CHAPTER-VI

CONCLUSION AND SUGGESTION

1. Concluding Observation:

An analysis of the Judicial behaviour of the apex court Vis-a-Vis Article 21, after the landmark Judgment in the Maneka Gandhi Vs. Union of India1 makes it clear that the court has expanded the horizons of Article 21 beyond the imagination and contemplation of the framers of the constitution, the Judges themselves and the constitutional lawyers. The court has by its liberal interpretation in numerous cases, has widened the scope of personal liberty so as to include many unenumerated and implied rights in the fold of Article 21, more particularly from Article 21, sprung up a whole lot of human rights Jurisprudence and the credit goes solely to the Supreme Court for its assertion of Judicial power for a humanitarian purpose and with a human touch.

2. Random survey of Landmark Decisions

We may now have a quick survey of landmark decisions rendered by the Supreme Court in relation to personal liberty as contained in

1. AIR 1978 SC 597
Article 21 of the Constitution which has a bearing on human rights jurisprudence. It may also be observed in this context that the Hon'ble Supreme court has interpreted Article 21 to include a wide variety of -Positive and negative rights. These rights include social rights, economic rights, human rights and legal rights of many manifestations that are essential for making a man's life meaningful and worthwhile and which enable him to live with basic human dignity.

(a) Right to privacy :- In Neera vs. Life Insurance Corporation of India\(^2\) the Supreme Court observed that a woman employee of the Corporation need not submit answers to questions regarding the regularity of menstrual cycle, the number of conceptions taken etc. which are embarrassing and violative of the right to privacy of the employees In R.Raja Gopal Vs. State of T.N.\(^3\) the apex court ruled that even a prisoner condemned to death by the Court, also has a right to privacy, which is part of his right under Article 21. In P.U.C.L. Vs. Union of India\(^4\), it was observed by the Supreme Court that telephone tapping violates the right to privacy which is a part of Article 21 read with Article 19 (1) (a).

Yet in another landmark case Mr. 'X' Vs. Hospital 'Z'\(^5\) the Hon'ble

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2. (AIR 1992 SC 392)
3. (AIR 1995 SC 264)
4. (AIR 1997 SC 568)
5. (AIR 1999 SC 455)
apex court observed that a woman is at liberty not to marry an AIDS patient. Further the apex court ruled that in a case of clash between fundamental rights, the right which would advance public morality and public interest would alone be enforced. In State of Maharashtra V. Madhulkar Narain⁶ the supreme court observed that right to privacy is available even to a woman of easy Virtue and no one can invade her privacy.

(b) Right to go abroad :- In Satwant Singh Vs. Asst. Passport Officer, New Delhi⁷ it was observed by the apex court that the expression “Personal liberty” in Article 21 takes in, the right of locomotion and to travel abroad.

(c) Right to shelter :- In U.P. Avas Evam Vikas Parishad Vs. Friends co-operative Housing Society⁸ the Supreme Court held that the right to life under Article 21 includes the right to shelter.

(d) Rights of prisoners :- A prisoner may be an undertrial or a convicted person. But such captive is entitled to enjoy fundamental rights and personal liberty, though circumscribed. In Sunil Batra vs. Delhi Administration⁹ (No. 2) the apex court ruled that the practice of keeping undertrials with convicts in jails offends the test of reasonableness in Article 19 and fairness in Article 21.

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⁶. (AIR 1991 SC 207)  
⁷. (AIR 1967 SC 1836)  
⁸. (AIR 1996 SC 114)  
⁹. (AIR 1980 SC 1579)
(e) Rights of prisoners to have interview: In Francis Coralie Mullin Vs. Union Territory of Delhi\(^{10}\) the supreme court held that a detenue has a fundamental right to have interview with his legal advisor and family members.

(f) Right to speedy trial: The Hon'ble Supreme Court handed down landmark decisions in a number of cases in this regard\(^{11}\).

It was held in Common Cause A Registered Society Vs. Union of India\(^{12}\) that fundamental rights includes the privilege of the undertrial prisoners to speedy trial and also to legal assistance if necessary, at the expense of State. And that both the rights are part of Article 21.

(g) Handcuffing of prisoners: In a recent case President Citizen for Democracy Vs. State of Assam\(^{13}\), the apex court held that handcuffing of every prisoner, regardless of varying reasons and backgrounds violates Article 21.

(h) Right to fair, trial: In police Commissioner, Delhi Vs. High Court\(^{14}\) the apex Court upheld that assurance of fair trial is the first imperative of the dispensation of Justice. And delayed trial defeats the right of an accused to speedy and fair trial implicit under Article 21.\(^{15}\)

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10. (AIR 1981 SC 746)
12. (AIR 1997 SC 1886)
13. (AIR 1996 SC 2193)
14. (AIR 1997 SC 95)
15. (Santosh Vs. Archana Guha (AIR 1994 SC 1229)
Yet in another landmark case Vineet Narain Vs. Union of India\textsuperscript{16} the apex court emphatically declared that, requirement of public hearing in Court, is part of the fair trial under Article 21 of the Constitution.

(i) **Right against Illegal Detention** :- When the criminal Justice system fails, sometimes a convict or undertrial or detenue has to spend his precious time in the prison, even though he is not required to do so according to law. In such cases, the Supreme Court has upheld the right against illegal or unlawful detention in jail which is violative of the guarantee under Article 21. In Dhananjay Sharma Vs. State of Haryana\textsuperscript{17} the Hon'ble Supreme Court held that the right to compensation for illegal detention is a fundamental rights under Article 21.

(j) **Right against torture and custodial violence** :- In Kishor Singh Vs. State of Rajasthan\textsuperscript{18} it was held by the Supreme Court that use of third degree methods by the police on arrested persons violates their rights under Article 21. In Nilabati Behra Vs. State of Orissa\textsuperscript{19} the Hon'ble Supreme Court deprecated the brbaric act of police of killing the petitioner's son in police custody by torture and

\textsuperscript{16} (AIR 1998 SC 889)  
\textsuperscript{17} (AIR 1995 SC 1795)  
\textsuperscript{18} (AIR 1991 SC 625)  
\textsuperscript{19} (AIR 1993 SC 1960)
declared that any person whose fundamental rights have been violated by State action, can move either the High Court under Article 226 or the Supreme Court under Article 32 for monetary compensation\(^{20}\). (In D.K. Basu Vs. State of West Bengal and in Ashok Kumar Johuree Vs. State of Uttar Pradesh) which cases were adjudicated by the Hon'ble Supreme Court in December, 1996, many guidelines were issued by the Supreme Court which were to be complied with by police for prevention of custodial Violence against the arrested persons.

Yet in another landmark decision Postsangbham Ningol Thockchom Vs. General Officer Commanding\(^{21}\) the Supreme Court awarded compensation to the family members of those persons who disappeared, after being carried away by army personnel.

\((k)\) Delay in execution of death sentence and Article 21 :- It is a fact that the person who is sentenced to death virtually dies everyday till his life is extinguished by hanging. Therefore; the Hon'ble Supreme Court held in a number of cases that delayed execution of death sentence violates the personal liberty of the condemned prisoner as long as he is alive and when it has been found that the delay was caused not due to the conduct of the condemned prisoner,

\(^{20}\)(In D.K. Basu Vs. State of West Bengal AIR 1997 SC 3017 and in Ashoke Kumar Johuree Vs. State of Uttar Pradesh)\(\text{writ petition (CR 2) no. 592 of 1987}\)
\(^{21}\)(AIR 1997 SC 3534)
the court ordered the commutation of death sentence to life imprisonment. In Shivaji Jaising Babar Vs. State of Maharashtra\textsuperscript{22} the Hon'ble Supreme Court held that the delay in disposal of a mercy petition, demands modification of the death sentence into one of life imprisonment.

In Triveni Ben Vs. Gujarat\textsuperscript{23} it was observed by the Supreme Court that undue and long delay in execution of the death sentence would entitle the condemned person to approach the supreme court for conversion of death sentence into life imprisonment but that before doing so the court should examine the nature and circumstances of the case.

(I) Right to free legal aid :- The Hon'ble Supreme Court has interpreted the object of rendering equal Justice and free legal aid, (as laid down in Article 39-A) of the Constitution as a part and parcel of Article 21 in numerous Judgments rendered by it.

In a recent case State of Maharashtra Vs. M.P. Vashi\textsuperscript{24} the apex court ruled that the right to legal assistance of undertrial prisoners at State's expense is part of their fundamental rights under Article 21.

\textsuperscript{22} (AIR 1991 SC 2147)
\textsuperscript{23} (AIR 1989 SC 142)
\textsuperscript{24} (AIR 1996 SC 1)
(m) **Right to education** :- Though right to education is not a specified fundamental right in part III of the constitution, yet under Article 41, and Article 45, the state is directed to make arrangements for spread of education among children until they complete 14 years. In Mohini Jain Vs. State of karnataka\(^{25}\) the Hon'ble Supreme Court observed that the right to education flows directly from right to life.

In Unnikrishnan Vs. A.P.\(^{26}\) Supreme Court observed that every citizen of this country has a right to free education until he completes the age of 14 years.

Thus it is evident from the foregoing discussion that the right to education which is only a directive principle, has now acquired the status of a fundamental right under Article 21 owing to the judicial activism of the Supreme Court.

(n) **Right to Health** :- Though it is a fact that the right to health has not been given the status of a fundamental right in the Indian Constitution, however, the significant provisions of the Directive principles of State policy enshrined in part IV of the Constitution enjoins the state to ensure the health and safety of the citizens.\(^{27}\)

The Hon'ble Supreme Court in Consumer Education and

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\(^{25}\) (AIR 1992 SC 1858)
\(^{26}\) (1993) 1 SCC 645
\(^{27}\) Article 47 of the Indian Constitution directs the State to raise the level of nutrition and the standard of living of its people and the improvement of public health, as among its primary duties.)
Research Centre Vs. Union of India\textsuperscript{28} ruled that the right to health and medical care is a fundamental right under Article 21, which is essential for making the life of the workman meaningful and purposeful with dignity of person.

Again in State of Punjab Vs. Mohinder Singh Chawla\textsuperscript{29} the apex court highlighted the need to ensure the health of the workers and others, as an integral part of the right invigorated under Article 21.

\textbf{(o) Right to livelihood} :- The Indian Constitution does not specifically provide the right to livelihood for the Indian citizens, as a fundamental right, but Article 39(a) of the Constitution, which is a directive principle of state policy signifies that the State shall direct its policy towards securing the right to adequate means of livelihood to the citizens.

But the Hon’ble Supreme Court gradually became conscious of giving the status of the fundamental right to the right to livelihood.

In Olga Tellis Vs. Bombay Municipal Corporation\textsuperscript{30} the apex court has maintained that right to livelihood is included in the right to life “because no person can live without the means of living that is the means of livelihood”

\textsuperscript{28} (AIR 1995 SC 922)
\textsuperscript{29} (AIR 1997 SC 1225)
\textsuperscript{30} (AIR 1986 SC 180 (1993))
In Narendra Kumar chandla Vs. State of Haryana\textsuperscript{31} the Hon'ble Supreme Court decided that the right to life under Article 21 includes the life to livelihood.

The Supreme Court however, in state of H.P. Vs. Raja Mahendra pal\textsuperscript{32} decided that right to livelihood cannot be so widely construed which may result in defeating purpose sought to be achieved by Art.21.

\textbf{(p) Right Against cruel and Inhuman punishment :-}

The substantive criminal law as it exists in India that is the Indian penal Code, 1860 provides a maximum sentence of death followed by life imprisonment for commission of certain grave offences like murder, rape with murder and decoity with murder etc.

The Hon'ble Supreme Court was on many occasions confronted with the task of deciding the validity of death sentence u/s. 302 of the I.P.C. 1860.

In Jagmohan Singh Vs. State of U.P.\textsuperscript{33} the Hon'ble Apex Court held that the imposition of death sentence upon an accused as warranted by law and in accordance with the procedure established by law cannot be said to be unconstitutional. Again in Bachan Singh

\textsuperscript{31} (AIR 1995 SC 519)  
\textsuperscript{32} (AIR 1999 SC 1786)  
\textsuperscript{33} (AIR 1973 SC 947)
Vs. State of Punjab\textsuperscript{34} the Hon’ble Supreme Court ruled that the provision of death penalty as an alternative punishment for murder is not violative of Article 21.

In Allaauddin Main Vs. State of Bihar\textsuperscript{35} the Apex Court upheld the position that imposition of death penalty does not violate Article 21.

The apex court however, declared in Shiv Ram Vs. State of Uttar Pradesh and also in R. Trimbak Chouthmal Vs. State of Maharashtra\textsuperscript{36} that death sentence can only be imposed in the rarest of rare cases but dowry death has ceased to belong to the species of “the rarest of the rare”.

\textbf{(q) Right under Article 21 and preventive Detention} :- Article 22 of the Indian Constitution provides for adequate safe guards to the persons arrested and also those detained under preventive detention laws.

The Hon’ble Supreme Court in A.K. Roy Vs. Union of India\textsuperscript{37} declared the validity of the National Security Act 1980, which provides for preventive detention on specific matters.

In Francis Coralie Mullin Vs. Union Territory of Delhi\textsuperscript{38} the apex court held the right of a deteneue to have interview with his legal advisor or family members, is a part of Article 21.

\textsuperscript{34} (AIR 1980 SC 898)
\textsuperscript{35} (AIR 1989 SC 2039)
\textsuperscript{36} (Shiv Ram Vs. State of Uttar Pradesh and also in (R.Trimbak Chouthmal Vs. State of Maharashtra (1996) 4 SCC 148.)
\textsuperscript{37} (AIR 1982 SC. 710)
\textsuperscript{38} (AIR 1981 SC 746)
Again in Union of India Vs. Vasanbharthi\(^39\) the Supreme Court ruled that the right to be informed of passing of the detention order and of place of detention, to the family members of the detenue is a part of the fundamental right under Article 21.

In another important case kartar Singh Vs. State of Punjab\(^40\) the apex court ruled that the procedure of Identification of an accused on the basis of his photograph, as incorporated in Sec. 22, TADA\(^41\) is unconstitutional.

**Right to pollution free environment** :- It may be noted that the Indian Constitution prior to passing of the 42nd Amendment Act of the Constitution has never specifically guaranteed any right to prevention of pollution. However, after the 42nd Constitutional Amendment a new directive principle in the form of Article 48A has been inserted in the Indian Constitution which directs the state to protect and improve the environment and to safeguard the forests and wild life of the contry.

In M.C. Mehta Vs. Union of India\(^42\) the Hon’ble Supreme Court in a PIL Case dealt with the issue of Degradation of “Taj Mahal” due to pollution. The apex court ruled in this case that the right to live in a pollution free environment is a fundamental right under Article 21.

\(^{39}\) (AIR 1990 SC 1216)
\(^{40}\) (1994) 3 SC 569
\(^{41}\) (The Section 22 of TADA Terrorists and Disruptive Activities (Prevention) Act, 1987 was violative of Article 21.
\(^{42}\) (AIR 1997 SC 734)
In a recent case the Hon'ble Supreme Court emphatically declared that in the name of religion, nobody can be permitted to add to noise pollution or violate noise pollution norms\textsuperscript{43}.

\textbf{(s) Right to Commit Suicide and Article 21:-} The hon'ble Supreme Court was on various occasions confronted with the question of deciding the validity of section 309 of the Indian Penal Code which provides for penalty for attempted suicide. In P. Rathinam Vs. Union of India\textsuperscript{44} the Hon'ble Supreme Court declared that making an attempt to commit suicide would be an offence and violative of Article 21, which has enough positive content in it. And the apex court further emphasised that right to life includes the right to die and that both of them are implicit under Article 21 and therefore Section 309, I.P.C. was declared unconstitutional as it violates Article 21.

But the apex court in another important case, Gian Kaur Vs. State of Punjab\textsuperscript{45} overturned the decision in Rathinam case stated above and observed that the right to life does not include the right to die and therefore section 309 of the I.P.C. is constitutional.

\textbf{(t) Prohibition of bonded labour and Article 21 :-} It is an admitted fact that 'bonded' labour and 'begar' are the two evils that

\textsuperscript{43} Church of God (Full Gospel) in India Vs. K.K.R. Majestic Colony Welfare Association (AIR 2000 SC 2773)
\textsuperscript{44} (AIR 1994 SC 1844)
\textsuperscript{45} (AIR 1996 SC 1257)
are ailing the modern society. Article 23 of the constitution prohibits the practice of both the evils but success to the desired extent could not be achieved in the concerned areas by the Administration.

Therefore the Hon'ble Supreme Court in order to eradicate both the evils resorted to Judicial activism because system of bonded labour violates the right to life and personal liberty guaranteed under Article 21.\textsuperscript{46} (Bandhu Mukti Morcha Vs. Union of India).

In Neeraja Chowdhary Vs. State of M.P.\textsuperscript{47} the Supreme Court handed down a series guidelines for release and rehabilitation of bonded labour on the ground that the system of bonded labour violates Article 21 and 23 of the constitution.

(u) \textbf{Right to treatment and medical assistance in Medico-Legal Cases} :-

The Hon'ble Supreme Court in paramanand Katara Vs. Union of India\textsuperscript{48} upheld the right of an injured person to treatment in medico legal cases, which is a part of the fundamental right to life under Article 21.

Again in P.B. Khedat Mazdoor Samity Vs. State of West Bengal\textsuperscript{49} the Supreme Court observed that the failure of the Government

\begin{itemize}
\item \textsuperscript{46} (Bandhua Mukta Morcha Vs. Union of India (AIR 1984 SC 102)
\item \textsuperscript{47} (AIR 1984 SC 1099)
\item \textsuperscript{48} (AIR 1989 SC 2039)
\item \textsuperscript{49} (AIR 1996 SC 2426)
\end{itemize}
Hospital to administer emergency medical treatment to a person in need results in violation of his right to life.

(v) Service matters and Article 21 :- The Hon'ble Supreme court in its attempt of expanding the horizons of the right to life and personal liberty, also sought, to extend the protection of Article 21 to service matters also.

In Narendra Kumar Chandla Vs. State of Haryana\textsuperscript{50} the Hon'ble Supreme Court held that termination of a government servant from service on the ground that he was afflicted with an unfortunate disease violates his fundamental right to livelihood implicit in Article 21 and the Court further directed the State to adjust him in a suitable post.

In another important case O.P. Gupta Vs. Union of India\textsuperscript{51} the Hon'ble Supreme Court observed that the suspension of an employee which continued for long years and the pendency of departmental proceeding for 20 years was violative of Article 21 as the same is unreasonable and arbitrary and not in accordance with just, fair and reasonable procedure contemplated under Article 21.

It is heartening to note that the Hon'ble Supreme Court has successfully introduced the fundamental rights Jurisprudence even in the service matters, due to its liberal and humanitarian interpretation.

\textsuperscript{50} (AIR 1995 SC 519)
\textsuperscript{51} (AIR 1987 SC 2257)
(w) Right to monetary compensation for violation of fundamental-rights: Article 32(2) of the constitution of India has conferred power upon the Supreme Court to issue directions or orders or writs, appropriate for the enforcement of fundamental rights. But the power to award monetary compensation for transgression of fundamental rights does not appear to exist under the constitution in favour of the Supreme Court in such cases. It is interesting to note that the Hon'ble Supreme has assumed this power under the provisions of the Constitution (Article 32 & 142) for deciding series of cases after 1980.

In a landmark decision Rudul shah Vs. State of Bihar\(^2\), the Hon'ble apex Court has awarded a compensation of Rs.30,000/- in favour of the petitioner for violation of his fundamental rights under Article 21 payable by the State, for unnecessarily stone-suffering captivity in jail for 14 years even after his acquittal in trial.

In Bhim Singh Vs. State of J & K\(^3\) the apex court awarded financial compensation to the tune of Rs.50,000/- for violation of the fundamental rights of the petitioner under Article 21 for not being produced before a Magistrate within 24 hours of his arrest. Again in Nilabati Behare vs. State of Orissa\(^4\) the apex court awarded monetary compensation for violation of fundamental rights under Article 21 in favour of the victims.

\(^2\) (AIR 1983 SC 1086)  
\(^3\) (AIR 1986 SC 494)  
\(^4\) (AIR 1993 SC 1960)
In Bodhisatwa Gautam Vs. Subhra Chakraborty, the apex court observed that rape is a crime which violates the right to life under Article 21 and as such awarded interim compensation to the rape victims.

In a recent case A.K. Singh Vs. Uttarakhand Jan Morcha (AIR 1999 SC 2193) the Supreme Court had the occasion to deal with a matter in which many people lost their lives, several people received injuries and the modesty of woman was outraged in a movement in support of a separate state of Uttarakhand in the hands of police.

The High Court of Allahabad in this case prior to its adjudication by the Supreme Court ordered the government to pay Rs.10,00,000/- each to the dependents of all persons who died in police firing and also Rs. 10 lakhs each to the victims of molestation and Rs.50,000/- each for 398 persons who were detained by the Police. Upon appeal to the Hon'ble Supreme Court by the State of Uttar Pradesh, the Hon'ble apex court ruled that the direction for payment of compensation is clearly unsustainable, because the order of the concerned High Court had no justification in as much as the said order of the High Court imposed an unbearable burden on the state.

55. (AIR 1990 SC 922)
56. (AIR 1999 SC 2193)
But in another important landmark case State of A. P. Vs. Challa Ramakrishna Reddy\textsuperscript{57} the Hon’ble Supreme court granted compensation to the claimant for violation of fundamental right of right to life under article 21 of the constitution.

In the Chairman, Railway Board -Vs- Chandrima Das,\textsuperscript{58} the Hon’ble Supreme Court dealt with the case of the Gang Rape on a Bangla Deshi woman by railway employees in a railway building on a writ petitioner filed by a practicing advocate of Calcutta High Court which sought relief of compensation etc. In this case, the Calcutta High Court allowed compensation of Rs.10,00,000/- to the rape victim which was upheld by the Hon’ble Supreme Court in appeal for violation of fundamental rights of right to life under Article 21 of the Constitution in as much as rape violates the right to life of the victim.

\textbf{(x) Right to Safe Drinking Water} : In K. Joshi Vs. Chief Secretary, State of U.P.\textsuperscript{59} the Hon’ble Supreme Court had the occasion to deal with the issue of right to safe drinking water.

The Apex court in the exercise of its powers directed the State to set up a committee to be headed by the Municipal Commissioner. Agra and the representatives of NEERI and others to look into

\textsuperscript{57} AIR 2000 SC 2083.
\textsuperscript{58} AIR 2000 SC 988
\textsuperscript{59} AIR 2000 SC 384
effective functioning of the concerned public authorities, responsible for supply of drinking water, providing, sewerage and providing adequate measures for disposal of solid waste.

3. Other Aspects of Article 21 and its interpretation:

Apart from what has been stated above, it is interesting to note that the Hon'ble Supreme Court in its judicial activism has also dealt with the expanding horizons of Article 21 in a number of cases.

In H.S. Srinivas Raghavachar Vs. State of Karnataka the Hon'ble Supreme Court observed that prohibition against legal practitioners from appearing before Land Tribunals, violates the protection under Article 21 of the Constitution. Again in Ramesh Vs. Union of India the Hon'ble Apex Court extended the protection of Article 21 to the telecasting of T.V. Serials. In State of H. P. Vs. Umed Ram Sharma the Hon'ble Supreme Court while acting upon a PIL observed that the right to roads in reasonable condition is a part of the right of the citizen under Article 21 of the Constitution.

In Ahmedabad Municipal Corporation Vs. Nawab Khan Ghulab Khan the Hon'ble Supreme Court held that the principles of natural

60. AIR 1987 SC 1519
61. AIR 1988 SC 775
62. AIR 1986 SC 847
63. AIR 1997 SC 152
justice should be followed in removal of encroachment by the Municipality.

(i) Sexual Harassment of Working Women and Article 21: In an important case Visakha Vs. State of Rajasthan\textsuperscript{64} the Hon'ble Supreme Court took recourse to judicial legislation and observed that sexual harassment of working women violates the right to gender equality and the right to life and personal liberty which implicitly contains the right to work with human dignity.

(ii) Rights of Mother as natural guardian: The Hon'ble Supreme Court in two important cases, Ms. Githa Hariaharan Vs. R.B.I. & Dr. Vandana Shiva Vs. Jayantha Bandhopadhyay\textsuperscript{65} observed that a natural mother can act as 'Natural guardian of minor' even when father is alive. The Hon'ble Supreme Court declared in the instant case that section 6(a) of the HMGA, 1956 and section 19 (b) – Guardians and wards Act, 1890 ought to be interpreted harmoniously.

(iii) Bundhs are violative of Article 21: Yet another aspect in which personal liberty under Article 21, has been taken into consideration by the Hon'ble Supreme Court of India, had been the consideration of the question whether Bundh or strike is violative of

\textsuperscript{64} AIR 1997 SC 3011.
\textsuperscript{65} AIR 1999 SC 1149
the exercise of personal liberty by the citizen as incorporated in Article 21 of the Constitution.

In a Landmark decision CPI(M) Vs. Bharat Kumar the apex Court has mandated that no person or group of persons party organisation has any right under the constitution or any other law to hold bandh, agitation, demonstration and rally in a manner causing compelling people by force or by show of force or even otherwise to stop from carrying on their business, profession and the other lawful activities, and Bandhs are unconstitutional and it upheld the Kerala High Court's ruling in this regard in Bharat Kumar K. Palicha -Vs- state of Kerala [AIR 1997 Ker. 291(FB)]

(iv) Emerging Limits of compensatory discrimination :- The Hon'ble Supreme Court in a landmark decision Samata -Vs-State of A. P. observed that the fundamental rights of the tribals to their social and economic empowerment is inherent in Article 21 of the Constitution.

Yet in another case the Hon'ble Supreme Court expanded the Horizon of personal liberty as enumerated in Article 21 of the Constitution to the effect that control and regulation of traffic is a

67. AIR 1997 SC 3297
matter of paramount public safety which is within the ambit of Article 21 of the Constitution.

(v) Judicial Selfrestraint: We may however note in this regard that the summit judiciary had not been unconscious regarding Judicial self-restraint and Article 21.

In a landmark decision, Left. Col. Prithipal Singh Bedi Vs. Union of India the Hon’ble Supreme Court observed that the requirement of Article 21 need not be satisfied to the procedure for trial of offence by Court martial.

The Apex court also observed on another occasion that Article 21 should not be attracted to trade and business by declaring that the concept of the right to carry on any trade or business and the concept of life and personal liberty within Article 21 are too remote to be connected together.

In State of M.P. -Vs- Ram Krishna Balothia the apex court observed that right to anticipatory bail is not an essential ingredient in Article 21.

Again in another important decision Madhu Kishwar -vs- State of Bihar the Hon’ble Supreme Court declined to interfere with the

68. M.C. Mehta Vs. Union of India (AIR 1998 SC 186)
69. AIR 1982 SC 1413.
70. AIR 1995 SC 1198
71. AIR 1996 SC 1864
customs of tribal inhabitants in respect of intestate succession and the rights of woman to succeed, especially on the ground of violation of Article 14, 15 and 21 of the Constitution.

The Hon'ble Supreme Court yet in another important decision in Anukul Chandra Pradhan -vs- Union of India\textsuperscript{72} observed that the right to vote is not related to Article 21, of the Constitution.

Again in Naga People's movement of Human Rights -Vs- Union of India\textsuperscript{73} the apex court noted that the powers conferred under the Armed Forces (Special powers) Act, 1958 are not violative of Article 21.

The apex court observed in another important case State of Punjab Vs Ram Lushaya Bagga\textsuperscript{74} that right to medical reimbursement of expenses incurred by a Government employee for treatment taken in a private Hospital, is not a fundamental right under Article 21.

It now, therefore, seems from what has been stated above that all the established and recognised human rights all over the world may be considered as part and parcel of the right to life and personal liberty under Article 21, thanks to the judicial activism in liberally interpreting the expression 'life' and personal liberty thereunder.

\textsuperscript{72} AIR 1997 SC 2814
\textsuperscript{73} AIR 1998 SC 431
\textsuperscript{74} AIR 1998 SC 1703.
It may also be argued in this context that the summit judiciary has been conscious enough to ensure that the protection under Article 21 is all-pervading, not suspendable even during the proclamation of emergency. The judicial activism guaranteed that Article 21 stands like a sentinels over human misery, degradation and oppression, and that its voice is the voice of justice and fair play and a voice which can never be silenced on any ground.

It now emerges, from the discussion undertaken above that the activities of the Supreme Court since the decision in Maneka's case has proved that the apprehension of the framers of the constitution regarding the ability or the competency of the judges of the apex court in examining the validity of the laws made by the legislature, whether could be trusted with reference to their bias or prejudices, for the purpose of determination which law is good or which law is bad was baseless. The summit judiciary has been doing a commendable job in keeping the State under an effective check, and in continuously expanding the horizon of personal liberty with reference to human rights and in ensuring that the invaluable right to life and personal liberty must not be violated by the State. We must not however be unconscious in this respect of the fact that the new dimensions in personal liberty with reference to human rights should also include right to reputation of a person, right to surrogate
motherhood, and also right to donate organs, limbs, etc. of a human being.

(vi) Reputation: In so far as right to reputation is concerned it may be argued that the right to personal liberty includes the right to reputation, any person making any defamatory statement against another is liable for action both under the Civil and criminal law.

The question regarding the right to reputation came up before the Supreme Court in Sowmitheri Vishnu V. Union of India\textsuperscript{75} where the petitioner challenged proceedings under section 497 IPC on the plea that, though she is not a party to the proceedings, her reputation is being affected. The court rejected her contention but held that the victim of adultery is entitled to defend her reputation in proceedings under section 497 IFC. Thus the court recognised that right to reputation is a part of the right to personal liberty.

(vii) Surrogation: Surrogation contemplates renting the womb of a woman for the development of embryo and delivery of the child, after it is born, to the 'donor mother' by the carrying mother. Thus, the carrying mother produces child for the infertile woman with the sperm of the husband of such a woman.

A question however crops up in this respect that whether a

\textsuperscript{75} AIR 1985 SC 1618.
woman has right to her own body, to decide whether to lend her womb or not and later on whether to accept restrictions imposed by 'donor' or whether she can have pregnancy terminated or whether she can refuse to hand over the child to the 'donor-mother' etc. Therefore, the question centers around the fact as to whether the contract of surrogation affect her privacy or right to personal liberty. It may be argued, in this context, that if the arrangement of surrogation is made out of love and affection and with the free will of the surrogate mother, it would be within the ambit of her right to personal liberty.

Hence, it may be highlighted that a woman's fundamental right to privacy, procreation or sexual autonomy does not encompass a right to artificial insemination or to surrogation. Of course, there are jurists who designates surrogate motherhood as bio-prostitution or "Disguised Rape" but there are also jurists who does not consider it to be adulterous if it is with the consent of the husband of the carrying mother and the wife or the donor husband.

It is also however a fact that the problem has not yet become serious in India but, when it becomes serious in India it may be tackled by a suitable legislation which may regulate it - keeping in view the interest of surrogate mother and the child to be born.

24. AIR 1997 Del 201
(viii) Donation of Organs: Now with regard to donation of parts of the human body to another human being in order to save the life of the donee it might be considered whether it should be within the ambit of personal liberty under Article 21 of the constitution. This particular aspect of personal liberty might be considered from the following viewpoint that if the arrangement of donation of a part of human organ to another living person for the purpose of protecting the life of the donee on the ground of love and affection and with humanitarian consideration and with the free will of the donor and donee it would be of course, within the parameters of right to personal liberty. But if such donation is in the nature of commercial exploitation or for earning money then the apparent voluntary consent would be in reality the result of influence of money or other gain or is economic compulsion, in such cases it would not be free consent but purchased or forced consent. It is not only inconsistent with human dignity but is an outright invasion on the person of the donor specially when the consent comes as a result of threat, inducement or helplessness or offer of monetary gain.

(ix) Emergence of Human Rights Jurisprudence: With the advent of the Indian Constitution human rights Jurisprudence acquired great momentum in India. The Racial discrimination has been abolished, class discrimination has also been abandoned and all the
people in the country have been given equal status. The Hon'ble Supreme Court in a landmark decision, Akhil Bharatiya Sosita Karinachary Sangha V. union of India AIR 1981 SC 298(\textsuperscript{Q}) observed that the Indian Constitution became a national Charter pregnant with a social revolution and not a legal parchment barren of militant values to usher in a socialist secular democratic society which equally belongs to the masses including the Horizon Girizon millions hungering for a humane deal after feudal, colonial, history's long night ......... Justice Krishna Aiyer.

Prior to this decision of the Supreme Court in another important case the apex court observed in Keshabananda Bharati V. State of Kerala(\textsuperscript{R}) "that fundamental rights themselves have no fixed content. Most of them are mere empty vessels into which each generation has poured its content in the light of its own experience. Restriction curtailment, abridgement, and even abrogation of these rights might become necessary in circumstances, not visualized by the Constitution makers; their claim to supremacy or priority is liable to be over-borne at particular stages in the history of the nation by the moral claims embodied in part IV."

But such view of the Supreme Court as given in Keshabananda

\textsuperscript{(Q)} AIR 1981 SC 298
\textsuperscript{(R)} AIR 1973 SC 1461
Bharati Case, has been changed in many a decisions handed down by the Supreme Court itself, particularly with a view to maintain, propagate and advance the human rights across the country.

That human rights Jurisprudence has now acquired an invincible status in our land has been highlighted in Maneka Gandhi’s\(^{\text{(S)}}\) case and also in R.C. Kooper’s case.\(^{\text{(T)}}\)

In Maneka Gandhi’s case the Hon’ble Supreme Court observed that these fundamental rights represents the basic values cherished by the people of this country (India) since the vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent.

They weave a pattern of guarantee on the basic structure of human rights and create negative obligations on the state not to encroach on invidual liberty in its various dimensions.

It may be rememberd in this context that the Supreme Court in its eagerness to protect, maintain, propagate and advance the human rights in India has inducted the due process clause ot the American Constitution into the Indian Constitutional Jurisprudence.

People suffering from transgression of their human rights can

\(^{\text{(S)}}\) AIR 1978 SC 597
\(^{\text{(T)}}\) AIR 1970 SC 564
effectively approach the High Courts and Supreme Court under article 226, 227, 32 136, of the Constitution, which is known as the public law review system in India. Besides, the private law review system has also been operating in India for the protection of the human rights.

While the public law review comprises the functioning of writ Jurisdiction of the Supreme court and High Courts (by the writs of Mandamus, Certiorary, prohibition, Habeas corpus and quo-warranto) the private law review comprises the system of injunction declaration, and suit for damages.

In so far as the remedies for violation of human rights by public law review is concerned there are some technical hardies which might impede its effective implementation. We may recall the Observation of Lord Denning as it appears in his work Freedom under Law, written in 1949, that just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari and action on the case are not suitable for the winning of freedom in the new age people therefore may be inclined to seek relief for violation of human rights, under the private law review.

Apart from what has been stated above people may have scope for remedial action in case of violation of human rights in the direction
of affirmotive action for the enforcement of public duties by the courts themselves.

It is worth noting here that during the last few years, the Supreme Court of India has certainly developed a fine Jurisprudence of right mobilization. Affirmative action for the enforcement of public duties is one of the areas where the genius of the Indian Judiciary has been registered in a unique manner. It is a fact that judicial redress can more readily be available for wrongful acts than for wrongful omissions of public bodies and the effectiveness of the Judicial remedies is also limited either by their intrinsic characteristic or by restrictive technical rules. But in 1980 the Hon'ble Supreme Court gave a decision in (Ratlam municipality Vs. Vardichand)\(^1\) which is a unique testimony of a new judicial dynamism, unhampered by these limitations, which has produced new enforcement dimension of public duties owed by the administrative bodies to the people at large.

In this case under section 133 of the Cr.P.C. a Magisterial order was issued to the municipality for removal of nuisance to the public which was in unhygienic conditions.

The decision was challenged by the Municipality on the ground of paucity of funds and other grounds.

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\(^1\) AIR 1980 SC 1622
When the matter ultimately was placed before the Supreme Court for adjudication the apex court turned down the appeal of the municipality in the interest of collective human rights of the people of India. When the maintenance and advancement of Human Rights has itself become one of the basic values if not the cardinal values of our constitution, people may be encouraged to have a glimpse into the latest functioning of the Hon'ble Superior Court in so far as their efforts to maintain the same is concerned.

The main criteria of the functioning of the judicial system in India being the establishment of uniformity and certainty in law the apex court has been working to our entire satisfaction in this direction although people expect much more from the Supreme Court and High Courts to make human rights values a meaningful one.


The latest trends as are emerging from the Superior Court decision in order to protect and safeguard human rights may be pursued by the people of this country to live a meaningful life with all attributes of personal liberty. The following decisions of the Superior Courts are pointers in the cherished direction.
(a) Birth after vasectomy - In Shakuntala Sharma -Vs- State of U.P.\textsuperscript{2}. The Court directed the state government to deposit Rs.50000/- in nationalised bank when a child was born to a couple of which the husband underwent vasectomy operation.

(b) Organising Eye camps and loss of vision - in M.P. Human Rights Commission -vs- State of M.P.\textsuperscript{3} the Court granted Compensation of Rupees one lakh each to the victims of Eye camps who lost their vision due to negligence of doctors in eye’s operation arranged by the State.

(c) Open Manholes - Deathtraps-the court directed for payment of compensation for the death of a child drowned in an uncovered manhole (Punjab Civil and Consumer Welfare Front Vs. U.T. of Chandigarh)\textsuperscript{4}

(d) Injury to newly born infant - In Jasbir Kaur -Vs- State of Punjab\textsuperscript{5} the court directed for payment of compensation to the parents of an infant who sustained injuries on his person because of negligence of a Govt. hospital staff.

(e) Deaths against mondal Commission - In Nanik Sewa -Vs- State of Orissa\textsuperscript{6} the court directed compensation to the tune of

\begin{itemize}
\item \textsuperscript{2} \textit{AIR} 2000 \textit{All} 219.
\item \textsuperscript{3} \textit{(AIR 2003 M.P. 17)}
\item \textsuperscript{4} \textit{(AIR 1999 P&H 32)}
\item \textsuperscript{5} \textit{(AIR 1995 P&H 278)}
\item \textsuperscript{6} \textit{(AIR 1996 Ori 131)}
\end{itemize}
Rs. 1,00,000/- for loss of life of students in connection with the implementation of recommendations of the mondal commission.

(f) **Electricity Death** - In A krishna Patra -Vs- Orissa State Electricity Board⁷ the court directed for payment of compensation by the Electricity Board for the death of a woman for lack of proper care and supervision in maintenance work.

(g) **Electrocution & compensation** - In a case sarla sahu -Vs- State of orissa⁸ the Court directed for payment of exgratia payment of Rs. 50,000/- with 6 percent interest as interim compensation to the legal heirs of the victim who died due to Electrocution which could be attributed to omission and commission of officials of Energy Department.

(h) **Death due to Landslide** - In the case K. Samikkanu -Vs- Union of India⁹ the court directed payment of compensation to the tune of Rs. 75,000/- because of death of a person on account of landslide in the mining area due to contributory negligence of neyveli lignite corporation.

(i) **Loss of motherhood** - In Tabasum Sultana (Dr.) -Vs- State of U.P.¹⁰ the court awarded compensation of Rs. 3,00,000/- to the petitioner who was a newly married woman and suffered precious

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7. (AIR 1997 Ori 109)
8. (AIR 2001 Ori 106)
9. (AIR 1997 Mad 229)
10. (AIR 1997 All 177)
loss of motherhood while under going tubectomy under the Government Sponsored family planning programme.


(k) **Electric shock disability & compensation** - In a case where infringement of legal right was complained of because of sustenance of injury by a citizen because of improper maintenance of high tension line the court directed for payment of compensation to the victim for negligence of the government / state officials 12

(l) **Ex-gratia payment as compensation** - In State of J & K -VS- Jeet General Store 13 the court held that in the absence of allegations of negligence or dereliction of duty on the part of State in protecting properties of citizen during communal riots, state is not liable to pay compensation; mere grant of ex-gratia relief does not amount to admission on the part of State of its culpability.

(m) **Death due to firing** – Yet in another case Aheibam Omgbi Laihao Devi -Vs- State of Manipur 14, where a person died because of

11. (AIR 1999 J & K 159)
indiscriminate firing his wife and a minor daughter were granted compensation of Rs. 1,50,000/-.  

(n) Anti Sikh Riots (1984) & Compensation – In Kehar Singh -Vs- State of Chhattisgarh\textsuperscript{15} it was held that the State is duty bound to protect life liberty and dignity of the people belonging to different faiths, caste and creed, and in cases where such attributes of life and personal liberty are jeopardised the victim should obtain compensation, following the Supreme Court mandate given in S.S. Ahluwalia -Vs-Union of India\textsuperscript{16}.

(o) Death of a member of police party chasing offenders - In Khalil Razak Shaikh Re\textsuperscript{17} - the court held that widow of a deceased should get compensation when her husband lost his life in co-operating police force in chasing and apprehending persons suspected of committing offences.

(p) Delay in Treatment – In Khairatilal Khurana -Vs- Govt. of NCT of Delhi\textsuperscript{18} – Court held that the state was liable to pay compensation for a precious loss of life of a student because of delay in administrating treatment to the patient in a private hospital.

\textsuperscript{15} AIR 2002 Chh 14
\textsuperscript{16} AIR 2001 S.C. 1309
\textsuperscript{17} AIR 2001 Bom 283.
\textsuperscript{18} AIR 2002 Del 40
(q) Railway accidents & Compensation – In D.B. Avalakhi- Vs- Union of India\textsuperscript{19}. The court held that the Railway Tribunal was bound to exercise powers of a Civil Court while deciding the question of compensation because of a passenger's death in a Railway Accident.

(r) Pollution Hazard & Compensation—In Obaya Pujary -Vs- Member-Secretary, Karnataka State Pollution Control Board, Bangalore\textsuperscript{20} the court held that when Citizen are affected by pollution because of the functioning of Stone Crushing Units, compensation ought to be given to the sufferers.

(s) Right to water & Compensation - In All India Lawyers Union (Delhi) -Vs- Union of India\textsuperscript{21} - the court directed for payment of compensation by the school authorities to the parents of a child who died in road accident while fetching drinking water from a distance to his school where he was studing as hygienic drinking water not available in the school.

(t) Explosion losses & Compensation - In Shyalpai Devi (Smt.) -Vs- NCT of Delhi\textsuperscript{22} - the court held that compensation ought to be given in the case of a death of Police Personnel, in Police malkhana, where proper care was not taken to defuse an explosive device kept in the same Police Malkhana.

\textsuperscript{19} AIR 2000 Kant 269
\textsuperscript{20} AIR 1999 Kant 157.
\textsuperscript{21} AIR 1999 Del 120.
\textsuperscript{22} AIR 1999 Del 264
(u) **Death in lift & Compensation** - In Dharamvir Kataria (Col.) Vs- Union of India\(^23\) - the court awarded compensation of Rs. 4.5 lac to the husband and children of the deceased who died in a lift where safety parameters were not upto the mark.

(v) **Swimming Pool death & Compensation** - In Klans Mittel Bachert J. Vs- East India Hotels Ltd.\(^24\) the court held that compensation and damages to the tune of Rs. 5,00,00,00/- ought to be awarded by a five star hotel in India where a German National, a boarder sustained head injuries in a hotel swimming pool and suffered mental and physical agony for 12 years and died at the age of 43 years.

We may conclude with the following observation of the Supreme Court handed down in Sher Singh Vs. State of Punjab.\(^25\) The horizons of Article 21 are ever widening and the final word on its conspectus shall never have been said. So long as life lasts, so long shall it be the duty and endeavour of this court to give to the provisions of our constitution a meaning which will prevent human suffering and degradation.


\(^{23}\) AIR 1999 Del 291
\(^{24}\) AIR 1997 Del 201
\(^{25}\) A 1983 SC 645 (Para 11) – 3 Judges
5. Suggestions:

(i) Human Rights Commission should not merely be a recommendatory body but must be given the status of a regular Criminal Court.

(ii) Section 30 of the Protection of Human Rights Act. 1993 should be implemented because the ordinary Courts are overburdened.

(iii) Petitioner to the Human Rights commission should, adduce some sort of evidence in support of their contention by affidavit.

(iv) Human Right Commission's Procedure should be more simplified.

(v) Proceeding instituted before the Regular Courts should also be simplified in respect of causes pertaining to Human Right violation.

(vi) Human Rights Commission has been given the status of a Civil Court but the matters dealt with by the Human Rights Commission are mostly criminal in nature.

(vii) It is not sufficient that the Human Rights Commission's findings merely be given the status of recommendation but should be made mandatory.

(ix) Human Rights Commission should have summary power to punish the witnesses who inspite of summons does not appear to produce documents and depose evidence without just grounds.
Human Rights Commission should be free to act while handing down decisions without subjecting itself to the strict applicability of the laws of the country.

(x) Human Rights Commission should not be bound by precedents and may act even on hearsay evidence.

(xi) Laws of evidence should not apply strictly to the working of the Human Rights Commission.

(xii) Human Rights Commission should be allowed to presume existence of facts on a wider basis than contemplated in Section 114 Evidence Act in reaching their findings.

(xiii) In proceedings before the Human Rights commission, public servants should not be allowed to claim any privilege for withholding documents.

(xiv) Human Rights Commission should be allowed to reach their findings in proceedings relating to Human Rights violation by public servants by acting upon even on irrelevant evidence and on a more wider concept of Judicial notice.

(xv) Human Rights Commission findings should not necessarily be based on facts which are duly proved and relevant in nature.

(xvi) The doctrine of Privileged communication as enshrined in the Evidence Act should not apply to proceeding before the Human Rights Commission.
(xvii) Right to justice and Rule of Law is a basic human right and all reasonable steps should be taken to make this right a meaningful one.

(xviii) This author has the experience of working in state Human Rights Commission and feels the above noted suggestions should be given due consideration in respect of remedial measures for Human Rights Violation by public servants. For Protection of Human Rights against Police action it may be noted that the following changes might be considered for proper functioning of Police force in our country:

(a) Provisions corresponding to Sec. 58, 59 of the N.D.P.S. Act 1985 should be incorporated in the Police Act 1861.

(b) Sec. 29 Police Act 1861 should be suitably amended to make the provisions more stringent and effective.

(c) The provisions incorporated in Sec. 173 Cr. P.C. requiring the Officer-in-Charge, of a P.S. to communicate to the informant the result of investigation should be made more stringent and summary punishment should be arranged to be imposed upon the erring police-officials.

(d) In case of allegation of violation of human rights by
policeman burden of proof should be shouldered by the policeman himself to prove his innocence.

(e) Provision regarding search without warrant by police U/s. 165, 166 Cr. P.C. should be amended in such a fashion that police should be severely punished if just and reasonable grounds could not be adduced by police in such cases.