

## **Chapter II**

### **2. DIFFERENT DIMENSIONS OF ARTICLE 21 OF INDIAN CONSTITUTION**

No person except according to procedure established by law shall be deprived of his life or personal liberty.

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 can not 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.

The right to life, right to life meaningful and dignified means complete. Does not mean it is restricted. It is something more than being alive or animal.

Words can not narrow down the meaning of life and it will be available to every citizen. Procedure established by law enacted by the state law means. Wide range of meaning is denied under the Constitution. These issues are the soul of this provision.

was a bit narrow.

V. opened on as Administrator of the Union Territory of Delhi and others as follows:

A person deprived of his personal liberty must be reasonable, fair and just.

It thus lays down:

Article 21 The right to live with human dignity free from exploitation assured.subject to her.

Unni Krishnan v. State of AP scope of Article 21, the Supreme Court has explained.

- 1) Right to go abroad
- 2) Right to privacy
- 3)against solitary confinement) is fine.
- 4)Against hand cuffing
- 5) against delayed execution is correct.
- 6) Right to Shelter. Against the death in custody
- 7) Right against public hanging

Public Interest Litigations in respect of children, the right to know, the right to open trial, under inhuman conditions in the home care have found this place.

Anvil (b) Security

(C) the right of every child to a full development.

Cultural heritage (d) protection.

Beyond the scope of this state are beyond the control of the temple innocent hostages by terrorists in custody has been extended.

different religion, caste and religion live together and therefore, the state of their life, liberty, dignity and should not be jeopardized or at risk who have a duty to protect a person's value.

Reasonableness test is not a purely subjective test and its shape are indicative of the Constitution.

Reasonableness requirement of fundamental rights through the entire fabric runs like a golden thread.

.. New dimensions from time to time have been added to the scope of Article 21. determine which imposed a limit on the process, arbitrary, whimsical and dreamy.

A person deprived of life or personal liberty would be against the provisions of Article 21 of the Constitution.

## **2.1 Right To Medical Care & Health.**

A healthy body is the very foundation of all human activities. That is why the saying Sadhanama Sariramadyam Khalu religion. National constitutional and statutory right to health as well as laws have been recognized in international law.

World Health Organization (WHO) health care system in relation to the list of 199 member countries, ranking 112 th place as India. In India, its people's health and safety concern to the health care law enacted by governmentâ indicated.

Part IV of the Constitution, Articles 39, 47 and 48 are contained in a. Several legislative acts also factories, large-scale industrial enterprises and mines, people employed in the health of women and children as human health and protect the environment. These legislative enactments food safety law, labor law and environmental law and with the spirit of the Constitution, in fact, cover a wide range of fields, including agreements.

have broadened the scope for policy, thus making some of them enforceable.

have. The right to health has been recognized by the Supreme Court under Article 21 that a different indivisible rights.

Gradation of the Indian Supreme Court, the right to health of the Indian Marshallian spirit of the Indian Constitution has been interpreted 21 and fascinatingly International Convention principles and guidelines of the State, depending on the general legal doctrines, repeatedly broadened the scope of the policy, thus making them applicable.

India has been shown to encourage the community to protect human health and the state of the judicial as well as administrative wings of an indifferent attitude in this respect is the way it is obvious that there is a duty to be accepted. The right to health has been recognized by the Supreme Court under Section 21 of the indivisible rights that are different.

The accumulation of soot in the lungs due to the Madhya Pradesh case, the age of the young workers in industries related to the production of a pencil case, Pencil Manufacturing Industry in the State to be one of the first health-related public interest litigation filed in the Supreme Court.

The same may be said that the failure to construct, install the factory to ensure the necessary security measures. In Pt. India and others Parmahand Katara V. However, the Supreme Court is responsible for the patient's innocent or a criminal penalty under the law, it's a doctor on the obligation of the state to fulfill the constitutional obligation of the government hospital that saved lives by virtue of Section 21.

Justice Ranganath Mishra gave us the following languages: No law or state action to avoid interference / paramount obligation cast upon members of the medical profession can delay discharge. Obligations, the total is absolute and Paramount, will not interfere with the discharge of the obligations of the law, whether statutory or otherwise can not be sustained and, consequently, will give way.

Similarly, the West Bengal Khet Mazdoor Samiti V. State, the Supreme Court of the right to life guaranteed by Article 21 of the injured are in violation of the public health consequences of the failure to timely treatment reasserted.

The seven-time medical instructions, and specifications: it is the constitutional obligation of the state to provide adequate medical care. The need for this has been. Whatever the manager role, then the first stage of the recognition of the right to health and the growing role of the court in the case of Parmanand Dr. Chandra Prakash in the case of gradual development can be understood.

Dr. Chandra Prakash, the Court of free medical care for victims of road accidents fiscal resources by tapping the manager role. A.S. In Uttar Pradesh Mittal V. State, the Supreme Court follows the rules defined for the camp, and 84 patients had serious injuries caused by the state of Uttar Pradesh, ordered to pay compensation. India Panikurlangara V. Vincent It is a welfare state Supreme Court unions to create congenial conditions in sustaining good health and to ensure that the obligations of the state. Directions import, manufacture, sale and distribution of drugs Drugs are proposed for a ban by the Supreme Court to seek for the consultative committee, and all types of drugs approved for cancellation of all licenses. On the importance of this trip can be seen in the light of recent international agreements.

Follows that the right to life and health vis-A-vis the right of the Justice Ranganath Mishra were observed: 21 of the Constitution guarantees the right to life and assured the court the opportunity to live the good life with a guarantee to cover the defined disease, and free from the usual expectation longevity treatment, including life.

Article 21 of the Supreme Court of coverage of employees in occupational health hazards brought. An employee at the time of service or post retirement health and vigor to protect the right to health and medical directive in Section 39 (e) of the policy, 41, 43,

and fall under Section 21 has been held to be a fundamental right of individuals 47 and with dignity, meaningful and purposeful lives all workers basic human rights.

Kirloskar Brothers Limited V. Employee State Insurance Corporation, the Supreme Court of the right to health workers basic rights and against the state and its instrumentalities are available not only in the private industry.

India's Murali Deora V. S. However, the Supreme Court banned smoking in public smoking is injurious to health and that the Constitution recognizes the right to health under 21. Punjab and others V. Mohinder Singh Chawla, a government official in the state is reimbursed the cost of his medical expenses. However, obliging the state to provide health constitutionally entitled to such benefits extension Punjab V. Ram Lubhaya Bagga was checked state.

The amount of the reimbursement rate, which is fixed before a policy is made. For upholding the principle of unlimited resources - Court Section 21 or Section 47 Suprema Lex opined may have been violated. V. Conclusion Punjab Lubhaya Bagga state court judgment about the right to health policy, the trend shows a clear change. The paucity of resources factor has bowed before the foreboding presence.

The bitter reality has been experienced by many developing countries legal system. For example, in the case of Vietnam, the 1980 Constitution, guarantees the right to health care and free medicine examination and treatment, but the country is facing a financial crunch, has been deleted, and that this right is the right of a narrow rule entitled" is one of the health of the population ' 'accorded the. When tragedies like the right to health resources can be seriously contemplated, which is a reality, it is not.

This is the case not only in India but also in developing countries such as Great Britain and the U.S. have been made for the fact that you like better, and resource laden country, a narrow, right in the resource-based health or the health of its citizens are accorded the right to stay in a spacious and prophet, which There is no connection with the amount of resources available. The only argument in favor of such a system through which we can realistically availed right, you can fit.

" Trust" in the judiciary and the legal system as a whole, and where one can avoid a situation. This provides for the right of citizens to be sure and bring a great amount of concrete to be more of them. In favor of the latter, it is only when the health of right, could realistically increase the range of rights that may be availed. Before considering the amount of available resources and consider a right, but an increase in the resources available for such purposes will not be able to.

The other main argument in support of" the real problem is not the lack of resources" wrong" but" the allocation of resources. Corruption, undersized budget allocated to health care, as well as some examples of improper allocation. Such a situation, the right resource - based system is the right solution. The right to an asset-based system of the last decade, and where India, keeping in view, it has already started in the right of this system is the best solution (that will be out there trying to allocate the resources to deal with the" wrong while trying to ) are" through other channels.

### **2.1.1 What is occupational Health ?**

A temporary nature of the employment, the environment and health tend to have major repercussions. 'Occupational health' has evolved from the concept of work-related

ailments. Occupational Health distributed during the course of his employment of an employee or employee of any injury, impairment or disease means.

In addition, it not only deals with work-related disorders, but it can affect all the factors that affect the health of the community. Inadequate monitoring of employee work-related and other non-communicable life style diseases, the most important reason for the increase in prevalence.

Seventy-five percent of the workforce living in the third world countries, more than 125 million workers each year are victims of occupational accidents and diseases. , Changes in work patterns, work relationships, work, self-employment increased outsourcing, etc. There was a problem with the Occupational Safety and Health Risk Management. However, particular attention 'dangerous job' and workers, particularly migrant workers and other vulnerable people's health and safety will be given. Risks related to agriculture and small industries and occupations in this occupational disease occupational safety and health services are likely to increase in the reach. However, the Public Interest Litigations (PILs), induced by the continuous struggle of workers and environmental legislations, with more awareness with respect to occupational health concerns are gaining ground.

### **2.1.2 The Constitutional aspects of Employees' right to health**

21 of the Constitution of India guarantees the protection of an individual's personal freedom. The Supreme Court of the "right to life" under the workers have upheld the right to health. For example, in the case of Consumer Education Research Centre v. Supreme Court of India, "occupational accidents and diseases in the most

appalling human tragedy and economic waste industry is one of the most serious kind." In addition, the court held that, therefore, the service or post retirement articles 39 (e) read with a fundamental right under Article 21, 41, 43, the health, the right to medical help protect worker health and vigor that would be, ", 48A and all articles relating to fundamental human rights and dignity of persons with a meaningful and purposeful life WORKMAN. "of the Indian Constitution as envisaged in the proposals and principles of the policy guidance to the industry and the industry has shown a significant concern.

Principles of State Policy Guidelines provide:

Workers, men and women in order to protect the health and strength of a),

B) children of tender age, women are not

C) citizens of their age or strength unsuited avocations are not compelled to enter the economic,

D) relief just and humane conditions of work and maternity, is provided and

E) Government undertakings, establishments or other organizations engaged in any industry, to secure the participation of workers in management of the law, or by any other means, shall be taken.

Therefore, the Government, Central or State, depending on the nature of the employment of temporary workers, safety and health policies, guidelines and principles to be kept in good working organizations, environmental activists, etc., will be discussed with the

### **2.1.3. Occupational Health Laws**

Factories Act, 1948, the Mine Act, 1952, Dock Workers (Safety, Health and Welfare) Act, 1986 regulates the provision of health care workers in an establishment in which the law was. Employee Insurance Act, 1948, and workmen's compensation law since 1923 is compensatory in nature.

#### 2.1.4. Under the Factories Act Health System, 1948

Factories Act, 1948, the physical strain or unduly long hours of manual labor to protect workers from the subject you are prepared with the object. This product can be as healthy and sanitary conditions of employees in the work that lays down and that should be very careful for their safety and accident prevention should be taken for as reported.

Act or related to any manufacturing process or production process associated with any job, whether for remuneration or not, either directly or by any agency (including a contractor) any person employed by an 'employee' is defined. It takes place in the production process is produced, which is connected with the product should not be necessary.

Section 10 of the State Government to comply with the following duties, certifying doctors' appoint a competent medical practitioners lays down that:

A) Check and young people and 'dangerous occupation, people involved in the certification exam.

B) substances used or new manufacturing process under the supervision of the medical practice could be a possibility of injury to personnel.

C) the possibility of injury to involve young people under the supervision of a medical practice.

Chapter IX of detail, such as health, safety and welfare measures related to the provision, cleanliness, ventilation layer, dust and smoke of the diversion, artificial humidification systems, sanitation, equipment, fencing, lays down, among others. Women from working in certain occupations n \ n and that the provision prohibits children. 27 process and the operation of the Maharashtra Factories Rules, 1963 has been marked as hazardous.

The rules of the preventive measures, protective devices, as well as warning notices put down detailed instructions regarding the medical examination of workers. Depending on the needs of the local government has adopted this rule. A list of 29 occupational diseases and any employee of a factory and a contract manager, the chief inspector of factories to inform medical practitioners obliges.

Rules, including medical examinations of workers health, safety and welfare of laying down the law with respect to the professional health centers, etc., is to establish a very wide range of

Discretionary power in the hands of the inspectors and the occupiers have been implemented since the lapse of his picks. Occupational disease is rarely reported in the factory, but the factory management of hazardous chemicals in the work of the high-risk potential.

#### **2.1.4. Under the Factories Act Health System, 1948**

This is a factory or establishment workers sustained while serving in various risks and contingencies ameliorating the social security law enacted with the object.

It is an illness, maternity and employment injury, employment injury and workers' medical benefits to dependents of workers who die in the form of pensions in providing cash benefits are provided. It also provides protection against the contingencies of the contributory principle of recognition of illness, dependents, benefits, pensions and replaced by a lump sum payment on a statutory organization<sup>4</sup> liability for the claim.

Act, seasonal employments' does not cover. This is an insurable employment, the employee caused by accident or occupational disease, as well as personal injury, employment injury 'is defined.

Medical Board is to calculate the percentage of the insured person's disability, health and welfare and medical benefits of advanced medical benefit council, a corporation counsel, certifications, etc., to promote, to set up a Esi Corporation lays down the law to provide workers' compensation for the Corporation and injured workers before submitting the report. An injured worker medical board to call him a check for up<sup>5</sup> have to wait months before. Esi Fund, the main source of revenue for the employer and employee contributions are paid. Funds are to be used, for which purpose a lot.

This facility is provided, the family of the insured medical services, the medical complaints seen with, existing state hospitals, dispensaries, etc. The gross misuse of these funds are maintained.

Discretionary powers with respect to the amount of funds to be used only with the corporation with the State Government. According to the Occupational Health and Safety Centre, Mumbai, for the Corporation staff are just 4 of occupational diseases.

Section 39 of the law on behalf of himself and Esi contribution to the Fund for payment of its employees makes the employer is primarily responsible. Contributions by the employer in the case of misuse, the staff set up by the respective State Government Employees' State Insurance Court can sue the employer.

A worker illness, disabled or mother makes the claim, where it will be made against the employer and not against Esi Corporation. Compensation from the involved process is tedious. Quick Claims Act provides for such a lapse unreal renders the object.

Under workmen's compensation Act, 1923, during the course of their work, arising out of an accident involving a legal obligation of the employer to pay compensation exists. Such work is essential for men to pay compensation as follows:

\* Personal injury will be caused. \* Also due to an accident in which occupational diseases, should be temporary total or partial disabled.

State Government in the matter of compensation, the amount and duration of compensation, the liability of an employer's decision to appoint a commissioner to be. The applicant appealed to the High Court in the case of Commissioner's orders are to be grieved.

Compensation decisions on the nature of the injury caused. The accident resulted in a temporary hit, the minimum compensation payable, Rs.50, 000 and a maximum of

around could be expanded. 3 million. Permanent total disablement and permanent partial disablement, the compensation depends on its nature, Rs.60, 000 can be expanded. In addition, the amount of compensation for which WORKMAN wage groups, and he worked for a time period on which the calculation is made.

Central government policy has emphasized the need for effective implementation of the existing laws of the Occupational Health is a comprehensive law.

## **2.2 The right to shelter**

Several cases, the Supreme Court of its ambit, including the right to housing under the Constitution of 21 means life has been enormous. Some of the court cases upholding the right to shelter, thereby bringing out the need for an honorable life like a mere animal existence, and looking at the difference between a decent human existence.

1. Builders vs. Shantistar in upholding the importance of the right to a decent environment and a reasonable accommodation. Narayan Khimalal Totame (1990) SCC 520: Air 1990 SC 630 the Court held that,

"The right to life in its sweep the right to food should be taken, the right clothes, and a decent environment for the animals, and the shelter was a difference in the lives of the people have a right to a reasonable accommodation of view. Physical, emotional and intellectual - in every aspect of it for animal You can expand the suitable habitat, would be for the people and protection of the body is bare.

The goal is to ensure every child to develop to the full. That will only be possible if the child is in the home. It is every citizen living in the home of a well-built and

comfortable to be sure, but especially for the people of India, mud-built thatched house or a reasonable home even create a mud accommodation that is fireproof. "

2. Up [(1996) SCC 549] the Supreme Court, a bench of three judges considered the rights and protection of the fundamental rights of every citizen and it is available for 21 of the Constitution was held in the year's Chameli Singh v. State of India as encompassing within its ambit, the right to shelter more meaningful the right to life. Para 8, it has been held thus: (SCC pp. 555-56).

A man's man is the only animal that does not meet the requirements of "an organized society, the right to live. Himself to develop the facility to ensure that it is only when it is secured and is free from the limitations that inhibit its growth. Rights in order to achieve this object are designed for.

The right to live in a civilized society, to be sure, food, water, decent environment, education, treatment and understanding of the right to housing. This is known as a fundamental human right in any civilized society. Universal Declaration of Human Rights and Convention or under the Constitution of India inserted in all civil, political, social and cultural rights can not be applied without these basic human rights. "

More emphasis on the right to shelter, in this case the Court held that,

"A shelter for the people, therefore, the protection of life and limb is a mere. They are physically, mentally, intellectually and spiritually, there is the opportunity to become the. Shelter right, therefore, adequate living space, safe and decent structure, clean and decent surroundings , adequate light, pure air and water, electricity, sanitation and roads

and other civic facilities have been included in order to have his daily living, such as easy access.

The right to shelter, therefore, a mere right to a roof over one's head means they have the right to live and develop as a human being to all necessary infrastructure. When used as an essential right to live, not in terms of the protection of fundamental rights as the right to be deemed to have been confirmed. Guidelines are enjoined in principle, the State must issue its financial budget, for its citizens, it should not be deemed to be under an obligation to secure. As a member of the community to organize a democratic society, the mental, the physical and intelligence in order to have a permanent residence in the basic duty as enjoined as a useful citizen and a useful citizen sentenced to improve its superiority and be an equal participant in democracy.

Equipped with state of the right to equality and dignity of the person and the object of making him a man was able to develop yourself as a cultural being. Do you want to live decent, therefore, equity, economic justice, basic rights to live, a right to live in dignity, and the constitutional right to frustrate the very object animation. "

3) In PC Gupta Vs. State of Gujarat and Ors, 1994, the court further articles 19 (1) (e) and 21 read with Section 19 (1) (g) the right approach, the right of residence and settlement was holding. Within the ambit of the protection guaranteed by Article 21, the right to enjoy the protection of the right to a meaningful life encompasses. Residence and the right to settle in the 19 (1) (e) of Section 21 and under as a fundamental right under the power of life and an integral facet is seen as a meaningful right.

4. Ahmedabad Municipal Nagarpalika vs case. (1997) 11 SCC 121 in Nawabkhan Gulabkhan, the Hon'ble Apex Court has observed as under.

"The right to life enshrined under Article 21 of the right to life meaningful and not merely the existence of creatures are included. Include the right to life is the right to live with human dignity.'s Right to life under Article 21 has been confirmed as a fundamental human right. Facility and would like the opportunity to Due to the residence and the right to settle in rural and urban poor is an illusion. articles 38, 39 and Status Inequalities in income and opportunities and minimize the social, economic justice as well as the economic policies of the 46 commandments,,.'s positive social, economic justice to the reality of the article 46 The weaker sections of the society envisaged under the largess of the state and a meaningful life worth to live with dignity and equality of status and continued to operate in order to enhance excellence.

Any person footpaths, pavements or public street or a public purpose or earmarked reserves the right to encroach and erect a structure or any place else there, even though the distribution of wealth and resources of the constitutional duty to provide adequate facilities and opportunities for the protection of life and on their heads for settlement building, to the right to life meaningful, effective and efficient.

No one can live without the means of living, it is understood that the right to livelihood, means of subsistence. Deprivation of the right to life is not only effective content and meaningfulness in life, but due to denude it is impossible to live like that .... "

".. Section 19 (1) (e) as a fundamental right in any part of the right to residence and settlement accords.'s Right to life under article 21 has been confirmed as a

fundamental human right. UDHR Article 25 (1) that everyone and myself a standard of living adequate for the health and well-being of his family has the right to declare the food, clothing, shelter, medical care and necessary social services included. economic, social and cultural rights, the International Covenant Article 11 (1) of the agreement states that the parties and the food itself, clothing, shelter, and constantly improve the quality of life for his family, including the right to accept that lays down the conditions of living. "

5. Olga TELLIS and others versus case. Apex Court has concluded as under the Bombay Municipal Corporation (1985) 3 545 reported cases in the Supreme Court:

"Abbreviation ..., we have a person footpaths, pavements or a garden or a playground, for example, a reserved or earmarked for any other public place, or else by erecting a structure, encroach, or has the right to the left, the Mumbai Municipal Corporation Act The circumstances described in the provisions of Section 314 is not unreasonable, and that, Kamraj Nagar Basti Western Express Highway, the road is leading an accessory.

We repeat, it must be created, which are guaranteed by the State Government in its pleadings that. Briefly stated, censuses, who happened to be in the censuses of 1976, pavement dwellers who do not, however, the farther away it is reasonable to consider such other convenient place as a condition to remove the marks, Malavani pitch or in the alternative, should be given as in terms of distance, identity card and those living in the census of 1976, the number of slum dwellers rehabilitation options for the site to be given, the slums in existence for a long time, twenty years or more, and say that they

stand to enhance and improve the land or appurtenant land, the site or accommodation will be provided to them, which is required for the public purpose, if you do not have to move, low-income shelter projects Project "which will follow the World Bank's aid prompted to accept the proposal, and basic amenities for slum Slum dwellers should be allowed under the upgradation program (SUP) 'in order to reduce the delay would not be applied to any eviction, wherever we are holding the slums, up to one month after the end of the rainy season will not be moved directly .....

6) Slum Areas (Improvement and Clearance) Act, report, 1956 Punnu Ram and others vs. the Supreme Court Chiranjitlal Gupta and others (1999)-3-SCC-273, the Supreme Court held, however, in interpreting the provisions of:

".. In addition, clause (b) Section 19 (4), it is the first to allow this kind, the authorities evicted slum improvement and clearance of areas that should be satisfied and to provide improvements and slum clearance area of interest, then allowed for eviction Payment can be made., he is held in this case, a tenant will not be any trouble.

Made by the appropriate authority of a slum clearance area, because if you do not plan, then, enactment of policy options for accommodation can be made available to him, unless the slum-dwellers, should not be held in any of the buildings or the whole of the event, will be ordered to be destroyed is, the dwellers, of course, vacate, you may, but not necessarily an alternative accommodation that would provide such instruction is given before it is considered. It's time for the tenant to provide alternative accommodation can not be provided within a reasonable time, but it is a fact that is required. The objective is

to fill in the eviction process and to improve the reconstruction process is required to be performed in an orderly fashion .. "

6) Maharashtra Ekta Hawkers Union vs Municipal Corporation of Greater Mumbai, (2004) SCC 625, in the Supreme Court has held:

".. The authority of the Constitution of India Hawkers 19 (1) (g) to make it clear that there is a right under. These rights, however, Article 19 (6) of the subject under reasonable restrictions., Therefore, should not be allowed to be a universe where such may be due to the narrowness of the road traffic or the free flow of pedestrians or disrupt the security of a free or near the hospital is necessary, to carry on where a fundamental right under Article 21 of the places of worship have business theory. theory there is no specific place right there. "

### **2.2.1 Justifications to support the forced eviction by Authorites**

The most common stand almost continuously and public authorities, ie, Municipal Corporation, the revenue received from the authorities, Urban Development and Housing Authority Board of hutment dwellers are occupying the land as a public road and other objectionable sites, such as rain water on the shore of the channel under the proposed housing scheme the road, reserved for. They are uncontested and unpolluted environment in urban areas in order to ensure the proper development of the other members of the society, and common interests for the benefit of, there can not be allowed.

Residents of the planned development of the cities that are required. Hutment dwellers in the interest of the general public for personal or collective rights, which must be sacrificed for planned urban development.

Exactly Hutment dwellers encroached land with their families and belongings to vacate a reasonable period of time and are provided with advance notice. The hutment dwellers such notice to evict them, that is the minimum necessary to use physical force, encroached land only when it refused to vacate or leave.

It is not in the power of financial resources and government officials encroachment comparatively recent origin, where the land is encroacher, buses will be provided with alternative sites.

Any law or statute on public property acquired by the organization in recognition of a fundamental right.

Government authorities such as the Bombay Provincial Municipal Corporation Act, the Gujarat Town Planning and Urban Development Act and the Bombay Land Revenue Code, and approved the action taken under the relevant laws of the State enactments, public authorities under the provisions of the planned and systematic development of urban areas and the public to use public properties and to protect the land, the towns municipal administration, control, namely those enactments, for the purpose of fulfilling the object, is empowered to remove encroachments on public land.

That the Constitution Bench decisions of Supreme Court in *OLGA TELLIS AND OTHERS Vs. BOMBAY MUNICIPAL CORPORATION AND OTHERS* (AIR 1986 SC 180) AND *AHMEDABAD MUNICIPAL CORPORATION VS. NAVABKHAN GULABKHAN AND OTHERS* (AIR 1977 SC 152), permit the civic authorities to adopt the procedure followed in these cases for restoring possession of properties for public use, by removing illegal encroachments.

## **2.3 Right To Environment**

Between the environment and life. The existence of life on earth, ecology and environment, depending on the harmonious relationship. Especially - Homo interaction with nature is very close. People at the center of concerns for sustainable development and a healthy and productive life in harmony with nature, you are entitled to be sure.

With the rapid acceleration of science and technology, we have numerous ways and achieved an unprecedented scale, the ability to transform our environment, the evolution of the human race on this planet has reached a level. Humanity's ability to transform his surroundings, if used wisely and with respect to the nature of the way, all people have an opportunity to improve the quality of life can bring.

Incorrectly or heedlessly applied, or will apply iniquitous ways, the same amount of power, and incalculable harm to people not being able to. The growing evidence of the damage caused in many parts of the world that we see around dangerous levels of pollution in water, air, earth and living beings; irreparable destruction and loss of life and natural resources, and the unwanted disturbances in the Earth's climate and the protective layer; gross deficiencies, physical, mental and Social health hazard, especially in the cities and industrial complexes in living and working environments, the.

Important to recognize our dependence on the earth's natural resources. Such as air, water, and land as well as natural resources are fundamental to all life forms:

they are, money and economic infrastructure, our survival is much higher than the base. Humanity, has a large number of people, especially you.

'Ecosystem people' (in their own natural environment, depending on the material to meet the needs of most), the natural resource base of survival and livelihood. This depends on the material and their economic sustenance. India alone, around 70% of the population living on the land, forests, wetlands and marine habitats, depending on water, food, fuel, shelter, food and medicine necessary for basic subsistence livelihood and cultural environment as for the food. Given the close interdependence of people and their environment, society and culture, it is not surprising that so greatly influenced by their environment. They are in their natural surroundings inspiration, wisdom, spirituality and aesthetics ask.

The natural environment is dependent upon not only the 'ecosystem people' are. All of it, S / he may be under the illusion that modern technology buffered by props who were living in Paris or Washington or even the urban rich. Industrializing growing city in the world, millions of people of all classes to the lung and skin diseases, water-borne diseases, and congenital abnormalities have from their food and water toxics, which is hundreds of kilometers away from the origin may be.

### **2.3.1 Environment and the Indian Constitution**

The relevant provisions of the Constitution of India is the backbone. India, 1950, certain provisions of the Constitution relating to environmental protection and nature conservation are not included. Perhaps, the country is now facing severe

environmental problems through the framers of the Constitution were not visualized. However, over the past five decades, the progress of these two witnesses.

The Constitution (Forty Second Amendment) Act, 1976, passed through the seventies, when the development took place. Schedule of the seventh - and a list of the third - specific provisions related to certain aspects of the concurrent list, more particularly for the protection of forests and wildlife, in Part IV - Directive principles of policy have been incorporated in the Constitution. Part IV: Principles of State Policy Guidelines (Section 48A): the protection and development of forests and wild life and protect the constitution specifically to environmental protection and nature conservation are the following provisions:

State to protect and improve the environment and to protect the country's forests and wild life shall be seeking. Part IV A: The basic duty (Section 51 - a): It shall be the duty of every citizen of India - (g) to protect the forests, lakes, rivers and wild life and the natural environment, including advanced, and to have compassion for living creatures. Seventh Schedule (Article 246) of the third - accompanying list of items. Animal cruelty reported in 17 of Prevention, Item no. 17A Forest, Item no. 17B Protection of wild animals and birds.

### **2.3.2 Article 21 and Right to Pollution free environment**

The second major development, more specifically, the right to life, dealing with 21 of the Constitution, in recent years some remarkable judicial pronouncements have been derived from the jurisprudence. One of the most important articles of the

Constitution of India, which is to ask, then you can only say - no person will be deprived of his life and liberty in Section 21, which says, - which is the guiding light of India.

All articles that are subservient. 'Life and liberty' - any person - not just a citizen - be deprived of life or liberty of a person, in other words, all the articles of the Indian Constitution has been formulated for the theme song to keep up. Person's life and liberty "are protected - for years the most dynamic of all articles, which was a thrill that article was this article, Article 21, together with the meat because it is not included as a mere platitude.

Celebrity provisions of Section 21 of the Indian Constitution and the people as a fundamental right to occupy a unique place. Protect the life and personal liberty. It envisages a procedure established by law and any person of his life or personal liberty except deprived of that goal. Here, the right to life, right to pollution-free environment, etc. simple words, the right food, the right to health, the right to live with human dignity, in Section 21, a person is an Inbuilt guarantee.

### **2.3.3 Section 21 of the Indian Constitution states**

'No person except in accordance with procedures established by the law of his life or personal liberty shall not be denied. 'Article 21 of the basic right to the heart of the other. Section 21 is very straightforward and less of a chance that there's immense resources. Law, yet it is ever evolving and it does not change according to time to meet the challenge. Therefore, the provisions of the Constitution, especially the fundamental

rights, and in particular Article 21 has been broadly construed by the Department of Justice.

Expand the reach and ambit of Section 21 of the system rather than trying to accentuate their meaning and content. The judiciary, the freedom of making a go of the idea that it broadened the rights of all varieties, including the opportunity to increase personal freedom. How to understand the basic principles established by law is to be compiled. Judiciary and fundamental rights to life and the right not to consider the environment as well as the correction has been upheld where the environmental field.

So we understand that in order for life-saving environment can be considered as article 21. This article is pollution-free environment, the right to life and the right person to have a bearing focuses on some of the landmark case.

The manufacturers themselves, particularly the right to life is the fundamental right of its broad sense. The Supreme Court of India, every person can enjoy life to its fullest extent, so that the essence of the right. Indian Supreme Court justice mechanical and chain bound to the rules and came out in Section 21 of the basic rights of the individual are also encouraged to expand their horizons. Section 21 and Section 21 of the two methods to enforce the rights under the unremunerated used by the Supreme Court, a person deprived of his way to ensure that the Section 14 and 19 of the Constitution requires the test to pass legislation affecting personal liberty or personal freedom, should be reasonable and just will. Section 21 was implied by the court recognized the right of the matriculated.

This approach by the Supreme Court, and all other rights, the right to wholesome environment including the right to life and personal liberty is interpreted. The court of judicial pronouncements in the right part of the ideology of development has to explicate.

Expand the reach and ambit of Section 21 judicial craftsmanship of the system and the contents of their money trying to accentuate. So the idea of justice broadened.

Go to the freedom of the individual in a way that includes all of the rights and personal freedom, the opportunity to increase diversity. The right to life includes the right to wholesome environment and sustainable development, the right to increase its scope. Wedded Indian democracy, the rule of law to protect the fundamental rights of its citizens, but not the only goal of an egalitarian order. Social engineering is a tool to carry out the procedure established by law obliges.

Environmental degradation can endanger the lives of current and future generations. Therefore, the right to life has been used in a diverse manner. It is the right amount of inter alia, the right to survive as a species, quality of life, the right to live with dignity, and the right to livelihood is included. Imply that the right has been recognized as a constitutional right in India. The right to a healthy environment in the court, directly or indirectly, are included. So it is a multidimensional interpretation of article 21 is clear. Deprived of life or personal liberty in any part of the state, regardless of the whimsical and fanciful, is against the Indian Constitution 21.

## Laws for environmental management

India, MOEF environmental protection and conservation in a multi-disciplinary body is the controller. Unprecedented in its scope and impact of environmental laws, in order to protect and enhance the Government of India has been accepted by the Fund. The following is a summary of relevant legislations for environmental management. The Gazette Notification may be referred to for further details.

I. Water (Prevention of Pollution Report Releases and Control) Act, 1974.

The. Water (Prevention and Pollution Control of the release of the report) cess Act, 1977.

III-. Air (Prevention and control of pollution and the release of the report) Act, 1981.

Fourth. Environment (Protection) Act, 1986.

V. Hazardous Waste (Management and Handling) Rules, 1989 as amended in 2000.

VI. Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 as amended in 2000.

VII. Public Liability Insurance Act, 1991.

VIII. Environment Impact Assessment Notification, 1994 as the 4th of May, 1994 and April 10, 1997 has been amended on.

IX. The National Environment Tribunal Act, 1995.

X-Chemical Accident (Emergency Planning, Preparedness and Response) Rules 1996.

XI. Biomedical Waste (Management and Handling) Rules, 1998.

XII. Recycled plastics manufacture and usage rules, 1999.

XIII. Fly Ash Notification, 1999.

Fourteenth. Municipal Solid Waste (Management and Handling) Rules, 2000.

Xv. Batteries (Management and Handling) Rules, 2001

Water (Prevention and Control of Pollution) Act, 1974

Rapidly reduced and water quality degradation and human health effects of his illness in the mid-seventies, water pollution prevention and control law is first introduced to force the authorities.

These laws prevent water pollution and water and wholesomeness maintenance or restoration are available for control. For example, a bearing on the quality of water being of all human activities are covered under this Act.

Subject to the provisions of the Act, the State Pollution Control Board (SPCB) No person shall, without the consent of any industry, operation or process, or any treatment and disposal system or sewage discharge, which is probably an extension or addition thereto may place or a stream or well or sewage or trade effluent on land as well as' Consent to work, after the establishment of the 'Consent to establish' You have to apply to the SPCB.

### Water (Prevention and Control of Pollution) cess Act, 1977

The main purpose of the Act specified in the Schedule to this Act has specific industrial category Levy and collection of cess on water consumed by the. Thus, water pollution prevention and control of money collected is used by SPCBs.

### Air (Prevention and Control of Pollution) Act, 1981

Air Act, 1981, its purpose, including the prevention and control of noise pollution is to reduce air pollution. Accordance with the provisions of this Act, no person shall, without the consent of the SPCB to establish an industrial plant, or air pollution control work in the area. Allow investors to collect SPCB / Pollution Control Committee (PCC) has been applied. Any person operating any industrial plant in any air pollutant emitted excess SPCB standards laid down and will comply with the stipulated conditions.

### Environment (Protection) Act, 1986

The protection and improvement of environment and for matters connected with it, is an umbrella law. It's an industry, operation or process or the execution of any person to comply or may be emitted, discharged or emitted pollutants, such as the quality of the environment to allow any excess should be available.

Aspects of rules relating to the management of hazardous chemicals, etc., has been set up in the waste. Under this Act, the Central Government. , Is limited to the location of industries and liquid effluent discharge has been approved and the noise process has evolved and has been declared so far. Respect to the value of pollutants,

especially those identified as highly polluting industries within a period of one year from the date the notice is to be achieved. However, a certain desire to SPCB, a time limit may be reduced and the quality of their jurisdiction respect the identify specific category within the industry. SPCB However, the time limit stipulated by the Government of India Standards are not able to relax. Under Article 15, the punishment of a fine and imprisonment for violation of the provisions of this Act.

In this Act, subject to the provisions of the central government. Deemed to be necessary or expedient for the protection of the environment and to improve prevention, control and abating environmental pollution, all have the ability to take action.

Processes and operations in different areas of industry, location and carry on with bans and restrictions on hazardous materials handling systems, security, bans and restrictions have been notified. Doon Valley, a variety of activities in the area up to the fragile ban has been imposed, Aravali Alwar, Rajasthan in the region, coastal areas and ecologically sensitive areas, etc. (MOEF, 1989 and 1992 A). In addition, the Public Liability Insurance (PLI) Act, 1991, any transfer of hazardous substances at the time of the accident b) occurring immediate relief to the persons affected by the structure are provided. Orders for life-giving environment.

#### 2.4 Right to life

No one needs is essential to life. It is one of the scholarships, or employment, or in any other walk of life or property must be obtained from. State policy,

a substantial section of the accomplishment of the aim of the directive principles of the constitution, but is not guaranteed as a fundamental right. At the same time, in the arts as an integral part of the right to life and livelihood to defend that title. 21 of the Constitution. This constitutional protection is provided under Illustrations.

### **2.4.1 The Ubiquitous Hawker**

Social tensions abound due to the action of a consensual age flawed and backward accent on job creation, millions of poor in the informal sector, while the domain is fighting bravely against all odds, and resourceful way of showing self-employment. Yet, instead of their operating conditions, making it easy to spread regulators or should we say extortionists and their life is going to be difficult! This is the go?

### **2.4.2 The Forgotten Street Vendor**

Liberalization, wealth creation, job generation, and discussions on the reform of the Indian economy, the informal sector is often neglected. It is our destitute, the poor, the exploitation of millions of citizens and contribute to the social needs of the people, their meager livelihood can be, which is a sector. Yes, this is our best and often overlooked service provider. This green leafy vegetables and all of our requirements within 5-10 minutes walking distance of the sale on the sidewalk by the Bhaiyya was not for that we would be where? The market is likely to demand that the car / rickshaw / bus promoting the contribution of pollution by heavy traffic! Street vending is very often the only occupational choice for many poor people.

Suppliers and vendors to stand on the same cane on the cart vegetablewallahs, fruitwallahs, Bhajjiwallahs, Batatwadawallahs, Bhelpuriwallahs, ancient Chatwallahs right - on the pavement where he graduated from the success stories in this sector, the industry is catering! They have gone on to become established traditional businesses.

Large or small cities and towns in their own efforts to build the strength of this work is Bhaiyyas and Bais day our daily supply of essential commodities so as to facilitate the formation of a chain of distribution. Also, readymade garments, shoes, household gadgets, toys, stationery, newspapers, magazines and so on, but, these things are not just fruits and vegetables. Avoid fruit and vegetables from the farmers market street vending in urban, formal sector as well as ill-afford to retail their products through expensive distribution network for small businesses, which will lead to a serious crisis. Their efforts to make our daily life easier and less expensive.

Naturally, such efforts are essential, as well as the flow of money through trade with the case. Thanks to their dourness, faceless street vendors in India, as well as a part of the image to save themselves from the millions of rising unemployment, Eke out a respectable living to fight poverty, every day, every day to serve a great and essential services, and 365 days a year.

They only cost effective services and you provide the poor Bhajjis, Batatawadadas and sold idlis they can afford and the amount. Their food purchasing power of the urban poor street food vendor icons makes food security. In addition to considering the impact of the appreciation of their services - are eligible for good business sense. Vending street / theory in spite of the fact that it's real benefits, inherent prejudice against them is a great.

But you have to serve your needs and then they promenade, parks, squeaky clean and keep out of sight, there'd be extinct! You are hungry, you Kanda (onion) bhajjis's enticing aroma flavor. Batawadas and Elaichi Tea, your local khau gully (alleys and street food vendors cluster where) in a restaurant of the same stuff as much as 1.5-2.5 times the money you will spend at the side of the street food vendors that will put you down. You have satiated your hunger and thirst, and then you'd banished them to overcome.

Citizens and to meet the social needs of the working people, these people do not deserve to be treated with dignity and respect?

### **2.4.3 Indifference /Cruelty Shown To Street Vending**

Dr. Sharit Bhowmik, Professor of Sociology, University of Mumbai, street vending "is a natural market because of local demand," actually. Thus, it follows that the number of consumers. Conservative estimates of Mumbai's street vending community that is 250,000 strong, but only 14,000 of these are licensed. According to Bhowmik said, "No license has been issued over the past 30 years." - Can be found in the attitude of indifference to a starker? It Municipal authorities only as an instrument of terror and extortion abundantly clear that the licensing system. You are running to and fro on a municipal truck vendors to see how often a goonda RAID anticipating when you can experience as a buyer.

India's 10 million street vendors, many of them in turn to be the bad state of the rental fee is high, a mixture of problems encountered. Mumbai collected bribery, including the rent - seeking fees, annual 20 million dollar counts.

According to Professor Bhowmik, street vendors, such as fee income from 10 to 20 percent of their salary. By Madhu Kishwar mentioned • Delhi, a journalist "who spared not even have a license stalls. Their stalls and wares are likewise destroyed or confiscated. Then released their push - carts and products is expected to get a hefty fine.

The penalty rate. Rs 1,450 plus. 'Excluding charges and Rs 300 as well. 100 per day for the number of shops in the rehdis municipal representatives. So there is a seller of the minimum cost. The very next day it is issued 1,900 rehdi get rid of the municipality. Emissions of their products for vendors often claim they can not pay exorbitant fines and bribes. So they will have to start again from scratch. "It is literally a brutal war Vending.

Madhu Kishwar routinely humiliated, beaten and tortured by the police, street vending in the "new entrants target.

The constant economic and physical assaults on their income only depress, but do not destroy their self-esteem and confidence. The routine violation of their basic human rights and their duty to ensure the safety of life and property in the hands of the very same people are running. "

#### **2.4.4 Employee's Service And Protection Of Article 21**

The investigation of the termination of employment of an employee without the employer for any lapses resorts, it is a violation of his right to livelihood and the principles of natural justice do not.

D.K. In Yadav v m / s JMA Industries,

The absence of eight days from the date of the last post and nothing happens Lien automatic loss of the automatic termination of the service and terminating the mandate of the force required to pass by the management "of the substance in his contention, bears the bench under the standing orders specifically allowed by the employer's operations statutory right gets are affected. Roberto de Souza's case (AIR 1982 SC 854), this Court in para 7 of the holiday period ending on auto service and nothing more can be done rejected that contention. unauthorized absence from duty, it is more interesting for the rolls of the name without complying with the principles of natural justice must not be based services, such as misconduct and complete responsibility for consecutive days of absence from the service and that is the end amounted justified.

KRSJ you (AIR 1990 SC 2034), this Court bench of two judges was that one of us: State Bank of India (AIR 1986 SC132 with an arbitrary name that is held in the form of attractive SCC 13 rolls of it camouflaged as a discharge simpliciter or service for serious misconduct, a simple finish, but that was not one of the considerations. court order and its effect on the veil lifted and looked beyond the apparent tenor., it is held that the action was not valid, and thus the court after observing "the rules of natural justice and the Union of India, VN Singh The ruling followed a Kriapak vs. Union.

Labour Court of Appeal against a "reasonable opportunity to present the person of his case and the authorities should be borne in mind in each case is whether the cardinal points are thus more should be done fairly reasonably justly and impartially., It is

a lot of work, but judicially accepted as a fairly work is required just to be fair and reasonable in the particular circumstances. in other words, that no man should be condemned unheard arbitrarily applied the principles of natural justice to the person's right to prevent the authorities are willing to work. "

In this case authoritatively lays down the following propositions:

A) The right to life is a part of the right to livelihood.

B) Livelihood has been living in his career.

Deprivation of livelihood is affected by the termination of service of an employee, and it should be just and reasonable, which is to be carried out in accordance with a procedure, unless such termination so it would be contrary to law.

C) a termination of services will not be affected by any other device or camouflage to circumvent the application of the method.

#### **2.4.5 Workmen's Conditions And Statutory Regulations**

The factory, a factory clean and free from contaminants arising from any drain, and effective measures shall be kept in accordance with Article 1 of the 1948 debris and contaminants (Section 12) has been created to ensure that treatment. Workmen reasonable comfort and proper temperature adequate ventilation to the premises (Section 13) are protected. Health workers to prevent inhalation of dust and smoke damage, which is required under section 14. Diet drinking water workers (Section 18) will be provided. Adequate and appropriate latrines and urinal accommodation in a convenient place

(Section 19) must be available at. Washing facilities are contemplated under Section 42. Factory will be equipped with first aid equipment. (Section 46). Workers belonging to the provision for children below 6 years and makes, crèches are provided. Welfare officer to look after the welfare of every worker should have.

#### Mine Act 1952

Makes similar provisions for mine workers. This is the first aid facilities and emergency facilities for carrying drinking water in the diet (Section 19) is in place latrines and urinals (2) an adequate number (Section 20) (1) Power Supply (Section 21) provides for the creation of effective instruction

#### Industrial Disputes Act, 1947

Employers as well as employees in order to ensure social justice for the investigation and settlement of industrial disputes is provided for. Conciliation Board (Chapter 5); court of inquiry (Section 6), the Labour Court (Section 7); Tribunal (Section 7A); national tribunals (Section 7B) Adjudicatory authority of the provisions of the Conciliation Officer (Section 4) is provided under . Section 10 Board, the court or tribunal is provided for reference and industrial disputes. Article 25 prohibits unfair labor practices.

#### Payment of wages act, 1936

Wages paid to persons employed in certain industries classed controls. Section 3, it is obligatory to all employers to provide their employees makes for

statutorily fixed minimum wage. Beyond the constitutional obligation of the employer is liable for the penalty prescribed under Section 20. On behalf of the staff, Relinquishment of any rights provided by law void Section 23) is held.

#### Minimum Wages Act, 1948

In addition, in respect of scheduled employments of labor for the benefit of the provisions made. The minimum wage rate is provided for in Section 5. Specified in Section 22F of the 1936 employment, payment of wages law is applied.

Their employment (Section 3) of Schedule 4, the amount of compensation payable prescribes the Workers Compensation Act, 1923 for any injury caused by an accident arising out of and in respect of certain categories of employers to provide compensation to workers by causing the death or injury of a disabled etc.

#### Government authorities have a duty

A person's right to life under the control of their due diligence of the people who have to work with the public authorities may be affected due to neglect. No results flowing out of their negligence, they are liable in damages. Bihar and others vs. the Supreme Court Legal Aid Committee. The attention of the Supreme Court is likely to be protected from the death grip may have been injured, said. Disciplinary proceedings have been taken against the delinquent havaladar.

Appropriate and timely medical attention has been given to save the victim's life may have been. It is not death that havaladar's negligence. Especially if it is a

person in the custody of a person in order to ensure appropriate protection for the obligation of the police. Rs 20000 / A compensation - Mahesh Mahto provided by the legal representatives of the state of Bihar.

Human Rights Act, 1993, Protection of

This is a good suggestion for the protection of Human Rights for National Human Rights Commission and the Human Rights Commission for the Constitution is intended to do. Section 2 (d) right guaranteed by the Constitution or embodied in the Indian court of international covenants and enforceable life of equality and dignity of the human person is defined.

Central Commission is established under Section 3. The Commission was established under section 21 of the state. Chapter 12 Central Commission prescribes. It is part of suo motu inquiries or human rights or public servants, such as violation of human rights or negligence of reported violations to prevent such violations alleged negligence on a petition by a victim. A court related to the proceedings, the Commission can interfere. It treaties and other international instruments to study and make recommendations for their effective implementation, and other places who visits. It's Human Rights - Literacy spread. The ability to search for it in a civil court (Section 13) is the investment. Section 18 is similar to the functions and powers of the Commission are the government of the state, such as the prosecution of an investigation following the necessary steps, on the recommendation of the Commission. Under Article 30, the Court of Human Rights was established.

## **2.5 Right's Of Women And Children**

It is the hope and future of the nation as well as a valuable asset and a liability for the harsh reality. At both national and international level, more attention is being focused on children's well-being and welfare. A country's future depends on human resources development and children's all round development.

Most of them are included in the provision of welfare in the country's constitution. India is a democratic welfare state against all forms of exploitation of the Constitution provides for the protection of children.

Indian Constitution framers dictum-in view of the important provisions for the betterment of the children and for the protection of the nation's wealth -. This provision of the Constitution expressly or impliedly to have directly or indirectly related to the protection of childhood, children's education and the elimination of child labor system.

The abuse against the child labor policies of the Government of expression carries. The Constitution provides fundamentally below the age of fourteen, no children. It recognizes the need to provide special protection to children. Children also need to be free in the future, and distributive justice. Therefore, children with special provisions to ensure that justice is a fundamental right, and the fourth part is devoted to the principles of the policy guidelines have been incorporated. The provisions of the Constitution relating to the welfare of our children are embodied in two categories - clear provisions and the provisions of the underlying can be divided.

## **2.5.1 The explicit Provisions dealing with the child welfare**

Section 15 (3): This special provisions for women, children and the state empowers. •

Article 24: It is, factory employment of children is prohibited

Section 39 (e) and (f): This is to protect the health and dignity of children the opportunity to grow with the purchase of the state obligates. • Section 45: Is it free and compulsory education for children is available. With the behavior of the child welfare system can be defined as under:

Article 14: equal rights before the law.

Article 23: prohibition on forced labor and traffic in human beings.

Article 38: To protect the welfare of the people trying to secure a social order.

Section 41: Education and the Government, the right to work.

Section 42: just and humane conditions of work and for maternity relief provisions.

Section 46: SC, ST and other weaker section of the Promotion of educational and economic interests.

Section 47: This nutrition and quality of life levels increase and public health to improve the state obligates.

## 2.5.2 Children's Right Protection under Fundamental Rights

The third part of our Constitution is the fundamental right of the description. The fundamental rights, as well as the Legislative, Executive and the limitations on the ability of political organizations, moreover, essential to the preservation of public and private rights. His whole intellectual, moral and spiritual potentialities for the development of the most essential of the rights of the fundamental is considered. This is a negation of the rights of individuals to be backward. Others imply that the fundamental rights of children are included, in which any person, to ensure the fundamental rights of the Indian Constitution guarantees the fundamental rights of the citizens of the country. Make sure children are citizens of India, which has the right to enjoy all the fundamental rights.

Children and definitely appropriate for children, some of which provide for other basic rights are the basic rights. Section 14 of the law and equal protection before the law, equality of persons in the territory of the guarantees.

Article 15 prohibits discrimination on the ground of religion, race, color, gender, class or place of birth or any of them. However, Section 15 (3), for the treatment of children and women in particular to be the optimal treatment for the provision of the law allows the state. However, no mention is made of the ground, leaning on the behavior of the children are allowed to consider the inherent weakness, Section 15 (3) of Section 15, Section 15 prohibits discrimination on the ground (1) and 15 (2), as an exception to the religion, race, color, in my class, gender or place. HMSeervai Section 15 (1), since

age discrimination is a prohibited ground of Article 15 reference (3), meaning that it is view.

It is the purpose of avoiding any dispute makes specific provision for the positive and the state shall strive to promote the welfare of children, including the framers of the Constitution is concerned, however, that the evidence is presented. Tender age of children for exploitation of children and repulsion of their solicitude for us to provide a certain founding fathers of our impelled; provide preferential treatment over the state of the other person, can act for the welfare of the children. It's more secure against the state, in particular, its policy shall indicate that proclaims the tender age of children's health and strength. This is the moral and material abandonment of childhood and youth are protected against exploitation against enjoins. Aside from that, they tried fourteen years of age is also free and compulsory education for all children provided.

Section 21 of the procedure by a person of his life or personal liberty except according to the law will be denied. This provision of the Constitution is very important for the human race and humanity. Delhi - Hon'ble Apex Court in the Fancis Cralie Mullin V. Union Territory has been explained, the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition is included with the right to live, clothing and shelter, and to read, write and express yourself in a variety of forms moving about freely and harmony with fellow human beings for the facility. Articles 14 and 21 of the Constitution of India, living virtually right under the protective umbrella canopy received. Mathematics with basic

facilities human dignity and the basic necessities to live a fun person to be deprived of the right to take any action in order to enable a person must be a minimum requirement.

Article 21A: Constitution (86TH Amendment) Act, 2002, Section 21, then add a new section 21A and 6 to age 14 is a basic right of education for all children. It is the state of the law, may be by, for example, all the kids in the 6 to 14 years of age are available for free and compulsory education shall determine -. Indian civilization of human society recognizes education as one of our obligations. Education institutions to establish and maintain a religious and charitable objects is considered. Education is not a product for sale. Even after six decades of independence, the economic front, looking at the rest of the population, 30% of the population living below the poverty line, and the bulk of the struggle for existence under the conditions of poverty. Fundamental rights is appreciated and fully enjoyed unless a citizen educated and aware of its status can not be.

Unni Krishnan, V P and the other party and the other by the Supreme Court of the State of the right to education for children aged 6 to 14 that was declared a fundamental right. Even after this, there is no improvement. Needs to make education a fundamental right was raised from all corners. As a result, the education is a fundamental right which the Constitution (86TH Amendment) Act, 2002 preparation.

Within the meaning of Section 21A of the fundamental right to education, and in that regard, in particular, have a duty to provide primary education, but the government has limited resources and the ability to show it to the legislature to create a savings of unaided educational institutions in the society, the Institute has been approved.

23 of the Constitution, beggar and other similar forms of forced labor and exploitation in traffic. This article does not speak specifically to children, yet it is the most important section of the community and the children, because they are more relevant to the context. It is because of their poverty, many children and even parents who allow their exploitation is absorbed by a known fact. And I still have relatives in the absence of their exploitation. They are deprived of education, their health, and to do all sorts of people losing jobs. Both domestic and agricultural operations in rural areas to look after children full-time employee or a part-time employee commitment as a landlord you are destitute parents. In urban areas, on the myriad forms of exploitation, such as child support and domestic servants, artisans and skilled workers as existing. This violates the basic rights of millions of children are exploited and no adequate by the state legislature and administrative measures have been taken.

A beggar - has the right to democratic V. The Hon'ble Apex Court in Union of India and has been interpreted by the labor or services for remuneration which is less than the minimum wage, in violation of article 23. Or even insufficient payment for work rendered by the amount of beggar children forced to labor. Sometimes, children of tender age of 23 in violation of this all-meat trade is tempted. No child below the age of 24 in the fourteen years in any factory or mine or engaged in any other hazardous employment shall be appointed -.

The prevailing poverty in the context of the implementation of the provisions of the above would be very difficult. Employment of children below a certain age are considered dangerous or harmful acts of their children's physical structure may be

banned are therefore prohibited. This article is an absolute bar to employment of children below the age of 14 years makes. Moreover, it is not altogether prohibit their employment. Employment only factory or mine or any other hazardous occupation is prohibited. The provisions of the 'dangerous' as it is a question of employment. Hon'ble Apex Court in order to explain the nature and amount of the dangerous jobs in the labor of children under 14 years of age and employed in the construction process can not be allowed to work in the JK-Salal project of the V. The work. This article, however innocent or guilty of any job or their employment is not prohibited.

' landmark judgment in Tamil Nadu' C Mehta V. State, Apex Court of the children below 14 years of age, a dangerous industry, mine, or other work to be appointed and the government should be to protect the economy has been laid down for instructions on how to complete, millions of children are working illegally in public and private social and humanitarian Right. By the way public litigation under Art 32 of the Constitution, a public-spirited lawyers are brought to court by Mr. MC Mehta. Sivakasi cracker factory involved in the case said the children of promise.

So in the above article, under the full protection of the fundamental rights of children, it is quite clear that.

The guardians of the law regarding the rights of children is very shallow.

## **2.6 Right to privacy**

In a historical sense, confidential personal freedom and dignity are essential to a civil liberty. Privacy Rights Louise Brandeis, J. "The right most valued by

civilized men," as the words, the existence of a cultural impression. International level, the International Covenant on Civil and Political Rights (to which India is a signatory), and more recently the European Convention on Human Rights recognizes the right. However, as is the case with other human rights, the underlying common feature, that is available against the state.

Indian Constitution, in comparison, will definitely fail to recognize the right to privacy. Some scholars say the whole concept of privacy Winfield himself or his property from the public, as is the absence of unauthorized interference with a person's right to privacy has been birale that contend. Pressed appreciation of the separate legal personality. Indian culture is alien.

### **2.6.1 Judicial Activism: The Right to Privacy**

The role of the judiciary system. Judicial activism in the realm of fundamental rights, the right of privacy. "The law declared by the Supreme Court shall be binding on all courts within the territory of India." Therefore, the Supreme Court decided that the Constitution states in Section 141 of the Land Act.

Under article 21 of the Supreme Court of India and the "Protection of life and personal liberty" as part of the fundamental right to "privacy rights," construing the ordinary citizen, the time has come to the rescue, that "no person in the act" of his life except according to procedure established by a shall not be deprived of liberty. In the context of personal freedom, the Supreme Court "strictly and scrupulously observe the

forms and rules can not imagine what they must discharge their duties to other persons deprived of their personal freedom to those who feel they" have played.

Constitution of India, 19 (1) (a) of the math "to freedom of speech and expression" the fundamental right to (i) reasonable restrictions imposed by the State, including that relating to defamation, (b), contempt of court, (c) decency or morality; states (iv ) protection, with foreign states (V) friendship; offense to you (VI) inspired, (vii) public order; (VIII) in the maintenance of the sovereignty and territorial integrity.

Thus, the right to privacy defamation, decency or morality is limited against.

The Supreme Court reiterated that the right to privacy in the following cases:

1. Kharak Singh, V. The appellant in this case, the domiciliary state of the Regulations, which allow travel, the 236 (b) of being harassed by police under. Section 21 of Regulation 236 the Supreme Court held that it is unconstitutional and violative. The Constitution 21 "protection of life and personal liberty" as part of the right to a "right to privacy" that includes concluded. Section 21 of the Freedom of privacy was broad enough to include, and where he lives with his family in a person's home, his castle, and that nothing that "the 'privacy' with 'individual freedom' of the way, and keeping with its privacy a calculated intervention "and a man's physical happiness and health is more deleterious.

2. M.P. 's Gobind V. The other case on domiciliary visits. The Supreme Court's privacy - a key demand of higher interest to examine with care and only when it is shown not to be denied "that is laid down. Filed a claim right to privacy is a

fundamental right, it must satisfy the compelling state interest test as an act of infringing shelter If it's not right that .....

3. State V. Charulata Joshi freedom of the press, which the article 19 (1) (a) given by the constitutional right to freedom of speech and expression is not an absolute right "of the Supreme Court." News of the person sought to be interviewed and the interview will be required to obtain the consent of the person If you say no, no court can issue an order.

4. Tamil Nadu and Rajagopal V. Even without his permission or approval of the State Supreme Court petitioners insofar as they appear in the public records of Auto Shankar's life-story/autobiography do have the right to express that held. The story of his life, but beyond that, and if they can not attack his right to privacy, in accordance with the law then they should be held accountable for results. Similarly, the state or its officials said, the publication can not be used to prevent or restraint. Among other things, it is a citizen of his own, his family, marriage, procreation, motherhood, child-bearing and have the right to protect the privacy of "the said. Anyone can publish anything related to the above, except the knowledge or consent otherwise - and whether laudatory Or not critical., he does so, then he will be in violation of the individual's right to privacy, and will be responsible for the loss of a job .....

5. The civil liberties (PUCL) V. People's Union of the Supreme Court held that the Telegraph Act, in violation of article 21 of 1885, S. 5 (2) of telephone tapping by the Government under. Privacy rights of "life" and inserted under the Constitution 21

"personal freedom" as a part of the right. "Except in accordance with procedures established by law," said right can not be lowered.

6. Mr. 'x' v. Hospital 'z' for the first time the Supreme Court on the health of sensitive information articulated. In this case, appellant's blood test was conducted and the respondent's hospital with HIV (+ +) to be found. Is already settled, that his wife, after this revelation is closed. They belong to the community, including members of his family and some of his HIV-positive (+ +) status for the suit and was ostracized by the community. The ethics rules, according to him, by his duty to keep secret the information about his health in order to claim compensation from the respondent approached the National Commission against the hospital.

National Commission summarily dismissed her complaint. As a result, he moved to the Supreme Court of Appeal. appellant as the person who applies to the medical profession, the duty of care 'policy to maintain the confidentiality of respondents and this duty is passed by, they were liable to pay damages that are the responsibility of the argument. "The right of privacy, apart from contract, the commercial matrimonial, or even a political cause, which may arise out of a specific set. Doctor - patient relationship, although the commercial, therefore, forced to maintain the confidentiality of the doctor morally and ethically, professionally not a matter of confidence. "It was a basic principle of jurisprudence, however, that the absolute duty of every right and every duty is not an absolute right, 'rule was not absolute and that' a person has the right to be 'that sense, subject to some exceptions, but there may not be a relative of Duty, and the instant case fell within the exception. Code of Medical Ethics and carved out an exception to the

confidentiality rule and an immediate or future health risks have, especially where the 'overriding public interest in the confidentiality under which, in certain circumstances, allowed the others to follow. According to the court, appellant placed for privacy, 'Okay, if any, proposed marriage with the appellant suffered from it, which carries the risk of infectious disease transmission as health, was not applicable in the current situation.

The right to privacy of the HIV (+ +) and, therefore, they are liable in damages was revealed that the respondents have violated the appellant wishes arguments, the Supreme Court observed that one of the basic human rights as the right to privacy as absolute and legally offense or disorder or protection of health or morals or the protection of the rights and freedoms of others, as reported may not be accepted for publication, it is not subject to such actions. "

7. District Registrar and Collector V. Canara Bank, illegal intrusions into the privacy of it right away and pretend that it is brought into play, depending on the nature of that ", was held, but at this point it is a very important subject, the informed judgment. These elements for the definition of the right to privacy searches and seizures at the request of the State, by the way, that you have the right to attack whenever they are relevant. "Following the judgment given by the Hon'ble Supreme Court, the three themes emerge.

(1) Privacy and confidentiality in accordance with the results of the right person for any unlawful attacks 'criminal' should be held accountable;

(2) unlawful aggression against the government to protect the privacy of the constitutional right to privacy, which is recognized;

(3) a person's "right to let alone" is not an absolute right and legal crime, disorder or protection of health or morals or the protection of the rights and freedoms of others, for preventing the release of the report as may be limited;

### **2.6.2 Tracing the Right to Privacy in India**

ADM Jabalpur V. Shivakant Shukla's celebrated personal freedom, the right of the Supreme Court explicitly in the Constitution, and the Constitution Act, other than those which are restricted by limitations, whether sought. As observed by Khanna J: "Article 21, the right to personal freedom is not the sole repository of the common law ..... not merely following the law without the authority of her life and deprived of personal liberty, it is equally effective in the penal law enacted into law . "

This is necessary to ensure that the set is definitely right to privacy, but because of its inclusion of the common law may be. In recent years, through judicial activism of the Supreme Court, the right to life guaranteed under Article 21 of the Constitution, the fundamental right to privacy by a creative interpretation of "reading in" like.

### **2.7 Right to personal Dignity**

"Inalienable dignity of every person, has the right and duty. Belong to one of whatever social class, every person is created in God is a living body, but with a cute

free and immortal soul is not only endowed. Having come from God, the Spirit of The Spirit of God is God and should be back in a dark coal mine in the bottom of the body of a worker to live, or in the lap of luxury in a well - fed Financier living in the body, it does not matter what you do. reality, both of them have the same value. they are true, morality and the struggle for eternal life, so that they are equal personal dignity, moral responsibility, the same eternal destiny, and both of them have been given the existence of the world. "- Father Leo John Dehon, founder of the Sacred Heart priests

Human dignity is a universal concern. Independent assessment of its moral agenda on the one hand and the social construction of a double kind is attempted. The variety of people all over the world to challenge the basic dignity. To a large extent, globalization autonomy, opportunity and a sense of undermining and destroying the source has a role to play. Status, race, class, race, religion and gender divisions with a critical relationship. Women in a patriarchal society 'dignity' in order to maintain, after all is objectified. In the very heart of their sense of dignity, and they will be combined with a recovery in a truly democratic state. Employment, education, health, freedom from hunger, the professions, social security and the economic and social rights of all people to a dignified existence, the most important way to ensure that. From the point of view of a Subalterns and to ensure that the minimum requirements are important. Dignity, peace, health and freedom to live in that hope.

In this article the concept of the Indian judicial system and how it has been explained by the evolution of the test are discussed. In addition, many of our domestic law and international convention has been dealt with in detail in the inculcation of.

Finally, as can be formalized in terms of the dignity of human beings, who can play the role of savior of the judicial system that records only.

### **2.7.1 Interpretation Of 'Personal Dignity' By The Supreme Court Of India**

Indian Supreme Court implied by the right to life, human dignity, in both senses of the concept of human rights has received a catalog. The right people, the food, shelter, hygiene, Clean Air, health care, education, and human dignity as a fundamental right for them to have to live with. In Punjab, Kartar Singh, V. Conditions, the SC is not only freedom from arbitrary restraint, which is an essential condition for the full development of the personality in order to secure a proper goal that was ruled. The Supreme Court in the case of different ways 'personal dignity' to explain, some of them are: -

Air 1997 Supreme Court 645 "Air India Statutory Corporation V. United Labor Union" recommendations and 38 of the Constitution to be meaningful and livable life with human dignity, social justice you imagine the arch. It provides an insight into the evolution of jurisprudence in which the environment is in the eyes of the law. It's the spirit of the law and makes it richer. And the time required to meet the needs of a particular era as an important system, the ultimate goal of every civilized society. Justice, law, social passion and commitment comprehends.

Egalitarian social, economic and political democracy to usher in the constitution as the highest values of justice, liberty, equality and fraternity. Of social justice, equality and social status are the pillars of democracy. Engrafted in the orderly growth and development is essential for every citizen of the policy, which consists of a "social justice" concept.

Air 1995 Supreme Court 922 "Consumer Education and Research Centre V. Union of India," the right to life, health and strength of workers, to enable a person to live with human dignity, requiring a minimum of protection are included.

Human dignity, the right to rest and leisure, personality development, social security, the right recommendations and Arts.38 and 39 of the Constitution, Universal Declaration of Human Rights by the comfort of a temporary basic human rights.

Air 1981 Supreme Court 746 "Francis Coralie Mullin V. Administrator, Union Territory of Delhi" Art.21 embedded in the right to life can not be limited to mere animal existence. It means something much more than just physical survival. The right to life with human dignity and all that goes along with it, such as, for example, read, write and express yourself over the head and facilities adequate nutrition, clothing and shelter, the bare necessities of life includes right to live with various forms, freely moving about and mixing and collaborating with the commingling.

It arises, the question of the right to life, limb or faculty are only limited protection or whether it is more and more embracing. We have the right to life with human dignity and the right to live there think it goes along with that, namely, such as reading, writing and expressing one over the head and facilities adequate nutrition, clothing and shelter, the bare necessities of life, various forms of self-help freely moving and mixing and collaborating with the commingling.

Preventive detention, but not necessarily to secure the release of a writ petition or submission of any claim or civil or criminal proceedings, prosecuting for the defense in criminal proceedings is not limited to the choice of a legal adviser for the purpose of consultation is to the right of a detenu, obviously, human dignity, personal freedom and the right to live and be included with the part of the detenu can not be deprived of this right by the right of the detenu, should be reasonable and can not be interfered with except in accordance with the valid legal process.

Air 1997 Supreme Court 610 "WB's DK Basu V. State"

"Custodial torture" of human dignity and to a very large extent, independent personality, destroy, which is a stark violation of degradation. Humanity flags fly half mast on each such occasion is - it's a calculated assault on human dignity and human dignity is wounded, civilization takes a step backward.

Air 2004 Supreme Court 561

"Guruvayur Devaswom Managing Committee V. CK Rajan" the poor, deprived poorest, illiterate, urban and rural unorganized labor sector, women, children, the disabled by ignorance, we found that the power of judicial review of their practices, indigence and illiteracy, and others have no access to justice is trodden down or have been denied justice. 'Social action' or 'Public Interest Litigation', a new branch of proceedings known as the person mentioned above was developed with a view to render justice to the entire class. It's time to stretch his wings. Pro Bono Public Speedy Trial, the maintenance of human dignity, of the Legal Aid, who provide relief and covered inmates in several

areas. As the Pro Bono publico and test litigations and peripheral procedural shortcomings on the man suspected by the dependence of the accuracy of the real issues - you want to pass, a necessary disincentive to those who had the joy of justice in keeping with the current accent.

Air 1981 Supreme Court 625 "will Ravinder Singh V. State of Rajasthan Kishor" human dignity prison officials had bartered away for mere apprehensions will be a favorite value of our Constitution.

Bhagwati, J.: - The poverty malfunctioning of our social, economic structure by the large masses of people, and it is a curse inflicted on the soul corroding and robbing him by sapping the moral fiber of the catastrophic effect that one of the basic human dignity and the right of God on earth, this wonderful the creation of high quality and that they would be destroying the finer susceptibilities.

Bonded labor system (abolition) Act, 1976 to implement the provisions of the government's actions that any failure of bonded labor and basic human dignity, with a view to ensure the principles of the policy guidelines have been enacted by section 21 of this Act, apart from the clearest violation of the Constitution 23 will.

Air 1978, the Supreme Court's 1675 "Sunil Batra V. Delhi Administration"

Offends human dignity, imposes avoidable torture and reduces the level of an animal, which would be arbitrary and must be treated in the industry may be under question. 14.

Air 1993, the Supreme Court's 2178 "Unni Krishnan, AP, V. State Party" in Section 21 of the human dignity and all that goes along with it in order to include the right to live with this Court has explained. "Flow directly from the right to life, the right to education." In other words, the right to education, the third part of the fundamental rights enshrined in the Constitution is concomitant to. State for the benefit of all levels of educational institutions is under a constitutional mandate. "Education can not be limited to the profits richer classes.

Air 2000 Supreme Court 1669 "Gopal V. State of Karnataka," it is a violation of the dignity of the victims of sexual indifference attitude towards the society on a sad reflection. We are the victims of a rapist not only violates the privacy and personal integrity, and remember that the process inevitably causes serious psychological as well as physical damage will be. Rape is not merely a physical assault - it is often destructive of the whole personality. A murderer destroys the physical body of the victim, a rapist the very soul of the helpless female degrades. When accused of trying to rape a court, therefore, a great responsibility to be included. They have to deal with such cases with utmost sensitivity. "

Explained by the different international intuitions 'status': - International Human Rights Instruments and the right to life, liberty and security of personal dignity. Part III of the Constitution of certain rights under international human rights instruments to comply with the rules. However, some of the guarantees provided by this type of instrument has been left intact. We are not completely sure of the international human

rights instruments by the life, liberty and security of the provisions relating to the right to be picked up.

1948 Human Rights (hereafter UDHR) Universal Declaration of life, liberty, and security of human rights, including the right to provide a series. Article 3 "Everyone's life, liberty and security of person has the right to." Article 4 stipulates a right against torture, or to cruel, inhuman or degrading treatment or punishment has been confirmed in slavery or servitude, and Section 5 provides the right.

Article 6 of the ICCPR "inherent right to life of every human being. These rights should be protected by law. No one shall be arbitrarily deprived of his life." Section 9 of the Agreement provides that the right to personal liberty and the right to liberty and security of person he is, "said., No one shall be subjected to arbitrary arrest or detention., No one will be deprived of his freedom except on the basis of and in accordance with such procedures as is determined by law. "This is the right of speedy trial and the right to compensation for unlawful arrest or detention, the right to be produced before a judicial authority, the right to be informed of the arrest charge and are within the scope of the right. Essential for a fair trial with a number of rules in Section 14 of the ICCPR. The right to justice and the principles of justice and human rights jurisprudence to provide a modern standard stipulated in the agreement.

Life, liberty and the right to security in dealing with some of the other international human rights instruments. Economic, Social and Cultural Rights, 1966 (hereafter ICESCR) The International Covenant also provides self-determination and the right to social security. ICESCR rights, livelihood and adequate living conditions, you

have the right to work. 1981 Women (hereafter CEDAW) Convention on elimination of all forms of discrimination against women, the right to provide for their dignified life. Elimination of violence against women on the importance of the right to life again reaffirmed, freedom and security, and to fill the gap left by the provisions of the CEDAW.

## **2.8 Rights Of Prisoners And Accused**

Sunil Batra vs. Delhi Administration and the Deprivation of his life in accordance with the procedure established by law, can only be, as the order can be observed. Deprivation in the early stages, so it means that not only can be, but it will follow the commandments, which is in custody after detention period extended imprisonment, etc. detenu or arrestees of their constitutionally guaranteed freedom does not stop there. They still have their remaining freedoms. It is held in preventive detention under the Act or an offense or a detenu undergoing a sentence of imprisonment, with the arrest of a criminal charge, they are all in a manner consistent with the concept of human dignity is not entitled to be treated. Whether it is, in fact, preventive detention provisions of the statutes of the criminal code or gel hand, and the 'right' to ensure the protection of the right against self-incrimination, the right to be alive and to provide advice to help you judge the quick and the 'right to a fair trial' right ' Similarly, the right to do so, and also the fundamental right to personal liberty is recognized as helpful.

### **2.8.1 Arrest And Police – Powers**

In the third report of the National Police Commission arrested by police corruption as the main source of energy mentioned. And manage large, unnecessary or unjustified arrests and almost 60% of the cost of such unjustified police that was responsible for 43.2%, which suggests. Third report of the Commission, p. 31 thus keeping:

"It's one of the main part of the shipping charges associated with the very small and, therefore, from the perspective of crime Prevention report can not be regarded as a necessary, that is obvious. They continue to be detained in custody a person arrested on the maintenance of essential was meant. above 43.2 per cent of expenditure in the final analysis it is connected at all times, not only for those who have been arrested in need of such prisoners was estimated that over. "

Today, depending on the circumstances of a particular case, with or without a warrant of arrest is managed by Codex.

If a public servant is subject to immediate arrest, after arrest and before any case, the higher officers should be notified when arrested. In the case of members of the Armed Forces, Army, Navy or Air Force, which is a member of the commanding officer of the unit should be sent. It should immediately arrest is effected.

And a member of the executive order is a criminal offense under arrest or detention magistrate Lok Sabha, 229 under the rules of business management, as well as the executive authority, without delay, inform the speakers you need. No arrests

detention, conviction or release is effected, as soon as the instruction invariably Legislative Assembly / Council / Lok Sabha / Rajya Sabha Chairman / Chairman of the Government should be sent together with the intimation sent. And instruction telegrams should be sent by post and through this weekend will be on the ground.

Code of criminal procedure of juvenile offenders as well as under Section 58 lays down its life for:

He refers to the "sub-divisional magistrate in charge of the police station, you, the Magistrate's report, or shall be, whether such persons have been within the limits of their respective stations, without warrant, arrest any person or to be admitted to bail in the case otherwise."

Children Act Section 19 (a) makes the following provisions:

"The child's parent or guardian, such as the arrest, and the children were found to be present in court if the child appears to be the first?"

## **2.8.2 Right to Fair Trail**

A fair trial, the right to a standard of international human rights law and the procedural law of their adopted countries. That's their fundamental rights and freedoms, the right to life and personal liberty, the most prominent of which is unlawful and arbitrary curtailment or deprivation are designed to protect the person. The concept of a fair trial is based on the basic principles of natural justice. Principles of natural justice and practice form the basis of the prevailing conditions may vary from system to

system, though. The concept of a fair trial rights in the Universal Declaration of Human Rights jurisprudence official accounts, 1948 (hereinafter as UDHR) has been accepted as.

Criminal justice should be the main feature of the International Covenant on Civil and Political Rights, Article 14 UDHR.<sup>2</sup> (hereinafter as ICCPR) <sup>3</sup> UDHR reaffirmed that the object is stored in paragraphs 10 and 11 is "Everyone shall have the right of law established by a competent, independent and through a fair and public hearing by an impartial tribunal. "should be evaluated in terms of the integrity of the trial, which is the standard, much more complex, and constantly being improved. They say that is a party to human rights treaties are included in the structure of the binding obligation can. But they are not formally binding, but as far as the law is concerned evolving.<sup>4</sup> Indian legal system, which can be expressed in the directions, which can be found in the document, it is reflected in its commitment to international fair trial in the constitutional scheme of the process. The pivotal role of the catena fair trials in the Indian judiciary has been highlighted.

Zahira Habibullah Sheikh and the Gujrat and ors ors V. State Supreme Court justice in the new horizon of justice and a fair trial and the principles to be aware of the many areas that energizes. This is reflected in the many rules and practices. It is new and constantly changing circumstances and the peculiar circumstances of the offense, the nature and accepted exigencies related to a constant, ongoing development process, involving a direct or are operating behind, social communication and social needs, and can be even more powerful way in which the administration of criminal justice balancing factors.

This article critical of the Indian criminal justice system should be a crime trials to test various components of the proposal. To achieve this end, as well as the relevant provisions of the criminal law of the case will be discussed. Finally, this article relates to the enforcement of the guarantee will throw light on the role of defense counsel.

### **2.8.3 Independent, impartial and competent judges**

The basic organizational structure of the active enjoyment of the right to a fair trial in a criminal proceeding in the case, is managed by an independent and impartial court. Presupposes the freedom of the executive branch of institutionally protected from interference from or influence by reason of a separation of powers. The rationale of the criminal charges to be set by a political body or an administrative agency will arise if the potential arbitrariness and bias are ignored. The prosecuting party and the state apparatus to investigate a criminal trail in the lower limb, it is directly or indirectly the influence and control of the judiciary, the suspicion that the ultimate significance and importance is unchained. The code in this section 6 of the Magistrates' Court of Judicial Magistrate court which is relevant. 50 of the Constitution of India also take steps to separate the judiciary from the executive on the responsibility of the state imposes. Conduct refers to the impartiality of judges. Bias is a decisive factor for confirming the court's impartiality. It is thus, in a proceeding before a judge or judicial proceedings when he participated in an individual at risk when a prima facie question may be. I guess he is a party or otherwise interested in a trial of a case in which a judge or magistrate by which Code 18, is taken away by Section 479.

## **2.8.4 Venue of trial and public hearing**

Justice also requires a public hearing should be open. ICCPR's Article 14 (1) and also for the general public as it is the only one of the elements essential to a fair trial.<sup>19</sup> The idea of a right belonging to the parties, guarantees the right to a public hearing, but in a democratic society. The right to a public hearing by the parties at the hearing that the effect of a rule without a specific request orally and should not be used publicly.

The time and venue of the public hearing and a reasonable range of data in the presence of members of the public interested enough to provide the required *inter alia*.

It is a judgment of the court orally pronounced or when the public will be considered, or the Code Section 327 is a combination of those methods.<sup>20</sup> The public hearing was opened for public by the court, Presiding Judge of the provision makes it appropriate that he , the public or the court may deny access to any particular person, you have to consider is that the magistrate. Investigate or prosecute the venue or space-related provisions of the Code sections 189 and 177 are included.

Search or local jurisdiction in which the crime is committed, it was tried by a court that is the general rule. Generally, the parties to produce evidence at the trial of any other remote means, and it would adversely affect the preparation of the defense.

Maharashtra Naresh Sridhar Mirajkar V. Apex Court in the case of public confidence in the administration of justice, which offers a wide range of views on the

judicial tribunals in discharging their functions, may be that this kind of great significance that the court must be filed in open court and the court of the public will be allowed admission.

### **2.8.5 Knowledge of the accusation**

It is not enough for the accused person to defend himself, given that a fair trial is to be imposed. The accused person is not aware of the charges against him, but if this means there will be no chance. The object of this code of values and an accused person is brought to court for trial, he was accused of the crime, he shall be stated in plain words that are not available under the provisions<sup>23</sup>. Serious criminal cases, the court is required to frame a formal complaint in writing and then read the charges and the accused.

### **2.8.6 Trial in the presence of the accused**

The general rule of criminal probes and trials should be conducted in the presence of the accused person. This is the underlying principle behind the ex-parte against a person accused of a criminal trial, the court should not proceed past that. It also resolved that due to the need to properly understand the penalty area and he can check out the next stage of their truthfulness, in order to find him a witness against the accused.

Code definitely sue in court under certain circumstances, but it is indirectly charged with the presence of a person in order to allow the appliance, which can be inferred from the provisions of the compulsory attendance is not available. Kerala's HR Industries V. The case, the Kerala High Court in the case of a person

accused of a presence that can be done that said that. "Grievous nature of the case involving moral turpitude, personal attendance rule is: it was opined., But not involving moral turpitude, and where the nature of the sentence, which is just fine technical, should be exempted from the rule.

It appears that his interest in, or when the court feels that his presence is necessary for the effective disposal only when the court appearance of the accused should be emphasized. Woman accused of labor, wage earners and other busy men, as the court should grant a rule exempted from personal attendance. The court did not appear in court accused of harassment is nothing to see. "

### **2.8.7 Evidence to be taken in the presence of the accused**

Sections 228, 240 as a logical subsidiary, 246 and 251 (explaining that where a person charged with a crime story), it should be taken in the presence of a trial of the accused person should have. Section 273 of the Code must be taken in the presence of all the evidence, the accused shall be accepted provided that it is important in this regard. Dispensed with the personal attendance of the accused in this section shall be taken in the presence of his lawyer was not available for that exception.

### **2.8.8 Cross-examine prosecution witnesses**

Article 14(3)(e) of the ICCPR29 states that in the determination of any criminal charge against the accused, he is entitled to examine, or has examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. This mandates that the parties

be equally treated with respect to the introduction of evidences by means of interrogation of witnesses.

The prosecution must inform the defence of the witnesses it intends to call at trial within a reasonable time prior to the trial so that the defendant may have sufficient time to prepare his/her defence. Though, in adversarial trial system, the burden of proving the guilt is entirely on the prosecution and the law does not call for the accused to lead evidence to prove his innocence, yet the accused is given a right to disprove the prosecution case or to prove special defence available to him. The refusal without any legal justification by a magistrate to issue process to the witnesses named by the accused person was good enough to vitiate the trial.

In *Badri v. State of Rajasthan*<sup>30</sup>, the court held that where a prosecution witness was not allowed to be cross-examined by the defence on a material point with reference to his earlier statement made before the police, his evidence stands untested by cross-examination and cannot be accepted as corroborating his previous statement.

### **2.8.9 Expeditious trial**

Speedy trial is necessary to gain the confidence of the public in judiciary. Delayed trial defeats the objective of the re-socialization of the offenders too. Delayed justice leads to unnecessary harassment. Section 309 (1) gives directions to the courts with a view to have speedy trials and quick disposals.

Though this feature is recognized as an element of fair trial but the real problem is how to make it a reality in actual practice where millions of cases are pending before the subordinate courts for disposal.

In *Hussainara Khatoon (IV) v. State of Bihar*<sup>32</sup> this court declared that speedy trial is an essential ingredient of 'reasonable just and fair' procedure guaranteed by article 21 and it is the constitutional obligation of the state to set up such a procedure as would ensure speedy trial to the accused.

The state cannot avoid its constitutional obligation by pleading financial or administrative inadequacy. As the guardian of the fundamental rights of the people, it is constitutional obligation of this court to issue necessary directions to the State for taking positive action to achieve this constitutional mandate.

In *Motilal Saraf v. State of J & K*, the Supreme Court explained the meaning and relevance of speedy trial and said that the concept of speedy trial is an integral part of article 21 of the Constitution. The right to speedy trial begins with actual restraint imposed by arrest and consequent incarceration, and continues at all stages so that any possible prejudice that may result from incompressible and avoidable delay from the time of commission of the offence till its final disposal, can be prevented .

#### **2.8.10 Prohibition on double jeopardy (ne bis in idem)**

The concept of double jeopardy is based on the doctrine of 'autrefois acquit' and 'autrefois convict' which mean that if a person is tried and acquitted or convicted of an offence he cannot be tried again for the same offence or on the same facts

for any other offence. Article 14 (7) of the ICCPR also provides that; "No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country".

This concept is embodied in section 300 of the Code which provides that persons once convicted or acquitted not to be tried for the same offence or on the same facts for any other offence. This clause embodies the common law rule of *nemo debet bis vexari* which means that no man should be put twice in peril for the same offence. Plea of double jeopardy is not applicable in case the proceedings for which the accused is being tried are distinct and separate from the offence for which the accused has already been tried and convicted.

If we compare the constitutional position of India and America on double jeopardy then we will make out that the protection under article 20 (2) of our Constitution is narrower than that given in American constitution. Under the American Constitution the protection against double jeopardy is given for the second prosecution for the same offence irrespective of whether an accused was acquitted or convicted in the first trial. But under article 20 (2) the protection against double punishment is given only when the accused has not only been 'prosecuted' but also 'punished', and is sought to be prosecuted second time for the same offence.

### **2.8.11 Aid of counsel**

Lawyers in criminal courts are necessities, not luxuries. The requirement of fair trial involves two things: a) an opportunity to the accused to secure a counsel of

his own choice, and b) the duty of the state to provide a counsel to the accused in certain cases. The right is recognized because of the obvious fact that ordinarily an accused person does not have legal knowledge and the professional skill to defend him before a court of law where in the prosecution is conducted by a competent and experienced prosecutor.

In USA, the 6th Amendment to the Constitution provides, inter alia, in all criminal prosecutions, the accused shall enjoy the right to have the assistance of counsel for his defence. In *Gideon v. Wainwright*, the Supreme Court of United States held that the 6th Amendment's guarantee of counsel to indigent defendants was so fundamental and essential to a fair trial that the due process clause required states to provide counsel to all indigent defendants in felony cases ...

In *Powell v. Alabamma* Justice Sutherland of the Supreme Court of United States gave classic expression to the plight of the unguided individual entangled in a criminal process. The passage is worth to cite here. He said "even the intelligent and educated layman has small or sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of the counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defence.

He requires the guiding hand of counsel at every stage of proceedings against him. Without it, though he is not guilty, he faces the danger of conviction because

he does not know how to establish his innocence ... "In India, right to counsel is recognised as fundamental right of an arrested person under article 22 (1) which provides , inter alia, no person shall be denied the right to consult, and to be defended by, a legal practitioner of his choice. Sections 303 and 304 of the Code are manifestation of this constitutional mandate.

In *Maneka Gandhi v. Union of India*<sup>44</sup>, it was held that the right of an indigent person to be provided with a lawyer at state's expenses is an essential ingredient of article 21, for no procedure can be just and fair which does not make available legal services to an accused person who is too poor to pay for a lawyer.

In this context a difference is to be noted as between article 21 of the Constitution and section 304 of the Code. Article 21 as interpreted by the Supreme Court in *Khatri v. State of Bihar* the mandatory obligation to provide free legal aid arise in every criminal case against an indigent accused, whether the trial is before a Magistrate or Sessions Judge. Under section 304 of the Code, the imperative duty arises only if the trial is before the Sessions Court, while in the cases before the Magistrate, the duty would arise only if the State Government issues a notification to that effect. If we take literal meaning of section 304, no conviction by a Magistrate can be quashed for failure to provide free legal assistance to the indigent person. But the M.P. High Court took the other way and set aside a conviction by a Magistrate made upon evidence taken without offering legal representation to the accused.<sup>46</sup> In this way the court tried to remove the anomaly which is created by the Legislature. Further, article 39-A was also inserted in the

Constitution as per Constitution (42nd Amendment) Act, 1976, which requires that the state should pass suitable legislations for promoting and providing free legal aid.

This article also emphasizes that free legal service is an unalienable element of 'reasonable, fair and just' procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. To fulfill this constitutional mandate the Parliament enacted Legal Services Authorities Act, 1987. Section 12 of the said Act provides legal services to the persons specified in it. Let it not forgotten that if law is not only to speak justice but also deliver justice, legal aid is absolute imperative. Legal aid is really nothing else but qual justice in action. It is in fact the delivery system of social justice.

In *Suk Das and Ors. v. Union Territory of Arunachal Pradesh*, the court strengthen the need for legal aid and held that "free legal assistance at state cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty. The exercise of this fundamental right is not conditional upon the accused applying for free legal assistance so that if he does not make an application for free legal assistance the trial may lawfully proceed without adequate legal representation being afforded to him. On the other hand the Magistrate or the Sessions Judge before whom the accused appears is under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or is entitled to obtain free legal services at the cost of the State. The conviction reached without informing the accused that they were entitled to free legal assistance and inquiring from them whether they wanted a lawyer to be provided to them at State cost which resulted in the accused

remaining unrepresented by a lawyer in the trial is clearly a violation of the fundamental right of the accused under article 21 and the trial must be held to be vitiated on account of a fatal constitutional infirmity ".

### **2.8.12 Role Of Defence Counsel And Fair Trail**

In the eyes of many people, the criminal defence lawyer represents all that is best about the legal profession; in the eyes of others, all that is worst. Defence counsel is the innocent accuser's last shelter against the horror of wrongful conviction or we can say that the defender is the only friend that an accused person has left in the world. He is also the accuser's chief instrument for defeating justice and getting away with crime. It sounds absurd or seems to contradict itself, but is in fact true that the defender is at once the indispensable condition for justice and the enemy of justice.

An advocate, in the discharge of his duty, knows but one person in the entire world, and that person is his client. To save that client by all means and expedients and at all hazards and costs to other persons, and, amongst them, to himself, is his first and only duty.

The system of criminal justice, adopted by our Code, pits prosecution against defense and requires undivided partisanship. Because the prosecution will present the state's case, the defendant must concentrate entirely on the accused's, and present it as forcefully as possible. The scope of counsel's participation in the pre trial process, particularly before the commencement of judicial screenings is however the focal point of a strong controversy. The conflict between the individual rights and demand of society

for security, which administration of criminal justice aims to resolve, is perhaps more apparent at this period than at any other stage in criminal process.<sup>50</sup> It is noteworthy that unlike the other stages of the criminal process, this initial period which intervenes between the invocation of the process against a person and his production before a judicial officer, is marked by the absence of a disinterested third party to ensure fairness in procedure and justice and impartiality in decision making. The vesting of the function of the decision making in the impartial judge, who presides over and supervises the proceeding, is one of the principal safeguard to the accused against the arbitrary and oppressive action.

But during this initial stage, this triangular situation is notably non-existent. The investigating officers on whom there is a direct pressure to 'solve' crimes and 'to bring criminal to justice' and hence whose impartiality is subjected to the greatest stress. In this situation the presence of counsel might encourage the accused person. Secondly, in bail matters an accused who is at liberty has always the advantage to prepare and organize his defense by locating and conferring with witnesses as well as by collecting evidence for his favour. A lawyer is sine qua non to get the bail and assistance of a client who is at liberty also helps the counsel to prepare his case. At trial stage, the effective participation by counsel might significantly reduce the drop in the number between the prosecution initiated and the convictions resulted. He can prevent hasty and oppressive application of the criminal process against the innocent person and can save him from inconvenience, humiliation and expense which might result from a lengthy and protracted trial. During trial stage the counsel has a duty to ensure that full disclosure is provided by the prosecutor; that all evidence bearing on the accused's case the accused's

case are fully explored and properly adjudicated; that, in particular, all evidence tendered by the prosecution was collected in accordance with constitutional standards; that all evidence supporting the accused's case is tendered at trial; that prosecutor's witnesses are cross-examined; that an accused is convicted only when the prosecution has satisfied its constitutional burden of proving guilt beyond a reasonable doubt.

Defense counsel is professionally bound to advance all arguments ethically permitted on behalf of the accused, to ensure that the accused is convicted only if the prosecutor can properly establish guilt. If on the basis of all of the evidence the accused is convicted it is the duty of the counsel to see that the penalty is proportionate to the gravity of the offence and to the degree of culpability of the accused, and he may also in pre-sentence hearing show those conditions which may help the accused to reduce the gravity of punishment. The appellate process is intended and designed to give a last opportunity to challenge the methods and policies of the administrators of criminal justice at the earlier stages, and the legality and fairness of the decision taken by them. There may be a mistaken identification arising out of the victim's and the witnesses' desire for vengeance.

The witnesses may have committed perjury or the police may have made suggestions to them. While these and other similar mistakes of facts may go directly to the innocence of the defendant, errors in the interpretation and application of the related provision of the law may also result in grievous injustice. The counsel's presence at this level is necessary to put before the appellate court all that is indigence, he relevant to show the errors of law or arbitrariness of the trial court.

