distinct

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<sup>143</sup> (1985) 3SCC 545

<sup>144</sup> AIR 1996 SC 1015; (1996) 2SCC 549.

<sup>145</sup>(1997) 11 SCC 121

constitutional obligation of the state, both under the right to life and under Article 19(1)(e), which guarantees the right of every citizen to reside and settle in any part of the country. These judgements particularly upheld the housing rights of the weaker sections of the population, such as dalits and scheduled castes. They also referred to the provisions regarding housing and shelter in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic Social and Cultural Rights (ICESCR).

The courts, however, have not been very consistent in interpreting housing as a fundamental human right of all citizens. In some recent judgements, not only have they failed to uphold this right, but have actually regressed on their earlier rulings.

A case in point is the petition filed in 1995 in the Bombay High Court. Filed by the Bombay Environmental Action Group (BEAG), the petition was to 'remove forthwith' informal settlement dwellers (described as 'encroachers') adjacent to the Sanjay Gandhi National Park, to ensure protection of 'the environment and all its aspects'. In its judgement on 7 May 1997, the Bombay High Court directed the relevant authorities to evict persons from their homes, pursuant to various wildlife protection and conservation laws, effectively depriving them of their livelihood.

The Indian People's Human Rights Tribunal on Sanjay Gandhi National Park, determined that the BEAG petition clearly showed its vision of a 'clean environment' excludes vast sections of the population who were 'unpropertied' and living in abject poverty. Additionally, it held that the Court's summary eviction order would eventually affect half a million slum-dwellers. Particularly disturbing was the fact that the Court not only ordered this mass eviction, but it explicitly ordered the demolition of homes and the destruction of all belongings and construction materials that, in the first wave of evictions, were gathered and burnt by the demolition squad.

However, a judgement in 2000 that shows complete disregard for fundamental human rights and international obligations, is the one by the Supreme Court in India in *NBA v. Union of India*. This case concerned the continued construction of the Sardar Sarovar Project dam and its significant impact on both the environment and hundreds and thousands of tribal people in the Narmada valley, who have been displaced with inadequate resettlement and

rehabilitation options. Despite full knowledge of the concerned authorities' failure to determine the total number of people to be displaced or find adequate land for their resettlement, and the incomplete resettlement of those already displaced, the Supreme Court ruled that, '*...displacement of the tribals and other persons would not per se result in the violation of their fundamental or other rights...*' and held that the construction of the dam would continue. The judgement contradicted all previous Supreme Court rulings that have upheld the right to shelter related to the right to life, as well as the decisions of the Narmada Water Disputes Tribunal.

### **3.2.11 RIGHT TO EDUCATION<sup>146</sup>**

The Right to Education legislation has a long and chequered history, having been subjected to numerous rounds of heated debate and philosophical and semantic alterations. It was tailored into existence in the period following the passage of the 86th Constitutional amendment in 2002, which declared Education a fundamental right of all children in the age-group of 6-14. A participatory process of inviting comments from members of the public yielded several different drafts of the bill in the subsequent years until finally, in 2008, the Union Cabinet stamped its seal of approval on it and it was placed before the RajyaSabha, which passed it in July 2009. The bill then proceeded to the LokSabha, where it was passed in August 2009.

The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) has a long and chequered history. The right to education was discussed extensively during the drafting of the Constitution. The Constituent Sub-Committee on Fundamental Rights included the right to primary education as a fundamental right. However, the Advisory Committee of the Constituent Assembly rejected this proposal and placed it in the category of non-justifiable fundamental rights (later known as Directive Principles of State Policy). The Acharya Ramamurti Committee made the first official recommendation for the inclusion of a fundamental right to education in 1990. Thereafter, several political as well as policy level changes influenced the course of free and compulsory education. The country witnessed an increased international focus on its initiatives regarding free and compulsory education

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<sup>146</sup> [http://www.azimpremjifoundation.org/Right\\_to\\_Education](http://www.azimpremjifoundation.org/Right_to_Education)

after its participation in the World Conference on Education for All in 1990. India also ratified the United Nations Convention on Rights of the Child in 1992.

The Supreme Court first recognised the right to education as a fundamental right in **Mohini Jain v. Union of India (1992) 3 SCC 666**. It was observed in this judgment that:

'Right to life' is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavor to provide educational facility at all levels to its citizens. (para 12)

In 1993 the Supreme Court narrowed the ambit of the fundamental right to education as propounded in the Mohini Jain case in the case of **J P Unnikrishnan vs. State of Andhra Pradesh, 1993 SCC (1) 645**. The Court observed that:

The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution. So far as the right to education is concerned, there are several articles in Part IV which expressly speak of it. Article 41 says that the "State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want". Article 45 says that "the State shall endeavor to provide, within a period of ten years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of fourteen years". Article 46 commands that "the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation..... The three Articles 45, 46 and 41 are designed to achieve the said goal among others. It is in the light of these Articles that the content and parameters of the right to education have to be determined. Right to education, understood in the context of Articles 45 and 41, meant: (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the state and its development. We may deal with both these limbs separately. (para 171)

In 2002, the 86th amendment to the Constitution introduced Article 21-A making the right to education a fundamental right. For the first time in independent India's history a fundamental right had been added to the Constitution. Unlike other fundamental rights the right to education required an enabling legislation to become effective. The RTE Act is this enabling legislation. The RTE Act came into force on April 1, 2010.

### **3.2.12 RIGHT TO KNOW:**

Article 21 enshrines right to life and personal liberty. The expressions "right to life and personal liberty" are compendious terms, which include within themselves variety of rights and attributes. Some of them are also found in Article 19 and thus have two sources at the same time. In **R.P.Limited v Indian Express Newspapers**,<sup>147</sup> the Supreme Court read into Article 21 the right to know. The Supreme Court held that right to know is a necessary ingredient of participatory democracy. In view of transnational developments when distances are shrinking, international communities are coming together for cooperation in various spheres and they are moving towards global perspective in various fields including Human Rights, the expression "liberty" must receive an expanded meaning.<sup>148</sup>

The expression cannot be limited to mere absence of bodily restraint. It is wide enough to expand to full range of rights including right to hold a particular opinion and right to sustain and nurture that opinion. For sustaining and nurturing that opinion, it becomes necessary to receive information. Article 21 confers on all persons a right to know which include a right to receive information. The ambit and scope of Article 21 is much wider as compared to Article 19(1) (a). Thus, the courts are required to expand its scope by way of judicial activism. In **P.U.C.L v U.O.I**<sup>149</sup> the Supreme Court observed that Fundamental Rights themselves have no fixed contents, most of them are empty vessels into which each generation must pour its contents in the light of its experience. The attempt of the court should be to expand the reach and ambit of the Fundamental Rights by process of judicial interpretation. There cannot be any distinction between the Fundamental Rights mentioned in Chapter-III of the constitution and the declaration of such rights based on the judgments

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<sup>147</sup> AIR 1989 SC 190.

<sup>148</sup> <http://cic.gov.in/CIC-Articles/Praveen%20Dala-02-13052006.pdf>

<sup>149</sup> JT 2003 (2) 528.

rendered by the Supreme Court. Further, it is well settled that while interpreting the constitutional provisions dealing with Fundamental Rights the courts must not forget the principles embodied in the international conventions and instruments and as far as possible, the courts must give effect to the principles contained in those instruments. The courts are under an obligation to give due regard to the international conventions and norms while construing the domestic laws, more so when there is no inconsistency or conflict between them and the domestic law.

### **3.2.13 RIGHT TO PRIVACY.<sup>150</sup>**

Respect for one's privacy is an inherent expectation of human being<sup>151</sup> as it is important for the mental, spiritual and physical well being of the individual. Privacy secures to protect relationships between individuals. Privacy is not just one possible means among others to insure some other value, but that it is necessarily related to ends and relations of the most fundamental sort, respect, love, friendship, and trust.<sup>152</sup>

However, there is no right to privacy in the Indian Constitution. Right to privacy being an integral part of one's right to life and personal liberty has to be given due importance. The recognition of right to privacy as a part of our constitutional right to life and personal liberty is considered as an illustration of progressive development.<sup>153</sup> In its present form the right to privacy is commonly understood as the right to be let alone and is broadly described as the right to an inviolable personality.<sup>154</sup>

Privacy is "a condition people maintain by controlling who receives information about them and the terms on which others receive it. Importantly, privacy is a subjective condition. One person cannot decide for another what his or her sense of privacy should

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<sup>150</sup>Nirvani, Sharada T., 2005, "A Critical Study of Judicial Enforcement of Human Rights in India Through Public Interest Litigation with special Reference to Right to Life", thesis PhD, Saurashtra University

<sup>151</sup>DivyaBhardwaj, "Right to Privacy : Are We Ready for it," *AIR* 2004 Jour 307.

<sup>152</sup>Charles Fried, "Privacy", *77 Yale L. J.* 475, at pp. 477-478.

<sup>153</sup>A.R. Desai, &Chidanand Reddy S. Patil, "Contours of Privacy and Defamation *vis-à-vis* Free Speech", (1996) *C.U.L.R.*, p 187.

<sup>154</sup>*Ibid* p 188



be.”<sup>155</sup> The right to privacy is part of the right to human dignity and the public law on information must frown on the violation of that intimacy of life which is the core of individuality of being.<sup>156</sup> Thus, the constitutional right to life and personal liberty secures the right to live in seclusion or in public gaze, as one chooses so long as one does not interfere with the right of others.<sup>157</sup> It can thus be deduced that privacy is a state of separateness from others. The right to privacy encircles within it the concept of dignity and decency also. This right has an element of secrecy or confidentiality. The right to privacy implies the right not merely to prevent incorrect portrayal of private life but to prevent its being depicted at all. The right has multi-pronged dimensions. In personal intimacies, it extends to home, family, marriage, motherhood, procreation and child bearing, consistent with dignity and decency.<sup>158</sup> However, the term privacy has not been specifically defined in the Constitution of India, or under any other statutory provisions.

Privacy is claimed to be one of the fundamental human rights available to all human beings. This is very much evident from the *Universal Declaration of Human Rights*, which recognizes right to privacy as a fundamental human right. Further the International Covenant on Civil and Political Rights also recognizes the right to privacy.

The right to privacy is directly spelt in Article 12 of the Universal Declaration of Human Rights as follows, “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, not to attack upon his honour and reputation. Every one has the right to the protection of the law against such interference or attacks.” The International Covenant on Civil and Political Rights, 1966 provides for rights to privacy in Article 17. It reads as follows:

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<sup>155</sup>www.privacilla.org, cited in *supra* n.121.

<sup>156</sup>V. R. KirshnaIyer, “The Right to Know is Fundamental” in *Salvaging Democracy*, (Delhi: Konark Publishers Pvt Ltd, 1990), p.119.

<sup>157</sup>Chidananda Reddy, “Privacy Rights of the Citizens Vs Executive Government,” *The Lawyers*, (1990) Feb . p. 22.

<sup>158</sup>Raghavendra Kumar, “Right to Privacy: Juridical Vision”, *AIR 2004 Jour* p.195.

(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, correspondence, not to unlawful attacks on his honour and reputation.”

(2) Everyone has the right to protection of the law against such interference or attacks.”

Constitution of India does not expressly provide for the right to privacy as a fundamental right. However, it is protected as a legal right under different statutes under different expressions like, privileged communication, matrimonial rights etc. However, the Supreme Court has considered the right to privacy as part of the fundamental right to life under Article 21. Although the Constitution does not expressly declare the right to privacy as a fundamental right the said right is an essential ingredient of personal liberty. The object behind Article 21 of the Indian Constitution is to prevent encroachments upon the personal liberty by the executive except in accordance with law and in conformity with the provisions thereof.<sup>159</sup> The right to privacy is granted to the citizens of India as one of the unremunerated rights read into the fundamental rights under the Constitution by the courts, in later decisions on the subject.

Initially, the court did not recognize the right to privacy. In *M.P. Sharma v. Satish Chandra*,<sup>160</sup> the Court made it clear that when the Constitution makers have thought fit not to recognize a right to privacy, the court has no justification to import it, thereby refuse to recognize the right to privacy. In *Kharak Singh v. State of Uttar Pradesh*,<sup>161</sup> the Supreme Court by majority held that the right to privacy is not a guaranteed right under our Constitution and therefore, the attempt to ascertain the movements of an individual, which is merely a manner in which privacy is invaded is not an infringement of fundamental right

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<sup>159</sup> N. K. Raha, “Right to Privacy under Indian law,” AIR 2001 Jour, 51.

<sup>160</sup> AIR 1954 SC 300.

<sup>161</sup> AIR 1963 SC 1295.

guaranteed by the Part III. It was in *Govindav. State of Madhya Pradesh*<sup>162</sup> that the Court took a pioneering view and recognized the right to privacy as a fundamental right.

In *Peoples Union for Civil Liberties v. Union of India*,<sup>163</sup> a public interest litigation was filed by the Peoples Union for Civil Liberties under Article 32 of the Constitution, highlighting the incidents of telephone tapping and citing from a CBI report published in the Magazine “Mainstream”, the Court held that right to privacy which includes the right to hold telephonic conversations in privacy is a fundamental right protected under Articles 14, 19 (1) (a) and 21 of the Constitution as also under Article 14 of the *Universal Declaration on Human Rights* and Article 17 of the

*International Covenant on Civil and Political Rights*. The Court also held that Section 5 (2) of the *Telegraph Act* permits the tapping of telephones – however it can only be resorted to in conformity with fundamental rights. The Supreme Court further observed: “We have, therefore, no hesitation in holding that right to privacy is a part of “right to life” and “personal liberty” enshrined under Article 21 of the Constitution. Once the facts in a given case constitute a right to privacy, Article 21 is attracted. The said right cannot be curtailed ‘except according to procedure established by law’.

The National Commission to review the working of the Constitution in its report has recommended the inclusion of a separate fundamental right to privacy in the Constitution in the following pattern:

Article 21-B : “(1) Every person has a right to respect for his private and family life, his home, and his correspondence. (2) Nothing in the clause (1) shall prevent the state from making any law imposing reasonable restriction on the exercise of the right conferred by clause (1), in the interest of security of the State, public safety or for prevention of disorder or crime, or for the protection of health or morals or for the protection of the rights and freedom of others.”

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<sup>162</sup>AIR 1975 SC 1378; while recognizing the right to privacy as fundamental right the Supreme Court of India has often considered the US position on the subject like the decisions of American Courts. E.g. *Roe v. Wade*, 410 US 113.

<sup>163</sup>(1997) 1 SCC 301; AIR 1997 SC 568.

### **3.2.14 RIGHT TO POLLUTION FREE ENVIRONMENT:<sup>164</sup>**

A right to clean environment is fundamental to the very existence of human being. Human existence without clean air or water is injurious to his integral existence. It is a risk to the health of the person and is also violation of the right to health, (in turn right to life) of the person. Often it is the poor and the underprivileged who are affected the most, as they lack “purchasing power to attain access to environment that is relatively cleaner to live in.”<sup>165</sup> These people are forced to live in unhygienic and difficult living conditions and thus become immediate victims of diseases. It becomes absolutely necessary to keep environment clean and healthy to prevent pollution. The judiciary has played a very important role by giving guidelines and directions for controlling and preventing pollution, for improving quality of environment, for not disturbing the balance of ecological system, etc. And a major role in this endeavour was by social activists, non-governmental organisations and public spirited people who by public interest litigations enabled the courts to act in this regard.

In a country where the most serious cost of environmental damage falls upon impoverished and illiterate groups with limited access to the courts, the new environmental right is championed as a legal gateway to speedy and in expensive legal remedy.<sup>166</sup>

This right to environment came to be read as a fundamental right through a number of cases most of which are public interest litigations. The judiciary has contributed to the attainment of cherished goal set by the law and the Constitution to have a pollution free environment. A careful examination of decisions handed down by the judiciary shows that “it stands for the best things men stand for”. When opportunity came the Supreme Court offered non-conventional interpretation of Article 21 for abating the pollution of the environment.<sup>167</sup>

A constitutional bench of the Supreme Court in the **Charan Lal Sahu Case** first addressed link between environmental quality and the right to life in 1991, the Supreme Court

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<sup>164</sup><http://www.legalserviceindia.com/article/1399-A-Mandate-To-Pollution-Free-Environment.html>

<sup>165</sup> *Handbook on Human Rights for Judicial Officers*, (Bangalore: NLSIU, 2000), p.354.

<sup>166</sup> Dr. J.L. Aparajit, et.al., “Judicial Response towards the Protection of Environment : A Critical Evaluation,” *Journal of Indian Legal Thought*, Vol.1 2003,p.97.

<sup>167</sup> Dr.Shahabuddin Ansari, “The Evolving Dimensions of Environmental Jurisprudence.” *Ensym. A Journal on Environmental Law*, Vol.II&III Dec.2004, p.47.

interpreted the right to life guaranteed by article 21 of the Constitution to include the right to a wholesome environment. In **Subash Kumar v. State of Bihar** (AIR 1991 SC 420/ 1991 (1) SCC 598., the Court observed that ‘right to life guaranteed by article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life.’ Through this case, the court recognized the right to a wholesome environment as part of the fundamental right to life. This case also indicated that the municipalities and a large number of other concerned governmental agencies could no longer rest content with unimplemented measures for the abatement and prevention of pollution. They may be compelled to take positive measures to improve the environment.

This was reaffirmed in **M.C. Mehta v. Union of India**.(1991) AIR SC 813 (Vehicular Pollution Case); (1992) Supp. (2) SCC 85; (1992) Supp. (2) SCC 86; (1992) 3 SCC 25. The case concerned the deterioration of the world environment and the duty of the state government, under article 21, to ensure a better quality of environment. the Supreme Court has held that life, public health and ecology have priority over unemployment and loss of revenue. The Supreme Court ordered the Central government to show the steps they have taken to achieve this goal through national policy and to restore the quality of environment. In another case,[ the Supreme Court dealt with the problem of air pollution caused by motor vehicle operating in Delhi.<sup>168</sup>

It was a public interest petition and the court made several directions towards the Ministry of Environment and Forests. Decisions such as this indicate a new trend of the Supreme Court to fashion novel remedies to reach a given result, although these new remedies seem to encroach on the domain of the executive. In **Shanti Star Builders vs. Narayan Totame**, the Supreme Court held that right to life is guaranteed in a civilized society would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. In **Subhash Kumar vs. State. of Bihar- (1991) 1 SCC 598**, the Supreme Court held that right to life is a fundamental right under Art. 21 of the Constitution and it include the right to enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in

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<sup>168</sup> ibid

derogation of laws a citizen has recourse to Art.32 of the Constitution for removing the pollution of water or air which may be detrimental to life.

In **M. C. Mehta vs. Union of India & Ors. 1987 SCR (I) 819 (the Oleum Gas Leak case)**, the Supreme Court established a new concept of managerial liability – ‘absolute and non-delegable’ – for disasters arising from the storage of or use of hazardous materials from their factories. The enterprise must ensure that no harm results to anyone irrespective of the fact that it was negligent or not. In *Vellore Citizens Welfare Forum vs. Union of India*, AIR 1996 SC 2715, the Supreme Court held that industries are vital for the country’s development, but having regard to pollution caused by them, principle of ‘Sustainable Development’ has to be adopted as the balancing concept. ‘Precautionary Principle’ and ‘Polluter Pays Principle’ has been accepted as a part of the law of the country.[13] In *Indian Council of Enviro-Legal Action vs. Union of India*, 1996 3 SCC 212 (the Bichhri pollution case), following the decision in the Oleum Gas leak case and based on the polluter pays principle, the polluting industries were directed to compensate for the harm caused by them to the villagers in the affected areas, specially to the soil and to the underground water. Enunciating the doctrine of ‘Public Trust’ in *M. C. Mehta vs. Kamal Nath* (1997) 1 SCC 388, the SC held that resources such as air, sea, waters and the forests have such a great importance to the people as a whole that by leasing ecologically fragile land to the Motel management, the State Government had committed a serious breach of public trust.<sup>169</sup>

The changing trajectory of environmental rights in India, from a historical perspective Active judicial intervention by NGOs, community groups, and others, have also set a series of important precedences that go beyond what the bare laws provide. There are many initiatives in Public Interest Litigation (PIL). Some of these include the cases against the construction of the Tehri Dam (*Tehri Bandh Virodhi Sangharsh Samiti vs. State of Uttar Pradesh*, 1992 SUP (1) SCC 44) and Narmada Dams (*Narmada Bachao Andolan vs. Union of India* AIR 1999 SC 3345); against deforestation (*T. N Godavarman Thirumulpad vs. Union of India*, 2000 SC 1636, a case that has since then spawned dozens orders pertaining to forests in India); against mining in the Aravallis (*Tarun Bharat Sangh, Alwar vs. Union of India* 1992 SC 514, 516); against mining in the Dehra Dun hills (*Rural Litigation and Entitlement*

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<sup>169</sup>ibid

Kendra, Dehradun vs. State of Uttar Pradesh, 1985 SC 652); against mining in adivasi lands of Andhra Pradesh (Samatha vs. State of Andhra Pradesh, 1997, a judgment with important consequences for acquisition or use of adivasi lands elsewhere too); on implementation of the Wild Life (Protection) Act 1972 (WWF vs. Union of India, WP No 337/95); on implementation of Coastal Regulation Zone measures (Indian Council for Enviro-Legal Action vs. Union of India, 1996(3) 579); on protection of the coastal area against destructive practices (Prof.SergioCarvalho vs. The State of Goa and Others, 1989 (1) GLT 276); on the right of citizens to inspect official records (this was before the Right to Information Act came into force) (Goa Foundation and Ors. vs. North Goa Planning and Development Authority and Ors. 1995(1) GLT 181); against forest logging and other environmental aspects of Andaman and Nicobar Islands. The judgments in other cases have set important precedents and directions for the further development of policy, law and practice. For instance, the Godavarman and the WWF vs Union of India cases have led to the orders that no forest, National Park or Sanctuary can be dereserved without the approval of the Supreme Court, no non-forest activity is permitted in any National Park or Sanctuary even if prior approval under the Forest (Conservation) Act, 1980 had been obtained, New authorities, committees and agencies have been set up such as the Central Empowered Committee (CEC) and the Compensatory Afforestation Management and Planning Agency.

Some judgments not directly related to environmental cases, also have significant implications for the struggle to establish environment as a human right. Mention should especially be made of a number of cases in which the Constitutional Right to Life (Article 21) has been interpreted widely to include a series of basic rights that include environment and livelihoods. In **Francis Coralie vs. Union Territory of Delhi (AIR 1981 SC 746)**, Justice Bhagwati observed: “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 necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and co-mingling with fellow human beings”.<sup>170</sup>

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<sup>170</sup> ibid

” In **Shantistar Builders vs. Narayan Khimalal Totame (AIR 1990 SC 630)**, the Supreme Court said: “Basic needs of man have traditionally been accepted to be three – food, clothing, and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.” In *Olga Tellis case (AIR 1986 SC 180)* the Supreme Court observed “An important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.... That which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life.” environmental crisis is causing enormous disruption of lives and livelihoods, threatening the collapse of its entire life-support system. The poor and under privileged classes of humans and the other non-human species unfortunately have to bear the main brunt of these environmental problems. Ironically, the crisis is rooted deep in social, economic and political structures, more specifically in relations of inequity of three kind’s Intra-generational inequity, Intra-generational inequity, and Inter-species inequity. Inequities in the relations between people and countries have also allowed the imposition of unsustainable and destructive models of ‘development’. The process of ‘development’ has been characterised by the massive expansion of energy and resource-intensive industrial and urban activity, and major projects like large dams, commercial forestry, and mining and chemical-intensive agriculture. The resource demand for the economic progress of a minority of people has lead to the narrowing of the natural resource base for the survival of the economically poor and powerless. This has happened either by direct transfer of resources into cities and industrial complexes, or by the destruction of life-support systems for rural communities everywhere.<sup>171</sup>

In **Re Noise Pollution (V) {(2005) 5 SCC 733/Pr 10}** the cries of a rape victim for help went unheeded in the blaring noise of loudspeaker in the neighbourhood. The victim committed suicide. Public interest litigation was filed. The court said that article 21 of the constitution guarantees life and personal liberty to all persons... it guarantees a right of

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<sup>171</sup> Ibid



persons to life with human dignity. Therein are included, all the aspects of life which go to make a person's life meaning full, complete and worth living. 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. No one can claim a right to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbours or others. Any noise which has the effect of materially interfering with the ordinary comforts of life judged by the standard of a reasonable man is nuisance. How and when a nuisance created by noise becomes actionable has to be answered by reference to the degree and the surrounding circumstances, the place and the time.<sup>172</sup>

**In Research Foundation for science Technology and Natural resources Policy v. Union of India and Another**, SC 2005, Dumping of hazardous waste, whether directions shall be issued for destruction of consignments with a view to protect environment and, if not, in what other manner consignments may be dealt with it was held, precautionary principles are fully applicable to facts and circumstances of the case and only appropriate course to protect environments is to direct destruction of consignments by incineration as recommended by Monitoring Committee<sup>173</sup>

**In Intellectuals Forum, Tirupathi v. State of AP and others (2006) 3 SCC 549**, Leave granted. The present matter raises two kinds of questions. Firstly, at a jurisprudential level, it falls on this Court to lay down the law regarding the use of public lands or natural resources. In this case the Court has reiterated the importance of the Doctrine of Public Trust in maintaining sustainable development which has been declared as inalienable human right by UN General Assembly.<sup>174</sup>

**In M C Mehta v. Union of India and others, 2006 SC** , whether mining activity carried out in Villages Khorijamalpur and Sirohi in District Faridabad in Haryana are in violation of the orders passed by this Court on 6th May, 2002 was in question. It was held, it

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<sup>172</sup> ibid

<sup>173</sup> ibid

<sup>174</sup> ibid

does not appear that area in question falls under any category of prohibition for carrying out mining activity. But another aspect that remains to be examined is about impact of mining in the villages in question on environment, Merely on basis of photographs or plying of large number of trucks per day, a direction can not be made for stopping mining activity. Monitoring Committee constituted in terms of directions in M.C. Mehta's case is directed to inspect the mining activity being carried on in 75.05 hectares in village Khorijamalpur and in 50.568 hectares in village Sirohi in Faridabad district and report the impact. In Karnataka Industrial Areas Development Board v. C. Kenchappa and others [18] in consonance with the principle of 'Sustainable Development', a serious endeavour has been made in the impugned judgment to strike a golden balance between the industrial development and ecological preservation.

Conclusion: Such wide interpretations of Article 21 by the Supreme Court have over the years become the bedrock of environmental jurisprudence, and have served the cause of protection of India's environment (and to a lesser extent, of livelihoods based on the natural environment). Adding to this is a large number of laws relating to environment, enacted over the last few decades. However, a number of groups have also pointed out that the Constitution is deficient in that it does not explicitly provide for the citizen's right to a clean and safe environment. In a recent submission to the committee set up to review the Constitution, these groups have proposed a number of amendments to the Constitution, for ensuring environment protection and nature conservation. These include: Recognition and incorporation of Environmental Rights as separate and independent Fundamental Rights in the Constitution of India. These follow from the above-mentioned interpretation to the term 'Right to Life', as given by the Supreme Court.<sup>175</sup>

This could be further specified to include right to clean drinking water, and to a clean and pollution-free environment. Replacement, within the Directive Principles of State Policy, of the term 'forest' by the term 'life supporting natural ecosystems', The reason for this suggestion is that the Courts and other authorities, including the forest departments, have been interpreting the term forest to mean land with trees. As a result, land without trees is not

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<sup>175</sup>ibid

considered as a forest and there is a lack of interest in protecting other important ecosystems such as grasslands, deserts, marshes, mangrove, etc. With the better understanding of these diverse ecosystems and their importance to humankind, there is a need to preserve them. Incorporation, within the Fundamental Duties, the responsibility of panchayats and municipalities to give due regard to ecological aspects and to protect the environment, including life supporting natural ecosystems such as forests, rivers and lakes, and wild life, in the preparation of plans for economic development and social justice. This would also necessitate incorporation, into the Eleventh Schedule relating to the Panchayats, an item for “protection of the environment and the promotion of ecological aspects”.

Thus a chronological analysis of environmental mission of the courts has been undertaken in order to explicate the development of the ideology of environment as being part of the right to life in the Indian context is justified from the above discussion. Therefore it is evident that article 21 is mandate for life saving environment.

### **3.2.15 RIGHT OF WOMEN:<sup>176</sup>**

Sexual harassment of women at workplace is a violation of articles 15 and 21. Directions issued by the Court would have to be strictly observed until suitable legislation was enacted by the Legislature.<sup>177</sup>

Denial of succession to Scheduled Tribe women amounts to deprivation of their right to Livelihood under article 21.<sup>178</sup>

While beauty contests as such may not be objectionable indecent representation of female body or anything derogatory to women would be violative of article 21 and offend the indecent Representation of Women Act, 1986.<sup>179</sup>

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<sup>176</sup> Dr. Subhash c kashyap, constitutional law of India , vol I page no 681

<sup>177</sup> *Vishakha v. State of Rajasthan*, AIR 1997 SC 3011: (1997) 6 SCC 241: 1997 (5) SCALE 453.

<sup>178</sup> *Madhu Kishwar v. State of BiJuar*, AIR 1996 SC 1864: (1996) 5 SCC 125: (1996) SUPP I SCR 442,

<sup>179</sup> *Chandra Rajkumari v. Police Commissioner, Hyderabad*. AIR 1998 AP 302.

### **3.3 EXPANDING HORIZONS OF RIGHT TO PERSONAL LIBERTY<sup>180</sup>:**

“Personal liberty” is used in article 21 as a compendious term to include within itself all the varieties of rights which go to make up the “personal liberties” of man other than those dealt with in the several clauses of article 19(1). In other words, while article 19(1) deals with particular species or attributes of freedom, personal liberty in article 21 takes in and comprises the residue. ‘Life’ in article 21 means not merely the right to the continuance of a person’s animal existence, but a right to the possession of each of his organs—his arms and legs etc. Is then the word ‘personal liberty’ to be construed as excluding from its purview an invasion on the part of the police of the sanctity of a man’s home and an intrusion into his personal security and his right to sleep which is the normal comfort and a dire necessity for human existence even as an animal? ((In the words of the preamble, the Constitution is designed to “assure the dignity of the individual” and cherished human values as the means of ensuring his full development and evolution..))The concepts underlying the Constitution would point to such vital words as ‘personal liberty’ having to be construed in a reasonable manner and to be attributed that sense which would promote and achieve those objectives and by no means to stretch the meaning of the phrase to square with any preconceived notions or doctrinaire constitutional theories.”<sup>181</sup>

Even where a person is detained in accordance with the procedure prescribed by law, as mandated by article 21, the protection conferred by the various clauses of article 19(1) does not cease to be available to him and the law authorising such detention has to satisfy the test of the applicable freedoms under article 19, clause (1). This would clearly show that articles 19(1) and 21 are not mutually exclusive, for, if they were, there would be no question of a law depriving a person of personal liberty within the meaning of article 21 having to meet the challenge of a fundamental right under article 19(1). Indeed, in that event, a law of preventive detention which deprives a person of ‘personal liberty’ in the narrowest sense,

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<sup>180</sup> Dr. SubashKashyap, constitutional law in india, vol 1 .

<sup>181</sup> *Kharak Singli v. State of Uttar Pradesh*, AIR 1963 SC 1295: 1963 Cr1 U 329: (1964) 1 SCR 332; *Maneka Gandhi v. Union of India*, AIR 1978 SC 597: (1978) 1 scc 248: (1978) 2 SCR 621.

namely, freedom from detention and thus falls indisputably within article 22 would not require to be tested on the touchstone of clause (d) of article 19(1). It is indeed difficult to see on what principle one can refuse to give its plain natural meaning to the expression 'personal liberty' as used in article 21 and read it in a narrow and restricted sense so as to exclude those attributes of personal liberty which are specifically dealt with in article 19. This would not be a correct way of interpreting the provisions of the Constitution conferring fundamental rights. The attempt of the Court should be to expand the reach and ambit of the fundamental rights rather than attenuate their meaning and content by a process of judicial construction. Each freedom has different dimension and these may be overlapping between different fundamental rights and therefore it is not a valid argument to say that the expression 'personal liberty' in article 21 must be so interpreted as to avoid overlapping between that article and article 19(1). The expression 'personal liberty' in article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under article 19.<sup>182</sup>

Surveillance may be intrusive and it may so seriously encroach on the privacy of a citizen as to infringe his fundamental right to personal liberty guaranteed by article 21 of the Constitution and the freedom of movement guaranteed by article 19(1) (d). That cannot be permitted. This is recognised by the Punjab Police Rules themselves. Rule 23.7, which prescribed the mode of surveillance, permits the close watch over the movements of the person under surveillance but without any illegal interference. Permissible surveillance is only to the extent of a close watch over the movements of the person under surveillance and no more. So long as surveillance is for the purpose of preventing crime and is confined to the limits prescribed by Rule 23.7 a person whose name is included in the surveillance register cannot have a genuine *cause for* complaint.<sup>183</sup>

The expression "personal liberty" in article 21 takes in right of locomotion and travel abroad. Personal liberty makes for the worth of the human person. Travel makes liberty worthwhile.

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<sup>182</sup> *R.C. Cooper v. Union of India*, AIR 1970 SC 1318; *Maneka Gandhi v. Union of India*, AIR 1978 SC 597: (1978) 1 SCC 248; (1978) 2 SCR 621.

<sup>183</sup> *Malak Singh v. State of Punjab*, AIR 1981 SC 760; (1981) 1 SCC 420; (1981) 2 SCR 311.

Life is a terrestrial opportunity for unfolding personality, rising to higher states, moving of fresh woods and reaching out to reality, which makes our earthly journey a true fulfilment.<sup>184</sup>

### **3.3.1 RIGHTS OF PRISONERS:**<sup>185</sup>

A detenu cannot be deprived of his 'personal liberty' of writing or publication of his books while in detention. Refusal by jail authorities to allow a prisoner to send the Manuscript (Ms) of his book for publication was contrary to law. On a plain reading of the article the meaning seems to be that you cannot deprive a man of his personal liberty, unless you follow and act according to the law which provides for deprivation of such liberty.' Supreme Court states in *State of Maharashtra v. Prabhakar Panduran*, AIR 1966 SC 424.

Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison-house entails by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to "practice" a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But even a convict is entitled to the precious right guaranteed by article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law.<sup>186</sup>

Part III of the Constitution does not part company with the prisoner at the gates, and judicial oversight protects the prisoner's shrunken fundamental rights, if flouted, frowned upon or frozen by the prison authority. Judges, even within a - prison setting are the real, though restricted, ombudsmen empowered to proscribe and prescribe, humanize and civilize the lifestyle within the careers. The operations of articles 14, 19 and 21 may be pared down for a prisoner but not puffed out altogether. For example, public addresses by prisoners may 1 w

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<sup>184</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597: (1978) 1 SCC 248: (1978) 2 SCR 621; *Sawant Singh Sawhney v. D. Ramarathnam*, APO. MR 1967 SC 1836: (1967) 3 SCR 525: (1968) 70 Born LR 1.

<sup>185</sup> Dr. SubashKashyap, constitutional law in india, vol 1 .page 686-88

<sup>186</sup> *D. Bhuvan Mohan Patnaik v. State of Andhra Pradesh*. AIR 1974 SC 2092: (1975) 3 SCC 185: (1975) 2 SCR 24; *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675: (1978) 4 SCC 494: (1979) 1 SCR 392; *State of Maharashtra v. Prabhakar Pandurang*, AIR 1966 SC 424: 1966 Cri U 311: (1966) 1 SCR 702.

put down but talking to fellow prisoners cannot. Vows of silence or taboos on writing poetry or drawing cartoons are violative of article 19. So also, locomotion may be limited by the needs of imprisonment but binding hand and foot, with hoops of steel, every man or woman sentenced for a term, is doing violence to Part III.<sup>187</sup>

A prisoner has a right to have his work published if it does not violate prison discipline. ***Hussninar v. Home Secretary, State of Bihar, AIR 1979 SC 1377***, Supreme Court discussed, An indigent person is entitled to be released on bail on personal bond without surety if there is no substantial risk of his absconding.

From the point of view of the right to personal liberty enshrined in article 21, the right to have interviews with members of the family and friends is clearly part of personal liberty guaranteed under that article. The expression 'personal liberty' occurring in article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of a man and it also includes rights which have been raised to the status of distinct Fundamental Rights and given additional protection under article 19. There can therefore be no doubt that 'personal liberty' would include the right to socialise with members of the family and friends subject, of course, to any valid prison regulations and under articles 14 and 21, such prison regulations must be reasonable and non-arbitrary. If any prison regulation or procedure laid down by it regulating the right to have interviews with members of the family and friends is arbitrary or unreasonable, it would be liable to be struck down as invalid as being violative of articles 14 and 21<sup>188</sup>.

### **3.3.2 Use of (iron) bar fetters:**<sup>189</sup>

Article 21 must obey the prescriptions of natural justice. Reasonableness in this area also involves some review of the action of an executive officer so that the prisoner who suffers may be satisfied that a higher official has with detachment, satisfied himself about the necessity to fetter him. Such administrative fairness is far more productive of order in prison than the counterproductive alternative of requiring every security suspect to wear iron. Prison

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<sup>187</sup> Dr. SubashKashyap, constitutional law in india, vol 1 .page 688

<sup>188</sup> *Francis Coraie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746: (1981) 1 SCC 608; *Prabha Dutt v. Union, of India*, AIR 1982 SC 6: (1982) 1 SCC 1: (1982) 1 SCR 1184; *Sheela Barse v. State of Maharashtra*, AIR 1983 Sc 378: (1983) 2 SCR 96:(1983) 2 5CR 337.

<sup>189</sup> Supra note 185

disorder is the dividend from such reckless 'discipline' and violent administrative culture, which myopic superintendents miss. Article 21 forbids deprivation of personal liberty except in- accordance with the procedure established by law and curtailment of personal liberty to such an extent as to be a negation of it would constitute deprivation. Bar fetters make a serious inroad on the limited personal liberty which a prisoner is left with and, therefore, before such erosion can be justified it must have the authority of law.<sup>190</sup>

Section 56 of the Punjab Jail Manual empowers the Deputy Superintendent to put a prisoner in irons only in -situations of urgent necessity followed by a immediate report to the Superintendent. Random decisions, freak impressions, mounting suspicions, subjective satisfaction and well-grounded allergy to a particular prisoner may be insufficient. Even though section 56 is a pre constitution measure, its application must be governed by the imperatives of articles 14, 19 and 21.<sup>191</sup>

Such a power, except in cases of extreme urgency difficult to imagine in a grim prison setting where armed guards are obviously available at instant notice and watch towers vigilantly observe (save in case of sudden riot or mutiny extraordinary), can be exercised only after giving notice and hearing and in an unbiased manner. May be that the hearing is summary, may be that the communication of the grounds is brief, may be that oral examination does not always take place; even so natural justice, in its essentials, must be adhered to. It is essential that reasons must be assigned for such harsh action and such reasons must be recorded in the history ticket of the prisoner as well as in the journal. Since the reasons are intended to enable the petitioner to challenge, if aggrieved, the record must be in the language of the petitioner or of the region, and not in English.'<sup>192</sup>

The infraction of the prisoner's freedom by bar fetters is too serious to be interviewed lightly and the basic features of 'reasonableness' must be built into the administrative process for constitutional survival. Objectivity is essential when the shackling is *prima facie* shocking. Continuously keeping a prisoner in fetters day and night reduces the prisoner from a human being to an animal, and that this treatment is so cruel and unusual that the use of bar fetters is an anathema to the spirit of the Constitution.<sup>193</sup>

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<sup>190</sup> *Sunil Batra v. Delhi Administration*. AIR 1978 SC 1675: (1978) 4 SCC 494. (1979) 1 SCR 392.

<sup>191</sup> *ibid*

<sup>192</sup> *Sunil Batra v. Delhi Administration*., AIR 1978 SC 1675: (1978) 4 SCC 494: (1979) 1 SCR 392; *Mohinder Singh Gill v. Chief Election Commr.*, AIR 1978 SC 851: (1973) 1 SCC 405; *Maneka Gandhi v. Union of India*, AIR 1978 SC 597: (1978) 1 SCC 248: (1978) 2 SCR 621.

<sup>193</sup> *Sunil Batra v. Delhi Administration* AIR 1978 SC 1675: (1978) 4 SCC 494: (1979) 1 SCR 392



**3.3.3 Use of handcuffs**<sup>194</sup>: The indiscriminate resort to handcuffs when accused persons are taken to and from court and the expedient of forcing irons on prison inmates are illegal and shall be stopped forthwith save a small category of cases. Reckless handcuffing and chaining in public degrades, puts to shame finer sensibilities and is a slur on our culture. Where an under trial has a credible tendency for violence and escape a humanely graduated degree of 'iron' restraint is permissible if - only - if other disciplinary alternatives are unworkable. The burden of proof of the ground is on the custodian. And if he fails, he will be liable in law.<sup>195</sup>

Government should frame rules or guidelines in regard to circumstance, under which handcuffing of the accused should be resorted to. It should be permitted only in extraordinary circumstances.<sup>196</sup>

### **3.3.4 Solitary Confinement:**<sup>197</sup>

Solitary confinement has the severest sting and is awardable only by Court. Even a person under death sentence has human rights which are non-negotiable and even a dangerous prisoner, standing trial, has basic liberties which cannot be bartered away. Until decapitation, a prisoner sentenced to death is human and so should not be scotched in mind by draconian cellular insulation or stripped of the basic fellowship which keeps the spirit flickering before being extinguished by the swinging rope. *Maneka Gandhi v. Union of India*<sup>198</sup> highlighted this principle in the context of article 21 itself. True, our Constitution has no 'due process' clause or the VIII Amendment forbidding the State from imposing cruel and unusual punishment,<sup>199</sup> but, in this branch of law, after *R.C. Cooper v. Union of India*,<sup>200</sup> and

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<sup>194</sup> Dr. SubashKashyap, constitutional law in india, vol 1 .page 686-88

<sup>195</sup> *Sunil Batra v. Delhi Administration* AIR 1978 SC 1675: (1978) 4 SCC 494: (1979) 1 SCR 392

<sup>196</sup> . *Sunil v. State of Madhya Pradesh*, (1990) 3 SCC 119: (1990) 2 SC 409; *Charles Sobhraj V. Suptd. Central Jail*. AIR 1978 SC 1514; *Citizens for Democracy v. State of Assam*; AIR 1996 SC 2193 *Altimesh rein V. Union of India*, AIR 1988 SC 1768.

4. AIR 1978 SC 597: (1978) 1 SCC 248: (1978) 2 SCR 621.

<sup>197</sup> Dr. SubashKashyap, constitutional law in india, vol 1 .page 686-88

<sup>198</sup> .AIR 1978 SC 597: (1978) 1 SCC 248: (1978) 2 SCR 621

<sup>199</sup> *Jagmohan Singh v. State of UP.*, AIR 1973 SC 947: 1973 Cri U 370: (1973) 1 5CC 21) (J'1) 2 5CR 541.

<sup>200</sup> AIR 1970 SC 1318.

*Maneka Gandhi v. Union of India*, the consequence is the same. For what is punitively outrageous, scandalizingly unusual or cruel and rehabilitative counter-productive, is unarguably unreasonable and arbitrary and is shot down by articles 14 and 19 and if inflicted with procedural unfairness, falls foul of article 21.<sup>201</sup>

Prisoners have a right under article 21 not to be subjected to physical or mental restraint or any restrictions amounting to torture, pressure or infliction which is beyond that awarded by the Court, is in excess of requirements of jail discipline or degrades human dignity.<sup>202</sup>

In **Sunil Batra v. Delhi Administration**, AIR 1978 SC 1675 Supreme Court discussed solitary confinement at length. Solitary confinement of a prisoner under sentence of death on the sole and solitary ground that the prisoner is a prisoner under sentence of death and total deprivation of camaraderie amongst co-prisoners, commingling and talking and being talked to, would offend article 21. Confinement inside a prison does not necessarily import cellular isolation. Segregation of one person all alone in a single cell is solitary confinement. That is a separate punishment which the Court alone can impose. Sections 73 and 74 of the Indian Penal Code leave no room for doubt that solitary confinement is by itself a substantive punishment which can be imposed by a Court of law. It cannot be left to the whim and caprice of prison authorities. Sub-section (2) of section 30 of Punjab Jail Manual merely provides for confinement of a prisoner under sentence of death in a cell apart from other prisoners and he is to be placed by day and night under the charge of a guard. Such confinement can neither be cellular confinement nor separate confinement and in any event it cannot be solitary confinement. Even jail discipline inhibits solitary confinement as a measure of jail punishment. It completely negates any suggestion that because a prisoner is under sentence of death therefore, and by reason of that consideration alone, the jail authorities can impose upon him additional and separate punishment of solitary confinement. They have no power to add to the punishment imposed by the Court which additional punishment could have been imposed by the Court itself but has in fact been not so imposed

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<sup>201</sup> *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675: (1978) 4 SCC 494: (1979) 1 CH 192

<sup>202</sup> *Sheela Barse v. State of Maharashtra*, AIR 1983 SC 378: (1983) 2 SCR 96: (1983) 2 5CR 337 ; *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675: (1978) 4 SCC 494: (1979) 1 SR 392; *Javed v State of Maharashtra*, AIR 1985 SC 231: 1985 (1) Crimes 913 (SC): 1984 (2) SCALE697; *Sitaram v. State of Uttar Pradesh* AIR 1979 SC 745: (1979) 2 SCC 656: (1979) SCR 1083, *Sher Singh v. State of Punjab*, AIR 1983 SC 465:

Upon a true construction, sub-section (2) of section 30 does not empower a prison authority to impose solitary confinement upon a prisoner under sentence to death. An analysis of the provisions of the Penal Code and of the Prisons Act yields the clear inference that section 30(2) relates to separation without isolation, keeping apart without close confinement.

### **3.3.5 PUBLIC HANGING:**

In case of *Attorney General v. Lachma Devi*, AIR 1986 SC 467, Supreme Court states that , “ Execution of death sentence by public hanging is violative of article 21, which mandates a fair, just and reasonable procedure”.

### **3.3.6 CUSTODIAL DEATH:**

Custodial death has been described as one of the worst crimes in a civilized society, governed by the rule of law.

Supreme Court Observed in *D.K. Basu, v. State of West Bengal*. AIR 1997 SC 610 that Custodial torture is a naked violation of human dignity, the Supreme Court said. The situation is aggravated when violence occurs within the four walls of a police station by those who are supposed to protect citizens. The Court accepted that the police have a difficult task in light of the deteriorating law and order situation; political turmoil; student unrest; and terrorist and underworld activities. They agreed that the police have a legitimate right to arrest a criminal and to interrogate her/him in the course of investigation. However, the law does not permit the use of third degree methods or torture on an accused person. Actions of the State must be right, just and fair; torture for extracting any kind of confession would neither be right nor just nor fair. (i) The Right to Life guaranteed by our Constitution includes the right to live with human dignity. The State is not only obliged to prosecute those who violate fundamental rights, it also has a duty to pay monetary compensation to repair the wrong done by its agents in not being able to discharge their public duty of upholding people's rights. Compensation, the Court said, is not be paid by way of damages as in a civil case [the victim is free to file a civil case to privately recover damages from the wrongdoer for loss of earning capacity] but under public law for breach of duty by the State in not being able to protect its citizens. However, there can be no strait-jacket formula as each case has its

own peculiar facts and circumstances. (ii) The Court recognised that the worst violations of human rights take place during investigation when the police use torture and third degree methods to get confessions. In such instances, arrests are either disguised by not recording them or showing detention as prolonged interrogation. The Court stressed that no matter what the circumstances, the State or its agents are not allowed to assault or torture people. They then laid down an elaborate set of guidelines in respect of arrest and interrogation. The Court directed that the guidelines which are given below should be circulated to the Director General of Police and the Home Secretary of every state and union territory and it shall be their obligation to have them put up in every police station at a conspicuous place.<sup>203</sup>

### **3.3.7 RIGHT TO SPEEDY TRIAL:**<sup>204</sup>

“Every accused is entitled to a speedy trial. Unexplained and inordinate delay of the trial for no fault of the accused is clearly a violation of article 21 of the Constitution. Expeditious trial is a basic right of an accused which cannot be trampled upon unless it can be shown that the accused was to blame for the delay in the trial”, stated by Supreme Court in case of ***Akhtari Bi v. State of Madhya Pradesh, AIR 2001***. A procedure is void if it does not provide for speedy trial. Speedy trial is a component of personal liberty. Inordinate delay in bringing an accused to trial or in preferring an appeal against his acquittal are violative of article 21. Undue delay in execution of death sentence is also violative of article 21.<sup>205</sup>

### **3.3.8 DELAYED EXECUTION:**<sup>206</sup>

The rationale behind the right against delayed execution is that a prisoner who has experienced living death for years is entitled to request the court to consider whether after all the agony and torment he is subjected to is just and fair, to allow sentence of death to

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<sup>203</sup> [www.humanrightsinitiative.org/publications/.../humanrights\\_policing.pdf](http://www.humanrightsinitiative.org/publications/.../humanrights_policing.pdf)

<sup>204</sup> Dr. SubashKashyap, constitutional law in india, vol 1 .page 688

<sup>205</sup> *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569

<sup>206</sup> Nirvani, Sharada T., 2005, “A Critical Study of Judicial Enforcement of Human Rights in India Through Public Interest Litigation with special Reference to Right to Life”, Saurashtra University

be executed. It is acknowledged that prolonged delay in executing a sentence of death can make the punishment inhuman and degrading.

The right against delayed execution was recognized in *T.V.Vatheeshwaran v.*

*State of Tamil Nadu*, AIR 1983 SC 381 and developed through *Sher Singh v. State of Punjab*, (1983) 2 SCC 344 and *Triveni ben v. State of Gujarat*, AIR 1989 SC 142 . Wherein it was reaffirmed that long delay in execution of death sentence will entitle the condemned prisoner to approach the court for conversion of death sentence into life imprisonment. Even a person sentenced to death is entitled to procedural fairness. Article 21 requires that any procedure which takes away the life and liberty must be just, fair and reasonable. Undue delay in execution of death sentence due to delay in disposal of mercy petition would result in mental agony to the condemned prisoner which would therefore, be violative of Article 21. This enabled public interest litigations to be brought before the court on behalf of prisoners sentenced to death awaiting execution, in protection of the rights of such persons.

A public interest litigation was filed in *Madhu Mehta v. Union of India*, AIR 1989 SC 2299 ,by Ms. Madhu Mehta, President of the public interest organisation called Hindustan Andolan. It was alleged that a person who had been condemned to death in 1981 had his mercy petition pending before the President for more than eight years. In the mean time, his mental condition had deteriorated to such an extent that it was feared that he may commit suicide. The Supreme Court held that undue delay in the execution of death sentence would entitle a condemned prisoner to invoke Article 21 of the Constitution which guarantees speedy trial. And also, there was not sufficient reason to justify the long delay of over eight years in the disposal of the mercy petition of the condemned prisoner. The court observed that the time and the manner in which the matter of mercy petition pending before the President was dealt with made a sad reading and spoke of the deplorable lack of speed and promptitude which should have been there in the disposal of the issue. Considering the fact that the convict had already suffered much mental agony of living under the shadow of death for long, waiting for it, the Court held that he should not suffer any longer. Therefore it directed that the death sentence should not be carried out and it was converted into life imprisonment.

**CHAPTER –IV**  
**COMPARATIVE STUDY OF RIGHT TO LIFE AND**  
**PERSONAL LIBERTY**

Article-21 in Indian constitution expressly forbids the executive from interfering with the life and liberty of the individuals without the authority of law. This article secures for Indian citizens same rights which the British citizens derive from the famous Magna Carta. Art. 21 obliges the executive to observe the “*forms and rules of law when depriving individuals of their rights to life or liberty.*” Besides Art 21 individual liberty is also protected by courts by means of writ of Habeas Corpus issued under Arts 32 and 226.

But right to liberty can nowhere be absolute. In the U. S. A., the executive may impinge upon individual liberty if it acts in accordance with “**due process of law.**” In the U. S. A. the Supreme Court examines the constitutional validity of the law under which executive actions are taken. Executive actions are valid only if the law is constitutional. Thus the “due process” restrains both the executive and the legislature. But in India executive actions encroaching upon an individual’s liberty is to be confined only within the “*procedure established by law.*” The Indian Courts do not exercise the right of judicial review over criminal laws. That was the view taken by the Indian Supreme Court in the famous case of **A. K. Gopalan vs. the State of Madras**. Under this view Indian Courts could restrain only arbitrary executive action but not arbitrary legislation.

This view prevailed till 1978 when in the case of **Maneka vs. Union of India**; the Supreme Court held that procedure for depriving individual liberty in a law must not be “**arbitrary, unfair or unreasonable.**” The position today is, the courts not only restrain arbitrary action of the executive, they also examine whether the laws providing for curtailment of liberty are “**arbitrary, unfair or unreasonable.**”

Before we compare need to analyse life and personal liberty status in U.S.A and England(U.K)

## 5.1 UNITED STATES OF AMERICA:

"Life, Liberty and the pursuit of Happiness" is a well-known phrase in the United States Declaration of Independence. The phrase gives three examples of the "inalienable rights" which the Declaration says has been given to all human beings by their Creator, and for which governments are created to protect.<sup>207</sup>

Right to liberty can nowhere be absolute. In the U. S. A., the executive may impinge upon individual liberty if it acts in accordance with "**due process of law.**" In the U. S. A. the Supreme Court examines the constitutional validity of the law under which executive actions are taken. Executive actions are valid only if the law is constitutional. Thus the "due process" restrains both the executive and the legislature.

Civil liberties are personal guarantees and freedoms that the government cannot abridge, either by law or by judicial interpretation. Though the scope of the term differs amongst various countries, some examples of civil liberties include the freedom from torture, freedom from forced disappearance, freedom of conscience, freedom of press, freedom of religion, freedom of expression, freedom of assembly, the right to security and liberty, freedom of speech, the right to privacy, the right to equal treatment under the law and due process, the right to a fair trial, and the right to life. Other civil liberties include the right to own property, the right to defend oneself, and the right to bodily integrity. Within the distinctions between civil liberties and other types of liberty, distinctions exist between positive liberty/positive rights and negative liberty/negative rights.

These liberties are part of fundamental rights in countries. Right to life and personal liberty is part of it. In America these Right to life and personal liberty included in civil liberties.

The United States Constitution, especially its Bill of Rights, protects civil liberties. The passage of the Fourteenth Amendment further protected civil liberties by introducing the Privileges or Immunities Clause, Due Process Clause, and Equal Protection Clause. Human rights within the United States are often called civil rights, which are those rights, privileges and immunities held by all people, in distinction to political rights, which are the rights that inhere to those who are entitled to participate in elections, as candidates or voters.[9] Before universal suffrage, this distinction was important, since many people were ineligible to vote but still were considered to have the fundamental freedoms derived from the rights to life,

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<sup>207</sup> [http://en.wikipedia.org/wiki/Life,\\_Liberty\\_and\\_the\\_pursuit\\_of\\_Happiness](http://en.wikipedia.org/wiki/Life,_Liberty_and_the_pursuit_of_Happiness)

liberty and the pursuit of happiness. This distinction is less important now that Americans enjoy near universal suffrage, and civil liberties are now taken to include the political rights to vote and participate in elections. Because Indian tribal governments retain sovereignty over tribal members, the U.S. Congress in 1968 enacted a law that essentially applies most of the protections of the Bill of Rights to tribal members, to be enforced mainly by tribal courts.<sup>208</sup>

## 5.2 ENGLAND

Civil liberties in the United Kingdom have a long and formative history. This is usually considered to have begun with Magna Carta of 1215, a landmark document in British constitutional history. Development of civil liberties advanced in common law and in statute law in 17th and 18th centuries, notably with the Bill of Rights 1689. During the 19th century, working-class people struggled to win the right to vote and join trade unions. Parliament responded with new legislation, and attitudes to universal suffrage and liberties progressed further in the aftermath of the first and second world wars. Since then, the United Kingdom's relationship to civil liberties has been mediated through its membership of the European Convention on Human Rights. The United Kingdom, through Sir David Maxwell-Fyfe, led the drafting of the Convention, which expresses a traditional civil libertarian theory. It became directly applicable in UK law with the enactment of the Human Rights Act 1998.

The relationship between human rights and civil liberties is often seen as two sides of the same coin. A right is something you may demand of someone, while a liberty is freedom from interference by another in your presumed rights. However, human rights are broader. In the numerous documents around the world, they involve more substantive moral assertions on what is necessary, for instance, for "life, liberty and the pursuit of happiness", "to develop one's personality to the fullest potential" or "protect inviolable dignity". "Civil liberties" are certainly that, but they are distinctly civil, and relate to participation in public life. As Professor Conor Gearty writes,

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<sup>208</sup> [http://en.wikipedia.org/wiki/Civil\\_liberties#United\\_States](http://en.wikipedia.org/wiki/Civil_liberties#United_States)



Civil liberties is another name for the political freedoms that we must have available to us all if it to be true to say of us that we live in a society that adheres to the principle of representative, or democratic, government.

In other words, civil liberties are the "rights" or "freedoms" which underpin democracy. This usually means the right to vote, the right to life, the prohibition on torture, security of the person, the right to personal liberty and due process of law, freedom of expression and freedom of association.<sup>209</sup>

Therefore, we can say that right to life and liberty are equally valued in both countries constitution. These rights increased with time in these countries as in India, so many new facets became part of these rights. Nevertheless, we find these rights very vastly in Indian constitution. These rights are developing with new challenges faced by judiciary in India as well as in America and England. These rights are in we found in England magna carta and in America in bill of rights. These rights are equally cherished and nourished in these countries. India as developing country still need to strengthen their application.

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<sup>209</sup> [http://en.wikipedia.org/wiki/Civil\\_liberties\\_in\\_the\\_United\\_Kingdom](http://en.wikipedia.org/wiki/Civil_liberties_in_the_United_Kingdom)

## CHAPTER-V

### CONCLUSION AND SUGGESTIONS

Article 21 yarns an endless and doubtless saga of welfare piece of legislation; its extent with time. It redefined and re-extended its meaning and scope. No fundamental right ever interpreted widely and liberally as of article 21. Judicial activism saw as the key to public welfare in all lines of action. We have seen vast role of judicial activism in Article -21 context. New interpretation and meaning of right to life and liberty came in picture expanded its horizon.

No legal provision has ever more controversial than Article 21 of the constitution, which provides for 'right to life and personal liberty' with so many colours hidden in it and it interpreted widely as so many facets and new colour of life and personal liberty comes in. As provided in constitution, 'No person shall be deprived of his life or personal liberty except according to procedure established by law.' New judicial interpretation that has given enormous dimensions to this article and give new meaning to each word and increased it beyond its limited sense.

In case of '**Chairman, Railway Board v. ChandrimaDas**'.<sup>210</sup>, concept and meaning of life and personal liberty was interpreted broadly. where by the apex court went on record and stated that even though Article 21 is in scheme of the fundamental rights gathered by the constitution and citizens of India avail these rights only, Article -21 is exceptionally applicable even to foreigners. It is imperative to make a distinction between a citizen and a non-citizen, as it is a question beyond any doubt that Article 14 of the constitution is applicable even to non-citizens such as a 'company' , Article 21 restricts itself to citizens and as far as non-citizens are concerned to foreigners, not to a company.

Right to life and personal liberty is the most exquisite and essential fundamental human rights around which other rights of the individual swivel and, therefore, the study assume great significance. The study of Right to Life is in fact a study of the Supreme Court role guardian of fundamental rights. Article 21 is the idol provision of the Indian Constitution and occupies a distinctive place as a fundamental right. It guarantees right to life and personal liberty to citizens and as well as aliens and is enforceable against the State. The new

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<sup>210</sup> <http://indiankanoon.org/docfragment/113663/?formInput=the%20chairman%2C%20railway%20board%20>

interpretation of Article 21 in Maneka Gandhi’s case has led a new era where right to life and personal liberty horizons expand. The broad and liberal facet came into the view in respect of these rights, now covers various aspects which the founding fathers of the Constitution might or might not have foreseen.

Fundamental rights enshrined in part III of the Constitution form the spirit of the Supreme Law, protection to the same is offered by article 32 and 226, the writ jurisdiction of the Supreme Court and the High Court respectively. Here so far as article 21 is concerned by way of judicial interpretation and activism a new branch of rights have aroused over the decade—reason for this is that so far as the scheme of Indian Constitution is concerned judicial decisions so rendered by the Supreme Court have the force of being the ‘law of the land’.<sup>211</sup>

**A set of exhaustive rights that article 21 in matter and in spirit is capable of offering is as follows:**<sup>212</sup>

SERIAL NO.	Rights offered under Article 21.	case laws in which the right got Recognised.
1.	Right to food	People’s Union for Civil Liberties v. UOI
2.	Right to shelter	Chameli Singh v. State of U.P.
3.	Right to livelihood	OlegaTellis v. Bombay Municipal Corporation
4.	Right to education	Mohini Jain v. State of Karnataka; Unni Krishnan v. State of A.P.
5.	Right to clean environment	M.C.Mehta v. UOI
6.	Right to privacy	Govind v. State of M.P.
7.	Right to marriage	Lata Singh v. State of U.P.
8.	Right to travel abroad	Maneka Gandhi v. UOI

<sup>211</sup> <http://www.legalservicesindia.com/article/article/article-21-the-omnibus-article-1196-1.html>

<sup>212</sup> ibid

9.	Right to live with human Dignity	Maneka Gandhi v. UOI
10.	Right against bondage	Bandhu Mukti Morcha v. UOI
11.	Right to emergency medical aid	Parmanand Katara v. UOI
12.	Right, not to be driven out of a state	NHRC v. State of Arunachal Pradesh

**The rights so mentioned above are regal in sense and spirit. Apart from these, the apex court to nomenclature few other rights by way of judicial interpretation. These are as follows:**<sup>213</sup>

Right to speedy trial (Sheela Barse v. UOI)

Right against prison torture and custodial death (Sunil Batra v. Delhi Administration)

Right to compensation for illegal – unlawful detention (Rudal Shah v. State of Bihar)

Right against handcuffing (Prem Shankar Shukla v. Delhi Administration)

Right against bar fetters (Charles Sobhraj v. Suptd. Central Jail)

Right against solitary confinement (Sunil Batra v. Delhi Administration)

It is very necessary to note that in a democracy no right is absolute. All rights are subject to reasonable restrictions of: morality, health, public order, state security, public safety & public policy.

*Justice Krishna Iyer* while speaking for majority in the case of **Sunil Batra v. Delhi Administration** made it constitutionally clear that when a person gets arrested, he steps into

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<sup>213</sup> ibid

the prison cell with his fundamental rights intact and not in devoid of them, he also made it amply clear that Article 21 is to be interpreted in the widest possible sense because fundamental rights form the spirit of the Constitution and Article 14, 19 and 21 are the spirit of the fundamental rights- over and onto which all other fundamental rights rest.<sup>214</sup>

Facets of Article-21 increased in above mentioned cases. Further add when question arises 'Is right to life inclusive of right to die? In case of **Gian Kaur v. State of Punjab**, here it was held that word 'life' is to be read in consonance with word 'dignity' so far as article 21 is concerned, but right to life in no stretch on imagination shall include right to die. 'Right to life' means 'right to life with human dignity' and not mere animal existence and in **ArunaShanbaug case** where by the apex court for the first time legalise to the concept of euthanasia or mercy killing in some form with conditions. A person in a persistent vegetative state (PVC), deriving his existence from life support system can apply for euthanasia by merely removing the life support system.

Hence, forth we can say that with social and psychosomatic development of the society, Article 21 is witnessing remarkable development—truly, it is welfare legislation. Article 21 and Sec. 377, IPC also comes into the new facet of life and personal liberty when in July 2009 that a judgement of Delhi High Court gave green signal to consensual sexual intercourse between same sex adults but the judgement gathered a lot of fume and criticism. Article 21 gets new judicial interpretation and was the crux of the judgement. Unfortunately, Supreme Court bench reversed the Delhi High Court's 2009 decision and held sec-377 of Indian penal code criminalised. As a three judge bench decision of the SC (comprising of Chief Justice K G Balakrishnan, Deepak Verma and B S Chauhan) offered legality to live in relationships and pre-marital sex, late in March 2010, stating that Article 21 is not only a welfare piece of legislation but also a progressive piece of legislation.<sup>215</sup>

Sec.354 (3) of Cr.P.C, 1973 states that death penalty can be given only in rarest of rare cases; whereby the facts and circumstances of the case are so grave that they intrinsically shock the conscience of the court. In addition, this provision provides that-- the bench heading the particular case needs to give 'reasons' for their decision in case the punishment rendered is

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<sup>214</sup> ibid

<sup>215</sup> <http://www.legalservicesindia.com/article/article/article-21-the-omnibus-article-1196-1.html>

life imprisonment and 'special reasons' in case the punishment rendered is death penalty. In case of **Bishnu Deo Shaw v. State of West Bengal**, Supreme Court held that 'life imprisonment is the rule and death penalty is an exception' – also that death penalty is ultra vires of the constitutional mandate- Article 21. However, there have been cases where by death penalty had upheld as a matter to meet the ends of justice, cases ranging from **Bachan Singh v. State of Punjab** to **Machhi Singh v. State of Punjab** and **Dhananjay Chatterjee v. State of West Bengal**. The 'abolitionist' argue that- crime breeds crime and murder breeds murder, murder and capital punishment are not opposites that cancel out each other but are of same kind.<sup>216</sup> Great importance was given to Article 21 while deciding such cases. However, all fundamental rights are subject to reasonable restrictions of public order, morality, health, public safety and state security and Article 21 is no exception.

Facts on record indicate capital punishment needs to be retained, so far as ethicality of death penalty regards to Article 21 is concerned- sec.354(3) of C.R.P.C., 1973 in matter and in spirit is enough to take care of that, as words used in the section are farsighted and far-reaching.<sup>217</sup> Therefore, we can say that with new judicial interpretation we can see direct correlation between right to life and personal liberty. Where we talk about right of accused, prisoners' rights, right to privacy, etc. We took both life and personal liberty in consideration as fundamental human rights. Consequently, hypothesis one is right that there is relation between right to life and personal liberty.

Second hypothesis is positive, as Article 21 covers the entire fundamental rights of Individuals is somewhat true. While we analyse all fundamental rights Article 12-35 find that all somewhere promote right to life and personal liberty. As new horizons are coming in soon it will cover fundamental rights of Individuals. In **Maneka Gandhi v union of India** and **A.K Gopalan v state of Madras** we discuss about right to life and liberty at length and in further cases.

Third hypothesis is positive as under privileged (poor's or weaker) was benefited by Article- 21. We find that right to legal aid, right to health, right to shelter etc add into the meaning by new judicial interpretations in cases above mentioned benefitting the under privileged.

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<sup>216</sup>ibid

<sup>217</sup>ibid

Fourth hypothesis is also positive as there is need to re-evaluate the position of right to life and personal liberty is right. Still with expanding horizon so many facets of life and personal liberty needs to come into the picture. Like gay rights, NARCO test analysis etc. India is developing a country so position of right to life and personal liberty is widened but not strong as in other countries in application. We need to strengthen its spirit.

## **SUGGESTIONS**

On the basis of above information, there were some suggestions:

- Article-21 is very strong fundamental right without which life is not possible even new horizons are adding to it. We need to act with caution because it's also crucial one. We need to follow the rule of natural justice while giving new meaning to it. Reasonable restrictions are there over them but we cannot deny principle of natural justice in shade of it. Supreme Court in 2013 was criminalised Sec 377 of IPC as it is against public policy. We cannot forget life and personal liberty meaning is very vast and extending further. It opens new way for debate.
- Poor and weaker section of society is get benefited by it but still not to the measure, it needs to be in reality. There is reservation as right given to backward to uplift their living and status. There is right to legal aid, shelter etc comes into ambit of article 21 but we also need to check their effectiveness in reality.
- Developing country like India needed to implement it effectively because welfare and development of society is depending on the status of life and liberty in country. If life and liberty will not protected by state, it will lead to anarchy and diminish the fundamental human rights without which life is no life.
- For the sake of psychological and social need of society life and personal liberty horizon needs to expand because society is going through changes so the need of it. Therefore, legislation must be up to date for welfare.
- Life and liberty somewhere covers all fundamental rights so they need to effective and their expansion based on natural justice otherwise it will diminish the spirit of constitution. That is why courts always have to give force to this principle. Concept of

euthanasia to gay right's we need to think rationally and do justice as life and personal liberty meaning extends beyond its limits.



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## **APPENDIX**

### PART III FUNDAMENTAL RIGHTS

#### General

12. Definition.—In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. 13. Laws inconsistent with or in derogation of the fundamental rights.—(1) 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. (2) 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. (3) In this article, unless the context otherwise requires,— (a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law; (b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas. (4) Nothing in this article shall apply to any amendment of this Constitution made under article 368. Right to Equality 14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to— (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. (3) Nothing in this article shall prevent the State from making any special provision for women and children. (4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. (5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the

Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30. 16.

Equality of opportunity in matters of public employment.—(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment. (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. (4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State. (4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent.reservation on total number of vacancies of that year. (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination. 17. Abolition of Untouchability.—“Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law. 18. Abolition of titles.—(1) No title, not being a military or academic distinction, shall be conferred by the State. (2) No citizen of India shall accept any title from any foreign State. (3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State. (4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State. Right to Freedom 19. Protection of certain rights regarding freedom of speech, etc.— (1) All citizens shall have the right— (a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form

associations or unions; (d) to move freely throughout the territory of India (e) to reside and settle in any part of the territory of India; and \* \* \* \* \* (g) to practise any profession, or to carry on any occupation, trade or business.(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. (3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause. (4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause. (5) Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,— (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.20. Protection in respect of conviction for offences.—(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. (2) No person shall be prosecuted and punished for the same offence more than once. (3) No person accused of any offence shall be compelled to be a witness against himself. 21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law. 21A. Right to education.—The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. 1 22. Protection against arrest and detention in certain cases.—(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor

shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate. (3) Nothing in clauses (1) and (2) shall apply— (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention. (4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless— (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention: Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or (b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7). (5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. (6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose. (7) Parliament may by law prescribe— (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of subclause (a) of clause (4); (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and (c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4)

23. Prohibition of traffic in human beings and forced labour.—(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them. 24.

Prohibition of employment of children in factories, etc.—No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Right to Freedom of Religion 25. Freedom of conscience and free profession, practice and propagation of religion.—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess,

practise and propagate religion. (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law— (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion. Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly. 26. Freedom to manage religious affairs.—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right— (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law. 27. Freedom as to payment of taxes for promotion of any particular religion.—No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. 28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.—(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds. (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution. (3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto. Cultural and Educational Rights 29. Protection of interests of minorities.—(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. 30. Right of minorities to establish and administer educational institutions.—(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause. (2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution



on the ground that it is under the management of a minority, whether based on religion or language. \*

\* \* \* 31. [Compulsory acquisition of property.] Rep. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 6 (w.e.f. 20-6-1979). Saving of Certain Laws 31A. Saving of laws providing for acquisition of estates, etc.— (1) Notwithstanding anything contained in article 13, no law providing for— (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or (b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or (c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or (d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or (e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19: Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent: Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.(2) In this article,— (a) the expression “estate” shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include— (i) any jagir, inam or muafi or other similar grant and in the States of Tamil Nadu and Kerala, any janmam right; (ii) any land held under ryotwari settlement; (iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans; (b) the expression “rights”, in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenureholder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue.31B. Validation of certain Acts and Regulations.—Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away

or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or Tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.31C. Saving of laws giving effect to certain directive principles.— Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing 1 [all or any of the principles laid down in Part IV] shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19; 2 and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy: Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent. 31D. [Saving of laws in respect of anti-national activities.] Rep. by the Constitution (Forty-third Amendment) Act, 1977, s. 2 (w.e.f. 13-4-1978). Right to Constitutional Remedies 32. Remedies for enforcement of rights conferred by this Part.—(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part. (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2). (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution. 32A. [Constitutional validity of State laws not to be considered in proceedings under article 32.] Rep. by the Constitution (Forty-third Amendment) Act, 1977, s. 3 (w.e.f. 13-4-1978).

33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.—Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,— (a) the members of the Armed Forces; or (b) the members of the Forces charged with the maintenance of public order; or (c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or (d) person employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.34.

Restriction on rights conferred by this Part while martial law is in force in any area.—

Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India

where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.<sup>35</sup> Legislation to give effect to the provisions of this Part.— Notwithstanding anything in this Constitution,— (a) Parliament shall have, and the Legislature of a State shall not have, power to make laws— (i) with respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament; and (ii) for prescribing punishment for those acts which are declared to be offences under this Part; and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii); (b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament. Explanation.—In this article, the expression "law in force" has the same meaning as in article 372.

