CHAPTER-4

THE INDIAN CONSTITUTION AND HUMAN RIGHTS
The Indian constitution and human rights

The Indian constitution came into the force on 26 January, 1950 is an eloquent testimony to the nation’s deep commitment to human rights. It proclaims basic human rights and fundamental freedoms and guarantees their enjoyment by all, irrespective of caste, colour, sex, or religion. It has created legal institutions to enforce the fundamental rights comprising liberty, equality, and social justice.

Because of the projected social disparities, the constitution has deliberately framed to provide positive discrimination and affirmative action in favour of those who would not exercise their human rights unaided. There are also constitutional safeguards to ensure effective representation of the social and economic deprived section of society in the legislation as well as public services.

Since independence, India had sought to institutionalize its commitment to human rights by a deliberate choice of an open society and a democratic policy based on universal adult suffrage in respects of human dignities of the persons the role of law and multi-party system.

India has been firm in its conviction that democracy is the best guarantor of human rights and it provides an optimal political framework for development. Poor countries like India require a massive social and economical transformation to conquer the ancient of poverty, ignorance and injustice. But India believes that in order to be feasible such basic changes have to be based on freely and willing consents of the people provided by a democracy. The institutions which India fashioned to sustain as plural, multi-ethnic, multi-religious, multi-linguistic and a secular polity had the overarching objectives of consulting the norms and principles of democracy.

1 The statement by Dr. Man Mohan Singh, Former Minister of Finance in the Narasima Rao Govt at the 50th World Conference on Human Rights. The observer dated 22 January, 1993.
2 While fundamental rights give stress on the existing rights, the directive principles provide the dynamic democratic republic and to protect all national.
   . Equity/Lives - Socially, financially and politically
   . Freedom - of thought articulation, Faith and warship
   . Level with - o f status & opportunities & to advance among
   . Organization or nobility Assure prides of the individual & the strath & respectability of the national.

As talked about over, the basic rights which bolster Human Rights in the Constitution are listed hereunder:

(i) Right to Equality
Art. 14: Equality under the watchful eye of the law & break even with insurance of the law
Art. 15: Prohibition of segregation on grounds of religion, race, standing, sex or spot of conception.
Workmanship 16: Equality of chance on matters of livelihood.
India has elected parliamentary institutions and conducts free and fair election locally for state and centre. It has built mechanisms for peaceful and orderly changes of government in response to popular will. These mechanisms have been tested time and again and have established their effectiveness. The governmental mechanism such as police, security forces are also working to safeguard people’s life, liberty and security. India’s judiciary independency which essential in the custody for the people’s rights are also acting seriously at protect them. The public interest litigation (PIL), an additional system of the Indian judiciary, has also been instituted for this cause:

A free and vibrant press, existence of various interest groups, strong public opinion, an assertive NGO community and above all rule of law to fortify India’s democratic system act its legal safeguards.

The country is also a essential for the UDHR, & party to various ‘international covenants’ and treaties. Furthermore, greater access to the statesmen of various countries and international human right agencies has been facilitated. It is to reaffirm the atmosphere of freedom and India’s commitment to its own catalogue of rights.3

Despite all these instrumentalities and institutional arrangements meant for the protection for individual right standard in country there have been large scale reports of violations of human rights in different parts of the country. These have been observed particularly at three different levels i.e. individual, society and state.

With the existence of the above block laws, the institutions, the safeguards the legitimate rights of the people are rendered useless. I.e. dalits, backwards castes, women and children. Though the above mentioned bodies are there for the protection of human rights still there is serious violation of rights, of women in custody i.e. police judiciary care homes, jails or under any other detaining authorities authorized by law to arrest detain and interrogate them for any offence.

The failure by authority draw for protection human right for all woman in custody, has prompted at researcher to conduct a research study on “Custodial atrocities and the status of Human Rights : An Analytical Study with Reference to Women in the state of “Rajasthan” and to ascertain the atrocities committed against women in custody and come up with the suggestions on ho w the checks and balances

3 Subramaniam, Human Rights Training (2000) Mean s Publication 4819/XI Mathur Lane, 24,Ansari Road, New Delhi., p.324.
can be reached to eradicate the said atrocities or pave way for implementation of the said conventions already in place.

In the state of Rajasthan majority of the population lives in rural areas. As they are poor and illiterate and are not aware of their basic rights, they are easily exploited by the better concern today as the state seems to be the worst kind of institution in violating human rights in terms of excessive powers of army, custodial death, rape, inhuman, and degrading treatment of prisoners, atrocities by police and Para – military forces and above all the existence of black – laws like the Disturbed Areas (special powers) Act, 1978, Police Act 1949, Armed Force Act- 1958, Disturbed Area (special courts) Act 1976, Arms Act 1959, etc. In addition to these Maintenance of Internal Security Act 1971, Essential Services Maintenance Act 1981, Conservations for Foreign & Prevention of Smuggling Activities Act- 1981, Conservations for Foreign & Prevention of Smuggling Activities Act- 1974, National Security Act 1980 are also some of the repressive laws of the government which very often violate the fundamental rights and freedom of the people. These are certainly a matter of sorrow and need to be checked/addressed.

4.1 Developments of Human Right of Women in India:-

Women’s Human Rights development did not start certainly in India though they were and are facing many atrocities. The same was started and agitated from outside and is as a result of an offshoot of what had taken place in the Universal Declaration of human Right. The whole progress for character and basis freedom & equally participated by woman in politically, socially, economical & culturally seniority are concomitant for the development of nation and socially & growing and establishment of family– cultural, social & economic. Each and every types of disability of ground are thus violations for basic freedom & rights for individuals. Gender justice taking shape for crimes against women which escalated all over the world and India forced the world and India to formulate or to promulgate National Commission for Women. Despite the fact that the Mythology of India placed all woman pedestal based very highly, deteriorated in those glorious status suffering a social, culturally setup back resulted in loss of their freedoms and declined in these personalities. Though we have seen and witnessed social reforms, movements of the nineteenth centuries arising considerably awakened, the constitutionals and legal
provision aimed at prevented discriminations, positive judicial trend, welfare schemes and activism of voluntary sector, women continue to suffer from increasing tide of violation both in and outside homes. According to the data compiled by the National Commissions for rape is committed after every 54 minutes and a dowry death happened after every 92 minutes and molestation every 26 minutes and act of cruelty every 33 minutes.4

Realizing this inequality the United Nation passed different instrument with a focus on women’s emancipations, maintained & enhancing the dignities of woman. Some other importants instrument is Articles 29 clause (1) of the Universal Declaration of individual Right- 1948 which speaks of duty for individual essential, for freely & fully developments for the manson personal of every persons, Declaration on the elimination of discriminations against woman,1967 The Declarations of Mexico on Equality for Woman & Peace 1975 Conventions for the established all types of discriminations, against woman,1979 Convention on the suppression of traffic in persons & of the prostit and other 1949, Convention on Political Rights of Women 1952, Equal remuneration Convention 1951, Discrimination against Employment 1958. The Women's Meetings in China, in India, and the United Nation’s incorporated various provisions related to equality and dignity of women.

The constitution of India provide, equal status and opportunity to all the citizens of India. Article 14 provides for equality in general and Art.15 clause (1) prohibit discriminations on general ground of inter alia sexes. Art.15 clause (3), embodies exception which permit the states for make provision for woman in special way. The amendment in the constitution of India that is 73 & 74 it is provide special rights for woman related to reserve seat panchayata and municipalities for women. Article 23 prohibits trafficking in human beings. Similarly Article 39(a), (b) (c) and Article 42 and 44 of the Constitution provides provision for the benefits of women. So all these and many more provisions accelerated the development of human rights of women which are as under. The child labour destroyed the childhood of the childrens and take away their aims and purpose those are necessary for the future of every child.

Considering the problems which women were facing and given that the then bodies formed for the protection of women had failed, the United Nation Commission’s recommendations in the 25th report to all members advocated the establishment for National Commissions and other similar bodies with mandate to review estimate, & recommends measured and priorities to ensures the equalities of woman and man and the all integration for women in all spheres of national life. Acting on this resolution and on the demands of several women organizations, the government of India set up committies in 1971 knowns as the Committies for the Status of Woman to evaluate the change that have taken place in the statues of woman as a result of the Constitutional, legal and administrative measures adopted since independence and to examine the impacts of the complex process of socially changes on various section of women and suggested measures to enable women to play their full and proper role in building up the nation.5 In order to ensure the implementation of various measures, the committee recommended the constitution, at the center and in the states, of a Commission. It is indeed surprising to note that the Government took 16 years to give effect to the recommendations of the Committee for setting up a National Commission. The Commission has been entrusted to investigation & examines all matter related to protection and safety provides for women under Indian Constitution and under different laws, display a report to the Central Government. Making suggestions in such reports for the usage make compelling for wellbeing and enhancing states of ladies by any Union or any state, inspecting of the current procurements of the Constitution and different laws influencing ladies and prescribing change in order to recommend healing enactments, measures to meet any lacunae, insufficiency or inadequacy in such enactments. Taking up the instances of infringement of sacred procurements or different laws with the powers for investigating dissention & taking sue-saying notification of matter identified with hardships of ladies' privilege and not connected by the law intended to give securities of ladies & likewise to accomplish the targets of balance and advancement, not petitioned strategies choice and rule and direction point in prompting hardships, guarantee the welfares & gives unwind to ladies and taking up issues emerging out of

such matters with powers, calling for uncommon studies on examinations concerning particular issues or circumstances emerging out of separation and barbarities against ladies and recognizing the requirements in order to prescribe methodologies for their evacuation. Undertaking limited time exploration taking an interest & educate make arranging procedure regarding socially, financially advancements of ladies, assessing the advancement of the improvement of ladies under Union and State, investigating penitentiaries, remand Homes, subsidizing prosecution including issues influencing a vast group of ladies and making periodical reports to the Government.6

Finally, with the introduction, recommendations, development and implementation of woman’s human Right in India still the of women’s right are violated and they are in total darkness which has prompted the researcher to take up an analysis of the problems.

4.2 Establishment and Recommendations of Committee Reports:

The commission of persons Right take up the question of implementated for persons right and its preliminary sessions in 1946. Its felt the need for International Agencies of implementation to be entrusted with the task of watching over the general observance of Human Rights in order to prevent the recurrence of acts as th ose of second World War. It recommended that pending the eventual establishment of an agency of implementation, the commission on human rights might be recognized as qualified to aid the appropriate organizations of the United Nations in the task defined for the General Assembly and the economical and social councils in Arts.13, 55 & 62 of the Charter concerning the promotion & observe right of human & fundamentals freedom for everyone and to security council in the task entrusted to it by Art.39 of the Charter by pointing to cases where violation of Human Rights committee in one country may, by its gravity, frequency or systematic nature, constitute a threat to the peace.

After considering the report, the ECOSOC asked the commission to submit suggestion regarded way& by effective means implementations & the suggestions made were as under:

6 Ibid, p. 121.
4.2.1. Secretariat Proposals:-

At the Drafting Committee Meeting in 1947, the human rights secretariat presented a draft outline of International Bill of Rights which shall be the Bill of deemed fundamental principles of International Law and of the National Law of each of the Member States of United Nations. The observance is international concern matter & it should be in judiciary limitation of the United Nations to discuss any violation thereof. On the request of the Committee, the Secretariat prepared a memorandum on the implementation which envisaged the following successive stages for International supervision and enforcement:

a) General Assembly and other organizations including commission on Human Rights to have the right to discuss and make recommendations for the violation of human rights of women in custody.
b) Individuals to have rights to petitions.
c) To establish a special organ of the United Nations with jurisdiction and the duty to supervise and enforce human rights.
d) It should also have jurisdiction to consider suspension of human rights.
e) Establishment of local agencies of the United Nations in various countries with jurisdiction to supervise and enforce human rights therein.

4.2.2 -Report of the working group:-

The Drafting Committee accepted the principle of the responsibility of the International Community for observance, but not the manner in which it has to be achieved. The subject of implementation that was referred to the working group was reported back as follows:

a) Individuals should have the right to petition other remedies.
b) A standing committee of five persons should be appointed by Economical Social and Cultural Rights (ECOSOC) to collect information concerning observance and enforcement of Human Rights within various states to receive petitions and to remedy them through negotiations and report those cases to the Commission.
c) The Commission may refer such cases to Committee when established.

The report of the group was criticized by members of the Commission, however, it decided to transmit the report to States and to ECOSOC for consideration.
and comments. US & China representatives proposed that provisions be made in the covenant for the appointment of a committee by covenanting the states for settling the disputes through negotiations. The report said that the Committee shall consider the complaints referred to it and make recommendations addressed to the states for amicable solutions. Reference may also be made to ICJ (International Court of Justice) for advisory opinion. In 1949 the Secretariat, in its analysis of the proposals of implementation which were made previously, suggested the establishment of a permanent conciliation committee and of local agencies of the United Nations in various states with powers to supervise and to apply the provisions of the Covenant. The UK & US delegates proposed for the establishment of a human right panel composed of two persons designed by every state parties to the covenant from which a five member of human rights committee would be selected for each base by the State concerned or in the absence of the agreement by the Secretary General. The Committee's report would be limited to findings of facts.

The Indian establishment proposed formation of a Standing Committee of five independent persons elected by ECO SOC which would have the duty to supervise the observance of the provisions of the covenant and keep UN informed of matters relevant to the observance and enforcement of human rights.

The USSR representative expressed the view that the implementation of the Declarations for human right & the covenant the matter which solely concerns the National Agency.

The US representatives emphasized that an ad-hoc committee be selected from the panel to deal with the complaints made by one state against another. The Netherlands representatives expressed the view that the panel for inquiry and conciliation established by the General Assembly Resolution 268D (iii) of 28 April 1948 might be used for selecting an Ad-hoc body for dealing with the complaints relating to human rights.

The Commission rejected both the proposals of ad-hoc body as also for the establishment of permanent body to consider violations of human rights. However, the commission agreed unanimously on establishment of a human Right Committee composed of persons of High standing with recognized experience in the field of
human rights. But there was no agreement regarding the method of selection. Mr. Cassin (France) was of the view that the committee should be elected by the (ICJ) International Court of Justice. Mrs. Mehta (India) was of the view that it should be elected by the General Assembly. Mrs. Roosevelt (US) stressed that the state parties to the covenant should be entitled to elect their own committee. The view was accepted by the Commission and later incorporated in the covenant.

With regard to powers and functions of the Committee, Mrs. Mehta (India) suggested that the functions of the new committee should not be limited to the consideration of complaints but should also be to the extent as to how the states shall fulfill provisions of the Covenant. It was felt that it is indeed better to prevent a violation of human right than to remedy it once it has taken place. However, it was agreed that the proposed committee should have two main functions:

i) to ascertain the facts, and
ii) to provide good office to the state concerned with a view to bring about arbitrary solutions.

Australia, in 1947 advocated for establishing an International Court of Human Rights to which the individual groups of National & International level concerned with the protections of human rights, would be the parties. This court will hear cases of individuals and also those referred to it by the Human Rights Commission and settle disputes.

The second proposal was made by Mr. Cassin of France in December 1947 before the human right commissions for the establishment of the International Bureau of human right of Independent persons of international repute to receive individual and NGO petitions against violation.

In 1950, Uruguay proposed creation of Attorney General with power to receive and examine petitions of individuals -national and international - and NGO's. He would negotiate with states and conduct inquiries, summon and hear witnesses to find out the facts.

At its VIIth Session, the human right Commissions on approved a new Chapter in the draft of the covenant dealing with periodic reports by state parties to the covenant.
concerning the progress made in achieving the observance of human rights. However, some of the covenants which were implemented during the formation of UDHR are:
1) Implementation under the Covenants on political civil right, 1966
2) Implementation under the Covenants on, cultural, economic and social right.
3) Implementation under the Conventions on elimination of all forms of Racial Discriminations of 1965.

4.2.2. -(a) Implementation Under the agreement Politically & Civil right 1966:-
The functions assigned to this Committee is of studying the report submitted by the State parties under Art.40 stating the majored adoptee by them to gave effective to the right recognized under the Covenant, the progressive made in the enjoyments of these rights and indicate the factors encountered by them in the implementation of the Covenant.

4.2.2. (b) Implementation Under the agreement on Social, Cultural, Economic, right 1966 :-
Under this Covenant the State party is require to submit report to the Secretary General on measure which they have adopt & the progress made in achievement the observance of the right reorganization in it, & also indicate factors and difficulties affecting the degrees of complete of obligation under the present covenant.

4.2.2. (c) Implementation under the Covenant of Basis of racial discrimination 1965:-
This committee suggested the methods by which the Covenant can remove discrimination against Racial cultures.

4.2.2. (d) Implementation under Convention against Discrimination in Educations 1960:-
The state party to the protocols, consider that except the state parties are not giving effect to the provision of the conventions, it may bring the matter to the attention of that state within three month & after receiving the same, the state will give explanation to the state demanding.

4.2.3 Practice of United Nations:
The Organizations of the UN entrusted with the task of promoting and protecting the Human Rights have adopted the following methods:
(1) Creation of International Human Rights Instruments and to provide for implementation procedures there under.
(2) Education methods for educating people in human rights.
(3) Obtaining and collecting information regarding promotion and protection of human rights.
(4) Discussion on human rights problems and violation, making recommendations to enforce human rights and taking decisions thereon.
(5) Investigation of human rights violation.
(6) Conciliation for enforcing human rights.
(7) Imposing functions.

4.3. Classification of Human Rights:

Human rights can be broadly classified from two different perspectives, first from the perspective of various aspects of Human Life, Social Economic, Political, Moral, and Civil and secondly, from the perspective of the methods of securing them. On the second basis they are constitutional or legal. These classifications can be discussed under the following heads:

4.3.1 Natural Rights:

Right Nature is those right which is inherent and integral to human nature. In fact, every individual by nature is given an individual property of his own which can't be taken away by any power. Such rights incorporate savvy rights, privileges of the psyche furthermore privileges of going about as a single person for his own particular solace and joy gave they are not damaging to the common privileges of others.

4.3.2 Moral Rights:

These rights are based on the general principles of fairness and justice. These are simply aspirations and ideals of people. Sometimes, people justify this right by the role they play in the family or the position in the society. Mothers of the family must be consulted about what is going on in their family. So it is moral duty of other members of the family to support this kind of status of the mother.

4.3.3 Fundamental Rights:

There are certain rights which are more important and basic than the other. For example, the most rights for life is basic of all right upon which the enjoyment of
other rights depends. These rights can never be restricted or taken away by any authority. The other is the right to be recognized the persons before laws, the right to equal protection, under law and freedom from illegal arrest or detention.

4.3.4 Legal Rights:-

Legal rights are otherwise known as positive rights. These rights are laid down in law. They are also guaranteed and protected by the law of the state. Thus legal rights are uniform and given to all irrespective of the caste, colour, race, culture, sex or place of birth.

4.3.5 Civil and Political Rights:-

The rights that are granted by government or civil society are called civil and political rights. These rights provide the basis for the fulfillment elementary conditions of social life. Without them civilized life is not possible and they are, therefore, considered to be very essential for the free and progressive life of man. Politically and Civil Right, however, include the rights for freedoms of speech, of assembly, the right to move freely, to hold properly, and practice trade or profession, & the rights to take parts in the governments of countries. Part 3rd of the Indian Constitution has resemblances with these rights:

4.3.6 Economic, Social, & Cultural Rights:-

The rights are in orders to eradicate social inequality, economic imbalances and to limit disadvantages caused by nature, age and so on. These rights, however, not bound to meet all these entitlements at once. It will depend upon the economic resources of the society. Most of the socialist states regards these rights as fundamental rights of the people. Rights the equality, right to work, right of have family, right to privacy, right to information, right to public assistance, during old age

and sickness, rights to take care of health, right to special care during childhood and during motherhood are some of the examples of these rights. They are incorporated in part 4th of the Indian Constitution as directive principle all state policies.

4.4. **Rights to Life :-**

accordingly Indian constitution rights to life means every person have that no one can deprived or removed from his executive and this is not for legislative action. Life is very important and dear, sacred, precious and it is a wonder ful gift provide by the God. We gate the opportunity to see this wonder full and magic world.8

Persons life are preservation of paramounts importanted that if we once lose a life than status can not be restored and gate back, because this is gone beyond the capacity of person.9 this is imaging contract with the term of life that was provide by field Justice. Those tell us about difference between persons life and animals life & define the concepts with related with bodies and soul & mind provide to man by that he can express his happiness and sorrow. Some times the trump life become more then existence mere animal. The constitution provide to make some provision to make more enjoyable and free.10

There are so many possibility and faculties to make fullness life is related full of surprise and related with different circumstance. The united nation provide the most priority of the human life and right to life.11 right to life is become most precious in the Indian constitution than it take place under the fundamental right. The person arc of all other rights. 12

If we compare old and today’s life become more dangerous and horizons that includes all meaning given to a man life is includes his old and traditional heritage and culture and Procter its heritage in its certainly and measure with in come with expanded concept of the Indian constitution under article 21.13 The provision related with fundamentals rather than the attenuate there mining and judicial process.

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8- The Humans Right in India, by Krishan Iyer, J. p.282  
9- Paramananda Katara verses Union of India, A.I.R. 1989, S.C. 2039 page 867  
10-Rights to Life and Liberties under the Indian Constitution Article 21, by B. L. Hansaria page 25  
11-supra note1, Krishan Iyer J.  
12- Francis Coralie verses Union Territory of Delhi, A.I.R. 1981, S.C. 746  
The civilized society not given more attributes importance then the personal liberty and life and its member. The article 21 provides some parameter position that given by the courts. The double enjoyment of fundamental rights over any other attributes of the social and political order that directed or provide by the legislative, the judiciary and executive become more cons cues and sensitive then the other daily existence of attributes.14

4.4.1- Rights to life in ancient time:-

The doctrine of rights is provides by theory of natural law from ancient time that is related to or provide way for settled the individual autonomy and identity. But by the civilization advancement and progress of society become requirement to keep distance and change according to times. The doctrine also changed according to time and transferred with the time lawyer’s majority says that natural right is interpreter part of the theory. The theory of law though under went become change but some part of principles can not be changed. They remain continue. Rights of individual is inter ally or unchanged.15

The rights for life are one essential and basically rights of individual. It is an important fundamental, transcendental, inalienable right for human. In logical sense and naturally speak than right is highest requires for the protection.16 The foremost right is right to life. Right to life is a soul communicate with the out side world but right to live with dignity and goes alone with it. The adequate needs of life such as food, clothes, shelter and other facility for fulfill the needs, provide facilities for riding and writing and express themselves. The article 21 if violate it means the person los his life’s dignity. The government is empowered the prohibit the objectionable performance and act under section 3 of the objectionable performance prohibition act. Article 21 in true sense that both affirmative and negative dimension.

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14- Keher Singh v/s Union of India A.I.R. 1989 S.C. 653 para 7
15- Rights to Life & Personal Liberties challeng & Judicial Responses Indian Bar Review Volium XXX -VI 2003 page 539 (Tejaswini Malegaonkar)
In a popularity based nation give more significance on the welfare of individuals. The privilege identified with the right to speak freely implies we get chance to express your perspective this privilege give in article 19 (1) by the Indian constitution. The privilege identified with life, security and liberty of individual is an essential right for human to find a significant role in the other various human rights. If we deny the right to life it means all right deny automatic and in other word these right become useless. National, Religion, Documents, it is become primordial right its means this right provide leadership for any other rights. People of the united nation play an important role in the preamble. This alone did not change the position of persons in domain of international law. Whatever individual has any place in the international law is a question which is related with another question that is they have bestowed rights and duties under the international law.

The existing law system which is emanates from God or morals and reason. The national law is only a part of law. The human right occupies a separate or significant chapter in the united nation in the chapter there are many seven reference in the preamble, among purposes of the united nation and among the responsibilities of general assembly. The framer of the chapter really serious and not take rest when he use these words in the preamble but went to give content to these words for various provision related to human rights. The responsibility of promoting international relation and cooperation in the social, education, economic and in the field of health, and the assembly assisting to the human rights and fundamentals freedoms.

4.4.2 Under International Law Right to Life :-

The universal Declaration on the human right in 1948 in this declaration says that every person has right to life, seurity and right to liberty.

18 -'The Universal Declaration of Human Right' 1948 under article 3
19 - The European Conventions for the Protection of Human Right, 1950 under Article 2(i)
20 - The Constitution of India Article 21
21- Shailaja Chander, J. Basic Right and Directive Principle thepublication of New Delhi 1992) page 159
22-L.D. Naikar, The Laws Relatined to Human Right, (the publications of Bangalore 2004) page -224
23- Ibid. page- 225
24-Supra take note of -11
The international covenant on political and civil rights the charter provides the rules related to human right. The united nation freedom and justice, and all these are necessary to maintain peace in the world. The covenant recognize the state parties for these rights provides for human dignity and according to the widespread presentation of human rights.

The commitments considering of states in the united country for affirmation of human right. The pledge under article 1 to 5 section first and second gives that all individual has right to self respect. By temperance of these rights they openly appreciate political, social, monetary and other social rights, commitments consider under the sanction of United Nations accommodates general admiration and perception of human opportunities and rights and individual realize their duty towards other peoples and for community.

The article related to convent with the each state party under take respect and ensure to all individuals with in its subjects and territory, it is jurisdiction the rights related with or recognized in the present covenant without any segregation on the premise of race, sex, shading, dialect and other related of assessment, social birthplace, national, birth, properly or other status. When the legislative or other major do not related with measure effect of the rights recognized in the convent.

The article 6 of the tradition related with inalienable right to life. This right comes under the question on the basis of that legal rights never actually being inherent in the nature. The legal rights always make by the framer worker of the legal right in legal way. The international covenant provide under article 6 the political and civil rights and absolute right not provide for life. It is very difficult that what is arbitrator by given the different opinion and deprivation of life. The legislation conform the principles of justice and injustice.

25 - The International Covenant related to political and Civil Right in 1966, Art. 6(1)
26- supra note15, page 226
27- These social right and perceived under Art. 11 & 12 of the International Covenant for Social, Economically, and Culturally Right in 1966
30 - supra note15, page 227
The states are allowed to give the extension to their global human rights and commitment and at risk to wind up unfilled. It turn into a contention that right to life of the tradition on the premise of political and social liberties it is precluded for discretionary hardship of life. The privilege to life is crime and right to experience his related with living openly and wishes. We can say that privilege to life is not related with right to live.

4.4.3-(a) Indian Constitution Right to Life is a fundamental Right :-

The article 21 Indian constitution provide right to life and in narrow supreme court initial, interposition become its on important, the important of these rights provide subsequent right for this by its interpretation after passing half of century then court passing in a series of judgment. The fundamental rights and duties are correlated. In other words we can says that fundamental rights and duties are the to part or aspects of the same coin.

The constitution of the India originally guaranteed some fundamental rights provide in part 3 of the constitution and the provision related to fundamental duties provision not mention any where in the Indian constitution. Article 51-A was impose or provide some duties upon the citizens. The article added in the Indian constitution by 42 amendment act 1976. The article 51-A first time have only ten fundamental duties for the citizens. Dr. Pandey has prescribed or given his writing, constitutional law of India that fundamental duties are impose to serve as a constant remedy or remind to every citizen that some specifies provision related to fundamentals rights for the individuals provide in constitution and same time its become necessary that citizens to observe some basic morns for democratic conduct and democratic behavior. The Indian constitution under article 21 gives that no persons can be denied from his life and individual freedom with the exception of those procurement give by law.

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32- Supra note.9
33-Promotions for International Peace and Securities under article 51
(c) foster appreciation for International laws and settlement commitments in the dealing of sorted out individuals with each other; and
The article 21 says that it is connected when any individual can denied from his life and individual or individual freedom just in these condition when such move is make as per the strategy endorsed by law. Article 22 additionally giv some procedure those requirements to be adopted. These requirements may also include in making of a procedure those are enacted by the legislature. It is applied in those cases when the procedure feel requirements are not followed accordingly.34 In this way article 22 prescribes the minimum procedural requirement that those are included in any law prescribed by the legislature.

The article 22 related with two different matters that is person detained under the law of preventive detention and other the person arrested under the ordinary law of crimes. These tow clauses of article related with detention cases. The procedure prescribed by the law which has to be followed when any person arrested under the preventive detention law and procedure prescribed which to be followed when a person detained under the law.35 obligation to maintain law and order in the state. The state maintains order and law through executive organs and making laws. It any persons disturb peace and security of law than he will be punished under the law. But here arise some other probability that if a person commit any act likely to cause harm to society and the security of the government, than he is detained under the preventive laws the main purpose or object of this law is that not to punish a main or done something but to intercept him before he dose it and stop to him from doing it such laws are repugnant to democratic countries.36 These are consider necessary to stop from the ill-use of flexibility and by against social components which may jeopardize the national welfare of the republic. Procurement identified with assurance endorsed forever and freedom by the constitution. The constructional gathering have charge on essential rights that give that no individual should be denied from his life and freedom

34- The International Laws on the contemporaries practices in India, April 25 to 27 in 1963 page275 refered to Universal Law eleventh release law agencyes in Allahabad- 1996), page 100
35 - supra note7 page 101
36- The Human Right and Parliament 20 to 22,1978 refered to in S. Chander supra take note of 14, page159
with no strategy recommended by the law. The drafting board of trustees of the Indian constitution the world endorsed method build by law for the due procedure of law and included some more qualifies word freedom, the concept must constructed very wide has included even the freedoms already prescribed. The object of some persons to change from due process established by the law. The other justified changes made in the law. The U.S.A. supreme courts justice provide an important advise for the change made in it. The process would not be created many problems in the state and it become helpful for the nation.

The justice of U.S.A. consider the force of legal audit petitioned the due procedure, was not just subjective in light of the fact that administrative force squandered in couple of judges. The judges related or have a place with representation nation, however it might likewise given uncalled for weight on the legal office. During the procedure of the get together, the methodology proviso give in the light of American assembly on the places of its assembly approved one another right. The right for the life and liberty of the individuals. That is restrain by the procedure of law the constitutional assembly accept this opinion by the majority of person and any clause established by the procedure of law. The Indian constitution under article 21 provide grante to protect. The constructional provision emphasis on both centre and state governments to take administrative and legislative procedure to ported and improve the condition of law.

The privilege to life is a fundamental a good fit for person and it is not a crucial right. The principle of natural justice with the old procedure reminds that it is established by the law. The free legal services become beneficiaries for the poor peoples that is implied under article 21. it is the duty of every state that it proceed the life and individual freedom of each individual and if any power of the state denied to

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37 Fundamental Rights, Interim Report, Delhi, 1948 Cal. 9
38 Judicial Review of Fundamental Rights 1976 page 111-112 P. Sarojini Reddy
39- P. T. Das Bhargava likewise upheld it see C.A.D. Volume number.VII page-848
41 -P.Sarojini Reddy, supra take note of 31 page112
any persons by his life and individual freedom than it is legitimized by law. As per the procurement give under article 21 of the constitution, the state is sure to provide legal remedy to those person, those are requires or feel needs. The court says that it is the compulsory part of the state. The fair and speedily trial is insuperable part of natural justice. The principle of natural justice in it self. In the Supreme Court says that life and liberty is note a new word in the Indian constitution but they have his higher value that prescribed by main kind that no person deprived from his life and liberty.43 If these rights are applied as a fundamental rights then the state bound to protect it. After that in another case the Supreme Court decide that right to life and legal and free aid applied with the new social rights. This right divided according to the paramount among the all rights, because all other basic rights also become enjoyable and have their effective portion. Such remedy related to more over best assured by the workable remedy with in the frame work made by the judicial system. Most access to justice we can see in the basic human rights those are purport to guarantee legal right.44

The Supreme Court held in keshavananda Bharti’s case says that fundamental rights are basic and natural rights of person. In this case elaborated the natural rights those are related with fundamentals rights. The natural rights are those rights related with persons moral and rational and these rights are for human beings.45 No doubt that the law ported the equality before law and equal rights.46 The economic and social qualities assured by the Indian constitution and the law become reality for living the free legal aid and service to survive the weaker sections of the community.

The widespread announcement of human rights 1948 under article 3 related with entomb national persuade on political and social liberties. The constitution of India under art. 21 gives rights for life by the legal framework. The legal framework assumed a critical part in the principal right.

44- Antiquated Indian Politically thoughts & Institution page 249 to 266, in year1963
46- Ibid.
The article 21 of the constitution safeguards the individual freedom of persons. Hence here the world procedure established by the law, it has its own importance. These article emphases that procedure must be fair and reasonable.47 These principles must be based on the principle of natural justice. It means listen from both the parties and after decide the exist point that is just fair and speedily trial. In the Indian constitution preamble says that procedure about the assuredly of the all justice. To ensure there object related to justice in part 3rd and 4th of the constitution lays down that the important direction for the state. The concept related with social justice given importance or emphasis that the entire citizen must get opportunity to develop himself. Because they have equal position in the society.48

The house of lord described the legislative function that the old function and principles reputed the same function of the legislative authority after near about 30 years.49 the constitution of India provide right to life and personal liberty. The constitution under article 21 provides that no persons deprived from his life without any procedure stab list by the law. The important direction for the state. The concept of social justice given importance of emphasize that the entire citizen must get opportunity to develop him self because they have same position in the society. There is no discrimination best on the external condition. But the condition must be providing same to every, those are based on the nature. For the being a welfare state, the India provide the proctor to all, not to a particular class or section the policy make by the state that are make in the interest of the all persons. Those laws make by the state, that main aim to do all activities for the welfare of the citizens. Here it is not make separate that justice is an important aspect for the human life.

The constitutional provision for the justice given more emphasis on the protection of rights, equal protection of rights and protection of law and equality before law. In other words we can say that the concept of justice is enshrined in the preamble of the constitutions.50

47- (1949) 2 All. E.R. 155

48- B.L. Hansania supra note3, page19. Ibid, at 164

49- B.L. Hansaria, supra, note.3, page 19-20, (1978) 1 W.L.R. 220

50- Francis Coralie v/s Union Territory of Delhi A.I.R. 1981 S.C. 746
Article 21 that is rights for life & liberties these are provide a particular definition for the right to life. The constitution prescribed in preamble that it is coupled with the modern concept that is rule of law.51 The rule of law implied only for that every person get proper and equal justice, there is no difference between the rich and poor person. the remedy provide by the law only get particular section of the society. The poor also have right to enjoy political and civil rights. 52 The art.21 provides the rights for life & right to personal liberties is equally enjoyable by all of them. Earlier it was not provide or left that the forerunner that poor people priced out of Indian judicial system and they can not take active part in the judicial system. They can not get justice in the court. In the 17th century justice Bhagwati give emphasized on the concept of legal aid in the law.53

According to him that law made as strength of the society and community and provides valuable sections for the weaker community. It is better for us that if any right get poor than if any one exploit the poor than he protect himself. Before there patience is exhausted, some one done same thing, then the law is not make only for speak justice but also behave judicial to do justice and this is only possible by enforce the legal aid in the today’s or present legal system provide for justice.54 The term life define that human is more important than the animal existence.55 The methodology recommended by law needs to reasonable and it is just and sensible, it ought not be a method require under segment 21 it is simply mean in the law to make peace in the class the procurement endorsed under the national equity would be held to be respectful and political rights.56

The Indian constitution under article 22clause 2 says that no individual should be rebuffed for the more then one for the same offence. This article embodies the common law rule of memo debit it means that no man should be punished twice in the same offence if he becomes again prosecuted for the same offence for that he has already prosecuted.57 He can take define of his former conviction according to the -

51 V.N.Shukla, The Constitution of India, tenth release page 164-165
53 Supra take note of 44 para 5
54 Paramanada Katara verses Union of India, A.I.R. 1989 S.C. page 2039
55- United states in year 1876 page 113
incorporated the same rule in the 5th amendment but no person shall get punishment again. The Indian procedure narrow then the British law and American law. Both the constitution to Procter against the double jeopardy.

The person must be an offence the word offence as define in any close that it may be violence of rights. The francis 58 case decided that it was provide damages and any other provision related to right and liberty the right to life is only right with temporary or permanently the justice Bhagwati arise the question whether the tight to life is ported the right to life and without any discrimination on the basis of community.59 the supreme court says that according to article 17 are available against private individuals an not for particular group. The Indian constitution says that by article 20 clause 1 that no person shall be punished without any. This article makes provision and power of the legislation. The legislation can make prospective laws but article 20 not permits to make legislature retrospective criminal laws. It is not make probation impose of liberty of civil and political with effect the influence under the law and time for the commission of the offence. The protection against offence, it makes clear that this right only applied to those person those are accused or offender. A person becomes accused person against home formal offence those are prohibiting by the law. The accused in the police case in fact a witness whose statement was recognized under section 161 of criminal procedure code. The life is not existence like a vegetables and isolation and ascetics it says by J. Krishna Ayer.60

Under the central right to uniformity in the witness of law and the equivalent assurance of law inside the domain of give by article 14 of constitution of India. The legal change after post crisis. The legal make under article 21 of the constitution. The article 21 is so easy rules adopted and spirit of law. The article 14 and 19 related with equality and personal liberty.61

57- Olga Tellis verses Bombay Municipal Corporation A.I.R. 1986 S.C.page 180, at 194 and so forth, S. Batra verses Delhi Administration, supra note page 50
58 -Francis Coralie verses Union of India ,Supra note page 44
59- Ibid
61- Sunil Batra verses Delhi Administration, supra note page 50; Maneka Gandhi verses Union of India, A.I.R. 1978 S.C. page 597
In the beginning article 21 is not so wide but the new approach adopted after 20 century. Now the article 21 provide so many rights related to life and liberty right from the inception revoked from emergency.62 article 21 A of the constitution related to education the state shall provide compulsory and free education. This article says those children below the fourteen years get education those procedures provide by the state. Article 22 related with arrested persons. This article says that no individual who is captured should be kept in authority without educated when may be the ground for such capture. Each individual who is captured might be produce before the nearest magistrate within 24 hours.63 No law provision for detained shall be authorized to detained of a person longer period more then 3 months.

The advisory board consists of persons who are qualified for appointment as the judge of high courts have reported before the termination of time of 3 months that are is in supposition sufficientes reason for detention. At the point when any individual confined as per the procurement of law those are made by the parliament under the proviso An and B. at the point when any individual is kept by law a request made under any law accommodating the law.64 Parliament might by law the circumstances under which an individual may confined for a period more then three months. The blend pantomime period for which an individual may detained more then three months. The Honorable Supreme Court mostly referred the international covenant ion provide the procedure. Those are related with human rights and right to life. The human law related to life adopted by the supreme court from international instrument related with right to life, the life does not mean that person live according to an animal. The human rights given so many mining and wide scopes for right to life.

The rights to life have much wide mining and take within it so many thinks some take human civilization which make life meaningful if reputation is directly effect than we protect it. The every person have right to enjoy his life and every

63- The Constitution of India Article 51 supra note 26
64- The Human Right & Judicial Activities, page 9 Hubli Bar Association in August 1997
person have quality of life that is connected with his human personality.65,66 The state has duty to maintain the dignity of life and is recognized according to state provision.67 Both children and women are castaways of any flawed social request and essential procurement for the welfare of individual. The court again chose that socialized society, those are not more imperative than the life of individual and freedom of that individual life is have incorporate all implications and rights without it nobody have any position and significance. 69 subject to open request and wellbeing and to different procurements of this part, the persons are similarly qualified for opportunity of inner voice and the privilege uninhibitedly to affirm, rehearse and engender religion. Nothing under article 25 might influence the operation of any current law or for making any law. The procurement for social welfare and change and considered open Hindu religion in circumstance of open sanction identified with all classes. The subject to open request ethical quality and each religious and solid section administer such property according to law. The right to move the also come under fundamentals rights because right to move granted by procedure of law that existing among the Supreme Court. The court make an order issuing an appropriate order and write for granting other relief which is not provide by the law.

The same system received for this situation by the Judge. He says that the privilege to life something all the more then the creature to survival his life. The trump right to life means that the person live with minimum sustenance’s and dignity, shelter and all other rights require for the human life and the human life is completed.70 In this case the court give more importance to term life that provided under article 21 that it is not just confined and simple creature existence.71 It implies not restraint against the current life and something more that we appreciate in life.72

65-Prem shankar verses Delhi Administration A.I.R. 1980, S.C. page 1535  
69 -Keher Singh verses Union of India A.I.R. 1989 S.C. page 653  
70- Samatha verses State of A.P A.I.R. 1997 S.C. page 3297 at 3330  
72- Ibid at 194
The privilege to life is exclude right to sustenance protect not too bad environment, garments and different needs. The wares those are essential for live. The contrast between the needs of creatures and human for shelters has kepted in viewes for the animals. It is only to Procted for bodies but for the human would be suitable commodities that permit to him for grow in all aspect, like physical, intellectual and mental.73

Again interpreted the right to life that is human live with dignity. It take some graces and fold some rights for citizens for become civilization which makes life, birth, living and other expended on traditional, heritage and cultural those are related to persons. The concept of life have become more expesensive in present time then the old tradition .74

The constitution of India provide right to life and liberty it means all persons live properly and equally.75 The provision related with to ported with full dignity and ported against arbitrary for the protection of life it mans protection from physical injury and other damage. It includes right to livelihood.76 Right to life and livelihood and other cases related to insurance case of India. It must be means to insure and playing an important role the right to fundamental and directive principle related to meaning full and security of the society includes by the supreme court. The Indian constitution under article 23 provides procedure related to right to work under the circumstance provide under the article 77. The right provide to prisoners 78and right to protect from environmental pollution.79

73- Shantistar Bulders verses N.K.Totame in year 1990 I S.C.C. 520
75-The Indian Constitutional Law, fifth version page.1272
78- Sunil Batra verses Delhi Administration, supra note page 50; A.K.Roy verses union of India A.I.R. 1982 S.C. page710
the provision related to life and liberty that procedure enacted by the law. The procedure of court must be fare and speedily trial 80. the right to life means enjoy all needs of all individuals aim.81 The provision related to fair and speedily trial.82 The term trial means that right provide for every individual.83

4.4.3-b-Private Right :-

Article 21 of the Indian constitution provides by the law has just, fair and reasonable not fanciful and arbitrary and oppressive it should be not produce all prerequisite of article 21 would not be fulfilled. What is faire and just? In the Manka Gandhi’s case no new range for the advancement of life.84 The standards set down in the maneka Gandhi case no individual should be denied from his existence with no strategy built by law.85 Accepting the standards of regular equity. There ought to be on the multicoated trade and business. The process of due process of law established by American constitution. The advisory board adopted process in the manila Gandhi that is illegal and arbitrary procedure adopted consequently the detention order was libel to be quashed.

On account of Meneka Gandhi case court give another approach to acknowledging individual flexibilities like rights to safeguard, rights to expediently trial, rights for apple, rights for human detainee treated inside the prisons. Rights to live and torture to live with human rights and dignity. 86 Article 21 provide natural gift for the healthy environment and natural right of every individual. It is basic and natural rights of every person like component under the law. Any living being can not survive without life and liberty. The advancement of social and technical conferred may benefit for comfort with other service those are provide by the law.

80- Maneka Gandhi verses Union of India, supra take note page 55
83-Basu, The Human Right in indian Constitutional Law, second version 2003 page 292
84 -Maneka Gandhi verses Union of India Supra note page 55
4.4.3-c Mothered Adopted by Law:

The procedure adopted by or established by the law for the persons is basically known as the fundamental rights. The article 19 of the constitution related that any person can move freely without with the move freely is an essential and important right for the person. If any one makes restriction and violation of this right it means that he sole the personal liberty and the article 19 clause 5 says that if any detention made without process figure given by the law. The right to life and personal liberty is sat back initial the judicial procedures for human life because the individual suffer for inter portion of article 21 by the Indian constitution. In this case Judge decide that meaning of phrase of American that is procedure established by the law. The attorney general also reminds in this case to judge that the constitutional assembly also rejected this phrase that is due process. Those are become unreasonable for the law. The justification suffer by deprivation of liberty and life. The article 19 related with the article 21 of the Indian constitution it accommodate hardship of the individual freedom of an individual.

It is not according to the law. Again it become an argue word law under article 21. it is not understood in this sense of an enactment but it passed on the principle of natural justice and that procedure not related with it that is violation of the and principle established by the law become invalid. The legislative sanction the procedure, the article 21 of the constitution provide guarantee portion against possibly and executive and judicial action and not appose the action taken by the legislative. The decision provide in A. K. Gopalan case 89 accepted judicial protection of human rights those are provide inhibited. The Indian constitution work for to decades.

86-Shailaja Chander, supra take note of 14, page 164-165
88-Fali S.Nariman, The Protections of Personal Liberties in India for Reflection on Emerging International Laws, Essays in Memory of Late Subrata Roy Chowdhury page -5
89- Ibid page10
The supreme court take more then 25 years to decided the case and make himself free from shackles which is ultimately decided in Maneka Gandhi’s case in year 1978.

Up to that time the principle of natural justice and due process of article 21 of the Indian constitution of India did exclude the Supreme Court. In Maneka Gandhi’s case the larger part recommending held that the same methodology can not be received by article 21. the authorization endorsed by law simply get to be reasonable and sensible and that not get to be oppressive.90 the standard of regular equity along these lines ported the privilege to life and freedom now the article 21 make faire and sensible procedure and law.91

The case decided that the spectacular board evolution of law relating to individual rights and judicial preceding of the case the article 21 look this fresh and helped the lower and apex courts in a new process that is institutional human rights in India.92 the due process read in Maneka Gandhi initiated the right of life and a personal liberty that is again repeated in the case Sunil Batra93 in this case the word law in the law procedure estabisher that is explain widely. Again article 21 define the word law it means right must be fair and reasonable and not arbitrary and opposite the individual right.94 here the prerequisite of article 21 is not satisfy on the grounds that it is ended up self-assertive compare to article 14 of the Indian constitution. In case of Bachen Singh 95 repeated again same decision. That decided in Maneka Gandhi case the court decided by majority that provision provide in article 21. the Maneka Gandhi says The article 21 says that the statement make clear those are based on reasonability. All the procedure adopted by the court.97,98 The article 21 not only adopted but it have subordinate laws also procted by it.

90- Maneka Gandhi verses Union of India, supra take note page 55, at.613.
91- Ibid, every Krishna Iyer J., page 659
92- Supra note 82, page 6.
93 -Sunil Batra verses Delhi Administration, supra take note page 51.
94- Ibid, page 49 every Desai. J.
In India the procedure of law means that same thing as the phrase or due process of law according to the American constitution. The American procedure due process and the Indian constitution provide right to life and liberty. Both are related with constitutional provision those are related with each other. Under the American constitution adopted two procedures that is substantive and procedural law, but in India only procedural law that given the guarantee to Procter the law. The term law means not only enacted law but it may be natural justice principal also included.

The Supreme Court also refused that it is not necessary that those procedure adopted for making law that same use by America in the due process because the word law is no where use in the due process on. This commitment farther says that the same related procedure is not sufficient to comply the mandated of art. 21. The procedures adopted for article 21 that is fair and reasonable. This procedure is not arbitrary.99

The concept of natural justice is essential part of the law. The due process of law is not a component of law like in the same way the natural justice is also not a mechanical concept of law. The natural justice applied according to the situation in article 21 merely did not mean that word law but incorporate the principle of natural justice if any one deprived a person from his personal liability and life. It is the duty of state that it musttake reasonable prevention from eliminate, mortality and epidemics and other exception through life to make healthy and clean environment and take major protection and provide medicinal facilities the primary education and fees all other right those are related to life of human being which are provided by international instrument on human rights.

The directive police is provided by India law in part IV. Article 21 rights to life are called hearts of the human right and it had amended far reaching gotten by -

95 -Bachan Singh v/s Condition of Punjab Supra note11
96- Ibid., page30
99-B.G.Ramcharan The Rights to Life in International Laws (Dordrecht: Martinus-Nijhoff,in year 1985) page 63
understanding. At the point when the inquiry emerges the court of India received a strategy those are assume dynamic part in the execution and change the human rights where the mandate rule get to be inferable part IV of the constitution. The constitution of India additionally gives certain protections to the assurance and conservation of environment under the basic rights, article 21 of the constitution conceded the privilege to life, life of poise to be lived in a legitimate domain free from risk ailment and their contamination.

The constitution additionally forces a commitment and the state through article 21 of the constitution ensures the privilege to life and individual freedom. Free from a threat malady, blameworthy. the two procurements as mandate standards are in consonance with the dedication of worldwide group as substance in all inclusive announcement of human right and universal contract on social, monetary and social right. Aside from 41 and 45 articles. It is a matter of normal information that order standards conceded partially IV of the constitution. It measurements not imply that are importance less. The order standards of the state approach are essential in the administration of the nation. These standards to be translated in the light of part III. These standards are to make basics rights. Both rights are supplementary for one another the state is under a sacred command to create conditions in witch the fundamentals rights granted to the individual under part III of the constitution for enjoyment for all. Environment is a natural gift. Every one like to live in a healthy environment it is a basic and natural right of every living being to live in a healthy environment and air, water etc. are essential for living being.

4.5. RIGHT TO LIBERTY:-

4.5.1 Concept and Meaning:-

'Liberty' or 'Freedom' is considered as the greatest possession of man. Even among animals there is an urge to live unhindered and a captive bird or animal attempts to shatter the chains or the cage which captivate it in order to live in an atmosphere of its own liking. Among human beings, the urge to acquire freedom from restraint artificially imposed has been the commonest feature of the long history of the

101- Supra note 58, page 11
human race. "Man is conceived free; all over he is in chains." This announcement of Rousseau portrays what a man sees on the planet. The internal desire for opportunity is a characteristic sensation of human culture."

Man adores that to which he has ended up habituated. Regard for the life, freedom and property of everyman is today not just a standard for choice or an arrangement of the state however has actually become a principle of the living law.

If there is any cause for which men would fight and die willingly, for which they would undergo the severest of hardships, for which they would face the firing squad and kiss the gallows with resolute heart and beaming face, it is that of liberty, for they look upon it as the very quintessence of a civilized and decent existence, something bereft of which life should be without honour and dignity, something without which life would lose all significance and meaning.

Liberty is the essential requirement for the modern society. It is called as the name of delicacies fruits of a mature civilizations. The individual cannot attain to the highest in him unless he is in possession of certain liberties which leave him as it were to breathe and expand. Moreover, freedom is as necessary to man as bread and air. Liberty of life and personal freedom are the focal points of civil liberty. This liberty sustains other liberties because without liberty of life and personal freedom no other civil liberty is possible. Liberty, the life-breath of all hitherto revolutions, aims at not only liberty from arbitrary restraint, but also at the securing, of those conditions which are essential for the fullest development of human personality. Liberty is the eager maintenance of those conditions without which man cannot be at his best. Further, liberty has in view not only the external situations in which man seeks to realize

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102 'Personal liberty forms part of the wider concept of liberty. According to Herbert W. Schneider : 'Freedom' and 'Liberty' are not synonymous. 'Liberty has a plural; 'Freedom' has none (Is there freedom; what liberties are there). The liberty of man , p. 655, but according to Charles A. Bread : The two word 'Freedom' and 'Liberty' are interchangeable. Although, there has been a tendency in the English speaking world to treat 'liberty' as 'something French, foolish and frivolous', and 'Freedom' as 'English, solid and sensible', there is no ground whatever for this distinction, Freedom of course, is older in the Anglo-Saxon tongue, but the two words have been employed in English thought as substantially identical in meaning, since the 14th century. In their deeper origins, in fact, they possessed strikingly similar characteristics; see Freedom in political thought, p. 288.


104 Clarence Morris, “the Great Legal Philosophers”, P. 449.


himself but also the internal, mental, moral, and spiritual aspects of his personality. There is no liberty where mind is not free.

4.5.2 Definitions:

"The world has never had a decent meaning of "freedom" and the American individuals are quite recently much in the need of one. We all pronounce for freedom however in utilizing the same word we don't all mean the same thing." Abraham Lincoln talked these words in 1864 yet they are generally as substantial today as they were the point at which he expressed them about a century prior.

There is no word that concedes to more different meanings and has made more diverse impacts on the human personality than that of freedom. It labors under the disease of manifold meanings. Philosophers have spun a tremendous web of confusion around it. But we have no need of venturing on that tempestuous sea; we shall deal with the word as it has been used in the political idiom.\textsuperscript{108}

Moreover, liberty no less than democracy is subject to a poetical mythological transfiguration and in the hands of politicians seldom is made to mean the opposite of what any honest man thinks when he uses the word. Thus Hitler and Mussolini maintained that they were endeavoring to gain liberty for their nations in international competition and that whoever hampers their nation in the quest of their "living space" committed a crime against their liberty; in this case liberty becomes what Montesquieu described as the 'right to bear arms and of being empowered in this manner to utilize roughness.

As indicated by Chamber's 'Twentieth Century Dictionary', Liberty signifies "Opportunity to do as one satisfies, the intemperate business of characteristic rights, force of free risk, benefits, exception, unwinding of limitation, the limits inside which certain benefits are delighted in, the right to speak freely and activity past standard thoughtfulness." Almost every moralist in human history has praised freedom, like -

\textsuperscript{107} B. mishra, Civil Liberties and Indian National Congress Introduction, p. VI (1969).
\textsuperscript{108} Gaetano Salvemini, "Democracy Reconsidered", p. 332.
happiness and goodness, like nature and reality, the meaning of this term is so porous that there is little interpretation that it seems able to resist.109

Liberty is an expression of an impalpable atmosphere among men. It is a sense that in the things we deem significant there is the opportunity of continuous initiative, knowledge that we can, experiment with ourselves, think differently, or act differently from neighbors without danger to our happiness being involved therein. We are not free unless we can form our plan of conduct to suit our own character without social penalties.110

Freedom might likewise be characterized as the insistence by an individual or gathering of his or its own particular embodiment. It tries to require the vicinity of three elements, a certain symphonious offset of identity; it requires on the negative side the nonattendance of limitation upon the activity of that confirmation and it requests on the positive side the association of chances for the activity of a constant activity. The problem of liberty has always been the prevention of those restraints upon the one hand that men at any given period of time are not prepared to tolerate and on the other hand the organization of those opportunities the denial of which resulted in that sense of frustration which when widely felt leads to imminent or actual disorder.

For John Stuart Mill, "all restraint, qua restraint is an evil. Laski takes the same line and argues that liberty is essentially an absence of restraint.111 According to Locke, the idea of liberty is the idea of a power in any person to do or forbear any particular action according to the determination or thoughts of the mind.112 Freedom consists in one being able to act or not to act according as one shall choose or will.113 By liberty we can mean a force of acting as per the determinations of, the will.114 According to Jonathan Edwards,  

110 Ibid. p.12.
113 Ibid. p. 28.
114 Hume, “Enquiries Concerning Human Understanding”, (1951) pp.73
"The plain and evident significance of the words, "opportunity" and "freedom" in like manner discourse, is power, open door or preference that any one needs to do however he sees fit, as it were, his being free from obstacle or hindrance in the method for doing, or directing in any appreciation, as he wills. Furthermore, the in spite of freedom whatever name we call that by, is an individual's being upset or not able to direct as he will, or being required to do otherwise".115

As indicated by John E.E.D. Acton freedom signifies "The confirmations that each man should be ensured in doing what he accepts his obligation against the impact of power and greater parts, custom and assessment."116

Thus liberty may be said to mean, the absence of all restraints on the power of a person to act or not to act according to the determination of his will which implies that there will be no impediments to exercise that will.

Those who hold that an individual's freedom lies in his ability to do as he pleases, look upon the coercive regulation of conduct by government as curtailments of individual liberty. Those who hold that a person's freedom lies in his ability to will as he ought; they regard the obligations imposed by law as no infringement of liberty.117

What seems to be of the permanent essence, of freedom is that the personality of each individual should be, so unhampered in its development, whether by authority, or by custom, that it can make for itself a satisfactory harmonization of its impulses. Restraint is felt as evil when it frustrates the life of spiritual enrichment. Freedoms are opportunities which history has shown to be essential to the development of personality.118

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117 Supra take note of 31, p. 24.
118 Supra take note of 27, p. 26.
Freedom dependably requests a limit on political power. Power thusly when uncontrolled is dependably the regular adversary of opportunity. The more extensive the carefulness, the more noteworthy the possibility of its misuse. Where tact is outright, man has constantly endured. Outright watchfulness is more damaging of opportunity than any of man's different creations. Furthermore total tact, in the same way as debasement makes the start of the end of freedom,

To Lord Justice Denning, freedom implies opportunity of each reputable native to think, what he will to say that he will and to go where he will on his legal events without let or block from some other individual. It must be coordinated, obviously, with government disability by which he implied the peace and great request of the group in which he live.119

In nations where tyrants smothered their subjects, by freedom, as indicated by John Stuart Mill, was implied insurance against oppression of the political ruler. The ruler was by and large viewed as in an essentially opposing position to the individuals whom he dominated. As the ruler of the vultures would be no less curved after imploring in the herd than any of the minor shrews, it was basic to be in a never-ending mentality of safeguard against his nose and hooks. The point, in this manner, of the nationalists was as far as possible to the force which the ruler ought to be endured to practice over the group; and this confinement was what they implied by freedom. It was endeavored in two ways:

*Firstly, by acquiring a distinction of specific immunities, called political freedoms or rights, which it was to be viewed as a rupture of obligation in the ruler to encroach and which in the event that he did encroach, particular resistance of general defiance was reasonable.

*Secondly, Establishment of protected checks by which the assent of the group or of an assemblage or something to that affect, expected to speak to its hobbies, was made a fundamental condition to a percentage of the more imperative demonstrations of the representing power.120

119 Supra take note of 27, p. 30.

120 John Stuart Mill on 'Liberty', p. 3.
Thus, we can examine from the various definitions of liberty that it has not a static or rigid content but its content is ever-changing. To some it means something and to others it means entirely different. But one thing 'is clear that liberty of a person consists in doing what he desires but his desires have to be balanced with the social control that is the exercise of similar desires of other people so that he may, not create nuisance for others. Thus, in short, we can say that liberty' in the narrower sense is the antithesis of physical restraint or coercion; and in the wider sense it means the liberty of a person to do anything he desires, for example, liberty to eat, liberty to sleep, liberty to play and so on.

Whatever, "freedom" may mean today, the freedom ensured by our bills of rights, said Roscoe Pound, "is a reservation to the single person of certain central sensible desires included in life in socialized society (and an opportunity from self-assertive and preposterous activity of the force and power of the individuals who are assigned or picked in a politically sorted out society to modify relations and request behavior, thus have the capacity to apply the power of that society to individuals."

Freedom, hypothesizes the formation of an atmosphere wherein there is no concealment of the human spirits, wherein, there is no disavowal of the open door for the full development of human identity, where to head is held high and there is no servility of the human personality or subjugation of the human body.

**4.5.3 Right to Personal Liberty :-**

The primitive man had no notion of Fundamental Rights, though he did, have a number (memberless) of freedoms which no civilized man can ever have. But these freedoms had no meaning. They were freedoms in wilderness. In the feudal society, only the ruler, the nobility and the clergy had rights. The emergence of the natural law school led to the recognition of the inherent, inalienable and basic freedoms and the rights of man. The state made law should not abridge these rights some jurists trace the origin of liberty to the ancient Greek civilization. State was a

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The idea of defining and declaring the rights of man and of citizens is not a very recent contribution to political theory. Since the days of French Revolution, it has become article of faith for liberalism. Though the Bill of Rights as conceived and formulated by the British and American Revolutions were more in answer to the sufferings or grievances of their people against the then Rulers than formal declarations of abstract rights, but the rights incorporated therein are such essential claims of humanity that their declaration and enforcement must be deemed to be the primary function of every civilized government. The privilege to individual freedom is a standout amongst the most, if not the most vital, of the human rights.

Freedom, is the posterity of high human advancement. It proposes the formation of an atmosphere wherein there is no concealment of the human spirits, wherein there is no dissent of the open door for the full development of human identity, wherein head is held high and there is no servility of the human personality or oppression of the human body. Absence of restraints on liberty is a pointer to the index of maturity of democracy in a society. But there can't be absolute liberty. It has to harmonized with duties towards society and the liberty of others. In fact, restrictions are essential for the preservation of liberty itself. But the persons in power may be tempted to increase their power and in the process limit the liberty of others. Litigation index is a clear pointer to the fact that the people holding state power are the main culprits for violation the liberty of the common man in the society, by their action or omissions. To safeguard the liberty of individuals, most democratic countries have adopted the easiest mode of incorporation the fundamental liberties or freedoms which are regarded as essential, inalienable, natural human and basic in their constitutions. This ensures governmental adherence to certain norms in its dealing with citizens.

123 Barker, “the Yhe Political Thought of Plato and Aristotle”, p. 77.
4.5.4 Position in India:

4.5.4.1 Historical:

The rights of man were embedded in highly developed ancient Indian civilization and religion. The ancient Vedas proclaimed liberty of body, dwelling house and life.125 Even as early as 2500-2000 B.C., in the Indus civilization, the people of Harappa enjoyed freedom of religion and worship, although no documents exist to throw any light on this subject. The advent of Aryan changed the structure of the community. They called the dark-skinned people whom they conquered as 'Dasios' or 'Slaves' or sometime even 'apes'. They had no rights. With the adoption of caste system, rights and duties depended upon the status in the community.

According to Prof. Altekar, ancient Indian writers describe not the rights of citizens but the duties of the state from which rights of citizens are inferred.126 King had a duty to please the people by maintaining good government. He was responsible to 'Sabha' and 'Samiti', representative bodies of the people. According to Dr. Saletore, excepting the tacit sanction of deposing and even killing a willfully and persistently wicked monarch and the right of deserting a tyrannical ruler, there were no other privileges which amounted to rights in ancient times.

Kauthilya in his 'Arthasastra' conceded three kinds of rights to citizens, namely, civil, economic and legal.

Civil Rights

He refers first to rights of women: (a) right to property,
(b) right to remarriage,
(c) right to maintenance,
(d) right to earn an independent livelihood,
(e) right to divorce, and
(f) right to freedom from torture.

Economic Rights

(a) Right to state relief

125 Rig veda8/38/12 quoted in P.B.Mukherjee, Civil Liberties, p.22.
126 A.S.Altekar, State and Govt. in Ancient India, p. 38.
(b) Right to property
(c) Right to possess rent free land
(d) Right to personal attention
(e) Right to medical relief
(f) Right to graze and fodder
(g) Right to free movement etc. etc.

Legal Rights
(a) Right to have recourse to justice
(b) Right to fair trial
(c) Right to produce witnesses
(d) Right to inheritance
(e) Right to claim remission of taxes
(f) Right to receive interest
(g) Right to summon help in danger etc.

The rise of Buddhism and Jainism were certainly a reaction, against the deterioration of the moral order existing in the post-Vedic period as also against the rights of the privileged classes. The concept of human rights in Buddhist polity was more human and liberal and repudiated caste distinctions. After Buddha, Ashoka protected and secured the most precious of human rights, particularly right to equality, fraternity, liberty and happiness.128

With Muslim Invaders came autocracy, despotism and religious fanaticism. Rights of people depended upon the nature of the monarch. Except in case of a very liberal ruler, non-Muslims did not enjoy rights in the Muslim state of Middle ages.

There was no question of enjoying freedoms during the British rule, the object of which was to strengthen the glory and might of England and to perpetuate the domination and exploitation of the people of India. British Government followed a -

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127 See Arthasastra, BK III Chs. XI, XX, BK. IV Cls. VIII & IX Quoted in Saletore's Ancient Indian Political Thought and Institutions, pp. 249, 262, 264.
128 Ibid. p.45.
policy of repression and suppression', a policy of 'divide and rule'. Whatever meager reforms were adopted from time to time was the result of reaction of the people. The glaring contrast between the ideal of civil liberty which the Indians got from the study of English history and literature and its virtual denial in their everyday life under the British rule produced a sense of frustration amongst Indians educated on the western line. It aroused the spirit of self-respect, nationalism and patriotism in the hearts of Indians.129

They learnt the lesson of liberty and other fundamental rights from the English Revolution of 1688, the American Revolution and its Declaration of Independence which declared the right to life, liberty and pursuit of happiness as inalienable rights and the French Revolution of 1789 and its Declaration of Rights. The people of India under the leadership of Mahatma Gandhi launched nonviolent struggle to achieve self-government and fundamental rights for themselves. Though some militants took to violence also. Lokmanya Tilak advocated that the freedom is the birth right of Indians for which they will have to fight.130

According to him, the political liberty is the solvent of all social diseases and an elixir that cures a nation of its maladies and invigorates it with such thoroughness as to make it feel its life in every limit. But the Government passed various repressive legislations.

The Government of India Act, 1919 failed to provide any fundamental rights to the people. The Nagpur-Session of the Congress in 1980 demanded repeal of all repressive laws. On the basis of the report of Sapru Committee, some of these laws were repealed. In 1925, "The Commonwealth of India Bill" containing a Bill of rights was unsuccessfully moved. Bombay session of Congress in 1927 demanded inclusion of rights in the future Constitution. The Nehru Committee Report in 1928 also included fundamental rights which it recommended must be included in the future Constitution. The Simon Commission however rejected the demand for the inclusion of fundamental rights in the future Constitution of India. In 1930, Congress Working Committee gave a call for the attainment of 'Purna Swaraj'. The Government adopted more repressive measures. Karachi Session of Congress in 1931 adopted a detailed -

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129 B.M. Sharma, Expanding Dimensions of Freedom, p. 207.
programme of 'Fundamental Rights and Duties'. The White Paper issued by the British Government after the 3rd Round Table Conference provided that certain including the privilege to individual freedom may be incorporated later on Constitution of India. Anyhow against the Government of India Act, 1935 did not contain a revelation of key rights. Maybe, more harsh measures were embraced to squash the freedoms of the individuals amid the Second World War. Under the Cabinet' Mission Plan of 1946 Constituent Assembly was established to frame the Constitution of India.

4.5.4.2 Jurisprudence of incorporation, Article 21 :-

Since the Indian Independence struggle was also a struggle for securing the fight to liberty. So, when the Indians got the privilege and responsibility to draft' their own Constitution, it was but natural to expect them and they were also under a moral but binding obligation to frame a Constitution which guarantees freedoms or liberties to all. B.N. Rau, Constitution Adviser, in his note to the members of the Constituent Assembly, suggested that provision relating to personal liberty should neither be vague nor a meaningless guarantee against the oppressive laws.131 K.T. Shah pleaded for empowering the courts to protect.

The Constituent Assembly elected an Advisory Committee on Fundamental Rights, which constituted several sub-committees. Rau, the Constitutional Adviser, prepared a draft Constitution. The draft Clause 16 provided: "No individual might be denied of his life or individual freedom without due procedure of law, nor might any individual be denied equity in the eyes of the law inside the domains of the federation." Thereafter, Rau was asked to proceed to U.S.A., Canada, Eire and U.K. to consult jurists, constitutionalists and statesmen on the draft Constitution of India. Justice Frank further told him that the due process clause in that Section was not only undemocratic but also was unfair and burdensome to the judiciary since it gave the judges' energy of voting enactment ordered by the delegates of the country. After a watchful examination of the draft, the Drafting Committee arranged a reexamined draft constitution and submitted it to the Constituent Assembly. The privilege to individual freedom was incorporated in Article 15, of the reconsidered draft Constitution which gave:
"No individual might be denied of his life or individual freedom aside from as per method created by law nor should any individual be denied balance in the eyes of the law or the equivalent security of the law inside the Territory of India." Thus, in the amended draft, the expression, 'without due methodology of law' was supplanted by the expression 'with the exception of as per technique made by law.'

In the Constituent Assembly consideration of Draft Art. 15 and the amendments proposed were postponed on 3rd December, 1948 at the suggestion of T.T. Krishnamachari. It was taken up for consideration on 6th December, 1948.132 In the Constituent Assembly the supporters of 'due process' clause made a consorted attack on the draft Article 15. Kazi Sycd Karimuddin moved an amendment that the word "individual" utilized before "freedom" be erased and for the expression 'aside from as indicated by method built by law' the expression 'without due procedure of law' be substituted.

Yet because of specialized procedural reasons, no talk could occur on the topic of the erasure of the word 'individual'. Notwithstanding, with respect to the second piece of his change, Karimuddin133 contended that "if the words 'method created by law' are kept then it won't be interested in the courts to investigate the unfairness of a law or a whimsical procurement in a law. When the technique is conformed to, there will be an end to everything and judges will be just observers."

So he emphatically supported the use of the phrase 'due process of law'. Mahboob Ali Baig supported the draft Article which included the phrase 'save in accordance with law'. The justification given by him for this was that a person must have the right to go to the court to establish his innocence and his arrest is wrong. Any law taking away this right should be invalid. Such a right is given under the expression 'without due process of law' or 'save in accordance with law'. Pandit Thakur Dass Bhargava opposed the deletion of the word 'personal' but supported the use of 'without due process of law' in Art. 15 as proposed by Karimuddhv. By using this phrase he argued, 'We want that the courts may be authorized to go into the question of the substantive law as well as procedural law.'

132 Ibid. p.67.
He wanted that courts should have power to inquire whether a law is good or not, just or not, protects the liberties of the people or not? Similarly, courts may also declare whether a procedure is just or not. He suggested that the phrase 'due process of law' should mean the same thing as understood in the American law. Rejecting the criticism that this phrase is not certain, he said, so are the phrases 'decency' or 'morality' used in the draft Art. 13. Recommending the acceptance of the amendment, he observed:

"If this amendment is carried, it will constitute the bedrock of our liberties. This will be a Magna Carta along with Article 13 with the word 'reasonable' in it. This is the only victory for the judiciary over the autocracy of the legislature. In fact, we want two bulwarks for our liberties. One is the legislature and the other is the judiciary. But even if the legislature is carried away by party spirit and is sometimes panicky, the judiciary will save us from the tyranny of the legislature and the executive."

He further observed, "In a democracy, the courts are the ultimate refuge of the citizens for the vindication of their rights and liberties. I want the judiciary to be exalted to its right position of palladium of justice and the people to be secure in their rights and liberties under its protecting wings, Chimanlal Chakkubhai Shah supporting the amendment said that the connotation of the new phrase is that the courts will have power to see not only that the procedure is followed but also that the substantive law is just and fair and riot unreasonable, oppressive or capricious or arbitrary. He said in American there is no uncertainty about this phrase as applied to 'life' or 'liberty'. In India 'liberty' is controlled by 'personal'.

Reacting to the argument that judiciary may not be able to fully appreciate the necessities of a law in a time of crisis, he remarked 'Sir' is it not better that nine guilty men may escape than one innocent man suffers? That is the worst that can happen even if the judiciary takes a wrong view.

According to K.S. Sharma, the phrase 'due process of law' guarantees a fair trial both in procedure as well as in substance. Substantive law must be just and appeal able to the civilised conscience of the community.
K.M. Munshi, speaking in favour of the amendment, said that we want to set up democracy, the essence of which is that 'a balance must be struck between individual liberty on the one hand and social control on the other. This clause would enable the courts to examine both the procedural part and the substantive law, to strike such a balance. He disagreed with the feeling that this clause may lead to disastrous consequences. He observed, "Human ingenuity supported by the legislature and assisted by the able lawyers of each province will be sufficient to legislate in such a manner that law and order could be maintained." He further, said that legislatures with large majorities have tendencies to pass laws in a hurry which give sweeping powers to the executive and the police. There will be no deterrent if these legislations are not examined by the courts. Alladi Krishnaswami Ayyar opposed the amendment and the inclusion of 'due process' clause. He observed:

Three or five gentlemen, sitting as a court of law, and stating what exactly is 'due process' according to them in any particular case after listening to long discourses and arguments of the briefed counsels on either side, may appeal to certain democrats more than the expressed wishes of legislature or the action of an executive responsible to the legislature.

let any member say that "there is anything like uniformity in regard to the interpretation of "due process"." He wanted the matter to be thoroughly examined and observed: "I trust that the House will take into account the various aspects of the question, the future progress of India, the well-being and the security of States, the necessity of maintaining a minimum of liberty, the need for co-coordinating social control and personal liberty before coming to a decision." He, however, noted the support which the amendment received revealing the faith in the judiciary. Z.H. Lari expressed the view that it is necessary not only in the interest of individual liberty but in the interest of proper working of legislatures that due process clause should find place in the Constitution. He expressed the hope that the Supreme Court in India will recognize the limits of individual liberty as well as the necessities of the state while interpreting this clause.

Legislature, according to Lari, in the last analysis, means only the Cabinet or the executive and nothing but the executive. He, thus, posed the question 'whether you

134 Ibid., H.V. Pataskar also supported the amendment.
are going to give such powers to the Executive which can infringe even the elementary rights of a person, the elementary rights of personal liberty or whether you should not put certain checks on the executive? Finally, he observed: "If this clause is accepted then the whole constitution becomes lifeless. The article as it stands is lifeless. Unless you accept this amendment, you would not earn the gratitude of future generations."

The consideration, of Art. 15 was again taken upon 13th December, 1948 when Dr. Ambedkar was called upon to reply. Dr. Ambedkar pointed to the two sharp perspectives. One supporting the incorporation of due procedure statement, the other contradicting, it. The inquiry, he said, was whether the legal ought to be given the extra energy to scrutinize the laws made by the state or the ground that they damage 'certain central standards or that the lawmaking body should be trusted not to make terrible laws. He admitted. "It is exceptionally hard to reach any unmistakable conclusion there are perils on both sides. For myself, I can't out and out overlook the likelihood of an assembly pressed by gathering men making laws which may revoke or disregard what we view as certain crucial standards influencing the life and freedom of the single person. In the meantime, I don't perceive how five or six noble men sitting in the Federal or Supreme Court analyzing laws made by the Legislature and by dint they could call their own individual inner voice or their predisposition or preferences are trusted to. Figure out which law is great and which law is terrible. It is foam a situation where a man needs to cruise in the middle of charybdis and scylla." Thus he went out to choose the way it prefers.

All the amendments were defeated and Draft Article 15 was adopted without 'due process clause' as Art. 21 of the Constitution. Dr. Ambedkar, informed the Assembly in September 1949, that no part of the Draft Constitution has been so violently criticized by the public outside as this Article.

4.5.4.3 Protection of Personal Liberty :-

Article 21 of the Constitution of India declares: "No individual should be denied of his life or individual freedom aside from as indicated by methodology secured by law."
This cherishes the high estimation of human poise and the value of human individual. The soul of man is at the foundation of Article 21. Truant freedom different flexibilities are frozen. Article 21 gives the security to against hardship of life and individual freedom to each individual, whether a resident or not. The privilege ensured by this article is, on the other hand, not a flat out right to life or individual freedom yet a privilege not to be denied of life or individual freedom without the method secured by law. From one viewpoint, it perceives the privilege of the State to deny an individual of his life or individual freedom and on the other side; it obliges that such a hardship can't happen with the exception of as per strategy secured by law and that technique must be simply, reasonable and sensible.

Accordingly the State's power to deny a single person of his entitlement to life or individual freedom is liable to the accompanying of a simply, reasonable and sensible strategy recommended by a substantial law. The law additionally should not be self-assertive or irrational. It is an assurance which is both substantive and procedural. Article 21, however evidently shows up as a shield working adversely against official infringement over something secured by that shield, indeed, it is the lawful distinction of both of insurance or the shield and additionally of what it secures which lies underneath that shield. Article 21 now is not restricted to procedural insurance just, it stretches out to the substance of the law.

Article 21 gives security against official activity as well as against authoritative activity. What this article requires is first that for denying an individual of his life or individual freedom, there must be a legitimate approval for the reason, and the power should entirely take after the endorsed lawful technique for the reason, which must be simply, reasonable and sensible.

4.5.4.4 Article 21: 'Sole Repository':-

Article 21 insurances security against hardship of life and individual freedom without which all different rights get to be useless.

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135 Article 21 in the Constitution
137 See Mithu v State of Punjab, AIR 1983 SC 473.
The main critical issue which emerges in connection to Article 21 is whether it is the sole storehouse of the privilege to life and individual freedom or that this right exists autonomous of the Article 21 as a typical law right. The Supreme Court completely inspected this matter in the celebrated Habeas Corpus case, where the detenu fought that privilege to life and individual freedom is ensured in Article 21 as well as under the Common Law and Statutory Law. The privilege to individual freedom is additionally contained in Articles 19, 20, 22 and in this way Article 21 is not the sole vault of the privilege to individual freedom. Dismissing the above contention Ray, C.J. held that -

Article 21 is the sole store of the privilege to life and individual freedom against the State. It grasps all parts of individual freedom. The privilege to individual freedom is neither a typical law right nor a statutory right nor, a characteristic right. The scholarly judge watched:

"In the event that any privilege existed before the beginning of the Constitution and the same right with its same substance is presented by Part III as a Fundamental Right, the wellspring of that right is in Part III and none is any previous right. Such preconstitution right has been lifted by Part III as a Fundamental Right. In the event that there is a preconstitution right which has gotten to be currently as Fundamental Right, the Common Law right has no different presence under our Constitution. If there be any privilege other than and more broad than the Fundamental Right in Part III, such right may keep on existing under Article 372." This perspective was imparted by Chandra chud, J. who watched that whether Article

21 of the Constitution is the sole vault of the privilege to individual freedom, it! is the privilege of the individual flexibility nothing more and nothing less. Bhagwati, J. additionally watched that the guideline of standard of law is sanctioned in Article 21 and it doesn't exist as an unmistakable and separate rule giving a privilege of individual freedom, autonomously and separated from that Article.

Then again, Justice Johanna, in his disagreeing judgment, watched: "Holiness of life and freedom was not something new when the Constitution was drafted. It spoke to an aspect of higher qualities which humanity started to esteem in its advancement from a condition of like there's no tomorrow to an enlightened presence.
Moreover the standard that nobody might be denied of his life and individual freedom without power of law' was not the endowment of the Constitution. It was a fundamental culmination of the idea identifying with the sacredness of life and freedom. It existed and was in power before the coming into power of the Constitution. Article 21 consolidated that standard and makes it a Fundamental Right. It doesn't however take after that if Article 21 had not been drafted and embedded in Part 111, in that occasion, it would have been passable for the State to deny an individual of his life or individual freedom without the power of law."

Lifting to the status of Fundamental Right, of one part of the preconstitutional right can't have the impact of making that privilege non-existent, if the central right is overshadowed, so far as the sacredness of life and individual freedom, is concerned Khanna, J. further watched:

It is hard to acquiesce to the discord that due to Article 21 of the Constitution, the law which was at that point in compel that nobody could be denied of his life or individual freedom without power of law was wrecked and stopped to stay in power. 4.5.5 Personal Liberty:-

'Individual Liberty' has both limited and more extensive significance. In its thin sense, it implies insurance against self-assertive capture or confinement. Yet in the more extensive sense, incorporates all freedoms crucial in a majority rule government for the improvement of human identity in its fullest degree and glad life. Its reason for existing is to help the single person to discover his own feasibility, to offer declaration to his imagination and to keep administrative or different powers from estranging the single person from his driving forces. In A.K. Gopalan v. Condition of Madras, 139 translating the term individual freedom in a most confined structure, Mukherjee, J. watched

"In the standard dialect 'individual freedom' implies freedom identifying with or concerning the individual or assemblage of the individual and individual freedom in this sense is the absolute opposite of physical limitation or pressure. As per Dicey who is a recognized power on the subject, 'individual freedom' implies an individual

138 See additionally B.S. Rao Badami v. Condition of Mysore, AIR 1969 SC 45. 139 Ibid. p.88
right not to be subjected to detainment, capture, or other physical pressure in any way that does not concede to lawful avocation.

It is, as I would like to think, this antagonistic right of not being liable to any manifestation of physical limitation or pressure that constitutes the quintessence of individual freedom." Das, J. deciphered 'individual freedom' in a liberal sense and said that Art. 19 sureties just a percentage of the opportunities however it doesn't implies that nationals don't have different flexibilities like flexibility to eat what one preferences. His Lordship watched:

I can't acknowledge that our Constitution proposed to give no insurance to the heap of rights which together with the rights specified in Art. 19 make up individual freedom. Surely, I see it as a value of our Constitution that does not endeavor to list thoroughly all the individual rights however utilizes the succinct outflow 'individual freedom' in Art. 21 and ensures every one of them.

Das, J. further said that whatever the expectations of the Drafting Committee may have been, the Constitution as at long last passed has in Art. 21 utilized the words 'individual freedom' which have a distinct undertone in law. It doesn't mean just freedom of the individual yet it implies freedom or the rights appended to the individual (jus individual arum). Craftsmanship. 19 secure a percentage of the imperative traits of individual freedom as free rights and the interpretation 'individual freedom' has been utilized as a part of Art. 21 to incorporate all mixed bags of rights which go to make up the individual freedoms of men.

The larger part of judges laid accentuation on the way that the Constituent Assembly qualified "freedom" by the word 'individual'. Patanjali Sastri, J. watched that, "whatever may be the for the most part acknowledged undertone of the representation 'individual freedom', it is utilized as a part of Article 21 it could be said which rejects the flexibilities managed inside Article 19."

Fazl Ali, J. in his disagreeing judgment clarified that the articulation 'individual freedom' has a more extensive importance and a limited significance. In the more extensive sense, they incorporate insusceptibility from capture and detainment as well as opportunities of discourse, affiliation and so forth. In the slender sense, they mean invulnerability from capture and confinement. The juristic origination of 'individual freedom' when these words are utilized as a part of the
feeling of insusceptibility from capture, is that it comprises of opportunity of
development and movement.

In this way Sastri, Mukherjee and Das, JJ limited it to mean flexibility for
unlawful confinement. In Klmrak Singh v. State o/U.P.140 the Supreme Court
legitimately assessed the issue and lifted it from the prohibitive elucidation of the
greater part judgments for Gopalan's situation. Most of the judges held that the
expression 'individual freedom' is utilized as an inclusive term to incorporate inside
itself all assortments of rights which goto cosmetics the 'individual freedoms of man
other than those managed in Art. 19(1). The Court in this way pronounced Regulation
236(b),141 which approved domiciliary visits during the evening, to thump at the
entryway of the individual under observation, to conscious him, on the off chance that
he was snoozing, to oblige him to open the entryway and to let the police fulfill itself
about him, was void. The power of domiciliary visits includes the right to enter within
the premises and therefore constitute an invasion on the security to one's house. The
freedom of a person under Article 21 includes the freedom to be alone in one's house
or the right to receive such visitors as he liked, except, of course, for criminal
purposes.

The Supreme Court realised that personal liberty must include the 'holiness of
man's home' and the safety from an' "interruption" into his own security and his
entitlement to rest which is typical solace and a critical need for human presence. The
adjective 'Personal' is used in Article 21 only to distinguish its scope from that of
Article 19, which already covers some varieties of liberty.

The minority view was that the right to individual freedom implies not just a
privilege to be free from confinements set on his development additionally flexibility
from infringements on his private life, as such any calculated interference with the
right of privacy would also be a breach.of personal liberty. The minority was of the
view that Art. 19 is not carried out of Art. 21. Both are autonomous essential rights,
however there is covering. 'Individual freedom' has numerous traits, some of which
are found in Art. 19 too.

140 AIR 1963 SC. 1295.
141 Of the U.P. Police Regulations
In Maneka case, 142 the Supreme Court was of the supposition that the endeavor of the Court ought to be to grow the scope and ambit of Fundamental Rights instead of constrict their significance or substance by a methodology of thin legal development.

The wavelength for appreciating the extension and ambit of the Fundamental Rights was situated by the Court in R.C. Cooper's case,143 so the court's methodology should now be tuned in to this wavelength. Adopting that approach, Bhagwati, J. watched: "The articulation 'individual freedom' in Article 21 is of the most extensive adequacy and it covers an assortment of rights which go to constitute the individual freedom of a man and some of them have been raised to the status of unmistakable Fundamental Rights and given extra insurance under Article 19. So it implies that Article 21 incorporates the opportunities said in Article 19 too."

4.5.5.1 Right to Privacy:-

The privilege to security is not particularly specified in the Constitution of India. So one needs to see whether it is incorporated in the privilege to individual freedom. The privilege to one's assurance is as old as the origin of life itself. 'Might is Right', justified in the primitive society, stands replaced by the universally recognized state's duty to protect its citizens in a politically organized society. Right to life and protection expanded its horizons and came to include the right to enjoy life, right to liberty, privacy etc. It is very difficult to give any precise definition of the right to privacy. Louis Henkin has said, about privacy, “Some may define privacy as sum of all private rights. Many, however, obviously, contemplate a discrete private right of privacy, though they may differ widely as to its character and content. So, we find innumerable references to 'the right to let alone'. Some contemplate a right to be alone, to be free from unwarranted intrusion, to be secreted and secretive, a right to be unknown (Incognita) free from unwarranted information about oneself in the hands of others. Unwarranted scrutiny, unwanted publicity, a right to intimacy and freedom to do intimate things. Some offer another kind of definition, a right to be free from physical, mental or spiritual violation, a right to the integrity of one's personality.”

In its broadest uses, privacy is as old as law, implicated in the concept of the individual and all that is ascribed to the individual in laws regulating his status and his relations, or protecting his person against assault, his reputation against slander, his property against trespass or conversion. Some rights which partake of what all of us would call privacy (hard-core privacy) are also old in the law, implied, for example, in laws against trespass, ever dropping, peeping etc.

The right to privacy was judicially recognised, in 1904, in Pavesich v. New England,'etc., Co.144 where unauthorised use of portrait in an advertisement was held as violation of right to privacy. Where a movie studio released a picture called the 'Red Kimono', which described the life of a former prostitute who was now living married life for the past seven years, the Court held that it was invasion of her privacy.

"Freedom in the established sense must mean more than opportunity from unlawful legislative limitation, it must incorporate protection too, in the event that it is to be an archive of flexibility. The privilege to be left to figure things out without anyone else's input is surely the start of all opportunity. A piece of our case to security is in the preclusion of the fourth amendment against outlandish pursuit and seizures. It gives the insurance that a man's house is his château past attack either by curious or by meddlesome individuals. A man loses that security, obviously, when he goes upon the roads or enters open spots. At the same time even in his exercises outside home he has immunities from controls bearing on protection."

The privilege of the individuals to be secure in their own homes, papers and impacts against irrational pursuit and seizures, might not be abused and no warrant should issue, yet upon reasonable justification, bolstered by vow or assertion and especially depicting the spot to be looked and the persons or things to be seized.

One of the Warren court's preeminent commitment to the American established law was its revelation of sacred right to protection. Equity Douglas said, "to be sure amid the most recent two decades the fourth Amendment right to be free from nonsensical hunts and seizures had gotten to be, in short hand wording, 'right to security'." In Mapp v. Ohio, 145 the appealing party had been indicted intentionally

144 South Eastern Reporter, 68,cited in 18 Harv. L. Rev.625. The Fourth Amendment of the U.S. Constitution pronounces:
possessing and under her control certain licentious and salacious books, pictures and photos disregarding Ohio's changed code. The U.S. Incomparable Court held, "Having once perceived that the privilege to security epitomized in the fourth Amendment is enforceable against the States, we can no more allow that privilege to remain a vacant guarantee. Since it is enforceable, in the same way and to like impact as other1 fundamental rights, secured by the due methodology proviso, we can no more allow it to be revocable at the impulse of any cop who for the sake of law requirement itself decides to suspend its satisfaction. Our choices, established reasons and truth provides for the individual close to one side which the Constitution ensures him, to the cop, no not as much as that to which legitimate law implementation is qualified and for the courts, that legal respectability so fundamental in the genuine organization of equity."

It was not until 1965, in Griswold v. Connecticut, 146 that the issue of established right to security went to the cutting edge. Alluding to this case, Henkin proclaimed that "a protected 'right to protection', 'eo nomine' and Fundamental, was conceived in 1965." For this situation, a Connecticut statute which made the utilization of the contraceptives a criminal offense was1 tested. The official and restorative chiefs of the Planned Parenthood League of Connecticut were sentenced in the circuit court on the charge of having abused the statute as extras, by giving data, direction and counsel to the wedded individual as to the method for anticipating origination.

The appealing party division of the Circuit Court concurred with the judgment and it was additionally attested by Supreme Court of Errors of Connecticut. The Supreme Court of United States, held that the statute was invalid as an unlawful attack of the privilege of protection of wedded persons and that security against all legislative intrusions of the holiness of a man's home and protective measures of life was major and the security is a principal individual right radiating from the totality of the protected plan under which Americans live.

146 381 US 479 (1965).
The choice in Grieswold's case mark the first occasion when the Supreme Court discussed a composite right to privacy. The importance of this right was recently understood by the Barger's Court's heavy reliance upon privacy to justify limiting of State abortion statutes.

In 1969, in Stanley v. Georgia, the court set aside conviction for possessing in his house an obscene film for his own viewing. It held, "for likewise major is the privilege to be free, with the exception of in extremely restricted circumstances, from undesirable administrative interruptions into one's security." In 1972, the court, in Eisenstadt v. Baird, refuted conviction for giving preventative gadget to a young lady. The court held,

'On the off chance that the privilege of security means anything, it is the privilege of the individual, wedded or single, to be free from baseless legislative interruption into matters so on a very basic level influencing an individual as the choice whether to hold up under or generate a youngster." In Roe v. Wade, an unmarried pregnant lady who wished to end her pregnancy by premature birth organized as activity in the U.S. Area Court for the Northern District of Texas, looking for a decisive judgment that the Texas criminal fetus removal statutes, which disallowed premature births aside from as for those acquired or endeavored by restorative guidance with the end goal of sparing the life of the mother, were unlawful. The Supreme Court said that despite the fact that the Constitution of U.S.A. does not expressly say any privilege to security, a certification of specific ranges or zones of protection does exist under the Constitution and "that the bases of that right may be found in the Fourth and Fifth Amendments, in the penumbras of the Bill of Rights in the Ninth Amendment and in the idea of freedom ensured by first area of the fourteenth Amendment. The privilege to protection incorporates a ladies' choice whether to end her pregnancy'. The statute precluding premature birth was struck down. In the connection of the zone of protection, Blackman, J. expressed:

147 Supra note 16.
149 404 US 438.
150 Supra note 11.
'They (prior choices) likewise make it pass that the privilege has some expansion to exercises identifying with marriage, cherishing v. Virginia (miscegenation); multiplication, Skinner v. Oklahoma (Sterilization); contraceptives, Eisenstadt v. Baird; family relationship, Prince v. Massachusetts; and youngster raising and instruction.'

Referring to the above cases, Henkin remarked:

I will not indulge the Professor's delight in dissecting and to his satisfaction demolishing the premises, the conclusions and especially the reasoning of the principal opinion in these cases. Whatever grade the professors might give to justice Douglas and others for their performance in the art of constitutional interpretation, the result is clear: It is no longer necessary to eke out privacy in small pieces as aspects of other constitutional rights: there is now a Constitutional Right of Privacy." In 1979, the court struck down a law which imposed two restrictions on unmarried minor's right to obtain an abortion namely, parental consent or judicial authorization.

We will know which rights are and which are not within the zone of privacy only case by case, with lines drawn and redrawn, in response to individual and social initiatives and imaginativeness of lawyers. What the court has been vindicating is not a right to freedom from official intrusion but freedom from official resolution (i.e. autonomy). The right to privacy aggravated uncertainties in jurisprudence of individual rights and public good under the Constitution, limitation on government power are re-examined and renovate the light of changing philosophies, of both public good and in dual rights.

This is done by Constitutional modernization by judiciary. Jurisprudence uncertainties are aggravated, said Her because consideration has focused1 on defining the private Rig! Privacy with little regard to our; other balance, the comet "public good".

Answer lies in public good that compete 'privacy' in these cases. The "goods" balance has never race refined scrutiny. The Court paid virtually no attention to the possible purpose or motive in outlawing contraception. The c pronounced, without really telling us why, that before a fetus is quick the state has no proper interest to

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151 410 US 117.
152 Ibid. Duglas, J. also gave this list.
deny a woman's right to abortion, but that even then the mother's health is a sufficient compelling interest justifying at least some interference with Right to Privacy.

A jurisprudence of balancing of rights and goods cries thinking about public goods. Thus, Henkin has called for limitation on the right to privacy but he too recognized the right. Under the Indian Constitution there is no specific provision relating to the right to privacy. In Gopalan's case, 153 the court observed that the personal liberty means freedom from phys restraints. Such an interpretation does not include a number personal rights which a person enjoys under law. Some of personal rights include the right to eat, drink, smoke, work, leis play or sleep as much as one likes. These rights would not under any of the clauses of Article 19, nor would they come within the restricted scope of Article 21 as interpreted by the majority the Gopalan's case.

The majority, however, that the right was not guaranteed under our Constitution. nevertheless came to the conclusion that so far as the right of people to be secure is concerned, it must be included in Article 21

In Govindv. State of M.P., 155 the petitioner who was sub to surveillance under regulations framed by the Government under the Police Act, challenged these regulations on the ground that his right to privacy cannot be permitted.

However, the question arises whether women have this right in the context of family relations in India?

Under the Shastric Hindu Law, woman was given lower social status and was discriminated. She was not entitled to independence. She was always under protective umbrella of a male person. 'Father protects her in childhood, husband in her youth and the son in her old age', was the view expressed by Manu. Birth of daughter was considered as misfortune. Female, infanticide and Sati system were well known and often practiced. The movements started by social reformers like Raja Ram Mohan Roy and various steps taken by the Government succeeded to some extent in saving women from these social injustices. But their status continued to be inferior promised.

153 AIR 1950 SC 27.
154 AIR 1963 SC 1295.
155 AIR 1975 SC 1375.
to secure social, economic and political justice for all citizens including women. Discrimination against women is not only prohibited but special provisions in their favors are permitted. The state has been directed to secure equal pay for men and women, adequate means of livelihood, just and sympathetic states of work and maternity help and so on. The recently included procurement setting down essential obligations for the subjects makes it required to deny rehearse slanderous to the nobility of ladies. A standout amongst the most imperative major right ensured to all is the privilege to individual freedom and as have been seen above it incorporates right to protection additionally, which incorporates the individual affections of the home, family, marriage, parenthood, reproduction and youngster raising. Protection likewise incorporates control over when and by whom the different parts of her body may be seen, listened, touched, noticed or tried. The privilege to choose when to conceive a youngster or not ought to likewise be incorporated.

4.5.5.2 Right to Privacy v/s Conjugal Rights:-

The Conjugal rights i.e., the privilege of the spouse or the wife to the general public of the other is not the animal of statute. Be that as it may it is characteristic in the very foundation of marriage itself. The Law Commission of India in 71st Report expressed, "The pith of marriage is an offering of a typical life, an imparting of every last one of satisfaction that life brings to the table and all the torments that must be confronted in life, an experience of the delight that originates from getting a charge out of the regular things of the matter and of the soul and from showering love and fondness on one's posterity. The remedy of restitution of conjugal rights had its origin in the ecclesiastical law of England. But now it has been abolished in England by the Matrimonial Proceedings Act, 1970. In India, it was applied as a part of justice, equality and good conscience. However, Hindu Marriage Act, 1955 erected it as a statutory remedy. The purpose of the remedy is to preserve and not to disrupt the marriage. Cohabiting means the husband and wife living together as husband and wife. They must live together not merely as two people living in one house but as husband and wife.

Through the decree of Restitution of Conjugal Rights, the withdrawing party is ordered to return to the conjugal fold, so that consortium is not broken. Consortium
means 'camaraderie, love, fondness, solace, common administrations, sex'. All these have a place with hitched state. Taken together they make up consortium.

The topic of relations between the privilege to protection and matrimonial rights emerged in late cases, where the legitimacy of Section 9 of the Hindu Marriage Act was tested on the ground of infringement of Arts. 14 & 21.

The Andhra Pradesh High Court communicated the perspective that sexual cohabitation is an as one fixing of an announcement for compensation of matrimonial rights. The reason for the decree is to force the party to behave and act as husband or wife with the other party which includes the duly to have sex also, and in case of wife, even against her free-will and consent. The decree transfer the choice to have or not to have sex and the- choice to allow or not to allow one's body to be used as a vehicle for another human beings' creation to the State. Thus it offends the inviolability of body and mind and offends the integrity of such a person (wife) and invades marital privacy and domestic intimacies, of such person. The Court further observed:

‘Nothing can conceivably by more degrading to human dignity and monstrous to human spirit then to subject a person by a long arm of the law to a positive sex act.'156 Chaudhry, J. who delivered the judgment stated: ‘It cannot but be admitted that a declaration for compensation of matrimonial rights constitutes the grossest manifestation of infringement of a singular's entitlement to security . . . . The privilege to protection ensured by Art. 21 are glaringly disregarded by the announcement.’

The Delhi High Court, however, has adopted a contrary view. The High Court held fist though sexual relations constitute most important attribute of the concept of the marriage, but they do not constitute its whole content.157 According to Rohtagi, J. of Delhi High Court, one great defect of Andhra judgment is that it regards marriage as a legalised means of sexual satisfaction and not as a partnership for life. The Andhra judgment according to his Lordship is based on misconception of the true end of marriage. A disproportionate emphasis on sex, almost bordering on obsession has coloured the view of the learned judge. Delhi High Court upheld Section 9 of Hindu Marriage Act, 1955, But an important observation having strong bearing on the decision may be noticed when the learned judge observed.

156 Ibid. p.200.
157 Ibid. para 60.
'Restitution remedy may appear to be survival of the concept of the marital unity. Today, it may appear outdated because law is fast changing in response to the changing needs and ideals of society. But we have to see it with the Hindu eye of 1955.'

Thus the learned judge in 1984 behaved as if he was acting and deciding in 1955, when the right to privacy was not even recognized. The Supreme Court of India got the opportunity in Saroj Rani v. Sudarshan Kumar158 to consider both the above divergent views. Justice S. Mukherjee, talking in the interest of the court, announced, 'We like to acknowledge, the perspective of the scholarly single judge of the Delhi High Court.'

However shockingly the Supreme Court did not consider the subject of wife's rights to security. The court was influenced by the method of execution of the decree of restitution of conjugal rights. From the above judgments.159 ; it is evident that the question of women as an individual, having ' separate entity from her husband, having the right to privacy against her own husband, while matrimonial bond continues, has attracted judicial attention, though jilts no final determination. Andhra Pradesh High Court has adopted the extreme positive view, recognizing the right to privacy and declaring the judicial intervention through the decree of restitution of conjugal right as barbarous and flagrant violation of the right to personal liberty of the woman.

Though the court does not expressly direct the wife to submit herself to the lust of her husband but that is implied as she is required to -behave like a wife, which phrase implies certain obligations towards the husband. This judgment is important not from the angle of more emphasis on sex, nor should it be rejected as insignificant because of it. Rather it is important because it has provided an important weapon in woman's arms for not only protecting the existing rights but for acquiring more rights and thereby enhancing their status vis-a-vis men's.

The Delhi judgment is devoted to the rejection of Andhra Pradesh view. It did not go into the question of the right to privacy of a woman as an individual. It opined against the introduction of constitutional law in home and compared it with a 'bull in -

158 AIR 1984 SC 1562
159 Supra note 21.
china shop'. It observed that in privacy of home, and married life, neither Article 21
and nor Article 14 have any place. But at the same time, it recognised that in the,
home the consideration that really obtains should be natural love and affection. That
may be accepted but it is only where love and affection are missing, it is only where
the man, in the present day, continues his primitive supremacy and forces his force on
the woman forgetting that she is wife, an object to be loved and well treated, that the
principles of highest law of the land guaranteeing certain rights for the protection of
one's privacy and also social status become relevant. These rights are not for the one
half of the population and thereby depriving the other half of their fruits. In the
married life, it is companionship, regard and
affection for each other, which would include enjoyment of each other which is more
important.

The Supreme Court rejected the Andhra view and declared that Area 9 of the
Hindu Marriage Act is not violative of Articles 14 and 21 of the Constitution, if the
motivation behind the announcement is seen in its legitimate viewpoint and the
technique for its execution, in instances of defiance, is kept in perspective. Both the
Andhra Pradesh High Court and the Supreme Court put accentuation on the technique
for execution and sanction for disobedience. By taking into consideration that
sanction is only financial i.e., attachment of property, they treated it as valid. It is,
however, submitted that where punishment for an offence is only fine and not
imprisonment it does not cease to be an offence, nor justified. Similarly, if method to
execute the decree of conjugal rights is by way of attachment of property. it does not
cease to be forcible or binding. The woman, who stands the, risk of having her entire
property attached, certainly would stand compelled to submit to the decree and its
consequences.

Thus it is quite obvious that the wife has the right to privacy and decree of restitution
of conjugal rights may, in certain situations, amount to intrusion into her privacy.
There is no absolute right to personal liberty under the Constitution and so is also the
right to privacy. The woman by agreeing to marriage, by going through its
ceremonies, may be deemed to have accepted restrictions But this is only so long as
love and affection continues, mutual affection and regard continues and the principles
of two —in one-ship continues. Once all this comes to an end, whether resulting in
judicial separation or divorce or not reaching that stage, the self-accepted restrictions on one's privacy stand restricted. Though the husband is not required to get the consent or obtain willingness of his wife, each time, while making advances towards her as that is implied in marriage, but once he is resisted, her privacy takes precedence, and he has to respect it. She may be tired, sick or otherwise under depression and thereby unable to participate, he should respect it and resist himself, and otherwise it may amount to violation of her privacy. Wife, also as an individual, having her own existence and distinct entity from her husband, has the right to take certain decisions, when she is involved or is affected.

Sometimes, these may be with the concurrence of an in consultation with him. But sometimes, these decisions may be against his will. The question as to when she should beget a child, or how many children to beget, depending on physical, mental or economic conditions, should be decided by both. The man should not force his force on her. Whether family planning methods should be adopted or not and child, which methods, should also be decided by both. The husband should not unreasonably act against her wishes. Even in these matters, in reality, the woman is subjected to, inconveniences and sufferings. Most men want their women to adopt family planning and themselves opting out. All these prevailing realities show that equal status continued to be denied to women, ignoring their individual personality. If the right to privacy of the women is recognized, it would provide a modern weapon in her arm, not only to protect the existing rights and privileges; but also further enhancing her social status and personality.

4.5.5.3. Right to Reputation:-

The right to personal liberty includes the right to reputation. Any person making any defamatory statement against another is liable for action both under the Civil and Criminal Law. In Kailash Nath v. State of UP where cancellation of arms licenses was challenged, the Allahabad High Court held that though there is no right to license for fire-arms but cancellation of one already issued with opportunity of being heard may violate Art. 21. The Court held that the act or cancelling or refusing to renew a license leads to grave consequences. It may affect the license-holder's security or protection and 'may even be a slur on his reputation'. However, the court
observed that if prior opportunity is not possible, post-decisional opportunity must be given.160

The question regarding the right-to reputation came before the Supreme Court in Somewhere Vishnu v. Union of India161 where the petitioner challenged proceedings under Section 497 IPC on the plea that, though she is not a party to the proceedings, her reputation is being affected. The Court rejected her contention but held that the victim of adultery is entitled to defend her reputation in proceedings under Section 497 IPC.

4.5.5.4 Liberty to Travel Abroad:-

On the off chance that privilege to travel everywhere throughout the world had not been a human, right and an established right, the human legacy would have been more hapless, the human family more partitioned the human request more shaky and the human future more dinky. Swami Vivekananda, harping on the country's fall of the most recent century, watched. "My thought as to the key note of our national destruction is that we don't blend with different countries that is- the one and the sole reason. We never had the chance to go over all potentially useful information. We were kupam-andukas (frogs in a well)."162

Individual freedom makes for the value of the human individual. Travel makes freedom advantageous. The soul of man is at the foundation of Art. 21. truant freedom, different flexibilities are solidified.

Law specialists' Conference at Bangalore in 1969 pronounced:

"Opportunity of development of the single person inside or in leaving his own nation, in setting out to different nations and in entering his own nation is a key human freedom. In addition in a related world needing for its future peace and advance on over-developing measure of global comprehension, it is attractive to encourage individual contacts in the middle of individuals and to evacuate all outlandish limitations on their development which may hamper such contacts-In early common law, a British citizen could riot go out of the country without the permission of the king, as it deprived the king of his services. The Constitution of Clarendon of -

160 AIR 1985 All 291.
161 AIR 1985 SC 1618.
162 Quated in AIR 1978 SC at 656.
also forbade clergymen to leave 'England without the license of the Crown. The origin of the right to travel abroad may however be followed to Magna Carta which pronounced:

>In future, it should be legal for any man to leave and come back to our kingdom unharmed and without apprehension, via land, or water, protecting his dependability to us, with the exception of in time of war, for some brief time, for the benefit of all of the kingdom." But a British citizen can travel abroad only if he is able to secure a passport. In the United Kingdom, granting a passport is entirely a matter of royal prerogative which is exercised on behalf of the Queen by the foreign office. Thus, in the United Kingdom one can leave the realm only with the royal permission but, according to David W. Williams, by convention that permission is hardly refused. Widespread Declaration of Human Rights likewise gives:

>'Everybody has the privilege to leave any nation including his own, and to come back to his nation.' In the United States, the privilege to travel abroad may be said to be secured by the fifth Amendment of the Constitution which ensures the privilege to liberty. The United States Supreme Court held that the right to remove from one place to another according to one's inclination is an attribute of personal liberty. In Kent v. Dulles, 163 where the petitioner was denied passport in pursuance of the regulation requiring him to submit an affidavit that he has never been a communist, Douglas, J. held:

>'Flexibility of development over; wildernesses in either bearing and inside boondocks also, waist some piece of legacy. . . . Flexibility of development is essential in our plan of qualities." In Harberi-Apthakar v. Secretary of State, 164 the court held that Section 6 of the Subversive Activities Control Act, which banished the application for or utilization of a travel permit by an individual from an association requested to enlist by the board as a Communist activity association, was an undue limitation on the privilege to travel abroad ensured by the Fifth Amendment. Douglas, J. watched; 'Opportunity of development at home and abroad is vital for employment and business open doors for social, political and social exercises for all the coexisting which gregarious men appreciate.

164 Ibid.
Those with the privilege of free development use it now and again for wicked purposes. Anyway that is valid for some freedoms we appreciate. We in any case put our confidence in them, and against limitation, realizing that the danger of mishandling freedom in order to offer ascent to culpable behavior is a piece of the value we pay for the free society.'

'Travel abroad is more than a mere privilege accorded to American citizens. It is a right, an attribute of personal liberty which may not be infringed upon or limited in any way unless there is full compliance with the requirements of due process.'

In Woodward v. Rogers, 165 the loyalty oath for passport was held to be vocative of the right to travel abroad under the Fifth Amendment. Although the right to travel across the frontiers of nations is now well recognized both under the international and municipal laws, but every country exercises its inherent power to regulate such crossing of borders, by insisting air passports or visas or by laying down other conditions like those of victimization or certification about not being affected by contagious diseases like AID. The use of passport for traveling across the frontiers became more frequent in the 19th and the beginning of the 20th century. It is only after the First World War that the present system of passport was introduced.

A passport is a political document. It is a piece of evidence as to the nationality of the holder of the passport and the request by the issuing authority to a country to treat him as such and grant him protection and assistance which he may need. In modern time, it has become a condition for free travel. In India, before 1967, there was, no restriction on exist but entry was regulated by the Passport (Entry into India) Act, 1920 and the rules made there under. In 1966, Kerala High Court interpreted Art. 21 to include the right to travel across the frontier either side and the right to get a passport for that.

In Satwant Singh Sawhney v.D. Ramanathan, Assistant Passport Officer166 the Supreme Court held that the privilege to travel abroad is a principal right. Since there is no law directing or denying any individual of such a right, refusal to give a visa or the withdrawal of one officially given, abused Article 21. The declaration 'Individual Liberty' in Article 21 incorporates the privilege of velocity and to travel abroad, however the privilege to move all through the regions in India was not secure

165 344 Fed. Sup 974 (1872).
because it was particularly given in Article 19. Under Article 21, no individual could be denied of his entitlement to travel abroad aside from as per technique made by law.

Mr. Equity Hidaytullah and Mr. Equity Bachawat did not concur with the greater part assessment. Hidaytullah, J. talking in the interest of himself and Bachawat, J. watched, "A person is ordinarily entitled to a passport, unless, for reasons established to the satisfaction of the court, the passport may be validly refused to him. Since an aggrieved party can always ask for a mandamus, if he is treated unfairly 'it is not open by straining the Constitution, to create an absolute fundamental right to a passport where none exists under the Constitution. There is no doubt a fundamental right to equality in the matter of grant of passport exists, subject to reasonable classification, but there is no Fundamental right to get a passport. A passport is a political document. The solution of a law of Passport will not make things better. Even if a law was to be made the position would hardly change because the utmost discretion will have to be allowed to decide upon the worth of an applicant. Where the passport authority is proved to be wrong a mandamus will always set the matter right.'

In 1967, Parliament passed Passport Act, 1967, which regulates the right to leave India to travel abroad as well as the right to enter India. It prohibits departure of a person from India without a passport. It lays down the procedure for obtaining a passport and also the grounds on which it may be refused or revoked or impounded.

In Maneka Gandhi v. Union of India,167 the privilege to travel abroad was comprehensively considered by the Supreme Court and it was emphasized that the privilege to individual freedom incorporates the privilege to travel to another country which incorporates the privilege to get visa. This privilege, notwithstanding, may be influenced by settled by law which must be just, fair and reasonable an not arbitrary or fanciful. Chief Justice Beg observed:-

'It seems to me that there can be little doubt that the right to travel and to go outside the country which orders regulating issue, suspension or impounding and -

166 AIR 1967 SC 1836.
167 AIR 1978 SC 597.
cancellation of passports directly affect must be included, in the right to personal liberty.'

The same view was expressed by Justice Bhagwati that Article 21 includes the right to go abroad. So after the decisions in Satwant Singh and Maneka, it is settled law that right to personal liberty includes the right to go abroad and for this to get passport, subject to deprivation according to procedure established by law, which must be just, fair and reasonable: Where it is not possible to give reasonable opportunity before confiscation of the passport, it must be given immediately thereafter, otherwise, it will be violation of Art. 21 as confiscation will be without procedure established by law.

4.6 RIGHT TO EQUALITY :-

Modern democracies such as the Indian Union furnish nationals with more noteworthy social and political rights, a higher expectation for everyday comforts, more recreation and better instructive opportunities. The augmentation of these profits to more natives amid the previous hundred years or something like that has been portrayed as the procedure of the development of the national or fundamental human correspondence the crucial rights because of people by prudence of their enrollment in a State. With the expanding democratization of governments, the crucial issue has been to force down the hindrances of isolation and to offer equivalent chances to all. The point of popular government has all over been to wipe out 'man made, socially cultivated, separation that has augmented for some and has limited for others streets that prompt instruction, wage and advancement.'

Nonetheless, this doesn't mean a refusal to perceive the regular contrasts in character and mind. Owing to the distinctions in blessings which nature has offered on some and denied to others, characteristic disparity has been and must keep on being certainty in the public arena. Vote based system however accepts that in an atmosphere of equivalent open doors and benefits alone the distinctions in mental and good hardware of man can best turn out.


169 Lipson, Leslie: The Great Issues of Politics, (Bombay 1973), and p.145.
The boss issues, which each legislature needs to understand, are to accommodate this characteristic imbalance as a reality with rule of Natural Equality Doctrine.170

The creator endeavors to examine this compromise prepare in India to give social and lawful correspondence to the natives

**4.6.1 Principle of equality:-**

Equality is a very vital principle of social justice. While it is a boon to the poor, the oppressed and the downtrodden, it is dreaded by the rich and prosperous section of the society, because it can be stretched beyond the limits of justice. As Hobhouse has observed:-

‘Justice is a name to which every knee will bow. Equality is a word which many fear and detest’.

The problem of equality has baffled political thinkers and social reformers from the earliest time. Aristotle defined equality as treating equals equally and unequal’s unequally. The modern idea of equality on the contrary focuses attention on its substantive aspect and seeks correction of inequalities in so far as they are unjust and alterable according to prevailing social consciousness. The French announcement of the privileges of man and subject read:

'Men are conceived and stay free and equivalent in rights. Social qualifications can be built just in light of open utility.'

Law is the interpretation of the general will. It must be the same for all whether it ensures or rebuffs. All subjects, being equivalent in its eyes, are similarly qualified to all open nobilities, spots and livelihoods as per their abilities and with no other refinement then that of their ethics and gifts. Mere formal equality is not enough for oppressed and exploited sections of the society which not only need to protection but in substance it requires removal of unjust and oppressive conditions which are capable of alteration.

His principles of equality demands that we may concede to only such discrimination as is based on rational grounds. What is rational depends on the level of prevailing social consciousness.

4.6.2 Equality before the law:-

Article 14 of the Constitution provides: 171

'The State should not deny to any individual uniformity in the eyes of the law or the equivalent insurance of the laws inside the domain of India.'

Consequently the Indian Constitution utilizes two interpretations: 'Fairness in the witness of the law' or 'the equivalent security of laws'. While the term 'correspondence under the watchful eye of the law' owes its cause to the English Common Law and has been joined in all composed Constitutions that ensures the privilege to fairness; 'level with insurance of the laws' is obliged to the American Constitution. As a rule, the terms 'Equity in the witness of the law' and 'equivalent assurance of the laws' are obviously indistinguishable, yet in fact they carry different meanings. The expression 'equality before the law' means absence of any privileges in favor of any person and hence it seems to be somewhat a negative concept.

The Nagpur High Court in Sivshankar v. Madhya Pradesh State Government distinguished between the two expressions, namely, equality before the law and the equal protection of the laws, as thus, "while both the expressions aim at establishing what may be regarded as equality of legal status for all, there is some difference between these expressions. The former expression is somewhat a negative concept implying the absence of any special privilege in favor of any individual, while the latter is a more positive concept implying equality of treatment in equal circumstances".172

171 The Constitution of India (op.cit.), p. 4.

172 Indian law reports, 1951, Nagpur, p. 646.
All that is meant by promulgation of laws or in the application of a law discriminate between citizens similarly placed. Equal justice and equal treatment is guaranteed by the state. 173 Igor Jennings has defined the term Equality before law as the following:

'Uniformity in the eyes of the law implied that among equivalents the law ought to be similarly directed, that like ought to be dealt with alike… … The privilege to sue and be sued; or to indict and be arraigned, for the same sort of activity ought to be the same for all subjects of full age and understanding and without separation of race, religion, riches, society. Moreover in Chiranjit Lai verses Union of India, it held that there ought to be no separation in the middle of individual and individual holding comparative positions opposite any legislation. 175 Dicey articulated his guideline of the 'principle of law' as hence:

'Matchless quality or power of law as recognized from minor mediation. . . . It implies again correspondence in the eyes of the law or equivalent subjection of all persons to the common rule that everyone must follow regulated by the normal law Courts. . . . It implies that in England no man is exempt from the laws that apply to everyone else except each man whatever his rank or condition may be is liable to the customary law of the land". 174

All things considered this correspondence under the watchful eye of law is not supreme however is liable to as gave under the Constitution of Eire, to 'contrasts of limit physical and moral and of social capacity. Any wrongful act or breach of the law will be dealt with in similar way whether the offender is a peasant, Public Officer, or a man of high social position. May be each in his sphere may have his own vast powers but in the eye of law they are all equal. However, certain privileges and immunities are given to heads of States, foreign sovereigns, and Ambassadorsal position or political influence'. 176


176 Ramchandran, op. cit. page. 211
Article 361 of the Constitution clearly provides exceptional treatment to executive heads of the Union and the States, Public Officials etc. Further, Parliament has the power under Article 246 to legislate in respect of foreign ambassadors (Entry 1, of list 1 of 7th Schedule) and of foreigners (Entry 17 of list I of 7th Schedule).177 Equality before the law signifies equal justice to all. Right to equal access to Courts is a natural corollary to the equal protection clause.178 Equal availability of the legal aid is next important principle to bring about equality in true sense of the term. Consequently, in England the necessity arose for the passing of the Aid and Advice Act, 1949. Such legal aid to the poor in India is equally essential for the guarantee of equality before the law. In other words law must be within the easy reach of all to enjoy the benefits thereof.

By its costliness or cumbersome procedure, the poor or the ignorant should not be denied the opportunity to reap the benefits of equality before the law’. Further, no one only on grounds of his superior social status, position or wealth should have a special treatment under the law of the land at the cost of justice. Furthermore, no individual should have a differential treatment as compared to other individuals in similar circumstances and possessing the same qualifications.179

The term correspondence under the watchful eye of law does not mean total balance or indistinguishable treatment. It pretty much infers nonappearance of benefit on grounds of conception, religion, race and so on. It further implies that among equivalents the law should be equivalent and might be similarly directed.

It might be noted here that the word used in Article 14 is 'person' and not citizen. Hence, the right to equality is provided to every Indian not as a citizen but as a human being. Moreover, the Courts held that 'law' in Article 14 was not confined to the law enacted by a legislature but also includes an order or notification of the executive.180

177 Ibid.
178 Barbier v. Connelly (1885), 113, United State, p. 27.
179 Ramchandran, op. cit., p. 221.
This may be regarded as the correct interpretation of the provision under Article 14. Moreover, the Constitution provides safeguards only against discrimination in the sphere of state actions and has nothing to do with the discrimination made by private individuals.\(^{181}\) However, right to equality before law is also applicable to non-citizens as well as aliens excepting enemies of war.

But the State can pass legislation which may affect the status of aliens and also can make discrimination in favor of one class of aliens as against the other under different circumstances.\(^{182}\)

**4.6.3 Provisions against discrepancy on the basis of race, cast, religion, birth and sex:**

The Constitution of India dedicates a different article for keeping any sort of separation on ground of religions, race, standing, sexes or spot of conception or any one of them. Article 15 comprises of four provisions out of which initial two give against separation on ground of religion, race, position, sex or spot of conception in distinctive circles and the rest deal with the exceptions to which the main provision will not apply. Originally this article had only three clauses and the State was permitted to make special provision for women and children. Meanwhile the Supreme Court declared "the Madras Communal Government Order" as ultra virus in The State of Madras v. Champakam Dorai Rajan case as it violated the provision under clause 1 of Article 15.\(^{183}\) This judgment of the Supreme Court resulted in the First Amendment Act of 1951 which added clause 4 in Article 15.

This new clause has practically cooled down the spirit of the Article itself since right to equality cannot prevent In a caste ridden society like India classes have been identified with castes, sub-castes, and communities. On the importance of caste system in India J.H. Morris Jones has significantly remarked "caste (or sub-caste or communities) is the core of traditional politics. To it belongs a complete social ethos. It embraces all and is all embracing. Every man is born into particular caste or group and within it inherits a place and situation in the Society for which his whole behavior and outlook in ideas, at least, to be derived."\(^{184}\)

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182 Ramchandran, op. cit. p. 222
183 S.C.R., 1951, p. 525.
184 Quoted by Sir Sik, V.M., Political Behavior in India, University of Puna, 1965, pp. 246-47.
Article 15 of the Constitution lays down:

(1) The State might not victimize any subject on grounds just of religion, race, station, sex, spot of conception or any of them.

(2) No subject might, on grounds just of religion, race, rank, sex, spot of conception or any of them be liable to any handicap, obligation, confinement or condition with respect to —

   (a) Access to shops, open restaurants, inns and spots of open stimulation,

   (b) The utilization of wells, tanks, washing ghats, streets and spots of open resort kept up entirely or mostly out of state Funds or committed to the utilization of the overall population.

(3) Nothing in this article should keep the state from making any procurement for ladies and kids.

(4) Nothing in this article or in condition (2) of Article 29 should keep the State from making any extraordinary procurement for the headway of any socially and instructively backward classes of subjects or for the Scheduled Castes and the Scheduled Tribes." Clause 2 of Article 29 gives that "No subject might be denied entrance into any instructive foundation kept up by the states and getting support out of States supports on ground just of religions, race, station, dialect or any of them". Here the word 'State'in connection to Fundamental Rights suggests "the Government and Parliament of India and the Government and the council of each of the States and all neighborhood or different powers inside the domain of India or under the control of the Government of India."1

The word 'discrimination', according to the Oxford Dictionary, means to 'make an adverse distinction with regard to or distinguish unfavorably from others'. The prohibited discrimination under Article 15 is limited to specific grounds, e.g., religion, race-, caste, sex or place of birth. Any discrimination other than those mentioned above has to be viewed under the general Article, i.e.

Article 14, if it is consistent and reasonable or not. If it is to be found that it is inconsistent and unreasonable with the demands of the changed situation than Article 14 prohibits it. A prohibition, for example, to employ children below a certain age -

185 The Constitution of India, op. cit., pp. 4-5.
186 Article 12 of the Constitution of India.
will not be valid as it will be injurious to their health. Women may also be prohibited from working in mines as that is unsuited to their strength and health. In this connection, to fix physical fitness as a criterion for entry to certain kinds of employment is quite reasonable.

A perusal of Article 15 reveals that whereas its first clause specifies various prohibitory grounds for the State within its competence, the second clause restraints both the State and the private individual whoever may be in control of the public places, as mentioned in the clause concerned. But the third clause provides special power to State to protect women and children. And a special clause four has been added to Article 15 by the First Amendment Act, 1951, so as to provide particular attention to socially and educationally backward classes.

It is, however, permitted in favor of women and children for obvious reasons, and special provision may be lawfully made for them. This is quite in accordance with the basic purposes of Constitution as outlined in its preamble, and also follows as an essential corollary to the principles of secular democracy. Following are certain points in clause (i) of the Article 15 which requires further explanation.

The Article 15 is meant only for Indian citizens. Resident aliens in India do not come with its scope. However, it may not deter others from painting out to the Court when they are directly affected (or prosecuted) that the law in question is void under the Constitution. Then can, in their defense, plead the law to be void under article 15, but they cannot enforce a fundamental right under that article. In United States of America persons other than discriminated against can raise the question of validity of statute or law. But in India, only the affected persons, under Article 32, can move to the Supreme Court.

4.6.4. Equal opportunity for public employment :-

The Equal opportunity in matters of Public employment may be regarded as an important right of citizens in a democracy which seeks to create a social request in which social, financial and political equity is achieved for all.

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The Constitution of India gives this directly under Article 16 which contains five conditions. The initial two provisions lay accentuation on equivalent open door in matters of vocation with no separation on the premise of religion, race, rank, sex and drop, spot of conception or living arrangement. Different conditions on the other hand, give certain special cases to which meet open door for all natives should not have any significant bearing.

The distinctive provisions of Article 16 are as per the following:

(1) Here should be correspondence of chance for all nationals in matter identifying with business or arrangement to any official under the States.

(2) No national might, on grounds just of religion, race, standing, sex, plunge, spot of conception, habitation or any of them, be clear for, or oppressed in appreciation of, any business or official under the States.

(3) In this article nothing might keep Parliament from making any law recommending, concerning a class or classes of work or arrangement to an office, (under the Government of or, any nearby or other power inside a State or Union domain, any prerequisite as to habitation inside that State or Union region) preceding such.

(4) Nothing in this article might keep the State from making any procurement for the reservation of arrangements or posts for any retrogressive class of subjects, which in the supposition of the State, is not satisfactorily spoke to in the Services under the State.

(5) Nothing in this article might influence the operation of any law which gives that the occupant of an office regarding the undertakings of any religion or denominational foundation or any individual from the overseeing body thereof should be an individual claiming a specific category. Preceding institution of the Constitution, fairness of chance in matters of open business was ensured under segment 275 and 298(i) of the Government of India Act, 1935. Segment 275 set out that—An individual might not be precluded by sex for being delegated to any Civil administration of or Civil post under the Crown in India. . . Area 298(i) further gave that "No subject of his Majesty domiciled in India might on grounds of religion, spot
of conception, drop, colour or any of them be ineligible for office under the Crown in India.

In this association reference might likewise be made to Article 335 of the Constitution that runs as takes after:

The cases of the individuals from the Scheduled Castes and the Scheduled Tribes might be thought seriously about, reliably with the upkeep of productivity of organization really taking shape of arrangements to administrations and posts regarding the issues of the Union of a State."

After a decent arrangement of examination of Articles 15 and 29(2; in the previous section statement (1) and (2) of Article 16 don't require further clarification. In nutshell it can be said that the point of these statements is to give uniformity of chance to every last national of India in matters of open job, regardless of his religion, race, position, sex or spot of conception No discrimination is ordinarily permissible on ground of residence but Parliament may frame a law under clause (3) providing for a residential qualification as essential for certain types of appointment as stated in the clause concerned. The word residence in Clause (2) and Clause (3) was inserted in Article 16 by the Constituent Assembly only on November 30, 1948 through an amendment based on the motion of Yampa Roy Kapoor and views expressed by K.M. Munshi and Alladikrishna Swami Ayyar.

While insisting for insertion of the word residence in Clause (2) of Article 16 Kapoor observed that his object was to ensure that "every citizen of the country, wherever he might be living should have" an "equal opportunity of employment under the State .. any where in the country".; and that "there being only one citizenship of the whole country it should carry with it the unfettered right and privilege of employment in any part and in every nook and corner of the country."

192 The Constitution of India operation. cit., p. 5.
193 Subs. By the Constitution on (Seventh Amendment) Act, 1956, Sec. 29 and Schedule for "Under any State determined in the First Schedule or any neighborhood or other power inside its region, any prerequisite as to habitation inside the state".
194 It is critical to note that uncommon procurement has as of now been made in the Constitution for the arrangement of individuals from the Anglo-Indian Community to posts certain services. See Article 336 of the Constitution of India, op. cit., p. 95.
195 "United Provinces : General."
Unluckily, he proceeded, for some time past we have been observing that provincialism has been growing in this country. Every now and then we hear the cry, 'Bengal for Bengalis' 'Madras for Madras’s' and so on and so forth. This cry is not in the interests of the unity of the country or in the interests of the solidarity of the country. I can easily understand a Provincial Government laying it down as a rule that only those who possess adequate knowledge of the provincial language shall be eligible for employment in the province. I can also understand a rule being laid down that a person who wants employment in the province should have adequate knowledge of local conditions. All that is easily understandable in the interests of efficiency of the services. I, therefore, submit that is the matter of employment there should be absolutely no restriction whatsoever unless it is necessary in the interests of the efficiency of the services. The unity of the country must be preserved at all costs. We must do everything in our power to preserve the unity of the country, and the amendment that I have moved aims at this and is a step in this direction.

Dr. Ambedkar while accepting the motion of Kapoor as amended by K.M. Munshi and Alladi Krishana Swami Ayyar significantly observed:

It is the inclination of numerous persons in this House that, since we have built a typical citizenship all through India, independent of the nearby purview of the regions and the Indian States, it is just an associative thing that living arrangement ought not be needed for holding a specific post in a specific State on the grounds that, in so far as you make habitation a capability, you are truly subtracting from the estimation of a typical Citizenship which we have built by this Constitution or which we propose to secure by this Constitution. Consequently, in my judgment, the contention that living arrangement ought not be a capability to hold arrangements under the State is a flawlessly substantial and a consummately stable contention. In the meantime, it must be understood that you can't permit individuals who are flying starting with one individual then onto the next, starting with one State then onto the next, as simple feathered creatures of section with no roots, with no association with that specific territory, just to come, seek posts and, so to say, take the plums and leave. Accordingly, some limit is fundamental. It was found, when this matter was -

197 Ibid., p. 108.
researched, that today in a lot of territories guidelines have been confined by the common governments endorsing a certain time of home as a capability for a post in that specific area. In this manner, the proposition in the correction that, albeit when in doubt home ought not be a capability, yet some exemption may be made, is not exactly strange. We are just after the practice which has been as of now settled in the different territories. In any case, what we found was that while distinctive areas were setting out a certain period as qualifying period for posts, the periods changed impressively. A few territories said that an individual must be really domiciled. What that implies, one does not know. Others have altered ten years, practically seven et cetera.

It was, accordingly, felt that while it may be attractive to settle a period as a qualifying test, that qualifying test ought to be uniform all through India. Subsequently, if that question is to be accomplished, viz., that the qualifying private period ought to be uniform, that protest can be attained to just by giving the ability to Parliament and not offering it to the nearby units, whether territories or States. That is the fundamental reason for this alteration putting down habitation as a capability.

4.6.5 Abolition of unsociability :-

The Constitution of India makes a procurement for the nullification of untouchables—a social shrewdness rehearsed in this nation from time immemorial. Article 17 provides199 that - Untouchables is nullified and its practice in any structure are prohibited. The authorization of any inability emerging out of `untouchables` might be an offense culpable as per law.

199 The Constitution of India, operation. cit. p. 5.

An examination of the above article demonstrates that it denies "untouchables" and practice of it in any structure is made an offense culpable under the law. This is t unique feature of the Indian Constitution since in no other country of the world social evil has been abolished through a Constitutional provision. Sir Ivor Jennings considers it a bad taste on the part of the framers of Indian Constitution. According to him social evils in a country should be mitigated through social reforms and should have no place in a Constitution which is fundamental law of the land. Sometimes pundits of the Constitution put the inquiry :- what is the right that is made by this article? Doubtlessly it doesn't make any exceptional benefit for anybody. Yet, it is an
incredible crucial right, a contract of deliverance to one-6th of the Indian populace from unending oppression and depression, from interminable mortification and disgrace.200 Right, truth be told, is a cure against an inability.

The abrogation of untouchables is consequently a major right in genuine feeling of the term. Untouchables—the very word is obnoxious—has been a custom left over on the Hindu institution of Varna or the four caste groups of the post- Vedic age. Those at the top of the caste hierarchy, denied every human right to the so called 'untouchables'—except to live and serve the rest of the community on terms commanded by the former.201 This custom of untouchables had not just tossed a great many Indian individuals into dimness yet it had additionally eaten into the very establishment of the country.

The composers of the Constitution, thusly, thought it legitimate to destroy the shrewdness by consolidating a different article into the Chapter on Fundamental Rights in the Constitution.202

This article is a very important provision of our Constitution and its object is to uproot some scandalously unreasonable social customs and disabilities from our nation. This provision stipulates to make safe to all citizen 'social justices' & equal status as outlined in the preamble of the Constitution. Article 17, if properly implemented, will definitely help to achieve these objects. Owing to some difficulties in the way of any definition or clear description that can comprehend all possible cases of Unsociability.

The words Unsociability have not been defined in the Indian Constitution. Since, the term 'Unsociability' has not been defined either in Article 17 or in the Unsociability (Offences) Act.1955, judicial decisions have clarified the meaning of the word Unsociability. In Devarajah v. Padmanna, the Mysore High Court decided that the terms are not to be understood in its literal sense and that the word 'Unsociability' in the 203 According to Dr. Ambedkar instead of leaving it to our -

201 The Indian Nation (Patna) July 3, 1977, pp. 7-8.
202 For a detailed discussion of this topic, pl. See States and Minorities 1947 by Ambedkar B.R.
Parliament or to a State legislature to make the enforce of any disable arise out of Unsociability a crime, itself declares any such enforcement an offence punishable by law”. Article 17 contains two main provisions regarding unsociability. First, it says that 'Unsociability' are abolish & it practice in any forms are forbidd and secondly, it declares that the enforce of any disable arise out of Unsociability will be an offence punish in accordance with laws. It may be mentioned here that the word Unsociability is enclosed in inverted commas which indicates that the theme of the article is not unsociability only in its literal sense but also the practice as it has developed historically in this nation. The term consists persons who are treated as untouchables either temporarily or otherwise for various reasons such as social observance, associated with birth or death or owing to social boycott resulting from caste etc. Banglore W.C. & S. Mills v. Mysore State, it was held that imposition of unsociability in such circumstances has no relation to the causes which relegate certain classes of people beyond the pale of caste estimate.

Mahatma Gandhi was the Chief exponent of abolition of untouchables and stood for total eradication of this evil. He was a great champion of the cause of Harridans' and once commented "I would prefer not to be reborn, yet in the event that I am reborn, I wish that I would be reborn as a Harijan, as an untouchable, so that I may lead a consistent battle against the restriction and indignities that have been stored upon these classes of people". It was an incongruity of destiny that a man (Dr. Ambedkar) who was driven starting with one school then onto the next, why should constrained take his lessons outside the classroom and who was tossed out of inn in the dead of night, all on the grounds that he was an untouchable, was endowed with the assignment of surrounding the Constitution which encapsulates this article and which managed the final knockout to this noxious social custom.

An incredible development, with the quick of Mahatma Gandhi in 1932 against the' Communal recompense, was launched against untouchables throughout the country. This movement had some positive result and untouchables was consider ably eradicated in Urban areas particularly. But the evil continues to exist in rural areas an-

203 A.I.R. 1958,Mysor, p.84.
204 C.A.D. 29th November, 1948, 661.
205 A.I.R., 1958, Mysore, p. 85
even after 30 years of independence atrocities on Harijans have become a regular feature in village life.

The Home Minister of India, while talking on the untouchables Offenses Bill which was gone into an Act in 1955, rightly watched:

"This growth of untouchables has gone into the very vitals of our general public. It is a smudge on the Hindu religion, as well as it has made prejudice, sectionalism and fissiparous propensities. A significant number of the shades of malice that we find in our general public today are traceable to this intolerable enormity. It was truly bizarre that Hindus with their grand theory and their benevolent kind-heartedness even towards creepy crawlies ought to host been get-together to such an insufferable overshadowing of masculinity. Yet untouchables has been there for quite a long time and we have how to offer reparations for it. The thought of untouchables is altogether hostile to the structure, soul and procurements of the Constitution'. The Untouchables Offences Act which may be said as a supplement of Article 15 of the Constitution came into force in June 1955. The Act meant for prescribing 'punishment for the practice of 'Untouchables," for the enforcement of any disability arising there from and for matters connected therewith. The Act provides punishment for enforcing certain religious social and other disabilities on the ground of untouchables. It further provides that whosoever even abets any offence under this Act is "punishable with the punishment provided for the offence". Some other legislative measures such as the Madras Removal of Civil Disabilities Act XXI of 1938, the Madras Temple Entry Act 22 of 1939 and Act V of 1947, the Bihar Harijan Removal of Civil Disabilities Act of 1949 etc., have also attempted to eradicate the social disabilities arising out of untouchables. Before the passing of Untouchables Offences Act there were more than twenty such legislative enactments framed by different Stale legislatures to deal with the problems arising out of untouchables. The Bengal Hindu Social Disabilities Removal Act, 1948 was one of them which were challenged in a famous case Banmali Das v. Pakhu Bhandari on grounds of constitutionality.208 The facts of the case in brief were as follows:207

207 Ibid.
Banamali Das, who was a Harijan (Cobbler by caste), filed a complaint against Pakhu Bhandari and others alleging that the accused had refused to cut his hair and also to render similar services to other members belonging to Harijan community. On behalf of defendants it was argued that the Bengal Hindu Social Disabilities Removal Act, 1948 was violation of constitutional provision since it imposed unreasonable restriction on barbers while exercising their profession. It was also alleged that the validity of the Act was discriminatory in its tendency. In an unanimous decision, the Calcutta High Court rejected this contention.

It held that there was nothing in the Act which cut down the right to carry on the profession of a barber. ‘All it does is to prohibit him from discriminating between one Hindu and another in carrying out his duties as a barber. It does not deny any person equality before law. It tends to make all persons equality in society and before the law and it cannot possibly be argued that this Act denies any person equal protection of laws.’

Likewise, the U.P. Removal of Social Disabilities Act, 1947 was challenged in the Allahabad High Court in State v. Bandari case. This Court also unanimously upheld the Act and observed that the petitioners had no right to refuse to render their services to Harijans.

In P.S. Charya v. State of Madras, the Madras High Court held that the Madras Temple Entry Authorization Act, 1947, as amended in 1949 was not repugnant to any of the provisions of the Constitution. To prevent certain classes of Hindus who were once called depressed classes from entering into a public meeting was certainly to practice untouchables. What was provided in the Act of 1947 was merely the fulfillment of the directives given under Article 17 of the Constitution. However, Article 17 suffers from some serious drawbacks. The word ‘untouchables’ lacks precision since it has not been denned under the Constitution. Legally it means unsociability on grounds of descent, caste, race or religion. But untouchables are prevalent throughout the country in much devastating form. The whole society suffers from this evil and untouchables have been a great obstacle in securing socially, politically and economically equality in caste ridden society like ours.

Likewise, the expression ‘any disability arising out of untouchables’ needs a clear definition or an illustrative elucidation for the enlightenment of both the judiciary and the general public. The Constitution, however, authorizes parliament to make law prescribing punishment for any offence envisaged by Article 17 except as otherwise provided in clause (b) and sub-clause (l)(i) of clause (A) of Article 35. This power was assigned to Parliament alone and not to the state legislatures with a view "to ensuring uniformity of legislation on the subject throughout the nation"211 according to Dr. Ambedkar. In spite of these constitutional and several legal provisions India cannot claim to have uprooted the evils of untouchables which has become a cancer on our body-politic. As a matter of fact, legislation is not the only remedy since the abolition of untouchables requires active public co-operation. In recent years atrocities on Harijans are on increase and have taken a menacing form.

211 Dr. Ambedkar said in the Constituent Assembly Debates on 29th November, 1948 with reference to Art.27 of the Drafting Constitution of India, 1948 which correspond to art.35 of the Indian Constitution.

4.6.6 Abolition of titles:-

In a democratic society in which social, economic and political equality is the axis, it is not desirable to confer titles on some individuals and thereby create artificial distinction among members of the political system. During the pre-independence days titles were conferred by British masters on ardent supporters and government officers in order to create a gulf in the society. After independence when the policy of divide and rule was finally abandoned, the framers of the Constitution decided to abolish such titles through constitutional provision and Article 18 under the Chapter fundamental rights was inserted accordingly.

Article 18 which deals with abolition of titles is as follows:
(1) No, title not being a military or scholastic unmistakable, will be give by the State.
(2) No, resident of India will acknowledge any title from any outside State.
(3) No, persons who are not a resident of India will, while he holds any authority of profit or trust under the State, acknowledged without the assent of the President any title from any outside states.
(4) No, individual holding any office for profit or discussion under the State will, without the assents of the President, acknowledged any present remittance & office of any sorts from or under any outside States.212

The above Article for the Constitution is so designed as to abolish all sorts of titles which may lead to social and political inequality. During British rule conferment of titles was primarily based on the policy of divide and rule. It further led ‘to social inequality, because as the number of title holders increased, it created a class by itself’.213 However, under the free India Constitution military and academic titles have been retained so as to provide incentive and encouragement in the defense forces as well as academic world, The analysis of Article 18 is as the following :-

The State as mentioned in Article 12 cannot confer any title which is not of a military or academic distinction. It means that the Government of the Union, State, their legislatures, local bodies etc. is restrained from bestowing titles other than military and academic to any one. However, a university or any other academic institution can confer a degree of distinction for achievements in the academic field. Likewise the government of India may confer military titles on the personnel of defense forces for their gallantry and heroic deeds.’

Secondly, no Indian citizen will accept any title from a foreign State. This provision is definitely "very wholesome as it tends to make the Indian citizen wholly Indian in outlook, thought, ambition and action". Such foreign recognition will, in fact, reduce the intensity of the citizen's loyalty to his motherhood.

Thirdly, even a person who is not a person for India will not accepted title from any foreign State without the consents of the President of India if he hold an office of benefit or trusts under the States as defined under Article 12. "This is to ensure loyalty to the Government he serves for the time-being and to shut out all foreign influence in Governmental affairs or administration".

212 The Constitution of India op.cit., p. 5.
Finally, no person, whether a citizen of India or non-citizen shall permit any institute or offices of any form from or under foreign Country without the consent of the President of India while holding an office or trust under the State.214

It may be noted here that a citizen of India who does not hold an office for benefit or faith under the State can accept emoluments or office of any kind under a foreign State and consent of President is not required in such a case.

But curiously enough, soon before the enforcement of the present Constitution the government of India started conferring titles like Bharat Ratan, Padma Vibhushan, Padma Bhushan and Padma Shri on political leaders, artists and academicians. It was argued with great pains that a title was something which 'hangs to one's name as an addition' and as the above ones are not meant to be so used, they are not titles? They have been advocated to be mere awards and not titles.215

In this connection, late Pandit Nehru, while defending these titles in LokSabha tried to distinguish these awards from titles and maintained that the conferment of such awards was within the provision of the Constitution.216

However, ‘the recent decision of Junta government regarding abolition of Bharat Ratna, Padma Bibhusan etc. is a right step in the right direction. The prohibition in this connection in U.S.A., Germany, Japan and Ireland is only against the conferment of the titles of nobility and the original intentions of the makers of the Indian Constitution had also been to abolish only the hereditary titles.217 But by professing abolition of titles, the framers did not express their intentions in explicit terms. In this connection, the views expressed by Sir Ivory Jennings are as follows:

‘The rule in Article 18, incorrectly summarized by the marginal note as abolition of title, that no name, not get being a military, or academic discrimination will be emphasis for the States, is apparently part of a 'right to equality'.

214 Ram chandran, op. cit., 178.
215 Tope op. cit., p. 65
217 See C.A.D., Vol. VII.
It seems to be no breach of the right to equality if Sri John Brown becomes Dr. John Brown, or General John Brown, or even Sir John Brown, M.B.E. or if he roles around a gold plated car or loads his wife with jeweler and silk saris, but if, like the present lecturer, he becomes an impecunious knight, the right to equality is broken. In whom is this right vested? It cannot be in Sir John Brown, it is neither in ram nor in persona, neither corporeal nor incorporeal. It is in fact not a right at all, but a restriction on executive and legislative power”.218

Moreover, the abolition of titles has nothing to with the existing titles of the rules of the former Indian States, which have been safeguarded to them under Article 362 of the Constitution.

The above Article, directs the legislatures and the executives to respect the guarantees and assurances given under any covenants and agreements as are referred to in Article 291 (dealing with the Privy Purse of the former Indian rulers) with regard to their personal rights, privileges and dignities (including the titles) of the former rulers of Indian States. However, the Supreme Court advocated for the abolition of such privileges.

In Narottam Kishore v. Union of India219 the Court went on to observe that ‘considered broadly the right of the basic principle for equality before law, it seems somewhat odd that Sec. 87. (of the C.P.C. conferring certain privilege and immunities upon the former rulers of Indian States) should continue to operate for all times. With passage of time, the validity of the historical considerations on which Sec, 87 is founded, will wear out and the continuance of the said section in the C.P.C. may later be open to serious challenge’.220

Clause (2) of Article18 provides an absolute ban on the Indian citizen to accept any name from any other foreign country. The purpose of this clause is to make a citizen loyal to his native country by all means. If this is the aim of this clause, it can be said that it has not served the purpose, for it is difficult to find a man in modern societies wholly indigenous in outlook, thought, ambition and action.

220 Ibid.
Clause (3) of Article 18 is again ‘out of place in a Chapter on fundamental rights. The argument that only titles accepted by such foreigner will, increase foreign influence in governmental affairs, and not their very presence and advice is illogical. A title is a personal matter which has nothing to do with one's influence in governmental affairs. It is difficult to conceive how the acceptance of a title by a foreigner can increase his influence in governmental affairs”.221

In Clause (4) of Article 18, the prohibition is only against persons covering any office for benefit or faith by the State, and it does not restrict to private individuals. "But though the prohibition with respect to holding of any office may be good, it is not very reasonable to prohibit the receipt of presents or emoluments. Such a provision also comes in conflict with the right to equality and liberty of a governmental employee’.222

Moreover, the Article does not prohibit the conferment of titles by private bodies and individuals, e.g., Vidwat Sammelanum, Heads of Mouths, literary and scientific bodies, music, art, academics etc. "Though the degree of affect may vary according to the status and nature of such private bodies, such titles do also have a similar effect as those conferred by the State, and so they do not vary much help the attainment of the object enshrined in the Article’.223 The argument that ‘state titles alone tend to foment nepotism, corruption, social arrogance or conceit etc’.224

However, Article 18 unlike the provision for the abolition of untouchably does not prescribe any action to be taken in case of its violation. On its very appearance, the Article seems to be only a prescription of prohibition observable and enforceable by the persons and bodies concerned only as a moral obligation.225 No penalty is prescribed for the violation of the said prohibition. Unlike Article 17, it does not confer any legislative powers to punish its violations. Although Article 35(a)(2) authorizes Parliament to make laws for punishing acts declared to be offensive under Part III of the Constitution, it can be of no use in the present situation, for Article 18 does not declare any act to be offensive.

222 Ibid.
223 Ibid.
224 Rarmchandran, p. 190.
It may be possible that a government employee may be dismissed from his job if he commits any breach of the provisions, but in respect of other persons no action can be taken against them.

Another issue may arise with related to the nature of the crime, the authority to prosecute and punish, and the governing them. In this connection Dr. B.R. Ambedker expressed the view in the Constituent Assembly that Parliament might, while enacting the law of citizenship, disqualify a person who had received a title in violation of the Prohibition. He pointed out:

'The renunciation of titles is a state of proceeded with citizenship; it is not a right; it is an obligation forced upon the person that on the off chance that he keeps on being the subject of this nation, then he must submit to specific conditions. One of the conditions is that he should not acknowledge a title on the off chance that he did, it would be open for Parliament to choose by the law what ought to be carried out to persons who abuse the procurements of this article. One of the punishments may be that he may lose the privilege of citizenship'.

Thus under Article 18 the State is prohibited to confer titles except education and military one on any individual. The citizens are also not permit to get any title from a foreign State without the consent of the President of our country.

The violation of this provision may result loss of citizenship. But the citizenship Act (1953) does not provide termination of citizen in case of acceptance of title from a foreign State without the assent of the President. Moreover, prohibition of conferment of titles under Article 18 may be enforced against the Slate under Article 32 & 226 only which guarantees fundamental rights in general to all citizens. In other words, the constitutional remedy under Articles 32 & 226 is providing only for the enforced of the right sure by this part (Part 3rd). According to Dr. Ambedkar Article 18 only imposes a duty on a person not to receive a title.

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226 It is somewhat astonishing that no case under article 18 as so far comes before any court of tribunal in India.
The underlying principle of Article 18 is that ‘in a democratic republic vested interests must not be allowed to grow as a mass affecting the nascent evolution of the people as a whole. If awards are merely restricted to military and academic distinctions the country is bound to advance in those directions and all fissiparous tendencies will vanish for the betterment of the body politic’.

A more important point in this connection is that a writ is available to a person to prohibit the State from conferring titles only when the Court takes the Stand that every person has a right to enforce the mandatory provisions of the Constitution. This is perhaps the main reason why award of decorations is not challenged in the law Courts. Critics point out that award of decorations is a clear infringement of Article while the government held the view that since the decoration cannot be used by recipient against their names it is not violation of Article 18.

Meanwhile, the leaders of Janata Government rightly felt that such decorations awarded in recognition of ‘public service in any field, including services rendered by government servants’ was infringement of true spirit of democracy underlined in Article 18. Therefore, it is decided to discontinue institutions of national awards’.229

‘Those who are already in receipt of such awards have been asked not to use these awards as titles on signboards, stationery or in any other manner. If any such recipient is found using the award as title it will be withdrawn’.230

Just after assuming the office the Prime Minister stated: ‘We had the question examined whether the institution of Civil awards namely Bharat Ratna and Padma Shri awards was in conformity with the Article 18 of the Constitution.’ The Attorney-General of India was consulted on this matter and his advice was that "a harmonious interpretation of the word 'title' in Clause (1) of Article 18 as well as clauses (2) and (3) thereof, the Bharat Ratna and Padma Awards would fall within the prohibition of grant of titles and would in his view be 'contrary not only to the letter, but spirit of Article 18(1)."

229 The Indian Nation, Patna, July 14, 1977.
230 Ibid.
The Government accepted the advice of the Attorney-General and accordingly decided to discontinue the awards. This led to the end of all controversies on this issue and the provision of Article 18 was enforced by the government in true spirit for the first time since the enforcement of the Constitution. This decision of the government is rightly regarded as a great landmark in the history of Constitutional rights.

4.7. RIGHT TO DIGNITY

4.7.1-Right to Human Dignity:-

The article 21 not provide. Without applying the rule of natural justice would not be able to valid according to article 21. It means that law made or enacted by the legislature and not to make embodying the principal of natural justice. The article 21 provides us right to life. We have right to live is not sufficient to physical presence yet it means right to live with human nobility. In the event that we expound the same view again this right is not confined to live or insignificant as creature presence. It implies something more than physical survival.

The privilege to life is just not ported that we can enjoy the life fully without any restriction in the society and country without others interfere. It is red use only by the procedure provide by the law the other right also related and goes with it, like right to get home, clothes and healthy food and nutrition.

The right to education also directly connected with the human dignity. If any one violates this right it means violation of article 21. It not implementation and provide by any private authority and any state authority. The various private sectors doing violation it. They treat labour as a slave and deprived of all these right. This is violation of fundamental right of workers. Every person have right to live with human dignity. This decision really a new revolution. The million of workers, every person have right to live human dignity if any women doing dance modeling and holding a beautiful contest with human dignity. But they are doing objectionable seen than it is violation of dignity. That may be prohibited by the provision prescribed by the law.
The article 21 is applied for both citizen and non citizen. The term liberty and dignity are related with the quality before the law. It means every person have the same right without any discrimination.

All are equals before the made the provision by the legislature. This article allow who make classification but it is not in favors of legislative classification. The term equality means treated equally in the same situation. The difference may be made reasonable and that avoided the law. The every individual have the right to medical and health is providing by article 21. It is also become necessary for the human being to make his life meaning full and purpose full with human dignity of every individual. Right to life means not only live like a animal it have so wide meaning.

Any person can not deprive from his life. The human live with dignity must be possible only by fair, just and reasonable. The state make law that person can live with dignity. The state act on the law which trespasses in the human dignity is not providing by article 21 of our constitution. The decision of the lower court and by various high courts. They give the judgment and make laws and added new provision related to human dignity.233

In the case of union peoples234 for democratize rights under section 21 the decision. The Supreme Court decides that those people and worker do work on the minimum wages of non payment. Those are doing work and employed in different places and involve in different project in Delhi.

They were denied from their right to live with the human dignity. Those are necessary for human life. The justice bhagwati says court and constitution provide various laws and procedure to ported labours from mediators’ and contractor. It is clearly mention that every one ensure the human rights and dignity of workers.

234- Peoples Union for Democratic Rights v/s Union of India, A.I.R. 1982 S.C.page 1473
If any one violate these rights and rule and regulation it means they are doing the violation of article 21 in the present time all most every state authority and private contractor also follow these rules. The court and constitution of India says that every citizen of India have the right to life and liberty that live with human dignity. The person doing work without any exploitation. All these right ported by article 21. That is necessary for human life. The part 4th of the constitution related with directive principals provide under article 39A, F and 41 and 42.35

Even make the provision for lebars fail to established than government provide help him. If it is not doing than become violation of article 21 of the constitution. Which us related with life and liberty and provide their guarantee.36 The state of Himachal Pradesh v/s parents and student of medical college of shimla 237 A parent write a letter to the shimla high court. In this letter mention a complaint against the ragging in the medical college by the senior students and fresher’s. The court gives the direction and emphasis chef secretary for prevent the ragging and passed a law to precede the life and ragging. After that the Himachal Pradesh state makes apply in the high court.

The supreme cort give the decision that ragging is a over through and all the human dignity and it is mental also effected the student. In the case of Tomra he is provide or give a notice to court against the Patna care home center. In this notice maintain that home care emphasis the women to live with human dignity but hear women with dignity but hear women to live in human situations in a old building here the center running. They also not provide proper food and cloths and treat them in humanly. There is no medical facility and no one give attention on them the court said that right to life is the fundamental right of every person and it is also mention right to live with human dignity. right also provide to every citizen the country. The study also bound to obey their and protect the human beings fundamental right.

237- State of Himachal Pradesh v/s A Parent of Student of Medical College Shimla, 1985 III S.C.C.page 169
The court also give the direction to state that immediately take action against the home care and provide all facilities to them. Until the new building is not ready. In the case of Vishaka here the court gives emphasis on the right. The court says every case of sexual her husband show the violation of fundamental right and right to live with dignity if once when the life is deprivation on the work place. It means he loss the right to freedom and choose professional ones.

The international convention preamble on political and civil right. It also includes provision related to human dignity. The right to equality and right to imaginative provide for all member of society.

The society and person is the base of freedom, peace, dignity etc. in the world and all these right provide the right to dignity. This right provide to all those are deprived to the dignity. The right provides to the person in the society and for maintains dignity. The right provides the position of person in the society and maintains the dignity. The article 21 provides right to live with dignity with freedom.

4.7.2-Right to Privacy:-

The right to privacy to be let or granted by article 21 of the Indian constitution. Privacy is an exceptional inherent for human being under the privacy included important that is spiritual, mental, physical and social security. It is also protect the relation between the peoples. It means privacy protected the right of others and there values but it is necessary to related to the fundamental respects sort, friendship and other moral values.

Every citizen has right to take or safeguard to his own privacy or his family members, marriage, motherhood, protection, education and child bearing etc. No body can punished if all these right to taken as per the system secured by the law. In the event that any one take or without his assent than it implies he disregard the privilege of individual freedom.

239- Vishaka v/s State of Rajasthan, A.I.R. 1997 S.C. page 3011
240- Divya Bhardwaj, "The Right to Privacy : Are We Ready for it," AIR 2004 Jour 307
Who ever damage the at risk to pay harm or rebuffed by methodology endorsed by law.243 The position may be diverse on the off chance that he puts into intentionally discussion and make circumstance for emerging the debate the privilege to protection is a piece of human life and freedom that is give in our constitution.244 Right to dignity and public information law also come under right to privacy if anyone make violation of these rights it means life of individual being intimacy.245

The Indian constitution have provision to secure the personal liberty and life that we can live in public safe gaze. No one can interfere others right. 246 There are some exception matter also those are note come under violation. The subject this rule if any publication of such matter are based on public interest and have public record there is not applied right to privacy, because it become legitimate subject for comment by media and press among the others. Again according to article 19 clause to become exception for cover out of this rule for the interest of decency. If any female who is the victim for assault, sexual, addiction, kidnapping and for any other offences related to these should not again be subject of indignity of her name and incident being punishable in media and press.247

There is more exception for right to privacy is that damage is not available easily or become for public officers and by discharges their public duties. Than it is not punished to media and press for these activities. But if the publication is making without any reason and untrue facts or statement than official can establish the statement made with reckless disregard of truth. All that allegation need to be proved with the written facts and with reasonable verification of that fact.

243- Ibid page 188
244- www.privacilla.org, cited in supra note121
The question is arise now that whether a person prevent to another for writing his autobiography and the another is that an authorized authority or piece can infringe right to privacy for others.248 here the government should make or maintain an action for defamation and put restrain on the media and press to publish such material against them. The court decide that no one official authority have the position in law to impose restrain on publication of the damatory matters. The public authority and officer take only action when they find it - false or untrue. The privilege to security is accessible to ladies effortlessly than the man. The privilege to protection is a key right as per the article 21 in our constitution.249it is not an absolute right on this right instruction and condition can be impose on the right of privacy for the prevention and reduce the crime. The protection or disorder of the morals and health and ported the right of freedom of others the right to marry is an essential part of our life and it is also include in the right to privacy but not come under absolute right. Marry is the universal scared and it is legally permitted by the law and to bodies of opposite sexes.

The material law provide every system that if any person suffering from venereal disease in a contract form it will be obey of that person to open, it to other partner in the marriage divorce seek. If any person have or suffer by disease before the marriage than he has no right to get marry with other partner. If he is not secure or cured about the disease. If that disease disclose by the doctor is not come under the violation of private right.

The Supreme Court dose not provides the right to privacy. In the case of M.P. Sharma251 decide the court says that the constitution maker authority think that right to privacy not given as a fundamental right. The court also not given to direction to make improvement in it and refused to recognized the right to privacy. The Supreme Court also decided in kharak Singh 252case that right to privacy is not come under the guaranteed rights according to the Indian constitution.

248- The Universal Declaration of Human Right, 1948 Article 12
249- Article 21 of the Indian constitution.
251- M.P. Sharma v/s Satish Chandra A.I.R. 1954 S.C. 300
252- Kharak Singh v/s State of Uttar Pradesh A.I.R. 1963 S.C. 1295
It depend on the circumstance or movement of a person, in which manner included because this right not provide guarantee of the fundamentals rights. In part III of the constitution. It decided Govinda’s case.253

The enjoyment of all human rights provided by law is also available to other persons or human beings. It is an additional fundamental right provided to her by the article 21 of the constitution. The constitution gave the insurance to right to life and freedom of all persons or subjects of the nation. The court says that ethical commitment and thought can not be communicated as much hold a light to other matter. The populace of union for common liberties254 case the suit was recorded by people groups of union for open hobby.

The common freedom characterizes under article 32 of our constitution. The occurrence related with phone taping and report refering to by C.B.I. to magazine standard the court says that privilege to security that incorporate the privilege to telephone conversation under the fundamental right that protected by articles 14 and 19 clause 1 and 21 of the Indian constitution and it also define by universal declaration under article 14. The international convention declaration related to political and civil rights under article 17.

The right to privacy is a part of personal liberty under article 21. The article 21 is automatically attached with it. This right not reduce only except the provision provided by the law. Review of the national commission do work for the constitution in the report provided the inclusion of provide separate the right to privacy by fundamental rights under the constitution in the different matter. Every individual have right to privacy for himself and related to his family and home etc. according to article 21 clause b of the constitution.255

253 -Govinda v/s State of Madhya Pradesh A.I.R. 1975 S.C. 1378 :- while perceiving the privilege to security as essential right the Supreme Court of India has frequently considered the US position on the subject like the choices of American Courts. E.g. Roe v. Wade, 410 US 113
Here nothing provide under clause 1 of article 21, it prevent to state to make any law and regulation to restrict it. The covenant sat the rights on political and civil rights are not absolute and subject also limited. When the limitation provide than it different as detail are covered by article only except the specific laws. Those are necessary to protect national security, public health and morals and public order and right and freedom of others. Some rights are not subject to any specific

4.7.3-Right to Education:-

According to the Indian constitution the right to education is also a fundamental right under article 21. According to that no one can denied to any citizen of the country from education by capital fees or charging high fees. The right to education is directly related with the right to life. Present time without education no life an in other word we can say that without education what the mining of life. The article 21 says that the dignity of individual can not be assured without education. The article 21 again says that right to education is a fundamental right on any cost. If any institute charge high fees than it also violation of article 14 that being unfair and unjust and arbitrary.

Rising the fees make to education beyond the above to rich to individual those are poor. The part III of the constitution commit that education is a fundamental right. The fundamental right says that expression and speech can not fully enjoy without education. The individual dignity also effected without an education. In India education not use as a commodity for sale, but it is use as declared by lordships or God.

The privilege to training is a basic directly under article 21 of the constitution and it is specifically influenced by right to life yet right to free and mandatory instruction under article 45 of the constitution. The privilege to free instruction accommodate these kids those are beneath the age of 14 years.256 But after word the state commitment to give training is liable as far as possible to its advancement and monetary limit.257

257-The Universal Declaration of Human Rights Article 26
Article 41, 45 and 46 can discharge the obligation by the state, either recognizing and granting affiliation to private institution or established its own institution. The private sector for the study or education becomes an essential part of today’s life. Without it we can not fulfill the motive of education and make the people educated. The private sector can not impose those finis that are become impossible for the people but it is not for the privet sector also to decide fees according to the government institution because private Instruction can not survive according to them.

The motive of private sector is that they involve and encourage the education in educational field. But they must also allow under some strict rules and regulation for preventive private educational institution to make the education commercial.258 The most of the people or with majority the admission in recognized institution for engineering and medical colleges, the admission process given by the percentage based. But 50% sets in all professional colleges filed by candidates prepared to pay high fees.259 There is no fixed reservation quota for any family management and community and cast. There is only discrimination one, that is who pay high fees.

The eligible criteria area and all other condition or rules and regulation is same for both payments sets and free seats. Only distinct to pay higher fees. The court also involved scheme to provide more priority or opportunities to meritorious students. Those are unable to pay fees. Government prescribed for such colleges. Education is build the personality of person to round all field like physical, moral, intellectual and all other development.

The man without an education like a animal. In the democratize country and society having hope, the people no about his right liberty, dignity and make the difference between the good and bad.260 For this it to necessary that people become education.261

259- Article 13 (2) on the same page
260 -Article 45 of the Constitution of India
261- Article 29(2) on the same page; Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination likewise ensures comparative right.
The main purpose of fundamental right to make and give a proper perfection by a systematic manner of body development and mind also. Education means knowledge which leads from the ignorance without an education man can not develop him self. The importance of education defined the foreign court that says education is a primary and foundation of the good citizen. Now days it is become principal instrument related to child to awake about the cultural values and prepare him after ward for training and adjust morally to this envirment.

The preamble of the Indian constitution promise to secure dignity and justice of the individual and integrated of the nation. Without people securing this objective is not possible. It is only the education which make aware the people to participate to achieve. The International Covenant on Social, Economic and Cultural Rights Article 13 (1) the article given in the prelude of the constitution. The constitution looks for or bound to accomplish this items by giving the principal rights.

The 86 revisions demonstration 2002 in the constitution, the article 21 privilege to training is not ensured as a principal directly under our constitution. The Supreme Court pronounced that it is a piece of principal right. The court likewise acknowledge that privilege to life is include with numerous different rights and it additionally give the hart and soul order standard of the state approach. On account of Mohini jain.262 The court must apply all human rights related to right to life is become compendium those are related with other rights, because all these right are basic for the enjoyment of dignity and life. The life is directly connected with right to education. If the education is not given in proper way, than life is also affected. When we make comparision between the right to life and education then individual can not get the privilege to life and individual freedom on account of Mohini Jain the court said that each individual get right to instruction as a major right as indicated by article 21 of our constitution and the same choice again rehashed on account of unnikrishnan.263

The privilege to life under article 21 is more essential and it is fundamental of all the rights. It has verity of rights are include with himself with different rights. The Supreme Court defines right to life in many cases with the right to include his liberty and human dignity. The main problem for education to determine and restored the different levels. The aim of education is not become complete after 60 years of the constitution adopted the directive principle. The part 4th of the constitution also provides compulsory elements for the compulsory education. According to the policy provide for primary education.

The education should be provide free of cost. Through out of India. The country except the condition of Utter Pradesh, Orissa and west Bengal in all these three expresses the all schedule cast and young ladies get free instruction and early afternoon dinners moreover. The administration additionally Distribute uniform and book freely. The same stats have free education for all children the matter related to high education there is no absolute obligation provide to state. But the state is failed to securing primary and compulsory education. The state also fail to make awareness among the peoples. To seek courts and judicial part of the court, the right to education also recognized by the law. The universal declaration also provided education fundamental right under article 26 of it 264.

Article 41 and 45 give a request to training to some extent fourth of the constitution. The article 41 says that state might give training inside the points of confinement of advancement of its privilege and financial ability to make viable procurement for securing the ideal for instruction and work and open help in specific instances of unemployment and undeserved wants. The article 45 related with compulsory and free education. The article provides the state shall provide his obligation those are given by the law. 265 Above these two principles provide as a form in directive principles, those are related with the commitment of international community.

264- “Right to Educate and Be Educated under Indian Constitution” Swarupama Chaturvedi volium XX (4) 2003 p.558 at 565
265 - Substituted by Constitution (86thAmendment) Act 2002 Article 45
266-TheConstitution, Inserted by Constitution (86th Amendment) Act 2002 Article 21-A
The articles 46 that provide to state take care for the economic interest and education for the weaker section. It is just a matter of common knowledge that directive principle provide in part 4th of the Indian constitution is not enforceable by the law it means not they are meaning less. These principles inter related with the part 3rd of the constitution hear says that these principles is not separated from fundamentals rights. Both are supplementary for each other.

If we are making tight to education under article 41 of the Indian constitution reality the fundamental right that remain past the compass of lion's share number of unskilled. Article 21 says that privilege to instruction is not total right. Under article 41 and 45 privilege to training is inferred for each offspring of this nation that has right to free instruction until they are not finish the age of 14 years. When they finish the age of 14years their entitlement to training go under point of confinement of monetary limit of state.

4.7.4- Right to Speedy Trial:-

It is common in India to have delay in judicial proceeding. Often a trial become delay without any reason and takes long time. It is become duty of the constitution to provide some duty to state for ensure the proper procedure adopted for the speedy trial. Who ever when breach the duty of this and not provide speedily trial in proper way than the court check the reason for delay it is true or not. The court do act according to it the court use the proper obligation for public interest. The right related to accused defined by the Indian constitution and other related provision also. The judicial have obligation to check the principles. These provisions provide in Indian constitution under article 14, 19(1) and 21 by these articles we can achieve this aim or make and of this delay process in speedily trial.

There is no separate provision related to judicial for the speedily trial in our constitution. The article 21 define that no person deprived from his life without any judicial procedure and law. The criminal procedure code also has some provision related to speedily trial under section 309. There is no special provision regarding to speedily trial in the criminal procedure code and under the Indian constitution and there is no other enactment provide for the speedily trial.
The Indian constitution under article 39A provides the order for equal justice that inserted in the constitution.267 That is imposing certain obligation on the state in the form of directive principles.268 The state shall make sure that the operation of legitimate framework gives equity to all on the premise of equivalent open door and suitable enactment and procurement for lawful aid.269 make any plan or by some other way that state think fit to guarantee the open door for the equity. The equity can not be denying to any single person by the reason of societal position, monetary or some other inabi The Indian constitution under article 39A also make the right for legal aid and on the basis of language or economic or social rights are not as a fundamental rights. This is more prior duty of state that the provide free legal aid and speedily trial to those peoples are not capable to get justice due to illiteracy, poverty and unawareness of process.270 In 1951 just after independence, the Honorable supreme court point out the importence of legal rights and legal aid. This provision laid down under the rule of law that in every case those accused are not capable to afford the trial of the court, of appeals are not power less to interfere it.

If it is found that the accused is not capable to get or for want legal aid, in these situation the proceeding against him may be said to amount negation of fair trial under the rule of law. the Indian constitution under article 14 clause C provide that when make the criminal charge against the accused, some one is related to the provision for granting minimum guarantee in equality for proceeding and inter alia without any delay in the proceeding.271. The Indian constitution provide right to speedily trial as a fundamental right under the article 21. 272 lities.
The criminal procedure code also provides some provision those are related to speedily trial under section 309. This section says trial and inquiry before every proceeding shall be speedy as soon as possible. When the witness going for examination the procedure may be continue day by day up to when the examination of the witness become over. The court finds to necessary to adjournment the court than he may follow the reason that is recorded. 273

There are number of matter go for delay in the court. The petition files for the public interest litigation. In the case of hussainara khdtoon 274 and kadira pahadia 275 the petition related to really surprised that many accused going fot trial from different states and in different –different matters.

The fair and speedy trial is an important factor for the natural justice. The court also declares the procedure established for the speedy trial. The procedure or rule established by the law. The law is also related with the principle of natural justice this right is based on one maxim that is if we delay the justice than justice denied. It is the grater interest of person and its delay is big mockery for the principle established for the justice.

The delay in the speedy trial is not affected only the system of judicial but it makes affection the related member also does to the pandect of cases many people suffered. Some people those are innocent victim do to delay in the speedy trial and judicial system. Some persons who threat of prisoners and hung over when the finial decision of the case came. The individual who we become prisoner that disproved by the psychologically and have deprivation and loss the social status, economic and up to he is in imprisonment till the he is not declared innocent. Even if commit crime or become, guilty he loss his faith in the justice and administrative system. In some cases the Supreme Court says that speedily trial is a fundamental right in certain cases. It also stop the right to life and liberty and live with human dignity because in the society

273 –Section 309 of Criminal Procedure Code 1973
He loss his position. The article 21 provides the guarantee for right to life and liberty. For the providing justice in the criminal cases. The speedy trial is become essential. Accused is to be trialed quickly because the procedure delays in the disposal of the criminal cases on the stage of trial. It is a violation of natural justice.278 The witness also effect to the judicial preceding. It is also injustice with the victim and society accused the party.

Hare it is essentional to remain the principles provide by the American constitution. In that provide as a fundamental right in India speedily trail is only integrant part of the law and established according to the rule and regulation under article 21 in our constitution.

now it is also established inerital rights. The Supreme Court says that it is essential and integral part of article 21. The order complied with the given direction. The Indian legislation replaced on the place of old criminal procedure code 1898 with the present criminal procedure code 1973. So the court towards the resigned expeditious division of criminal cases. The approach of the court also comes out towards the speedily trial the Indian government also so his deep interest in the speedily trial.279

In the case of kadra pahadia 280 the Supreme Court decides that speedily trial is accused use The social scientist and philosopher and social research a to give a letter to point out the supreme court in the case of kadra pahadia and other five boys, those are the age between nine to eleven and they all are belong to backward cast the Capet in Bihar jail near about nine years with out trial the court declared that it is shame full for the judicial system provide in India which a man kept in jail without trial near about three years. The court provides the right to speedily trial as a fundamental right under article 21 of Indian constitution. When the court check the position of jail than he say that right related to freedom only remain only on papers.

In the case of sheela 281 the court again repeats his decision. The main purpose of the court to decide these principles to make speedily trial without any

279- The Law relating to Human Rights, published 4004 page 405 to 407 (by the L.D.Naikar)
281- Sheela Barase v/s Union of India 1986-87 2 S.C.C. 632.
delay and ensure the principles provide for the speedily trial those are provide by the court. old procured provide he in criminal procedure code and make or appoint various committees to go up to the problem and find out the reason to delay in the justice.

But here is no change the procedure of judicial system, the problem at now has the same position. All these cause compile the judicial system to come forward and take the some extra stapes. The participation doing in creative approach. The court also makes some rule under article 21. Those portions related with the speedily trial and try to found out the main cause for the personal liberty. The court also told that those person in custody more then six month without produce charge sheet, they become released.

The case of Mehta’s 282 the petition filed by the Hindustan related to writ and given the direction in favor of that individual that have been waiting the decision on the mercy pending petition before the president of India near about eight years. The court says that it is unaccepted delay in the petition filed based on death sentence. This type’s delay makes the mentally disturbed and tortures the related family members of the convict. It held on the basis of basic reason not make clear for the keeping in mental by the convict in the delay of speedy trial. This type crime those are against the death sentence and on the basis of nature of crime. This is directly violation of article 21 those are based on speedy trial. 283

Even those are charged under section 302 of the Indian penal code and section 395 of the criminal procedure code. The right to speedy trial not guaranteed specifically as a fundamental rights. It is only given in for that they must implied in sweet and the content of the person those are provide under section 21 of the constitution. The provisions related to bail where the speedily trial becomes delay than accused get right to apply for bail. The court give decision on this related to case legal aid committee the case of under trial related to prisoners.284

283- Supreme Court Legal Aid Committee, Representing Undertrial Prisoners v/s Union of India, 1994 3 SCCpage 731; Supreme Court Legal Aid Committee v/s Union of India, 1995 5 SCC page 695
284- Undertrial Prisoners v/s Union of India 1994 3 S.C.C. page 731
The court provide provisions those are Capet in jail sense a long time, they also right to bail and established the provision that the prisoner get half punishment those are provide related to that crime because they half imprisonment complete before trial.285 The court decided that release all these prisoner those are Capet in jail from a long time even they are commit serious crime and not get trial in the cases they can relapsed on the bail for the public interest litigation.286

The article 21 related to right to life and liberty when any person confine in the jail without providing charge sheet fot trial a long period than it become show the condition of judicial that how much become worthless. Here is no meaning to provide article 21 as a fundamental right because here totally violation of these rights only by delay in speedy trial. The court declared that speedily trial use as a part of article 21 of our constitution. In this article the direction given for the stipulate time with in that period the different cases going under trial must be disposed.287 It is become natural for judicial system to make delay in speedy trial related to prisoners those are Capet in jail in different matters. This condition we can see through out the country. The court says that the direction must be provide valid in all state and mention that the matter related to speedily trial not applied to pending matters but it also further cases those come in future there must also applied.

It true that speedily trial is not a fundamental right but due to effort of judiciary the right of speedy trial has been recognized as an essential and important part of article 21. The delay in procedure of disposal of cases. The people loss their faith in the judiciary system through out of the country. The Supreme Court seven judge’s bench provides the decision related to secure the speedy trial and justice that going on backward.288 The decision provide in the case that related with the state of Karnataka 289 here the court think to proceed the right of prisoner through the speedy trial.

285- Shaheen Welfare Association v/s Union of India 1996 2 SCC page 616
287- Common Cause v/s Union of India  4 S.C.C.1996 page33
The delay in the speedily trial is not itself courts approach but there may be some relevant facts or when the matter reach up to the final verdict, than there may be change many steps. There is not make any particular rule for the speedy trial it is based on the balancing process between the accused right is violated or not. There may be prescribed time limit for the proceeding determination.

The speedy trial and fair trial both are integral part of article 21 those are related to persons commit crime or become accused. the speedy trial based on the cases circumstance and there is qualitative difference between the two rights on behalf of that case prescribed. The nature of case and incident may be committed and which process and grave nature of the crime.

The accident may be committed in the public place or by transport bus use as a public purpose. The court applied the limitation period for the trial and procedure adopted for the discharge the accused after word the same decision applied to all cases those are going this time and applied for future in legislative proceeding. The article 21 of the Indian constitution provide guarantee for life and liberty. For the criminal justice the speedy trial must become necessary.

The united nation says that speedily trial is a constitutional part and provides the guarantee of rights. The procedure adopted for speedy trial must be fair and reasonable and the discreditable not based on the economic and other relevant facts. For the speedily trial fix any time for trial of the accused and the burden of proving lies on the prosecutor and give the justification for delay in the trial. The article 21 provides the help to accuse any time and all stages. The accused not denied the right of speedy trial on the ground that he has not complete the demand of speedy trial. If the court come on the final designs than the right to speedy trial for accused has been made the charge for the conviction.

4.7.5- Right to Legal Aid:-

Legal aid is providing the free service in the law in the domain to provide legal advice and help. The legal aid also provides the help in the court during the proceeding of the case.

290- Ibid 1869-1871
291- Ibid 1878
It is also essential duty of the state. The legal aid provides the help to get equal justice all community or the society. Mostly it becomes a power full source of the poor people to get justice. The legal aid provide equal opportunity of justice in economic, social and political reduce. In India the term legal aid come in influence widely after use in European countries. Because in ancient and medieval period is not require the legal aid. Some author and philosopher says that needs feel the legal aid after the 2\textsuperscript{nd} world war. During the British rule in India the people not get the justice properly. So after the independence make the provision in the constitution identified with legitimate help. The Indian constitution under article 21 gives that privilege to life and liberty is a fundamental right of every person.

No one can take it out without the legal process given in the law. The term procedure here become an important factor, it means all are have the right to get the equal opportunity and procedure must be fair and reasonable without any discrimination made on cast race and economic status base.\textsuperscript{292} The procedure adopted for legal aid is also based on the principle of natural justice. The preamble of our constitution also makes sure the justice to all. The part 3\textsuperscript{rd} and 4\textsuperscript{th} of our constitution related with fundamentals and the directive principles.\textsuperscript{293}

The term social justice gives more emphasis that all citizen of the country get equal opportunity to develop him self and his family. The people become equal in the society. It mans that not only rich people get opportunity for the enjoy civil and political right. The poor people also have the same right to enjoy freely political and civil rights without any restriction.\textsuperscript{294} The article 21 is providing to every one right to life and liberty and makes equal enjoyable for all. Earlier the approach is different related to poor. They can not have right to get justice equality as the higher section of the society. After that in the seventeen century on wards the emphasis given on the free legal aid because the source of law become the strength of the weaker section and society or community. It is become beneficial for the poor people. Because they get all other rights also equal without any discrimination.

\textsuperscript{292} Dr.N.Jaswal, Human Rights and the Law, (New Delhi: APH Publishing Corporation, 1996), page.202-204
\textsuperscript{293} Dr.H.G.Kulkarni, Implementing the Constitutional Mandate of Legal Aid, 2004 vol.XXI, page 107.
\textsuperscript{294} -Article 14 of International Covenant on Civil and Political Rights.
The law is not made only for the speaking but it must do in actual position and provide the justice to all the people. The order provide for the equal justice to all by the constitution under article 39-A. these provision emphasis on the state as a form of directive principles.295 Now it become the duty of state to check the legal system that it is doing work on the basis of equal opportunities and provide equal justice to all people. The article 39-An additionally make the privilege to free lawful help bound the obligation of state to give the free legitimate support administration to those individuals who are not capable or fit to get equity because of monetary emergencies, destitution, unawareness and absence of education.

The main of characteristic equity with the technique created by the law is giving the administration of free legitimate aid.296 The denounced likewise can request the privilege to life under article 21 of our constitution. It additionally turns into the obligation of state to ensure the life and liberty of every person and citizen of the state without any discrimination. If any authority of the state appose the rights than it become the primary duty of state to protect these rights. Because the article 21 says that free legal aid made for the needy persons. The court also says that it is necessary part of state duty. The free legal aid becomes the compulsory for get just and fair, reasonable and fair procedure.

The legal aid is a without remedy there is no meaning of fundamental right.297 If any person not able to get justice due to any reason, than what is the purpose of equal justice provide under article 14 as a fundamentals rights.

So the country like India there is most of people or a major part of the society belong to poverty and deprivation of all these rights become meaningless. The fundamental right is not compulsory on the accused that he is applying the free legal aid. It is applied only when the person unable to get it.


In 1978 a special petition comes before the court. It is related to the matter of full imprisonment. The reason for delay only that he is not produces or survives the copy of judgment that the lower court given.298

The court says that there are only to way for going apple and right for apple, that is submit or produce with its help before the court. The article 21 says that this is responsibility of state to provide him the service of free legal aid. The justice says that it is not the charity of the government but it is duty of the state.299 If any prisoner unable to get or safe his rights and natural rights with the special level. Then he may emphasize or applied before the court. Through the article 142 and take the support of article 21 and 39-A of the constitution. The remedy provides to the accused depend on the court fees and what fees get to skilled lawyer which is very high. Than if the person find that he is not found capable to himself to present before the court and get the justice. In the Indian judicial and American judicial system mostly adopted same procedure or path to get justice and right recognized for free legal aid.

These are become Essential part of Indian judicial system. poverty in India become power full obstacle for the poor people to get justice that way the right recognized free legal aid and fundamental rights.300 the legal aid is not absolute fundamental right so it is not bound for accused to take the help of free legal aid. The Supreme Court decides the legal aid as a right under article 21 of the Indian constitution. These opinions given by the court in case of Hoskot.

The court give an order related to legal aid that for the make good process on the legal aid it is become necessary for the country to provide good layer. And it is possible if we provide number of Law College and provide necessary related material like good staff and teachers. When the government is not capable to provide sufficient number of colleges than it is become the duty of government to permit for the private colleges and included them as a grant in aid.


299- Section 304(1) of Criminal Procedure Code.

300- Sharada T.Nirvani, 'Legitimate Aid- Revisited' paper introduced at National Seminar on 'Lawful Support and Legal Education at ILS Law College Pune, 18th and 19th Jan. 2002, page2
Article 21 take guarantee for the right to speedy trial and legal aid become as a fundamental rights. The equal justice and legal aid provide in the Indian constitution under article 39A the main purpose to provide this article it means justice provide according to the law. It is main duty of the state that he secures the right of citizen without any disabilities. In other words we can say that article 39 have large and wide importance in the constitution. The legal education becomes the demand of the modern society by this demand every year many persons trained properly in different branches of law. The article 21 and 39A cast, duty on the state regarding the obligation and grant legal aid.301

In the case of Khatoon 302 the court decided that the article 39A applied for the providing the free legal aid service, the justice must be fair and reasonable for all without any discrimination. It is become necessary for provide fair and reasonable justice to the person. The article 21 provide its guarantee.303 In the case of khatri 304 the court emphasis the right that he can take the free legal aid service those are provide by the Indian constitution as a fundamental rights. The duty imposes on the state also under article 39A. Further court says that the court can not avoid the constitutional remedy provide to any person or accused as a form of free legal aid. Due to financial incapacity, illiteracy and lack of awareness they do not get justice only for them free legal aid service provide.305

In the case of ‘barases’306 the supreme court provide the legal reiterate those are related to the poor accused an those are unable to get justice. This aim is not achieved only the basis of article 39A, take the help of some other articles that is article 14 and article 21 of the Indian constitution. These both are also related to equality and liberty of the person.

302- hussankhatoora v/s state of Bihar A.I.R. 1979 S.C. page 1369
The judge says that court already provide many provision for the poor accused to get help from the legal aid service.307 The state also performs duty under article 39A, for the improve the judicial system to provide the equal justice and right to life and liberty to every person of the country through the article 14 and 21 of our constitution. The court further says that if he fails to provide the free legal aid to the accused by the state on its own cost, when ever it is refused by the accused person.

Than again he is not apply for the same. The free legal aid provide by the state is a fundamental right of accused person. These right is applied on the reasonable requirement for provide fair and just reasonable procedure provide by article 21.

The magistrate also have duty to tall about this legal aid to the accused those are feel need to it. But unfortunately in the democratize country the rule established those are note totally become rankles. Than the people loss his faith in the justice system, those are note get proper and true justice from the judicial sector. In suddas case 308 the court decided that the legal aid can not be take away from the accuse only the basis of when he is failed to apply or use these rights. They are believed on the legal system. Today the judicial system also become the property of reach and power full sector of the society. The court also provide the direction related to woman custody and related to there legal aids and rights.

In the case of legal research centre309 the court decided that how much voluntary people and social organized sector take part in legal aid to make successful and effective. When a women Capt. in police lock up than the legal aid committee which are nearest to the to that have information. The session judge also takes round in a month to visit a police lock up.

The article 136 before the court for proceeding related to special judge that on the ground of rapid trial infringement that the right quick trial give under article 21 of our constitution. The court says that defer in continuing and trial. The court again says that privilege to expedient trial straightforwardly influenced the privilege to life and individual freedom. But the speedy trial provides according to the circumstance and needs of the person.

307- 1983 (1) SCALE page 140, Para1st
308- Supra note. 179
309- Centre of Legal Research v/s State of Kerala A.I.R. 1986 S.C. page 1322
The convict capt under trial in the jail for doing reasonableness test. Article 19 and 21 is fairness. When we capt the accused in the jail for criminal proceeding without any evidence than it become violence the test of fairness and article 21 of the constitution because this article related to life and liberty.310 The important right of a prisoner is personality and if he have right to maintain his dignity in the society. The procedure regarding the time limits of the court, it has balance between the circumstance and related facts and also includes the nature of offences.

4.7.6- Right against Torture:-

Any type of cruelty, touchier, third greed treatment and in human treatment mention under article 21 with the inhibition. Where these rights come or face during the integration and investigation and other any where also. If the act of government become unlawfully than it bound for breed contented of law. Those are appreciate encourage anarchy and every person live with the anarchy system and make the tendency according to that.

The civilized nation given permeation for doing these activities and happens these thing in the nation. 311 In the police custody also need for safety and regulate the policies for the state. But in India constitution no where given this type of guarantee. The constitution note make nay special law for the touchier, in human, cruelty and third degree treatment and punishment given by the police to accused person in police custody.312

It is clearly established and define in the constitution that during the trial or convict not loss their fundamental rights those are provide in article 21 of our constitution. The basic right of the person no where stopped and deprived from the person. Generally torture use for showing and clear intense, mental, physical and psychotically.

310 -P.S.Narayana, Public Interest Litigation, (Hyderabad:- Asia Law House, 1999), page102

311- D.K. Basu v/s State of West Bengal, A.I.R. 1997 S.C. page 610 at 618

312- Dr. B. Hydervali, ‘The Law and Custodial Torture in India,’ (1999) Cr. L. J. (Jour) page 36 at 37
The main purpose of torture to pruderies and force to that person for during that act or say something against to any one or other specific person. Without wanting to. It makes for separate some mental and physical agony and makes weight on them. 313 in 1948 the torment embraced by the general statement on human rights. After it 1949 it is embraced by the general tradition. Be that as it may in 1948 it was first time embraced by the general gathering the idea of torment.

After that general convention definer the term torture under the convention provides the definition of torture, it means any persons fell pain that may be mental and physical and make influence on the person. That influence may be made by himself and other third person. And make the discrimination on any reason and kinder of such influence. When such influence made by the official capacity. If that may be influence by the law. But when it makes the violation than it become torture.314

The universal declaration makes some rule and regulation against the torture.

Again the same concept remind by political and civil covenant. Without the concept of scientific and medical experiment nothing takes without his concept and joining in the right. That on one become the subject of cruelty and torture etc. if we say specially and individually, that no one include without his free consent and will for the scientific and medical experiment.316 there is no provision provide in Indian constitution related to torture, cruelty and punishment as a right under the fundamental rights and part three of constitution. It is established by the court to decide in various cases. This right includes some other right in it like right against soldiery confinement, custodial violation and handcrafting etc.

All the above rights separately recognized by the court as a fundamental right through the different case laws. As related to life and personal liberty and right to dignity provide by the article 21 of our constitution.

313- Ibid
314- Article (1) of the Convention on Torture
315- Article 5 of Universal Declaration of the Human Right
316- Article 7 of International Covenant on Civil and Pol. Right
These rights may be called right to accused person that treated as a human or humanity317. The article 21 interacted by the Indian Supreme Court and developed and added the human right for the protection and prevention the accused right those is related with the human dignity.

The Supreme Court provides more emphasize on the portion of human right and dignity. One case related to this matter. Peoples union for democratic rights v/s union of india318 in this case the court observe that right to life is not bound that may be physical or related to any facility by which means life is become enjoyable on this right to dignity in the case of Sunil batra 320 the court says that the court had opportunity to discuss with prisoner in deep when he frame awe rights and thought relating to human rights. In this case court speaks profoundly and deeply in the favor of accused rights. If any one abuses the rights of the accused that may be under trial and convict and the situation and circumstance there the voice of the victims not be listened outside. Then it make essential for the court to elaborated the right to life and here include the right to torture soldiery confinement, handcuffing etc. The court further says that jurisprudence can not sleep the campus punished justice become the evidence of the torture.

The accused are not completely denied from their fundamental right. The liberty of prisoner is very nature of things, very fact for circumstance for his confinement. The interest related with liberty left with him is more important. The convict for a crime is not treated as non human. Whose right becomes the subject of the accused administrate.321

318 -Peoples Union for Democratic Rights v/s Union of India A.I.R. 1982 S.C. page 1473
319 -Ibid
321- Ibid
also based and it is duty of the state that no one deprived from the right accept the provision provide by the law.

The procedure related to solitary confinement by the substantive punishment by the court and law. It is not left with the prisoner authority. The court mentions every impact of the torture, liberty of life in its broad sense and not violation of article 21. The article 21 is directly related with life and liberty of the person. It become a part of life unless the institution of law in prisoner and police have common, feeling for others and individuals. In the case of Francis Coralline 322 the court make clear it, and any form of cruelty, torture, degrading treatment is also effect the human dignity and order related to right to live with human dignity be prohibited by article 21. the prisoner procated from in human barbarous treatment. The important role plays by the writ hibiscus corpus for the judicial remedy. The torture provides in many form it may be physical, mental and all the form of torture affect the civilized society or community.

In the case of Sheela Barase 323 the court decides that ill-treatment and torture related to women suspect in police lock up is violation of article 21 of our constitution. In the case of khatri 324 the court pronounce sentence for the blinding under trial by the police piercing their eyeball out needs. The case Bhagalpur is become illustrate key and pattern of the torture. The torture pattern granted by the state and local judicial authority and the routine of torture and failure of inquiry process and irrigated length judicial system.

The trump torture is prohibited by the article 21 of the Indian constitution. There are certain provision given in the Indian penal code and criminal procedure code etc. The torture is totally prohibited. It also related with other illegal physical treatment in the jail. The Supreme Court in some cases the torture made pronouncement and hand cufing to the accused during the trial.

In the case of the Dr. Basu the west bengals executive chairman of legal aid service give a letter to the justice of India and says to pay attention on the news listen those are come through news paper related the death of prisoner in jail and police lock up and custody.

323 -Sheela Barase v/s State of Maharashtra (1983) 2 S.C.C. page 96
The chairmen present that it was become the issue to examine to related death to depth and develop the death of custody and their families for atrocities and death by the police. The letter takes as a write petition by the court. The court makes guide line for the central and state for investigation for the case of detention and related to accused. The court said that during the custody it become may big crime for the society and it is violation of article 21. When the tortures given by that person who have held any government position and he is low fully obey the rule and regulation provide for the torture. The torture by agent and meditore of state, any authorized society an officer that hold authority of state And not come under the torture. By the constitutional provision every person has the right to life under article 21 of the Indian constitution. In the khishor singh case, the court says that when the police use 3rd degree mat herd it is violation of article 21 and provide the directive principle provide by the government that police become an educated and rich or teach to respect for human beings. The court provides the direction about the soldiery confinement. The article 21 and 22A of the constitution it become requirement of the act and related to these articles become followed strictly. The article 21 of our constitution says every person get right and liberty and live with human dignity. If any one violate of the articles it means he torture to that person.

4.7.6.1- Right against Hand Cuffing:-

In the case of premshankra and Sunil batra in both the case the court decide that hand cuffing those are under trial accused or prisoner violate the right of fundamental. In the case of democracy citizen the charge made by police including the under trial accused for handcuffing.

327 -Ibid
329 -(1980) 3 S.C.C. page 526
330 -(1978) 4 S.C.C. page 494
Violation of law decide by the court of India and there was make charge that eight prisoner as a patient in hospital were tied with rope and handcuffing. The court says that tying by rope handcuffing patient prisoner is a inhuman treatment and it is also violation of human dignity and rights. All these are not permitted under article 14, 19 and 21 of our constitution. Except the permission provide by the magistrate in rare cases. In the case of Sunil Gupta 332 in this case the court declare guilty for the conduct or act of guard, who beat and arrest and abuse upon the social workers handcuffed on them up to tae the court.

The social worker brought public interest litigation and charged that they are doing work against exploitation of tribunal peoples and for local farmers. The case has been lunched against them with the charge of obstruct and prevent the public servant for performing to them public act and functions. They all are abused, arrested and beat them. Take to them before the magistrate after handcuffed them. provide discrimination and direction before the handcuffing to any accused. To take permission by the court. When the petitioner is well educated and going for public cause and they make shelter or submit for him for arrested. They did not seek for the bail but they can chose the continue in prisoner for a public act. They do not have been scope mind and thinks. There was no nephew cause and reason to make handcuffing to them. There were any subject that they were humiliation by violation of there rights under article 21 of our constitution. There were so many other cases happened in Delhi administration related to handcuffing. The judicial officer of the police ware many condemned by the court in the Delhi service association case. 333

4.7.6.2- Right against Bar-Fetters:-

In the case of Charles Sobraj 334 the court observe that article 21 is only stopped those act prohibited by the law and doing violation of law and destroy the personal liberty and other rights related to any one individuals. The liberty is extending as negation of it and constitutes deprivation.

332- Sunil Gupta v/s State of Madhya Pradesh (1990) 3 S.C.C. page 119
The court says that it is become compulsory for the escort party to take or
The term bar fetter makes serious on roads the limited or rested personal liberty. A prisoner or accused left with, before such erratic act justified it must the authority of law. The prisoner act under section 56 dose not permitted to used the bar fetter for un wanted and un usual long period. When the prisoner is locked for serious offence in jail or cell and day and night and when it become too.335

The bar fetter is generally is use to like barbarity and vanes must whip. When it is use in these conditions where bar fetter must be violated under the article 21 of Indian constitution. In the case of kishore singh 336 the petitioner sends a telegram to the Supreme Court. In Jaipur central jail three accused filed a petition for bar fetter. Here accused Capet in jail more then ninth month. The supreme court decide that so many rules that decide prier related to prisoner become out dated and that are not mention in the constitution. It has become bar fetter those are become illegal and torture. The court again give direction to the all states government that on the old rules removed and on that place modified the new rules those are given under the prisoners act. So they are making sure with the constitutional prevision those are providing by article 21 and include the new interpreted and modified by the court.

4.7.6.3- Right against Delayed Execution:-

The term delay in execution setup with a particular logic behind it. The accused those have an experience and live so many years for the death. They are doing request to court theta after employ all the torture bodily and mentally and with great pain that all are become just fair and reasonable. These entire death sentences give according judicial proceeding. It is make mentally and physical to the accused and treat as in human. Because of delay in execution. That accused treat as degrading and inhuman treatment. The cause related with delay in execution procedure and defines some relation and reason in the case of vetches hwaran 337

335 -Ibid
337 -T.V.Vatheeshwaran v/s State of Tamil Nadu A.I.R. 1983 S.C. page 381
It extends in another case that is in the case of sher 338 and another is triveni case 339. In all these case the court provide decision and make reflection.

The two judge’s bench of the court said that delay in execution the time near about four year passed. The sufficient reason and it is sufficient reason for violation of article 21 of the constitution. The process established for sentence it is unfair and unjust and unreasonable procedure adopted for the accused. The court said that this rule is not adopted in every case. All are decide according to their own facts. Article 21 says that those procedure are violate the rights and those are take away from the life and liberty.340 The procedure must be fare and just and reasonable.

The delay without any reason become delay in execution of death sentence only due to delay in mercy petition. In this case the public interest litigation by the petitioner that is also prescribed of public interest litigation. In this case they make the charge against the mercy petition. The mercy petition sends to president of India in 1981. But the president takes near about seven years to give the answer. During this period his physical and mantel condition become so worse. The accused think that he commit suicide. Again the court says that delay in execution with out any reason that is become violation of article 21 of the constitution because it provide right to speedy trial. In this there is no providing any sufficient reason for delay in execution. When the president read that mercy petition than says that make disposal to this issue. Because the accused all ready bear so many torture that mental and physical by waiting of the decision in the mercy petition. The court said that he is not bear now. And the death sentence change in to life sentence.

4.7.6.4- Right against Solitary Confinement:-

The most common and important question come in mind that to whom soldiery confinement given and whom not given in the case of Sunil batra.

In this case the convict gets the death sentence. It is violation of article 14, 19, 20 and 21 of our constitution. The two accused those are capt in Tihar jail. They file a petition before the court under article 32 and challenge the section 30 and 56 of prisoners act. The accused get the death sentence from the lower courts and send to the high court for making confirmation. Here one more possibility that they can go to Supreme Court also. The accused kept in solitary confinement up to that the Supreme Court given the decision. The court gives decision on February 24, 1978.

The section 30 of the Indian penal code not provides any authority to give solitary confinement. The punishment of solitary confinement is also sub relative punishment of the Indian penal code under section 73 and 74. That is also implied by the court. It is also not impose by the accused authority. The court says that accused under section 30 clause 2 of the provision related to prisoner death sentence.

But the death sentence can not become final up to that the accused have option of apple. When the appeal provision is applied for mercy becomes complete than it become final statement for death sentence. When the accused sentence it not become conform up to that solitary confinement become violation of article 21 of our constitution. If we restrain the accused right to move, speak and share their view with other is also violation of article 21 of our constitution. So if we provide solitary confinement than it become violation of article 21 related to life and liberty. The solitary confinement make demoralized the person and degrading treatment provides the negative effect on the accused. Underlined and unrelieved and opinion of the accused is not the separate to the accused person from the other is mostly disturbed the violation.

4.7.7 -Right to Compensation:-

The term right to compensation is give a positive sign to the judical proceeding and provide a positive to that persons. Those are suffer by loss and protect the human rights the philosophy companion is a positive sine for judicial. To protect article 21 that is related to right to life and liberty and live with human dignity provide for all -

342- (1978) 4 S.C.C. page 494 at 570-571
the citizen of our country.343 This law provides justice the peoples those are absence of any constitutional provisions and judicial proceeding. 344

The main purpose of term computation is to full feel the monetary lows that are suffered by the wrong act that is become a support in a form of monetary. In the case of unaltered able damage remain a really effective remedy for the informer and information of all the rights. When the state make the violation of human right than it may be repairs by the monetary compensation is make good option for during complete and make complete the loss by the compunction make the loss.345 it is get by that person and claim the suffered person to whom Due to increasing the strength the abuse of power by the arbitrary and public authority in the life of other person. They may recognized by the court. The court also makes interfere to be wrong state and public law, become libel for compensation to the victim. 346 when the provision and legislation is not sufficient than court make interoperation and interfere the statutory scheme those are provided for compensation to the aggrieved party the justice says or require to be fully compensation. The monetary right provide by the legislature. Where and when any one makes the violation of rights than it supplementary by the judicial to extent the constitutional remedy.347

It is universal recognized and excepted principle that the right to enforce the compensation is not different from the concept of that right provides the guaranty right

343 Ibid.

344 Dr.G.Yethirajulu, “The Indian constitution under Article 32 and Remedy for Compensation” A.I.R. 2004 Jour.page313


346- Justice Arun Madan, the Human Right And Social Legislation, A.I.R. 2001page 138 at 143

The universal declaration for human right recognizes under article 8 all these rights. This article told us that every one has get right to the sufficient tremble as a forum of remedy provide for the violation of human right. This is granted by the provision established by the law and act to constitution 348. by the international convention related to political and civil right provide the compensation related to under article 9 clause 5. this article says that all person those are victim of detention and arrested unlawfully all are have right to enforce for the compunction . 349

This article also says that court not doing clear justice with these persons; those are arrested and detained un law fully. The court maintains. The right to life and liberty and give surety granted by the constitution and international convention under article 9 close 1. The court decides the right of person related to compensation. In India also adopted the procedure of compaction declared by the right to compaction. And become enforceable. Right to compaction declared by the Indian government on april 10, 1979 with the article 9 close 5 and under article 9 of the international declaration on political and civil rights.

Now the India have the position that the article provide and provision applied with the provision close related with the article 22 close 3 to 7 of the Indian constitution. In the Indian legal system there is no special and separate provide for the compensation that claimed by the victim person detention and arrested unlawfully against the state authority.

The Indian become irresponsible with article 9 close 5 of the international convention even in those cases when the person un law fully arrested and detained.350 Our constitution can not make charge on the constitutional assembly or makers. The Indian chief justice Chandra Chud says that right to life and liberty provide by the constitution is other various sated for covering by hand with social aspects and matters.

348- The Universal Declaration of Human Rights Articles 8.
349 - International Covenant on Civil and Political Rights Article 9 clause (5)
Further said that in the case of rising to the violation of right to personal liberty. If the court of rising the violation of all these personal right and liberty. If the court not accepts the provision like the international conventions article 9 close 5 that pass the order related to compunction. It is provide up service or option for liberty.351 The question related with the right for compensation article 21 is come before the court in the case of khatri.352 and santabai 353and in the case of seth v/s state of Bihar354 in these cases this question left without given any answer on the infraction of rights on compensation. Finally the supreme court says that compensation is provide and payable in the case of detention and when un law fully arrest to any person the court says that it is generally violation of right to life and liberty of person. This decision becomes turn point about the compensation for the violation of personal liberty. In the case of radul 355 In this case the petitioner described the state affair in Jail of Bihar and administration related to that. The petitioner commits be the section court in 1968 but after that near about 13 years. The petitioner file a writ petition habeas corpus in the case of above decide by the supreme court under article 32 through the petition be demand and doing pray to court for his release from illegal arrest and detention and relief related those children prohibition and medical expanse that those are given for treatment and compensation for his illegal treated to him. The government says to court that victim already released. When the petition take against for listen than it become infructure. The petition make under the general rule. 356

The court gives the notice to the government to provide relief and in it include the claim of compensation. The justification given from the state side that detention makes un law fully that the petitioner mind condition is not well than court not believe in petitioner. Further the court said that this much long period detention make the violation of article 21. The petitioner deprived from his liberty those are provide by constitutional. The court gives an order for compensation under a civil suit. By this

355 -Rudul Sah v/s State of Bihar, A.I.R. 1983 S.C. page 1086; Supra note232
case court ensure the payment of compensation for the unauthored person and arrested person. 356

The court also mind and observe that article 21 is provide the guarantee of life and liberty. 357 The court pass and order for related to unauthorized detention. 358 The defect in the present system adopted for compensation is that there are not given proper attention as is warranted. The police also not treat the person with humanity. 359 The accused those are found in variable in rape cases trial. The compensation related to sexual assault be provided with legal representation. 360 Such type of person well aware and acquaintance by criminal justice. The role of advocate is not only this much that he explain the natural proceeding but tell about other issue related with accused. It is very important.

It is very important to secure the person who look after the complain in the police station that person present up to last stage of the case. The national commission also makes some rules for the compensation related to woman crime. The court also makes sure prohibition of such types victims.

There is no special provision related to compensation in the constitution. it is provide by the court when any person file a suit for the violation of his rights related to article 21 that grant guarantee related to life and liberty. This is only compulsion way of judicial system to provide compensation as remedies of effective person those bear lose due to negligence of other party. This claim maid by the family member of victims. 361

The compensation is a way to enforce the law and secure the fundamental rights due to monitory compensation. This decision of court become significant of others and appreciated by other authority. The principle given by the court in the case of sah and behera’s cases applied these principles seriously.

357- Dr.Y.R.H.Reddy supra note page 231.
358- Supra note 236.
359- Supra n. 233.
361 M.S.V. Srinivas, the Compensation under Article 32 and Article 226 for Violation of Human Right and Fundamental Freedoms, A.I.R. 1997 (Jour) page 167
The compensation given by the family member of the victim party and if any person die in Jail or in police custody due to negligence of authority and by torture them if the victim have loss due to insufficient medical facility provide by the authority in the police custody and if the victim die by any other negligence of the encounter.

The united state also observe all these conditions and take necessary stape for prevent these situation. In the case of chiran jil the court decide that compensation should be provide by the government. In this case a army servicer die by the negligence of army officers by this act the family member of that person become helpless maentaly as well as financial.

The court decides that completion should be providing to his widow and his children get entire allowance. The compensation should be provided only those person suffer by illtreatement by different tortures, labour forced in during detention and unauthorized arrested.

362 G.L.Wazir, the Right to Compensation under Public Law in India:- A Basic Human Rights and International Commitment, Legal News and Views, July 1997 page15
365 Supreme Court Legal Aid Committee v/s State of Bihar, (1991) 3 S.C.C.page482: Charanjeet Kaur v/s Union of India (1994) 2 S.C.C. page 1
368- D.K. Basu v/s State of West Bengal, A.I.R. 1997 S.C. page 610
369-Peoples Union for Democratic Right v/s Police Commissioner1989,4 SCCpage 730
By harm full gases\textsuperscript{370}, and due to bodily harms and injury \textsuperscript{371} and when any person those are going for medical treatment and refused by the any authority in government hospital.\textsuperscript{372} in the case of Basu \textsuperscript{373} the court make clear the position of international covenant those are related to political and civil right under article 9 clause 5 in the India make it clear. That time the Indian legal system decide that they are not recognized the right to compensation related to unauthorized persons and dented by the police authority.\textsuperscript{374}

The compensation becomes a public source of law to prevent the violation of human rights. It is also claimed before the court by write petition and gets monetary relief by these writs. These writs provide by the constitution under article 32 and 226. The article 32 give the power to make writ in the Supreme Court directly and article 226 applied in high courts for compensation \textsuperscript{375}

The public law not only applied for public power provides to citizens but it also makes sure that the citizen live in proper system and followed the legal system. In the case of shakuntla the court give the direction for compensation.\textsuperscript{376}

The fact of the case is that the petitioner husband dies due to electric wire. This accident happened when the petitioners husband come back from the employed place And he is come in the contract of electric wire. The wire is openly in the way during the monsoon and not takes any action and not repair after making so many complaints to electric department. The court says the electric board liable for negligence and provides the compensation of exgratic amount to the victim party and there miner children.

\textsuperscript{370} M.C. Mehta v/s Union of India A.I.R.1987 S.C. page 395
\textsuperscript{371} A.S. Mittal v/s State of U. P. 3 SCC1989 page 223
\textsuperscript{372} Paschim Bangal Khet Mazdoor Samiti v/s State of West Bengal A.I.R.1996 S.C.43
\textsuperscript{373} Basu v/s State of West Bengal A.I.R. 1997 S.C.page 610
\textsuperscript{374} Ibid.
\textsuperscript{375} Ibid.
\textsuperscript{376} shakuntla devi v/s Delhi electric supply A.I.R.1995, 3 S.C.C. 368
In the case of kewal pativ 377 in this case also provide the compensation to the widow that victim killed in Jail by his co accused when he served the sentence under the section 302 of Indian penal code and its result the victim wife deprived from his life by the law of contrary and the violation of article 21 of his right. No one person have right to deprived from his life except the provision given by the law. Here the death commit due to the negligence of Jail authority. Than the court give direction of the government to provide the compensation for the widow and there children.


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