Chapter - IV

CONTRIBUTION OF JUDICIARY TO THE CONSTITUTIONAL DEVELOPMENT
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4.1 General Introduction: The functioning of a democracy is dependent on the autonomy and efficacy of the three systems of the state, namely, parliament, executive and the judiciary. India in the last two decades has seen rapid erosion of the functioning of the parliament and the executive. In this scenario of failure of the state in ensuring its constitutional obligation and rights to the citizens and initiating social-economic transformation, the judiciary has often played a significant role in upholding the rule of law and thereby protecting the fundamentals of democracy in the country. Nevertheless, it is important that the judiciary is not burdened with expectations of playing the role of the executive. It cannot directly carry out the tasks of effective governance. This is critical for the long-term health of Indian democracy because of two reasons. First, the judiciary has its role and organisational limitation and can not perform the role of day-to-day
governance. Second, the fundamental principle of division of power needs to be respected and strengthened for making democracy work effectively.

The judiciary has played an active role in all spheres, be it environment, police system, status of women, etc. leading towards their amelioration and ensuring that justice is delivered in its entirety. Looking at the way the issues of diverse nature, have been addressed by the judiciary, one can easily conclude that judiciary despite its lacunae is the only potent weapon through which the grievances of the society can be redressed and justice can be ensured. Law is a mean to achieve an end, and that is justice. If this end is to be achieved law cannot remain stagnant. It has to be dynamic and must change according to the transition of the society. Constitutional Law cannot be an exception of this general Law of Change. It must replace the outdated norms and must baptize the new ones to protect human rights.

The task of interpreting the constitution has been assigned to the judiciary. The Judiciary in India enjoys a very significant position since it has been made the guardian and the custodian of the Constitution. It is not only a watchdog against the violations of fundamental rights, guaranteed under the Constitution and insulates all persons, Indians and aliens alike, against discrimination, abuse of State power, arbitrariness etc. rather, as James Madison, one of the founding fathers of the American Constitution once said, the Judiciary in India is truly the only defensive armour of the country and its constitution and laws. If this armour were to be stripped of its onerous functions it would mean, the door is wide open for nullification, anarchy and convulsion. Liberty and Equality have well survived and thrived in India due to the pro-active role played by the Indian judiciary. One of the most important principles of just democratic governance is the presence of an independent judiciary, which allows citizens to seek protection of their rights and redress, against the government actions. These limits help make the three branches of the government accountable to each other and to the people. An independent
judiciary is important for preserving the rule of law and is, therefore, the most important facet of good governance.

In recent times the judicial attitude has changed with the signs of time. To analyse the present system, it becomes imperative to consider the role of judges in the present system too as neither of the two can be analysed in isolation sans the other. It is the role played by the judges that has given rise to the present judicial system. We see that the judiciary has now come forward with a new look by giving an introduction of its pro-activeness through judicial activism, it has started giving primacy to public interest over private interest by encouraging public interest litigation, it has also expanded the scope of various rights like right to life, etc.

The rule of law, one of the most significant characteristics of good governance prevails because India has an independent judiciary that has been sustained, amongst others, because of support and assistance from an independent bar which has been fearless in advocating the cause of the underprivileged, the cause of deprived, the cause of such sections of society as are ignorant or unable to secure their rights owing to various handicaps, an enlightened public opinion and vibrant media that keeps all the agencies of the State on their respective toes. One of the most important principles of just democratic governance is the presence of an independent judiciary, which allows citizens to seek protection of their rights and redress, against the government actions. These limits help make the three branches of the government accountable to each other and to the people. An independent judiciary is important for preserving the rule of law and is, therefore, the most important facet of good governance.

The judicial system has an important role to play ultimately in ensuring better public governance. There may be a plethora of regulations, rules and procedures but when disputes arise, they have to be settled in a court of law. There is no area where the judgments of Supreme Court have not played a
significant contribution in the governance. Good governance, whether it be in the case of environment, human rights, gender justice, education, minorities, police reforms, elections or limits on the constituent powers of the Parliament to amend the Constitution. Indian Judiciary has been pro-active and has scrupulously and with immense zeal guarded the rights which are fundamentally necessary for the human life and existence. The scope of right to life has been enlarged so as to read within its compass the right to live with dignity, right to a clean and healthy environment, right to humane conditions of work, right to education, right to shelter and social security, right to know, right to adequate nutrition and clothing and so on. The Supreme Court has, down the years, elaborated the scope of fundamental rights consistently, strenuously opposing intrusions into them by agents of the State, thereby upholding the rights and the dignity of an individual, in true spirit of the concept of good governance. In various cases, the Court has issued a range of commands for law enforcement, dealing with an array of aspects of executive action and of the police.

Now if we closely analyse the role played by the judiciary in turn leading to the present status of judiciary, we find that judiciary has played a vital role in all spheres of activity. The Court has expanded and humanized the concept of the Right to Life and Right to Liberty. This has created the concept of Judicial Activism. Judicial Activism is the rising of the judiciary to the pressing demands of the time and occasions under circumstances adversely and almost irreparably affecting the social and political fabric of our society. Judicial Activism is now a central feature of every political system wherein adulatory powers rest in a free and independent judiciary, in order to evolve law in consonance with the changing needs and aspirations of the society and to serve the cause of natural justice. The Supreme Court was generally very cautious upto 1960s in limiting the executive authority. But after the nightmarish experience of the emergency, the judiciary has become more
aware of the dangers of executive tyranny in India. It is under such circumstances that the courts have to assume the responsibility of stepping into the domain of Legislature and executive in order to correct them either by taking suo moto cognizance of the matter or through the instrument of Public Interest Litigation.

In recent years, the Judicial Activism in its true form started when Justice J.S. Verma was the Chief Justice who galvanized the process and Justice Kuldeep Singh delivered some landmark judgments in irregularity in petrol pump allotment case and allotment of government premises in Delhi. The Courts have to exercise their judicial powers for protecting the fundamental rights and liberties of citizens of the country. Therefore, in order to achieve this mission, the judiciary has to exercise evolve its jurisdiction with coverage, creativity, as per circumstances and with vision, vigilance and practical wisdom. The Courts have played a vital and important role in dispensing justice and towards the amelioration of the society. In a significant judgment, in Parmanand Katara vs Union of India, the Supreme Court held that it is a paramount obligation of every number of medical profession (Private or Government) to give medical aid to every injured citizen brought for treatment, immediately, without waiting for procedural formalities to be completed in order to avoid negligent death. Judicial Activism has also helped in protecting our environment and preserving the rich heritage of our country. In M.C. Mehta vs Union of India¹, The Apex Court ordered the closure of tanneries at Jajinan near Kanpur which were polluting the Ganga. An another case of M.C. Mehta vs Union of India (pollution of Taj Mahal Case)², Justice Kuldeep Singh, known as Green Judge for his decision on pollution held that 292 polluting industries locally operating in the area are the main source of pollution and directed them to change over within fixed time schedule to

¹ AIR 1991 SCC 558
² AIR 1997 SCC 1840
natural gas as industrial fuel. This was done so because the industries were causing degradation of Taj Mahal due to the atmosphere pollution caused by chemically hazardous industries, established and functioning around Taj Mahal.

The Apex Court has held that the states has to provide food to the people starving free of cost out of surplus stock lying with the states. Judicial activism has act right a number of wrongs committed by the state. It has provided protection against inhuman treatment, for child welfare, protection of ecology and environment pollution, professional ethics, right to life and right to live with dignity, compensation for custodial death, direction for protection of women and many more. The PIL has proved to be a potent weapon in the hands of the Court enabling it to unearth many scams and corruption cases. The Hawala Scam, the fodder scam, the urea scam and the ayurvedic medicine scam are a few such examples. The very recent examples of judicial activism are the Best Bakery Case where there was emphasis on witness protection and coming down heavily on perjury. Another recent example is the Jessica Lal case. A Bench of Delhi High Court took a sue motto cognizance of Acquittal of all the accused in the Jessica Lal murder case.

4.2 Judicial contribution towards the Basic Structure Doctrine: The basic structure theory plays a useful part in our constitutional jurisprudence. But was there truly a judicial formulation by the Supreme Court of India of the basic structure doctrine in the Kesavananda Bharati case? An insider’s unravelling of a fascinating story. Thirty six years ago, on April 24, 1973, thirteen judges of the Supreme Court assembled in the Chief Justice's court packed to its capacity with lawyers and laypersons. They delivered eleven judgments in India's most celebrated case in constitutional law —the Kesavananda Bharati case. For over three decades we have believed that in
that case a majority of judges decided that Parliament has no power to amend
the basic structure of the Constitution.

Revelations of how the Kesavananda case was decided have been
disclosed in later interviews with those who were involved in the case, writings
of scholars, and by a revealing autobiography of Justice Jaganmohan Reddy,
one of the judges in that case. This writer, a counsel in the case, kept detailed
notes of the proceedings of the case. We can now piece together a collated
account of how the case was decided. At the end of it, the question arises —
was there truly a judicial formulation of the theory of basic structure in that
case, as it has come to mean today; and was the case decided in an
atmosphere conducive to a detached determination of a highly contentious
matter with political overtones.

To reverse the Golak Nath case (1967), which had held that Parliament
had no power to amend fundamental rights, and in anticipation of a major
constitutional battle, we now know that the government carefully selected
some judges who would not be obstructive to its reversal. The case became a
contest not only between the rival parties but apparently among some of the
judges who were committed to their own strong views on Parliament's power
to amend the Constitution. Justice Jaganmohan Reddy records this about
some of his colleagues: "I got the impression [from the first day] that minds were
closed and views were determined."

The case was essentially a political fight in a court of law with a political
background. It was conducted under continuous and intense pressure the
likes of which it is hoped will never be seen again. One author has described
the atmosphere of the court as "poisonous." A judge on the bench later spoke
about the "unusual happenings" in the case. If the several "unusual
happenings" in the case are related in detail, they will make one doubt if the
decision in the case was truly a judicial one — expected from judges with
detachment from the results of the controversy before them.
On April 24, 1973, the eleven separate judgments were delivered by nine judges; collectively these ran into more than 1000 printed pages. Six judges — Chief Justice S.M. Sikri and Justices J.M. Shelat, K.S. Hegde, P. Jaganmohan Reddy, A.N. Grover, and S. Mukherjea — were of the opinion that Parliament's power was limited because of implied and inherent limitations in the Constitution, including those in fundamental rights. Six other judges — Justices A.N. Ray, D.G. Palekar, K.K. Mathew, S.N. Dwivedi, M.H. Beg, and Y.V. Chandrachud — were of the opinion that there were no limitations at all on Parliament's power to amend the Constitution. But one judge — Justice H.R. Khanna — took neither side. He held that Parliament had the full power of amending the Constitution; but because it had the power only "to amend," it must leave "the basic structure or framework of the Constitution" intact. It was a hopelessly divided verdict after all the labour and contest of five months. No majority, no minority, nobody could say what was the verdict.

How was it then said that the Court by a majority held that Parliament had no power to amend the basic structure of the Constitution. Thereby hangs a tale not generally known. Immediately after the eleven judges finished reading their judgments, Chief Justice Sikri, in whose opinion Parliament's power was limited by inherent and implied limitations, passed on a hastily prepared paper called a "View of the Majority" for signatures by the thirteen judges on the bench. One of the conclusions in the "View of the Majority" was that "Parliament did not have the power to amend the basic structure or framework of the Constitution." This was lifted from one of the conclusions in the judgment of Justice H.R. Khanna. Nine judges signed the statement in court. Four others refused to sign it.

By any reading of the eleven judgments, this conclusion could not have been the view of the majority. It was only the view of one judge — Justice H.R. Khanna. Some judges had no time to read all the eleven judgments as
they were prepared under great constraints of time owing to the retirement of the Chief Justice the next day. Justice Chandrachud confessed that he had a chance hurriedly to read four draft judgments of his colleagues. No conference was called of all judges for finding out the majority view. The one conference called by the Chief Justice excluded those judges who were of the opinion that there were no limitations on the amending powers. Nor was the conclusion debated in court, as it ought to have been. The Chief Justice’s action has been described by some as an act of statesmanship. Others believe it was a maneuver to create a majority that did not exist.

The verdict would have remained in this uncertain state but for accidental events following the decision. On August 1, 1975, with lightning speed and by an outrageous abuse of the amending power during the Emergency, Parliament made the 39th Amendment to the Constitution. This introduced Article 329 A of the Constitution — which sought to validate Indira Gandhi’s election set aside by a judge of the Allahabad High Court without any contest, including her pending appeal in the Supreme Court.

On August 11, 1975, Indira Gandhi’s election appeal against her disqualification was heard by five judges presided over by Chief Justice A.N. Ray. He had been appointed Chief Justice of India by the government the day after the judgments in the Kesavananda case — superseding three other judges who had decided against the unlimited power of Parliament to amend the Constitution. The government believed that with the amendment to Article 329A of the Constitution, her appeal would simply be allowed. But so outrageous was the amendment that all five judges declared it bad as it violated "the basic structure." Nevertheless, Indira Gandhi’s appeal was allowed by an amendment made to the Representation of the People Act, 1951, which cured all illegalities in her election.

The court could strike down constitutional law but not an ordinary law that carried out the same purpose. To many this seemed perplexing.
Everyone took it that the court had now approved the basic structure theory by striking down the amendment to Article 329A — everyone, that is, except Chief Justice A.N. Ray. He had stated in Indira Gandhi's case that the hearing would proceed "on the assumption that it was not necessary to challenge the majority view in Kesavananda Bharati case." On November 9, 1975, two days after the Indira Gandhi case was decided, the Chief Justice constituted a new bench of thirteen judges to review the Kesavananda Bharati case. For two days, N.A. Palkhivala made the most eloquent and passionate argument against the review. On November 12, the third day, the Chief Justice announced suddenly at the very outset of hearing: "The bench is dissolved." Thus ended an inglorious attempt to review the Kesavananda judgment. Whatever the reasons for the dissolution of the bench, Chief Justice Ray's maladroit attempt to review the basic structure limitation gave it a legitimacy that no subsequent affirmation of it could have given. But the problem could not be avoided. In 1980, in the Minerva Mills case, the question was raised whether there was indeed a majority view on the limitation of the basic structure. Justice Bhagwati said that the statement signed by nine judges had no legal effect at all and could not be regarded as the law declared by the Supreme Court. He said the so-called majority view was an unusual exercise that could not have been done by judges who had ceased to have any function after delivering their judgments and who had no time to read the judgments. However Justice Bhagwati relieved himself from deciding what he called "a troublesome question" by saying that Indira Gandhi's case had accepted the majority view that Parliament's power of amendment was limited. This was not correct as that case was decided on the assumption that it was not necessary to challenge the majority view.

So a single judge's opinion — Justice Khanna's of a limitation of the basic structure on Parliament's power — has passed off as the law. But Justice Khanna was responsible for another vital dimension of the basic
structure two years after the case was decided. In the Kesavananda case, he
did not say that fundamental rights were part of the basic structure of the
Constitution, although six other judges said that and the case was entirely
about the validity of amending fundamental rights by the challenged
constitutional amendments. Three of Justice Khanna's brother judges in the
Kesavananda case were clearly of the opinion that Justice Khanna had not
held that fundamental rights were part of the basic structure in the
Kesavananda Bharati case. But in Indira Gandhi's election case two years
later, Justice Khanna "clarified" his judgment in the Kesavananda case. He
now said that he had given clear indications in his judgment that fundamental
rights were part of the basic structure. By so clarifying his judgment, Justice
Khanna did not realise that this clarification rendered his judgment in the
Kesavananda case hopelessly self-contradictory, as he had held
unconditionally valid two constitutional amendments that nullified vital
fundamental rights. With that dubious exercise, Justice Khanna's "clarification"
is now a vital part of the basic structure.

Fundamental rights are now immune to an amendment if it violates the
basic structure of the Constitution. In the latest judgment, delivered on
January 11, 2007, by nine judges of the Court on the Ninth Schedule to the
Constitution, the basic structure limitation has been stated to be "an axiom of
our constitutional law." An axiom means a self-evident truth. So be it.
Whatever its origins, the basic structure theory play a useful part in our
constitutional jurisprudence. Parliament does not and should not have an
unlimited power to amend the Constitution. However, in the glorification of the
basic structure theory, it is important to bear in mind its infirm roots and how
predilections and prejudices of judges, chance, and accidental circumstances
have played a greater part rather than any logic or conscious formulation of it.
4.3 Article 21 Of The Constitution Of India – Judicial Interpretation: The Constitution of India provides Fundamental Rights under Chapter III. These rights are guaranteed by the constitution. One of these rights is provided under article 21 which reads as follows:-

According to Article 21 “No person shall be deprived of his life or personal liberty except according to procedure established by law.” Though the phraseology of Article 21 starts with negative word but the word No has been used in relation to the word deprived. The object of the fundamental right under Article 21 is to prevent encroachment upon personal liberty and deprivation of life except according to procedure established by law. It clearly means that this fundamental right has been provided against state only. If an act of private individual amounts to encroachment upon the personal liberty or deprivation of life of other person. Such violation would not fall under the parameters set for the Article 21, in such a case the remedy for aggrieved person would be either under Article 226 of the constitution or under general law. But, where an act of private individual supported by the state infringes the personal liberty or life of another person, the act will certainly come under the ambit of Article 21.

Article 21 of the Constitution deals with prevention of encroachment upon personal liberty or deprivation of life of a person. The state cannot be defined in a restricted sense. It includes Government Departments, Legislature, Administration, Local Authorities exercising statutory powers and so on so forth, but it does not include non-statutory or private bodies having no statutory powers. For example: company, autonomous body and others. Therefore, the fundamental right guaranteed under Article 21 relates only to the acts of State or acts under the authority of the State which are not according to procedure established by law. The main object of Article 21 is

1 Article 21 of the Constitution of India
that before a person is deprived of his life or personal liberty by the State, the procedure established by law must be strictly followed. Right to Life means the right to lead meaningful, complete and dignified life. It does not have restricted meaning. It is something more than surviving or animal existence. The meaning of the word life cannot be narrowed down and it will be available not only to every citizen of the country. As far as Personal Liberty is concerned, it means freedom from physical restraint of the person by personal incarceration or otherwise and it includes all the varieties of rights other than those provided under Article 19 of the Constitution. Procedure established by Law means the law enacted by the State. Deprived has also wide range of meaning under the Constitution. These ingredients are the soul of this provision. The fundamental right under Article 21 is one of the most important rights provided under the Constitution which has been described as heart of fundamental rights by the Apex Court.

The scope of Article 21 was a bit narrow till 50s as it was held by the Apex Court in Gopalans case that the contents and subject matter of Article 21 and 19 (1) (d) are not identical and they proceed on total principles. In this case the word deprivation was construed in a narrow sense and it was held that the deprivation does not restrict upon the right to move freely which came under Article 19 (1) (d). At that time Gopalans case was the leading case in respect of Article 21 along with some other Articles of the Constitution, but post Gopalan case the scenario in respect of scope of Article 21 has been expanded or modified gradually through different decisions of the Apex Court and it was held that interference with the freedom of a person at home or restriction imposed on a person while in jail would require authority of law. Whether the reasonableness of a penal law can be examined with reference to Article 19, was the point in issue after Gopalans case in the case of Maneka Gandhi v. Unjon of India, the Apex Court opened up a new dimension and laid down that the procedure cannot be arbitrary, unfair or
unreasonable one. Article 21 imposed a restriction upon the state where it prescribed a procedure for depriving a person of his life or personal liberty. This view has been further relied upon in a case of Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others as follows: Article 21 requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful. The law of preventive detention has therefore now to pass the test not only for Article 22, but also of Article 21 and if the constitutional validity of any such law is challenged, the court would have to decide whether the procedure laid down by such law for depriving a person of his personal liberty is reasonable, fair and just.

In another case of Olga Tellis and others v. Bombay Municipal Corporation and others, it was further observed: Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right must conform the norms of justice and fair play. Procedure, which is just or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. As stated earlier, the protection of Article 21 is wide enough and it was further widened in the case of Bandhua Mukti Morcha v. Union of India and others in respect of bonded labour and weaker section of the society. It lays down as follows: Article 21 assures the right to live with human dignity, free from exploitation. The state is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly when he belongs to the weaker section of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. Both the Central Government and the State Government are therefore bound to ensure observance of the various social welfare and labour laws enacted by
Parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the directive principles of the state policy.

The meaning of the word life includes the right to live in fair and reasonable conditions, right to rehabilitation after release, right to live hood by legal means and decent environment. The expanded scope of Article 21 has been explained by the Apex Court in some pronouncements and some of them are listed below:

4.3.1 The right to live with human dignity: *Maneka Gandhi's*⁴ case the Court gave a new dimension to Article 21. It held that the right to 'live' is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. Elaborating the same view the Court in *Francis Coralie v. Union Territory of Delhi*,⁵ said that the right to live is not restricted to mere animal existence. It means something more than just physical survival. The right to 'live' is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes "the right to live with human dignity", and all that goes along with it, namely, the bare necessities of life such as, adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human being.

Following *Maneka Gandhi* and *Francis Coralie* cases the Supreme Court in * Peoples Union for Democratic Rights v. Union of India*,⁶ held that non-payment of minimum wages to the workers employed in various Asiad Projects in Delhi was a denial to them of their right to live with basic human dignity and violative of Article 21 of the Constitution. Bhagwati, J. (as he then was) speaking for the majority held that the rights and benefits conferred on the workmen employed by

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⁴ AIR 1981 SC 746.
⁵ AIR 1978 SC 597.
⁶ AIR 1982 SC 1473.
a contractor under various labour laws are "clearly intended to ensure basic human dignity to workmen and if the workmen are deprived of any of these rights and benefits, that would clearly be a violation of Article 21". He held that the non-implementation by the private contractors and non-enforcement by the State Authorities of the provisions of various labour laws violated the fundamental right of workers "to live with human dignity."

This decision has heralded a new legal revolution. It has clothed millions of workers in factories, fields, mines and projects sites with human dignity. They had fundamental right to maximum wages, drinking water, shelter creches, medical aid and safety in the respective occupations covered by the various welfare legislations.

In Chandra Raja Kumari v. Police Commissioner Hyderabad,7 It has been held that the right to live includes right to live with human dignity or decency and, therefore, holding of beauty contest is repugnant to dignity or decency of women and offends Art. 21 of the Constitution. The government is empowered to prohibit the contest as objectionable performance under Section 3 of the Andhra Pradesh Objectionable Performances Prohibition Act, 1956. If it is grossly indecent scurrilous or obscene or intended for blackmailing.

In State of Maharashtra v. Chandrabhan8 the Court struck do'wrt a provision of Bombay Civil Service Rules, 1959, which provided for payment of only a nominal subsistance allowance of Re. 1 per month to a suspended Government Servant upon his conviction during the pendency of his appeal as unconstitutional on the ground that it was violative of Article 21 of the Constitution.

In All India Imam Organization v. Union of India,9 the Supreme Court has held Imams who are incharge of religious activities of Mosque are entitled to emoluments even in absence of statutory provisions in the Wakf Act, 1954. In a number of cases-it has been held that right to if enshrined in Article 21 means

7 AIR 1996 AP 302.
8 (1963) 3 SCC 387.
9 AIR 1993 SC 2086.
right to live with human dignity. The court did not accept the contention of the Wakf Board that since Imams perform religious duties they are not entitled to any emoluments. Whatever may have the ancient concept but it has undergone a change and even Muslim Countries Mosques are subsidised and the Imams are paid their remuneration. Therefore the submission that in our set up or in absence of any statutory provision in the Wakf Act they are not entitled to any remuneration cannot be accepted. Financial difficulties of the institution cannot be above fundamental right of a citizen. If the Boards have been vested with responsibility of supervising and administering the Wakf then it is their duty to arrange resources to pay Imams. The court gave detailed directions to the Government of India and the Central Wakf Board to prepare a scheme for determining the remuneration of Imams of various categories of Mosques and finding out sources of income necessary for the purpose. This should be completed within six months. the society specified in the Constitution. In the circumstances of the case, the Court held that subject to certain safeguards, the appellants were entitled to be released on bail.

In Vincent Parikurlangara v. Union of India\textsuperscript{10} the Supreme Court held that the right to maintenance and improvement of public heath is included in the right to live with human dignity enshrined in Art. 21. A healthy body is the very foundation of all human activities. In a welfare State this is the obligation of the State to ensure the creation and sustaining of conditions congenial to good health.

4.3.2 The right to livelihood: in Olga Tellis v. Bombay Municipal Corporation,\textsuperscript{11} popularly known as the 'pavement dwellers case' a five judge bench of the Court has finally ruled that the word 'life' in Article 21 includes the 'right to livelihood' also.

\textsuperscript{10} (1987) 2 SCC 165.

\textsuperscript{11} AIR 1986 SC 180; (1985) 3 SCC 545.
In that case the petitioners had challenged the validity of Sections 313, 313-A, and 497 of the Bombay Municipal Corporation Act, 1888 which empowered the Municipal Authorities to remove their huts from pavement and public places on the grounded that their removal amounted to depriving them of their right to livelihood and hence it was violative of Article 21. While agreeing that the right to livelihood is included in Article 21 the Court held that it can be curbed or curtailed by following just and fair procedure. It was held that the above Sections of the Bombay Municipal Corporation Act were Constitutional since they imposed reasonable restrictions on the right of livelihood of pavement and slum dwellers in the interest of the general public. Public streets are not meant for carrying on trade or business. However, the Court took a humanistic view and in order to minimise their hardships involved in the eviction it directed the Municipal Authorities to remove them only after the end of the current monsoon season. The Court also directed the Corporation to frame a scheme for demarcating hawking and non-hawking zones and give them licences for selling their goods in hawking zones. Licence in hawking zones cannot be refused except for good reasons.

In LIC of India v. Consumer Education & Research Centre12, it has been held that the "right to life and livelihood" as interpreted in Olga Tellis v. Bombay Municipal Corporation and several other cases by this Court includes the 'right to life insurance policies of LIC of India' and it must be within the paying capacity and means of the insured. The Preamble chapter on Fundamental Rights and directive principles accord right to livelihood as a meaningful life, social security and disablement benefits are integral scheme of socio-economic justice to the people, in particular to the middle class and lower middle class and all affordable people. Life insurance coverage is against disablement or in the event of death of the insured, economic support for the dependants, social security to livelihood of the insured or the dependants. The appropriate life insurance

12 (1996) 5 SCC 482.
policy within the paying capacity and means of the insured to pay premia is one of the social security measures envisaged under the Constitution to make right of life meaningful, worth living and right to livelihood a means for substance. In that case the conditions imposed and denial to accept policies under Table 58 were challenged by the respondent as violative of right to life in Art. 21 of the Constitution. The Supreme Court held that the terms and conditions imposed by the LIC for accepting policy must be just, fair and reasonable. The policy cannot be restricted only to salaried class in Government service or quasi Government bodies or reputed commercial firms. The Court held that such a condition is unconstitutional. However, since Table 58 is severable from rest of the condition the Court held that whole of Table 58 need not be declared unconstitutional.

4.3.3 The right to privacy: In R. Rajagopal v. State of T.N.,13 popularly known as "Auto Shanker case" the Supreme Court has expressly held the "right to privacy", or the right to be let alone is guaranteed by Art. 21 of the Constitution. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right of the person concerned and would be liable in an action for damages. However, position may be differed if he voluntarily puts into controversy or voluntarily invites or raises a controversy.

This rule is subject to an exception that if any publication of such matters are based on public record including court record it will be unobjectionable. If a matter becomes a matter of public record the right to privacy no longer exists and it becomes a legitimate subject for comment by press and media among others. Again, an exception must be carved out of this rule in the interests of decency under Art. 19(2) in the following cases, viz., a female who is the victim of a

13 (1994) 6 SCC 632.
sexual assault, kidnapping, addiction or a like offence should not further be subjected to the indignity of her name and the incident being published in press or media.

The second exception is that the right to privacy or the remedy of action for damage is simply not available to public officials as long as the criticism concerns the discharge of their public duties; not even when the publication is based on untrue facts and statements unless the official can establish that the statement had been made with reckless disregard of truth. All that the alleged contemner needs to do is to prove that he has written after reasonable verification of facts.

The Court, however, held that the judiciary with its contempt powers and the legislature with its privileges stands on different footing.

In this case the editor and the associate Editor of the Tamil Magazine "Nakkheeran" published from Madras moved the Supreme Court and asked for a writ restraining government officials from interfering with their right to publish the autobiography of Auto Shanker who had been convicted for several murders and awarded capital punishment. Auto Shanker had written his autobiography in jail which depicted close relationship between the prisoner and several IAS, IPS and other officials, some of whom were partners in several crimes. The announcement by the Magazine that very soon a sensational life history of Auto Shanker would be published, created panic among several police officials that they might be exposed. They forced him by applying third degree method to write letter addressed to the Inspector General of Prisons that he had not written any such book and it should not be published. The I.G. wrote the publisher that it was false and should not be published.

It is to be noted that the petitioners did not show that they were authorised to publish the book. The question for consideration was whether a citizen could prevent another for writing his autobiography. Secondly, does an authorised piece of writing infringe the citizen's right to privacy. Does the
press have the right to publish an unauthorised account of a citizen's life. 

Thirdly, whether the Government could maintain an action for defamation or put restraint on press not to publish such materials against their officials or whether the officials themselves had the right to do so.

The Court held that the State or its officials have no authority in law to impose prior restraint on publication of defamatory matter. The public officials can take action only after the publication if it is found to be false.

In _State of Maharashtra v. Madhukar Narain_, it has been held that the 'right to privacy' is available even to a woman of easy virtue and no one can invade her privacy. A police Inspector visited the house of one Banubai in uniform and demanded to have sexual intercourse with her. On refusing he tried to have her by force. She raised a hue and cry. When he was prosecuted he told the Court that she was a lady of easy virtue and therefore her evidence was not to be relied. The Court rejected the argument of the applicant and held him liable for violating her right to privacy under Article 21 of the Constitution.

In a landmark judgment, a two-Judge Bench of the Madras High Court held that a minor girl had the right to bear a child. In this case a 16 year old minor girl, Sashikala became pregnant and wanted to have the child against the opposition from her father. The father had filed a case in the Court seeking permission to have the pregnancy medically terminated on the ground that she was legally and otherwise also too young to take the decision to bear the child. It was argued that this would be detriment to the health of the minor mother and the child born of a minor mother and also have a wider social consequences. On the other hand, the public prosecutor, defending the case of the girl, had argued that she had the right to bear the child under the broader "right to privacy". Even a minor had a right to privacy under Art. 21 of the Constitution. He argued that the Indian Constitution does not make any distinction between "minor" and "major" in so far

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14 AIR 1991 SC 207.
15 The Hindustan Times, 3-12-1993.
as fundamental rights were concerned. He argued that Sashikala was a mature minor who is fully conscious of the consequences of bearing and delivering the child. The Court accepted that Sashikala was a minor but did not agree with the petitioner's father, that the delivery in the case of minors was fraught with dangerous medical consequences. "The younger the mother, the better the birth" the Judges said. On the other hand, termination of the first pregnancy could lead to sterility. Quoting extensively from English and American laws and an American decision the bench held that in the case of a mature and understanding minor the opinion of the parent or guardian was not relevant. The Judges also quoted chapter and verse from Christian, Islamic and Hindu texts to show that destruction of human life even in the mother's womb had no moral sanction.

4.3.4 The right against solitary confinement: In Sunit Batra (No. 1) v. Delhi Administration the important question raised before the Supreme Court was whether 'solitary confinement' imposed upon prisoners who were under sentence of death was violative of Articles 14, 19 20 and 21 of the Constitution. In this case the two convicts who were confined in Tihar Central Jail filed two petitions under Article 32, challenging the validity of Section 30 and Section 56 of the Prisons Act. Sunil Batra was sentenced to death by the District and Sessions Judge and his sentence was subject to the confirmation by the High Court and to a possible appeal to the Supreme Court. Batra complained that since by date of his conviction by Session Judge that was on 6th July, 1976 he was kept in solitary confinement till the Supreme Court intervened on 24th February, 1978. Charles Sobhraj, a foreigner, an under-trial prisoners challenged the action of the Superintendent of Jail putting him into bar fetters. He was arrested on 6th July, 1976 and detained under Section 3 of MISA. Since the time he was lodged in Jail he was put in bar fetters notwithstanding the recommendation of the jail doctor that bar fetters be removed. It was contended that Section 30 did not

16 AIR 1978 SC 1575. See also Sunit Batra (No. 2) v. Delhi Administration, AIR 1980 SC 1579.
authorise prison authorities to impose the punishment of solitary confinement. The Supreme Court accepted the argument of the petitioners and held that Section 30 of the Prison Act did not empower the prison authorities to impose solitary confinement upon a prisoner under sentence of death. Under Section 73 and Section 74, I.P.C., solitary confinement is itself a substantive punishment which can be imposed by a court of law. It cannot be left within the caprice of prison authorities. The Court held that the expression "prisoner under sentence of death" in the context of Section 30(2) could only mean the prisoner whose sentence of death had become final and could not be annulled or violated by any judicial or constitutional procedure. Thus a prisoner was not under sentence of death till he had the right to appeal against this sentence or to appeal for mercy. If by imposing solitary confinement there is total deprivation of comradeffie (friendship) amongst co-prisoners comingling and talking and being talked to, it would offend Article 21 of the Constitution. The liberty to move, mix, mingle, talk, share company with co-prisoners if substantially curtailed would be violative of Article 21 unless curtailment has the backing of law. Although solitary confinement was held to be violative of Article 21, Section 30 was held to be valid because the procedure prescribed under it for the curtailment of prisoner's liberty in jail, was fair and just within the meaning of Article 21. If Section 30 is interpreted in this manner its obnoxious element is removed and it cannot be said that there is deprivation of personal liberty without the authority of law. In the case of Charles Sobhraj it was contended that Section 56 of the Prison Act justified putting him into bar fetters. The petitioner contended that Section 56 was violative of Articles 14 and 21 as conferred unguided and arbitrary powers on the Superintendent to confine a prisoner in irons. The Court held that continuously keeping a prisoner in fetters day and night reduces the prisoner from a human being to an animal and that this treatment was cruel and unusual that the use of bar fetters was against the spirit of the Constitution. Section 56 lays down certain conditions under which it can be done. Since these conditions were not
present in the instant case therefore putting bar fetter cannot be justified. Section 56 is however valid. The petitions were therefore dismissed.

4.3.5 The right against hand cufing: In Prem Shankar v. Delhi Administration\(^\text{17}\), the Supreme Court added yet another projectile in its armory to be used against the war for prison reform and prisoners rights. In that case the validity of certain clauses of Punjab Pocie Rules were challenged as violation of Arts. 14, 19 and 21 of the Constitution. Krishna Iyer, J., delivering the majority judgment held that provisions in paras 26, 22 that every under-trial who was accused of a non-bailable offence punishable with more than three years jail-term would be handcuffed, were violative of Arts. 14, 19, 21 of the Constitution. Handcuffing should be resorted to only when there is 'clear and present danger of escape'\(^\text{18}\) breaking out the police control and for this there must be clear material, not merely an assumption. In special circumstances the application of iron is not ruled out. But even where in extreme cases, handcuffing is to be put on the prisoner, the escorting authority must record simultaneously the reasons for doing so otherwise under Art. 21 of the procedure would be unfair and bad in law. This is implicit in Art. 21 which insists upon, fairness, reasonableness and justice in the procedure for deprivation of life and liberty. His Lordship said:—

"Handcuffing is *prima facie* inhuman and, therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring, to inflict 'irons' is to resort to zoological strategies repugnant to Art. 21......."\(^\text{19}\)

In Sunil Gupta v. State ofM.P.\(^\text{18}\), the petitioners were educated persons and social workers, who were remanded to judicial custody were taken to court from jail and back from court to the prison by the escort party handcuffed. They had staged a 'dharma' for a public cause and voluntarily submitted themselves for

\(^{17}\) AIR 1980 SC 1635.
\(^{18}\) (1990) 3 SCC 119.
arrest. They had no tendency to escape from the jail. In fact, they even refused to come out on bail but chose to continue in prison of the public cause. It was held that this act of the escort party was violative of Art. 21 of the Constitution. There was no reason recorded by the escort party in writing for this inhuman act. The Court directed the Government to take appropriate action against the erring escort party for having unjustly and unreasonably hand-cuffing the petitioner.

In *Citizen for Democracy v. State of Assam*\(^\text{10}\) the Supreme Court expressed serious concern over the violation of the law laid down by that Court in *Prem Shankar Shukla* 's case against handcuffing of under trial or convicted prisoners by the police authorities. In the instance case, Mr. Kuldip Nayar an eminent journalist in his capacity as president of "Citizen for Democracy" through a letter brought out the notice of the Court that the seven TADA detainees lodged in the hospital in the State of Assam were handcuffed and tied with a long rope to check their movement. Security guards were also posted outside the hospital. The Court treated the letter as a petition under Art. 32 of the Constitution and held that handcuffing and in addition tying with ropes of the patient-prisoners who are lodged in the hospital is inhuman and in violation of human rights guaranteed to an individual under international law and the law of the land. Where a person is arrested by the Police without warrant and the police officer is satisfied on the basis of the above guidelines that it is necessary to handcuff such a person he may do so till the time he is taken to the police station and thereafter his production before the Magistrate. Further use of fetters thereafter can only be under the orders of the Magistrate. The Magistrate may grant the permission to handcuff the prisoner in rare case. The Court clearly pointed out that any violation of directions from law.

\(^{10}\) (1995) 3 SCC 743.
4.3.6 The right against delayed execution: In *T. V. Vatheeswaran v. State of Tamil Nadu*\(^{20}\), a two-Judge Bench of the Supreme Court held that delay in execution of death sentence exceeding 2 years would be sufficient ground to invoke the protection of Art. 21 and the death sentence would be commuted to life imprisonment. In *Sher Singh v. State of Punjab*\(^{21}\) the three-Judge Bench of the Court agreed with this view that prolonged delay in the execution of a death sentence was an important consideration for invoking Art. 21 for judging whether sentence should be allowed to be executed or should be converted into sentence of imprisonment. Prolonged detention to await the execution of a sentence of death is an unjust, unfair and unreasonable procedure and the only way to undo the wrong is to quash the death sentence. However, the Court held that this cannot be applied as a rule in every case and each case should be decided on its own facts. The Court should consider whether the delay was due to the conduct of the convict (where he pursues series of legal remedies), the nature of offence, its impact on the society, its likelihood of repetition, before deciding to commute the death penalty into a sentence of life imprisonment. In the instant case the delay was found to be due to the conduct of the convict and therefore it was held that the death sentence was not liable to be quashed. Accordingly, the Court overruled the decision in *T. V. Vatheeswaran v. State of Tamil Nadu*.

But where there is delay in execution of death sentence of more than 2 years and the conduct and behaviour of the accused in the jail, evident form the report of the jail authorities show that he was showing genuine repentance it was held that the death sentence could be commuted to life imprisonment.\(^{22}\)

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\(^{20}\) AIR 1981 SC 543.

\(^{21}\) AIR 1983 SC 466.

Finally, in *Triveni Ben v. State of Gujarat* 23 a five judge Bench of the Supreme Court has set the matter at rest and held that undue long delay in execution of the death sentence will entitle the condemned person to approach the Court for conversion of death sentence into life imprisonment, but before doing so the Court will examine the nature of delay and circumstances of the case. *No fixed period of delay could be held to make the sentence of death inexecutable.* In the present case the death penalty of the accused was converted into life imprisonment.

In *Francis Coralie v. Union Territory of Delhi,* 24 the Supreme Court held that the detenu's right to have interview with his lawyer and family member is part of his 'personal liberty' guaranteed by Art. 21 of the Constitution and cannot be interfered with except in accordance with reasonable, fair and just procedure established by law. In that case the validity of the provisions of the COFEPOSA which provided that a detenu can have interview with his lawyer only after obtaining prior permission of the District Magistrate, and that too, in the presence of the custom officer, and, permitted interview of the family members only once in the month, were challenged on the ground that they were arbitrary and unreasonable and violative of Arts. 14 and 21. The Court held that the provisions of the COFEPOSA which permitted only one interview in a month to detenu with members of his family were violative of Arts. 14 and 21 and unconstitutional and void. The word "personal liberty" in Art. 21 is of the widest amplitude and it includes the "right to socialise" with members of family and friends, subject of course, to any valid prison regulations which must be reasonable and non-arbitrary.

The provision which restricts the interview only to once in a month is unreasonable and arbitrary particularly when a detenu stands on a higher footing than an under-trial prisoner or a convict. A detenu must be permitted to

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24 AIR 1981 SC 746.
have at least two interviews in a week with relatives and friends with the prior permission of the District Magistrate. On the same reasoning the provisions regarding permission to have interview with a legal lawyer was also held to be unconstitutional because it would cause great hardship and inconvenience to the lawyer who could have to apply to the D.M. well in advance and the time fixed the D.M. might not be suitable to the lawyer. Moreover, the interview must be taken in the presence of a custom officer and if he did not, for any reason attend the interview as had happened on several occasions the interview could not be held at all and the lawyer would have to go back without meeting the detenu and the entire procedure would have to be repeated again for applying to the D.M. Thus this requirement renders the right to consult a legal advisor illusory. The right of detenu to consult a legal advisor of his choice for any purpose including securing release from preventive detention is included in the right to live with human dignity and is also part of personal liberty and cannot be interfered with except in accordance with reasonable, fair and just procedure established by a valid law.

In Madhu Mehta v. Union of India28, the mercy petition of the petitioner who was sentenced to death was pending before the President of India for about 8 or 9 years. This matter was brought to the notice of the Court by one Madhu Mehta, the National Convenor of Hindustani Andolan. Following Triveniben's decision the Court directed the death sentence to be commuted to life imprisonment as there were no sufficient reasons to justify such a long delay in disposal of the convict's mercy petition. Speedy trial in criminal cases is implicit in the broad sweep and content of Art. 21. This principle is no less important for disposal of mercy petitions.

4.3.7 The right to shelter: *Chameli Singh v. State of U.P.*\(^{20}\) it has been held that the right to shelter is a fundamental right under Art. 21 of the Constitution. In any organised society, the right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to benefit himself. Right to live guaranteed in any civilised society implies the right to food, water decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without the basic human rights. Shelter for human being, therefore, is not a mere protection of his life and limb. It is home where he had opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter therefore, includes adequate living peace, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being.

In view of the importance of the right to shelter, the mandate of the Constitution, and the obligation under the Universal Declaration of Human Right, the Court held that it is the duty of the State to provide housing facilities to Dalits and Tribes, to enable them to come into the mainstream of national life.

4.3.8 The right against illegal arrest and custodial death: In *Joginder Kumar v. State of U.P.*\(^{27}\) the Supreme Court has laid down guidelines governing arrest of a person during investigation. This has been done with a view to strike a balance between the needs of police on the one hand and the

\(^{20}\) *AIR 1997 Bom. 349.*

\(^{27}\) (1994) 4 SCC 280.
protection of human rights of citizens from oppression and injustice at the hands of law enforcing agencies.

The Court has held that a person is not liable to be arrested merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the police officer effecting the arrest that such arrest was necessary and justified. In the instant case, a practising lawyer was called to the police station in connection with a case under inquiry on 7.1.1994. On not receiving any satisfactory account of his whereabouts the family member of the detained lawyer filed a habeas corpus petition before the Supreme Court and in compliance with the notice, the lawyer was produced on 14.1.1994 before the Court. The police contended that the lawyer was not in detention but was only assisting the police to detect some cases. The Court held that though at this stage the relief in habeas corpus could not be granted yet the Supreme Court laid down certain requirements to be followed by the police before arresting a person.

Following are the guidelines laid down by the Court—

(1) An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to have an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.

(2) Police officer shall inform the arrested person when he is brought to the police station of this right.

(3) An entry shall be required to be made in the Diary as to who was informed of the arrest.

These protections from power flow from Art. 21 and Art. 22 of the Constitution and therefore they must be enforced strictly.
In a landmark judgment of Nilabati Behera v. State of Orissa, the Supreme Court awarded compensation of Rs. 1,50,000 to the mother of the deceased who died in the police custody due to beating. In that case, the deceased aged about 22 years was taken into police custody at about 8 a.m. on Dec. 1, 1987 by ASI in connection with the investigation of an offence of theft in village and detained at the Police outpost. He was handcuffed, tied and kept in custody in the police station. His mother went to the police station at about 8 p.m. with food for him which he ate. At about 2 p.m. on Dec. 2 the petitioner came to know that the dead body of her son with a handcuff and multiple injuries was found lying on the railway track. The police version was that the deceased had escaped from police custody at about 3 a.m. by chewing off the rope and thereafter his body was found at the railway track. On the basis of evidence and medical report it was found that the deceased had died due to beating and the Court awarded Rs. 1,50,000 as compensation to the deceased's mother.

4.3.9 The right to speedy trial: In Hussainara Khatoon (No. 1) v. Home Secretary, State of Bihar, a petition for a writ of habeas corpus was filed by number of under-trial prisoners who were in jails in the State of Bihar for years awaiting their trial. The Supreme Court held that "right to a speedy trial" a fundamental right is implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution. Speedy trial is the essence of criminal justice. In United States speedy trial is one of the constitutionally guaranteed right under the sixth amendment. Bhagwati, J. (as he then was) held that although, unlike the American Constitution speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted in

Maneka Gandhi’s case. No procedure which does not ensure a reasonable quick trial can be regarded as 'reasonable, fair or just'. For this reason the Court ordered the Bihar Government to release forthwith the under-trial prisoners on their personal bonds. In Husainara Khatoon (No. 2)\textsuperscript{30} and Husainara Khatoon (No. 3)\textsuperscript{31} cases the Court reiterated the same view. In a significant judgment in Abdul Rehman Antuley v. R.S. Nayak,\textsuperscript{75} the Supreme Court has laid down detailed guidelines for speedy trial of an accused in a criminal case but it declined to fix any time limit for trial of offences. The burden lies on the prosecution to justify and explain the delay. The 'court held that the right to speedy trial flowing from Article 21 is available to accused at all stages namely the stage of investigation, inquiry, trial, appeal, revision and retrial.

The concerns underlying the right to speedy trial from the point of view of the accused are:—

(a) the period of remand and pre-conviction detention should be as short as possible. In other words the accused shall not be subjected to unnecessary or unduly long detention point of his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace resulting from an unduly prolonged investigation, inquiry or trial shall be minimal; and

(c) undue delay may result in impairment of the ability of the accused to defend himself whether on account of death, disappearance or non-availability of witnesses or otherwise.

The court said that the accused cannot be denied the right of speedy trial merely on the ground that he had failed to demand a speedy trial.

As regards the time limit the Court said that it has to be decided by balancing the attendant circumstances and relevant factors, including nature of offence, number of accused and witnesses, the workload of the court etc. No

\textsuperscript{30} AIR 1979 SC 1369.
\textsuperscript{31} AIR 1992 SCI 630.
time limit can be fixed for speedy trial. If the court comes to the conclusion that the right to speedy trial of an accused has been infringed the charges for the conviction shall be quashed. But this is not the only course open. The nature of offence and other circumstances may be such that quashing of proceedings may not be in the interest of justice. In such case it may make an order that the trial may be concluded within a fixed time and where it is concluded reducing the sentence.

In Raghbir Singh v. State of Bihar, the accused persons who were being tried for waging war against the State filed writ petitions under Article 136 before the Supreme Court for quashing the proceedings before the Special Judge on the ground of violation of their right to speedy trial under Article 21 of the Constitution. The Court held that there was no delay in investigating and trial of their cases warranting the quashing of proceeding against them. The Court held that the right of a speedy trial is one of the dimensions of the fundamental right to life and liberty guaranteed by Article 21. In the instant case, it was found that the delay was caused due to the tactics of the accused as they did assert their rights which was evident from the number of petitions filed before the Magistrate, and the special judge from time to time. The delay in investigation and trial was the outcome of the nature of the case and the general situation prevailing in the country.

In Sunil Batra (No. 2) v. Delhi Administration, it was held that the practice of keeping under-trials with convicts in jails offended the test of reasonableness in Art. 19 and fairness in Art. 21. The under-trials are presumably innocent until convicted and if they are kept with criminals in jail it violates the test of fairness of Art. 21. Krishna Iyer, J., delivering the majority judgment, held that integrity of physical person and his mental personality is an important right of a prisoner, and must be protected from all kinds of atrocities. In that case the petitioner did not
seek his release from the jail because he was undergoing a sentence of life imprisonment but he did seek protection from inhuman and barbarous treatment inflicted upon him in jail. The petitioner was subjected to physical torture by a warden of the Tihar Jail as means to extract money from the petitioner. Batra, a convict, came to know this act and brought the incident to the knowledge of the Court through a letter. The Court converted this letter into a *habeas corpus* petition and approved and reiterated the specific guidelines laid down by this Court in *Sunil Batra's case (No. I)*\(^{34}\) before punishing a prisoner. The Court gave following directions to the Central and State Governments and the Jail authorities:— (1) that the petitioner's torture was illegal and he shall not be subjected to any such torture until fair procedure is complied with. (2) No corporal punishment or personal violence on the petitioner shall be inflicted. (3) Lawyers nominated by the D.M., Session Judge, High Court and the Supreme Court will be given all facilities to interview, right to confidential communications with prisoners, subject to discipline and security considerations. Lawyers shall make periodical visit and report the concerned Court the result of their visits. (4) Grievance deposit boxes shall be maintained in jails which shall be opened by D.M. and the Sessions Judges frequently. Prisoners shall have access to such boxes. (5) D.M. and Sessions Judges shall inspect jails once every week, shall make enquires into grievances remedial, and take suitable actions. (6) No solitary or punitive cell, no hard labour or dialatory charge, denial of privileges and amenities, no transfer to other prison as punishment shall be imposed without judicial approval of the Sessions Judge.

4.3.10 *Right to health and Medical Assistance:* In *Parmananda Katara v. Union of India*\(^{35}\), it has been held that it is the professional obligation of all doctors, whether *government* or *private*, to extend medical aid to the injured

\(^{34}\) *AIR* 1978 SC 1275.
\(^{35}\) *AIR* 1989 SC 2039.
immediately to preserve life without waiting legal formalities to be complied with by the police under Cr.P.C. Article 21 of the Constitution casts the obligation on the State to preserve life. It is the obligation of those who are in charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence which amounts legal punishment. No law or State action can intervene to delay the discharge of this paramount obligation of the members of the medical profession. The obligation being total, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way. The Court directed that in order to make everyone aware of this position the decision of the Court must be published in all journals reporting decisions of this Court and adequate publicity highlighting these aspects should be given by the national media. The Medical Council must send copies of this judgment to every medical college affiliated to it. This is a very significant ruling of the Court. It is submitted that if this decision of the Court is followed, in its true spirit it would help in saving the lives of many citizens who die in accidents because no immediate medical aid is given by the doctors on the ground that they are not authorised to treat medico-legal cases. Let us hope that all doctors (Government or private) of this country should follow this ruling of the Court earnestly.

In Pas chimpan Bang Khet Mazdoor Samiti v. State of W.B.36 following Permanand Katara’s ruling the Supreme Court has held that denial of medical aid by governments’ hospitals to an injured person on the ground of non-availability of beds amounted to violation of right to life under Art. 21 of the Constitution. In this case, the petitioner, Hakim Singh, who was a member of an organisation of agricultural labourers, had fallen from a running train and had suffered serious head injuries and brain haemorrhage. He was taken to various government hospitals in the city of Calcutta but because of nonavailability of bed he was not

admitted. Ultimately he was admitted in a private hospital as an indoor patient and he had to incur an expenditure of Rs. 17,000 in his treatment. The Supreme Court held that Art. 21 imposes an obligation on the State to provide medical assistance to every injured person. Preservation of human life is of paramount importance. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Art. 21 of the Constitution. The Court directed the State to pay Rs. 25,000 to the petitioner as compensation.

In a historic judgment in Consumer Education and Research Centre v. Union of India, the Supreme Court has held that the right to health and Medical care is a fundamental right under Art. 21 of the Constitution as it is essential for making the life of the workman meaningful and purposeful with dignity of person. "Right to life" in Art. 21 includes protection of the health and strength of the worker. The expression 'life' in Art. 21 does not connote mere animal existence. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic conditions in workplace and leisure.

The Court held that the State, be it Union or State Government or an industry, public or private is enjoined to take all such action which will promote health, strength and vigour of the workmen during period of employment and leisure and health even after retirement as basic essentials to life with health and happiness. The right to life with human dignity encompasses within its fold, some of the finer facets of human civilization which makes life worth living.

Health of the worker enables him to enjoy the fruit of his labour. Medical facilities to protect the health of workers are, therefore, the fundamental human rights to make the life of workman meaningful and purposeful with dignity of person.

\(^{37}\) (1995) 3 SCC 42.
The Court made it clear that all authorities or even private persons or an industry are bound by the directions issued by the Court in this regard under Arts. 32 and 142 of the Constitution.

The Court, accordingly, laid down the following guidelines to be followed by all asbestos industries (in the country there are about 74 asbestos industries).

(1) All asbestos industries must make health insurance of workers employed in industry.

(2) Every worker suffering from occupational health hazards would be entitled for compensation of Rs. 1 lakh.

(3) All asbestos industries must maintain the health record of every worker upto a minimum period of 40 years from the beginning of the employment or 15 years after retirement or cessation of the employment whichever was later.

(4) "Membrane filter test" to detect asbestos fiber should be adopted by all the factories at par with Metalliferous Mines Regulations, 1961 and Vienna Convention.

(5) All the factories whether covered by the Employees State Insurance Act, or Workmen's Compensation Act or otherwise, should insure health coverage to every worker.

The Court further directed the Centre and all the State Governments to review after every 10 years or when the International Labour Organisation gives direction in this regard the standards of permissible exposure limit value of fibre in tune with the international standard.

The Court also directed the authorities to consider inclusion of such of those small scale industries, factories to protect health hazards of workers engaged in the manufacture of asbestos or its ancillary products.
In *Kirloskar Brothers Ltd. v. Employees' State Insurance Corp* the Supreme Court, following the *Consumer Education & Research Centre's case*, has held that 'right to health' is a fundamental right of the workmen. The Court also held that this right is which is a world renowned pilgrim centre and the only source of water for that area. The lakhs of pilgrims visit Tirupathi every year. The Government of Andhra Pradesh issued orders for alienation of Avilala tank bed area to Andhra Pradesh Housing Board for housing purposes. The society filed a writ petition in the High Court challenging the Government's orders allocating tank bed area land to Andhra Pradesh Housing Board. On behalf of the Government, it was contended that the High Court dismissed the petition on the ground that there was no illegality in the action of the Government. The Supreme Court reversed the decision of the High Court and stayed the Government order for alienating lands in the vicinity of the above tanks and directed the Board to stop further construction. The Court held that the above tanks are important for protection of environment and supply of water to those areas.

The Government is responsible to protect and preserve historical tanks on the basis of 'sustainable development' and 'public trust' and under Articles 21 and 48A and 51A it is the constitutional obligation of the Government. 'Sustainable development' as defined in the World Commission on Environment and Development Report, means development that meets the needs of the present without compromising ability of future generations to meet their own needs. The Court referred the Stockholm Convention to which India is a party. The Indian Courts have also recognised the concept of sustainable development in its several decisions. Second principle which the Court has recognised is the doctrine of 'Public Trust'. In modern sense it means that 'the bed or soil of navigable waters is held by the people of the State in their character as sovereign in trust for public uses for which they are adopted. This doctrine says

that "natural resources", which includes lakes are held by the State as a "trustee" of public, and can be disposed of only in a manner that is consistent with nature of such trust". Article 48-A of the Constitution of India mandates that the State shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51A of the Constitution enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve national environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. These two Articles are not only fundamental in the governance of the country but also it shall be duty of the State to apply these principles in making laws.

Regarding the argument of the Government that the suit land was proposed to be acquired for constructing the houses for the people as right to shelter is a valuable right of citizens. The Court held that the right of shelter is not so pressing need so as to outweigh all environmental considerations. Even if the proposed constructions are not carried out no one will be left houseless. The fact that the party has spent money on developing the land is immaterial. The Court directed that with regard to the feasibility of revival of the two lands in Terupathi and prohibited further construction.

4.3.11 Right to free legal aid: In M.H. Hoskot v. State of Maharashtra, the Supreme Court applied the ruling of Maneka Gandhi's case. In that case petitioner, who was a Reader holding M.Sc. and Ph.D. Degrees was convicted for the offence of attempting to issue counterfeit university degree. The scheme was, however, foiled. He was tried by the Sessions Court which found him guilty of grave offences but took a very lenient view and sentenced him to simple imprisonment till the rising of the court. The High Court allowed the State appeal and enhanced punishment to three years. The High Court Judgment was pronounced in November, 1973, but the special leave petition was filed in the

39 AIR 1978 SC 1548.
Supreme Court by the petitioner after 4 years. The petitioner had undergone his full term of punishment. The explanation given by him for the condonation of delay was that he was given the copy of the judgment of 1973 only in 1978. It was disclosed that although a free copy of the order had been sent promptly by the High Court meant for the applicant, to the Superintendent of the Jail but he claimed that he never received it. The Superintendent claimed that the copy had been delivered to him but later it was taken back for the purpose of enclosing it with a mercy petition to the Government for remission of sentence. The Supreme Court, although dismissed the special leave application because of the settled practice that the Court could not interfere with the concurrent findings of the two lower courts but it thought it proper to make the legal position clear. The Court held that 'a single right of appeal' on facts, where the conviction is fraught with long loss of liberty, is basic to civilised jurisprudence. "One component of fair procedure is natural justice". Every step that makes the right of appeal fruitful is obligatory and every action or inaction which stultifies it is unfair and therefore offends Article 21. There are two ingredients of a right of appeal: (1) service of a copy of a judgment to the prisoner in time to enable him to file an appeal, and (2) provision of free legal service to a prisoner who is indigent or otherwise disabled from securing legal assistance. These are State responsibilities under Article 21. Any Jailor who by indifference or vendetta, withholds the copy thwarts the court process and violates Article 21 and may make the further imprisonment illegal. He suggested that the Jail Manuals should be updated and should include this mandate and the State must make available a copy of the judgment to the prisoner. Regarding the right to free legal aid, Krishna Iyer, J., declared, "This is the State's duty and not Government's charity." If a prisoner is unable to exercise his constitutional and statutory right of appeal including special leave to appeal for want of legal assistance, there is implicit in the court under Article 142, read with Articles 21 and 39-A of the Constitution, the power to assign counsel to the prisoner provided he does not object to the lawyer
named by the court. Equally, is the implication that the State which sets the law in motion must pay the lawyer an amount fixed by the Court.

In State of Maharashtra v. Manubhai Pragaji Vashi,\textsuperscript{40} the Court has considerably widened the scope of the right to free legal aid. The Court held that in order to provide "the free legal aid" it is necessary to have well-trained lawyers in the country. This is only possible if there are adequate number of law colleges with necessary infrastructure, good teachers and staff. Since the Government is unable to establish adequate number of law colleges, it is the duty of the Government to permit establishments of duly recognized appellant was tried and sentenced to two years imprisonment under Section 506 read with Section 34, IPC. He was not represented at the trial by any lawyer by reason of his inability to afford legal representation. The High Court held that the trial was not vitiated since no application was made by him. On appeal the Supreme Court set aside the conviction on the ground that he was not provided legal aid at the trial which was violative of Art. 21 of the Constitution.

In Veena Sethi v. State of Bihar,\textsuperscript{41} the Free Legal Aid Committee Hazaribagh brought to the notice of the Court through a letter about the illegal detention of certain prisoners in the Hazaribagh Jail for two or three decades without any justification. At the time of their detention prisoners were declared insane but afterwards they became sane but due to the inaction of authorities to take steps to release them they remained in jails for 20 to 37 years. It was held that the prisoners remained in jail for no fault of theirs but because of callous and lethargic attitude of the authorities and therefore entitled to be released forthwith.

\textsuperscript{40} (1995) 5 SCC 730.
\textsuperscript{41} AIR 1983 p. 339.
4.3.12 Right against inhuman treatment: In Kishore Singh v. State of Rajasthan the Supreme Court held that the use of "third degree" method by police is violative of Art. 21 and directed the Government to take necessary steps to educate the police so as to inculcate a respect for the human person. The court also held that the punishment of solitary confinement for a long period from 8 to 11 months and putting bar fetters on the prisoner in jail for several days on flimsy ground like "loitering in the prison", "behaving insolently and in an uncivilised manner", "tearing of his history ticket" must be regarded as barbarous and against human dignity and hence violative of Arts. 21, 19 and 14 of the Constitution. Section 46 of the Prisons Act and Rajasthan Prison rules must be in conformity with Art. 21. "Human dignity is a clear value of our Constitution not to be bartered away for mere apprehension entertained by jail officials, " declared, Krishna Iyer, J. Similarly, torture and ill-treatment of women suspects in police lockups has been held to be violative of Art. 21 of the Constitution. The Court gave detailed instruction to concern authorities for providing security and safety in police lockup and particularly to women suspects. Female suspects should be kept in separate police lockups and not in the same in which male accused are detained and should be guarded by female constables. The Court directed the I.G. Prisons and State Board of Legal Aid Advice Committee to provide legal assistance to the poor and indigent accused (male and female) whether they are under-trial or convicted prisoners.

4.3.13 Right to education: In a landmark judgment in Mohini Jain v. State of Karnataka, popularly known as the "Capitation Fee case" the Supreme Court has held that the right to education is a fundamental right under Article 21 of the Constitution which cannot be denied to a citizen by charging higher fee known as the capitation fee. The right to education flows directly from right to life. The.

42 AIR 1981 SC 625.
44 (1992) 3 SCC 666.
to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. In this case the petitioner Miss Mohini Jain of Meerut, Uttar Pradesh had challenged the validity of a Notification issued by the government under the *Kamataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984* which was passed to regulate tuition fee to be charged by the private Medical Colleges in the State. Under the Notification the tuition fee to be charged from students was as follows: Candidates admitted against Government seats Rs. 2,000 per year, the Kamataka Students Rs. 25,000 per annum and students from outside Kamataka Rs. 60,000 per annum. The petitioner was denied admission on the ground that she was unable to pay the exorbitant tuition fee of Rs. 60,000 per annum. The two judge Division Bench consisting of Justice Kuldip Singh and R.N. Sahai, held that the right to education at all level is a fundamental right of citizen under Article 21 of the Constitution and charging capitation fee for admission to educational institutions is illegal and amounted to denial of citizen's right to education and also violative of Article 14 being arbitrary, unfair and unjust. Capitation fee makes the availability of education beyond the reach of poor. The right to education is concomitant to the fundamental rights enshrined under Part III of the Constitution. The fundamental right to speech and expression cannot be fully enjoyed unless a citizen is educated and conscious of his individualistic dignity. The education in India has never been a commodity for sale, their Lordships declared.

In *Unni Krishnan v. State ofA.P.* 45, the Supreme Court was asked to examine the correctness of the decision given by the Court in *Mohini Jain’s case*. The petitioners running Medical and Engineering Colleges in the State of Andhra Pradesh, Kamataka, Maharashtra and Tamil Nadu contended that if *Mohini Jain* decision is correct and followed by the respective State Government they will have to close down their colleges. The five Judge bench by 3-2 majority partly agreed with the *Mohini Jain* decision and held that right to education is a

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45 (1993)1 SCC 645
fundamental right under Article 21 of the Constitution as 'it directly flows' from right to life. But as regards its content the court partly overruled the Mohini Jain's case and held that the right to free education is available only to children until they complete the age of 14 years, but after that the obligation of the State to provide education is subject to the limits of its economic capacity and development. The obligations created by Articles 41, 45 and 46 can be discharged by the State either establishing its own institutions or by aiding, recognising or granting affiliation to private institutions. Private educational institutions are a necessity in the present day context. Mohini Jain's case was not right in holding that charging of any amount must be described as capitation fee. Saying so amounts to imposing an impossible condition. It is not possible for the private educational institutions to survive if they charge fee prescribed by government institutions. The private section's sector should be involved and encouraged in the field of education. But they must be allowed to do so under strict regulatory controls in order to present private educational institutions from commercialising education. The charging of the permitted fees by the private educational institutions which is bound to higher than charged by in similar government institutions cannot itself be characterised as capitation fee. The majority, accordingly held that admission to all recognised private educational institutions particularly medical and engineering shall be based on merit, but 50 per cent of seats in all professional colleges be filled by candidates prepared to pay a higher fee. The court held that there shall be no quota reserved for the management or for any family, caste or community which may have established such college. The criteria of eligibility and all other conditions shall be the same in respect of both free seats and payment seats, the only distinction shall be requirement of higher fee by payment students. The Court evolved a scheme which would provide more opportunities to meritorious students who are unable to pay higher fee prescribed by Government for such colleges. In TMA Pal Foundation v.
State of Karnataka, an 11 Judge Constitution Bench of the Supreme Court has overruled the Unni Krishnan decision partly. The Court held that the scheme relating to admission and the fixing of fee were not correct and, to that extent, they are overruled.

4.4 RIGHT TO EDUCATION A FUNDAMENTAL RIGHT (ART. 21A.)

The Constitution (86th Amendment) Act, 2002 has added a new Article 21A after Article 21 and has made education for all children of the age of 6 to 14 a fundamental right. It provides that "the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine."

It is well known that education is a basic human right. For the success of democratic system of government, education is one of the basic elements. An educated citizen has to choose the representatives who form the government. Education gives a person human dignity who develops himself as well as contributes to the development of his country. The framers of the Constitution realising the importance of education have imposed a duty on the State under Art. 45 as one of the directive policy of State to provide free and compulsory education to all children until they complete the age of 14 years within 10 years from the commencement of the Constitution. The object was to abolish illiteracy from the country. It was expected that the elected governments of the country would honestly implement this directive. But it is unfortunate that even after the lapse of 52 years from the commencement of the Constitution they did not take any concrete steps to implement this directive and 40% population of the country is still illiterate. The framers perhaps were of the view that in view of the financial condition of a new state it was not feasible to make it a fundamental right under Part III of the Constitution, but included it in Chapter IV as one of

1 AIR 2003 SC 355.
the directive principles of State Policy. But the politicians of our country belied the hope of the framers of the Constitution.

In the meantime, the Supreme Court in Unnikrishnan case declared that the right to education for the children of the age of 6 to 14 is a fundamental right. Even after this, there was no improvement. A demand was being raised from all corners to make education a fundamental right. Consequently, the government enacted Constitution (86th Amendment) Act, 2002 which would make education a fundamental right.

The question arises as to how this gigantic project would be implemented. The population of the country has considerably increased and the number of children of age from 6 to 14 years are in crores. The government does not have money, at present, to run its own educational institutions. In the area of education it is emphasizing on privatisation. Majority of higher secondary schools are run by private persons where there is no provision for free education. They charge high fee. Only rich persons can afford to send their children to these schools. When the education will become a fundamental right a citizen would go to the court for enforcement of his right and the Court would be obliged to give an order for its enforcement. But if there are no schools how would the government implement it? Making education compulsory would not solve the problem. The only alternative is to encourage non-governmental organisations to come forward and participate in it to fulfil the mandate of the Constitution. Of course, the government must help them and see that teachers and employees working in these private educational institutions get minimum salary to survive and make the scheme successful.

In the absence of these initiatives, it is doubtful that the constitutional mandate to provide free education to all children in order to become able citizens of the country would be successful. Private public schools have become centres for exploitation. As a result of expansion of the scope of Article 21, the Public
Interest Litigations in respect of children in jail being entitled to special protection, health hazards due to pollution and harmful drugs, housing for beggars, immediate medical aid to injured persons, starvation deaths, the right to know, the right to open trial, inhuman conditions in aftercare home have found place under it. Through various judgments the Apex Court also included many of the non-justifiable Directive Principles embodied under part IV of the Constitution and some of the examples are as under:

(a) Right to pollution free water and air.
(b) Protection of under-trial.
(c) Right of every child to a full development.
(d) Protection of cultural heritage.

Maintenance and improvement of public health, improvement of means of communication, providing human conditions in prisons, maintaining hygienic condition in slaughter houses have also been included in the expanded scope of Article 21. This scope further has been extended even to innocent hostages detained by militants in shrine who are beyond the control of the state. The Apex Court in the case of S.S. Ahuwallia v. Union of India and others it was held that in the expanded meaning attributed to Article 21 of the Constitution, it is the duty of the State to create a climate where members of the society belonging to different faiths, caste and creed live together and, therefore, the State has a duty to protect their life, liberty, dignity and worth of an individual which should not be jeopardized or endangered. If in any circumstance the state is not able to do so, then it cannot escape the liability to pay compensation to the family of the person killed during riots as his or her life has been extinguished in clear violation of Article 21 of the Constitution. While dealing with the provision of Article 21 in respect of personal liberty, Hon'ble Supreme Court put some restrictions in a case of Javed and others v. State of Haryana, AIR 2003 SC 3057 as follows: at the
very outset we are constrained to observe that the law laid down by this court in the decisions relied on either being misread or read divorced of the context. The test of reasonableness is not a wholly subjective test and its contours are fairly indicated by the Constitution. The requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights. The lofty ideals of social and economic justice, the advancement of the nation as a whole and the philosophy of distributive justice—economic, social and political—cannot be given a go-by in the name of undue stress on fundamental rights and individual liberty. Reasonableness and rationality, legally as well as philosophically, provide colour to the meaning of fundamental rights and these principles are deducible from those very decisions which have been relied on by the learned counsel for the petitioners.

The Apex Court led a great importance on reasonableness and rationality of the provision and it is pointed out that in the name of undue stress on Fundamental Rights and Individual Liberty, the ideals of social and economic justice cannot be given a go-by. Thus it is clear that the provision Article 21 was constructed narrowly at the initial stage but the law in respect of life and personal liberty of a person was developed gradually and a liberal interpretation was given to these words. New dimensions have been added to the scope of Article 21 from time to time. It imposed a limitation upon a procedure which prescribed for depriving a person of life and personal liberty by saying that the procedure which prescribed for depriving a person of life and personal liberty by saying that the procedure must be reasonable, fair and such law should not be arbitrary, whimsical and fanciful. The interpretation which has been given to the words life and personal liberty in various decisions of the Apex Court, it can be said that the protection of life and personal liberty has got multi-dimensional meaning and any arbitrary, whimsical and fanciful act of the State which deprived the life or personal
liberty of a person would be against the provision of Article 21 of the Constitution.

4.5 Directive Principles given status of Fundamental Rights

New Dimension.—In a number of decisions the Supreme Court has given many directive principles of State policy, the status of fundamental rights. In Unnikrishnan v. State of A.P.\(^{47}\) the directive principle contained in Art. 45 has been raised to the status of a fundamental right. It has been held that children from the age of 6 to 14 years have fundamental right to free and compulsory education. Similarly, 'equal pay for equal work' has been held to be a fundamental right in Randhir Singh v. Union of India\(^{48}\) and therefore, enforceable by the Courts. In H. M Hoskot v. State of Maharashtra, it has been held that "legal aid" and "speedy trial" are fundamental rights under Art. 21 available to all prisoners and can be enforced.

In Grih Kalyan Kendra Workers Union v. Union of India\(^{49}\), the Supreme Court has enforced the provisions of Art. 39(d) by giving the directive principles the status of fundamental rights. In this case the workers sought for a writ of mandamus directing the Union of India to pay equal pay scale in parity with other employees performing similar works. The court held "equal pay for equal work" is not expressly declared as a fundamental right, but in view of the directive principles of State policy as contained in Art. 39(d) of the Constitution, 'equal pay for equal work' has assumed the status of fundamental right in service jurisprudence having regard to the constitutional mandate of equality in Arts. 14 and 16 of the Constitution. The Court made it clear that under the above circumstances "it is trite that the concept of equality implies and requires equal treatment of" those who are situated

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\(^{47}\) AIR 1982 SC 579.
\(^{48}\) AIR 1991 SC 1173.
equally” and issue of appropriate directions in the interest of justice. In M.R.F. Ltd. v. Inspector of Kerala\textsuperscript{50} the Supreme Court heavily relied upon the provisions of Art. 43 to uphold the validity of Kerala Industrial Establishment (National and Festival Holidays) Act, 1958 and held that the Act is a social legislation to give effect to the directive principles of State policy contained in Art. 43 of the Constitution. In Gujarat Agriculture University v. Rodhod Labhu Prachar\textsuperscript{51}, the Supreme Court considered the regularisation of daily wage workers, who continued for more than 10 years in Gujarat Agriculture University and their absorption on relaxation of the eligibility conditions on a compassionate ground and held that the Court should exercise the discretion very cautiously. The Court observed that the Government who is a guardian of people and obliged under Art. 38 of the Constitution to secure social order for promotion of welfare of the people to eliminate uncoldigualities in a status, will endeavour to give maximum posts even at the first stage of absorption.

Elevated to inalienable fundamental rights they are enforceable by themselves. The Directives in our Constitution arc forcuuncr of the UNO Convention of Right to Development as inalienable human right and every person is entitled to participate in, contribute to and enjoy economic, social, cultural and political development in which all human rights, fundamental freedom would be fully realised. It is the duty of the State to take responsibility for further development of these human rights, fundamental freedoms. The State should provide facilities and opportunities to ensure development and to eliminate all obstacles to development by appropriate economic and social reforms so as to eradicate all social injustice. These principles are embedded as integral part of our Constitution in the Directive Principles. Therefore, the Directive Principles, now stand elevated to inalienable fundamental human rights. In this case the Court has held that though, right to work cannot be claimed as fundamental

\textsuperscript{50} AIR 1991 SC 158.
\textsuperscript{51} AIR 2001 SC708.
right but once a person is appointed to a post or an office, be under the State, or private agency, it has to be dealt with as per public element. So after the abolition of contract labour system, the workmen have right to regulation of their services. The Act is a socio-economic welfare legislation. Right to means of livelihood is a constitutional right. Without employment the workmen will be denuded of their means of livelihood and resultant right to life under Art. 21 of the Constitution. It was held that though there is no provision in the Contract Labour (Regulation and Abolition) Act, 1970 for absorption of the employees whose contract labour system stood abolished under the Act. But the Act does not prohibit the corporation to absorb them in regular service and that is the mandate of the Constitution in Art. 21. The contractor stands removed and direct relationship of employer and employee is created between the principal employer and workmen. In view of all this, it is submitted, that the Constitution (25th Amendment) Act was not at all necessary.

Though much has been achieved still much more is to be achieved. Political influences and economic and social disparities still exist, standard of living of the people is yet to be raised. Unemployment is yet to be implemented. But with all this it can be safely concluded that efforts of Governments of the Union and of States are really very encouraging and substantial in the implementation of these objectives. In Air India Statutory Corporation v. United Labour Um'on,\(^2\) the Supreme Court has held that the Directive Principles now stand.

This new trend and the decisions show that it is being increasingly difficult to draw a line between the fundamental rights and directive principles when courts are exercising the power of judicial review. These decisions indicate that atleast in some areas of directive principles the rights of citizens are vitally connected with fundamental rights and failure to discharge such obligations will

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\(^2\) AIR 1977 SC 645.
involve the invalidation of legislation of executive action of the Government of the instance of aggrieved persons. The Government is thus bound to implement the directive principles.

4.5.1 Implementation of Directives: Guided by the Directives the Central and the State Governments have tried to the best of their resources to implement large number of Directives. Under Article 39 (b) the Governments have abolished the old institution of hereditary proprietors, such as, Zamindars, Jagirdars etc., and made the tillers of the soil real owners of the land. This reform has, by this time been carried out almost completely throughout India. Side by side with this, laws have been enacted in many States for the improvement of the conditions of the cultivators. In order to prevent concentration of land holdings even in actual cultivation many States have enacted legislation fixing a ceiling, that is to say, a maximum area of land which may be held by an individual owner. Untouchability, the age-old curse of the Indian Society, has now been made an offence punishable by law. The Government has fixed minimum wages for our workers, modernised our labour laws and improved the conditions of labour. Panchayats have been established in the remotest villages of our country. They have been vested with the powers of civil administration, such as, medical relief, maintenance of village roads, streets, tanks and wells, provisions for primary education, sanitation and the like. They also exercise some judicial powers. For the promotion of cottage industries the Government has established several Boards, viz., All India Khadi and Village Industries Board, Small Scale Industries Boards, Silk Board, All India Handicrafts Board, All India Handloom Board etc. Many States have passed laws for compulsory education. Slaughter of cows and calves in some of the States have been prohibited. In some States as Andhra Pradesh, Gujarat, Haryana, Punjab, Kerala, Madras, Mysore and Maharashtrà, Judiciary has been separated from the Executive. A large number of laws have been enacted to implement the directives contained in Article 40.
The objectives laid down in Art. 40 have now been fulfilled by enacting the Constitution 73rd and 74th Amendment Acts, 1992 known as the Panchayati Raj and Nagarpālika Constitution Amendment Act, 1992. These Amendments provide constitutional sanction to democracy at the grass root level.

In 1971 fourteen major banks of the country were nationalised. Privy purse and privileges of the princes were abolished. The privileges of I.C.S. Officers were taken away. The Constitution was amended by the 25th Amendment Act, 1971, so as to enable the Government to implement more speedily socio-economic reforms. This Amendment added a new Article 31-C to Article 31 of the Constitution which has been abolished by the Constitution (44th Amendment) Act, 1978. The new Article provides that no law which is intended to give effect to principles contained in Article 39(b) and (c) shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Articles 14 or 19 of the Constitution. The validity of the 25th Amendment Act has been upheld by the Supreme Court in the Fundamental Rights 'case'.\(^{53}\)

The amendment according to the Government was made to facilitate the socio-economic reforms to be introduced by the Government. It was alleged that courts were standing in the way of implementing the Directive Principles and hence the amendment becomes necessary. It is submitted that this allegation is untenable. In an interesting article Mr. Justice K. S. Hegde of the Supreme Court of India has said: "There is no truth in the allegation that the Courts are standing in the way of implementing the Directive Principles. No judicial pronouncement has impeded the implementation of the Directive principles contained in Articles 40 to 51. One may ask whether any judicial pronouncement come in the way of the State in implementing the mandate contained in Article 44 requiring-the State

to secure to the citizens a Uniform Civil Code throughout the territory of India—a mandate of considerable significance of consolidating and strengthening the nation. I am not aware of any judicial pronouncement which has come in the way of the State securing equal pay for equal work for both men and women and protecting the health and strength of workers, men and women. Nor has any judicial decision interfered with the duty of the State to see that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength and the childhood and youth are protected against exploitation against moral and material abandonment." Then referring the complaint that some of the decisions of the Supreme Court have impeded the efforts of the State to secure and protect a just social order he said: This complaint is an ill-informed one. While the Constitution has laid down that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order to which justice, social, economic and political, shall inform all the institutions of the national life; it has also prescribed the method by which the social order contemplated should be achieved.32

Instead of becoming a stumbling block the judiciary has now taken itself the responsibility of implementing the Directive Principles. In its recent judgments the Court has declared many directives as fundamental rights and have enforced them. Equal pay for equal work, Protection of children from exploitation, Abolition of child labour in hazardous works, Free and compulsory education of children below the age of 14 years (under Arts. 39, 41, 45 and 47), Protection of working women from sexual harassment, Free legal aid to poor, speedy trial of under trial prisoners, (An. 39-A), Right to work and medical assistance to workers (Art. 41) and Protection of ecology and Environmental Pollution (Art. 48-A).