

## Chapter II

# Right to Life with Human Dignity: Constitutional Jurisprudence

### 2. 1. Introduction

Indian Constitution is one of the unique Constitutions of the world which takes care of each and every section of the society. The framers of Constitution were aware of the importance of human dignity and worthiness and therefore they incorporated the word human dignity in the preamble of the Constitution of India. The most important feature of the Constitution is the fundamental rights. The framers of Constitution borrowed it from USA and added a separate chapter in Part III of the Constitution. The Constitution provided various rights i.e. right to equality, right to freedom, right against exploitation, right to freedom of religion, right to cultural and education, right to constitutional remedy, which talks about most sacred, inalienable, natural and inherent rights. Fundamental rights are guaranteed by the Constitution to all people without any discrimination. The provision of fundamental rights preserve and protects the human dignity. The Judiciary has also emphasized dignity as a fundamental right in number of cases. Recently, in *Naz Foundation v. Government of NCT and others*<sup>1</sup>, Court observed that, “the Constitutional protection of human dignity requires us to acknowledge the value and worth of all individuals as members of our society”. All citizens of India will live and enjoy peaceful, dignified life without any disturbances.

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<sup>1</sup>. *Naz Foundation v. Government of NCT and others w.p. (c)7455, 2001*

The constitution of India is the supreme law of the land and there is nothing beyond the Constitution. According to the Kelson's pure law theory the Constitution of India is the grand norm means, it is at the top and there is nothing beyond that. The Constitution of India takes care of every section of the society to protect their rights of individuals and at the same time it restricts the state not to violate the rights of person guaranteed by the Constitution.

The Constitution of India guarantees equal protection to all and forbids the state from depriving anybody's life and personal liberty without procedure established by law<sup>2</sup>. Social justice which is the base of the Indian Constitution has its overtones in the criminal justice system too. The preamble of Indian Constitution itself make it clear that there is equality among all the citizens of India and that is the reason all persons are equal before the law including law makers and followers of the same law. The Constitution of India also guarantees equal justice to all the people of India apart from their caste and religion.

Justice *MishraRagnath* rightly pointed out in *ParamandaKatara v. Union of India*<sup>3</sup> 'preservation of life is of most importance, because if one's life is lost, the *status qunte ante* cannot be restored as resurrection is beyond the capacity of man'. Right to life is inalienable basic right of man. It is most important, human, fundamental, inalienable, transcendental rights<sup>4</sup>. Naturally and logically this right requires the highest protection. It denotes the significance of human existence for this reason it is widely called the highest fundamental rights. Everyone has the right to life, liberty and security of person<sup>5</sup>. Article 21 is the important

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<sup>2</sup>. Articles.14 and 21 of the Constitution of India

<sup>3</sup>. *AIR 1989 SC 2039*

<sup>4</sup>. *Indian Bar Review*, Vol. XIX, 1992, P. 100.

<sup>5</sup>. *Article 3 of Universal Declaration of human Rights 1948*

provision of the Indian Constitution and occupies a unique place as a fundamental right and enforceable against state. Since *Maneka Gandhi's case*<sup>6</sup> the Supreme Court interpreted article 21 of Constitution has ushered a new era of expansion of the horizons of right to life. Traditionally right to life was called as natural right of the people. Right to life is one of the important fundamental rights of the citizen of India and aliens of India. It is protected by the Constitution of India.

Every human life is precious and beautiful. One must pay respect to one's human dignity. Therefore, it is universally recognised and the foundation of moral vision for the society. After Second World War International community concentrated on Human dignity as a core element for protection of human beings. The conceptual dimensions of human dignity were established in 1948 as the foundational concept of the UDHR. The preamble of UDHR says, 'where as recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'. Human dignity mentioned at the outset of the *Article 1 of the Universal Declaration of Human Rights 1948*, which is the most important document in the world. *The Universal Declaration of Human Rights provides* the preliminary work out for protecting and development of right to life with human dignity in the various constitutional laws of various countries in the world. Every person has inalienable right to live with dignified life without discrimination. They are entitled to claim equal respect from the state as well as from other persons. It is one of primary duties of each state to protect fundamental rights to the human dignity and implement welfare schemes in order to improve the dignified life of the citizens.

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<sup>6</sup>. AIR 1978 S.C. 597

Indian constitution ensures many rights to the citizens as well as aliens. It is not only a legal document, but also a social document. The preamble of Indian Constitution ensures social, economic and political justice in a way the Constitution which makes it exceptional Constitution in the world. Now, the question is what right to life is something which is more than an animal. Article 21 of Constitution of India deals with only right to life and liberty includes that no person shall be deprived life and liberty except according to procedure established by law. Article 21 is concern with right to life and liberty in literal sense, but due to liberal interpretation of same Article the court has expanded its scope.

Under right to life many more rights are there. It included because of Supreme Court interpretation. It reveals that, the interpretation made by the Supreme Court for widening the scope and ambit of Article 21 has resulted a jurisprudence of human right. It is not out place to mention that this jurisprudence is now part and parcel of human dignity. All This happened because of liberal attitude and approach of Supreme Court. The court has interpreted in such way a that, the right to life includes a dignified life in the case of *OligaTellis v. Bombay MuncipalCoroporation and others*<sup>7</sup> and *Corlie Mullin v. Adminstrator and Union Territory of Delhi*<sup>8</sup>. It includes many more things about dignified life. So in a way scope of right to life which has been expanded and given widen connotation to it within its amplitudes the courts has covered many more rights. Hence, right to life includes anything which is essential to live life with dignity.

The right to life is not only correlated with human dignity but also it directs our attention to the very essential subject of honour killing,

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<sup>7</sup>. AIR 1986 SC 180

<sup>8</sup>.AIR 1981 SC 746

family members for sake of social status or 'so called his family honour' kill the members of family the Constitutional guarantee of right to life which is ensured through this paramount status book like Indian Constitution is important. Now if we take into consideration the very basis of honour killing why and how it happens, then the question comes about the constitutional guarantee which has been ensured through the different pronouncement of the courts.

India is seen in as one of the powerful emerging countries in the world. 21<sup>st</sup> century recently our Prime Minister *Mr. Modi* proudly said that, dignity of women is our collective responsibility and there should not be any compromise in any way. We must pay respect and honour equally to encourage their dignity. Researcher feels that, even in the global period the Indian women struggle for the right to life with human dignity even today. Women have been victims of various forms of cultural and customary exploitation from years together. Young girl or women are facing a number of problems in every sphere of life. They are still suffering with the evil customary practices like honour killing; female foeticide etc. and deprived of their life. This is nothing but exactly against the nature and the constitutional provisions such as the right to live with dignity. Indian Womanhood is tied up by many a rusted chains of religious customs and traditions still today.

It is seen that, even after sixty nine years of the Independence of India, women have not got proper freedom and she is unable to enjoy the fruits of right to dignified life within her house and outside the house. They are always living under the influence of customary, religious norms, which is considered as supreme power of the honour to the family or community. Whoever tries to violate the norms of the caste, community or religion society people (*panachayat*) will punish to particular person

as, in that way of boycott or directed to play with the human dignity or harassment, torture and sometime withdraw the life of the person i.e. honour killing. The real situation of women and young girls is very crucial for living with dignity.

Though the country has made a lot of progress the role of women in the society is yet not changed. Still women became the victims of the patriarchal system. In our country number of rules and plans are working on only paper but practically the Government is seems to be weaker for implementation of rules and regulations in this regard. There is no specific stringent law to protect the dignified life of women from the customary evil and barbaric practices such as Sexual abuses, Infanticide, Feticide, Rape, Sexual- harassment, Murder, honour killing etc.

## **2. 2. Meaning of Human Dignity**

Human dignity is connected with the individual life and it's having Constitutional jurisprudential value as fundamental rights. Dignity refers to presentation of honour and personal merits of individual. The idea of human dignity is associated with the protection against the exploitation, and violation of inalienable rights. The term human dignity is commonly used for protecting the status and honour of the person, without that person cannot live in the earth. Every one having their own status and respect and they are living for that only. Human dignity attaches with their own behaviour and role of the person in the society. The world human "dignity" has been derived from a Latin "*dignitas*" which means worth, merit, quality or state worthy of esteem and respect or high status, reputation.<sup>9</sup> The term dignity means simply 'worthiness' or 'excellence'. It is any quality of a person entitling them to be regarded, respected and

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<sup>9</sup>. English dictionary i.e., your dictionary

honoured by others<sup>10</sup>. Human Dignity also treated as honour and status of the individual. It has always conveyed something deserving of respect, honour, excellence worthiness and nobility of the individuals. Human dignity is closely connected with the honour of the person or group the contemporary society.

Constitution used the term '*dignity*' in its preamble; the preamble reads as 'assuring the dignity of the individual and the unity and integrity of the nation. Dignity is attached to the identity of a human being as a person, when a human being does not enjoy the right to persons, dignity does not exist at all. In simpler terms, it can be said that dignity can be ensured when every member of the society has a feeling that he or she is a respectable member and no one can humiliate, harass, exploit and insult him or her on the basis of caste, creed, sex and status etc.<sup>11</sup>

At present there is no precise definition of human dignity. The term human dignity protected the civil, political, religious and social rights of individual. "Human dignity means a state of worthy of honour, respect, equal status and it is inherent connected mentally with human life irrespective of caste, creed, sex, colour, status, of the person". Human dignity is attached with the family, caste, community and society. Every society having its own norms with pride of dignity, they maintain their dignity, respect and status as per customary practices. Being a human it should treat equal in dignity irrespective of gender.

Human dignity is the foundational concept of the worldwide human rights system of Government. The importance of human dignity is laid in *The UN Charter, Universal Declaration of Human Rights* and other

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<sup>10</sup> . Ravi Rajan,' Interrogating the Conceptualization of Human Dignity: A Human Rights Perspective' Social Action Journal, Vol. 65, No. 03, July-Sept. 2015, ISSN No. 0037-7627, P. 26

<sup>11</sup> . Dr. N.K.Chakrabarti, Dr. ShachiChakrabarti,"Gender Justice"vol.II, first Edition 2006, pub, R. Cambray and Co. Private Ltd, Kolkata, P. 339

several international covenants as also in the Constitution of India, which mentions 'dignity of the individual' as a most important value in its Preamble.

### **2. 3. Concept of Right to Life with Human Dignity**

The right to life is the important and most valuable fundamental right of the citizen and aliens of India. Everyone has the right to life, liberty and security of person. The concept of life is not possible to define in specific way or in a single word. It is true that life can be defined scientifically, theoretically or even philosophically. It is also said that law has its inherent jurisdiction over all these aspects of life. According to the Oxford Dictionary '*Life*' is a condition that distinguishes animals and plants from inorganic matter, including the capacity for response, growth, reproduction, functional activity, and continual change preceding death.

Every society has different norms to protect the human life and dignity of individual. The right to life denotes the significance of human existence for this reason. It is widely called the highest fundamental rights<sup>12</sup>. Our Indian Constitution ensures in part III fundamental rights which are designed to protect and preserve the basic rights of individuals from the violation of right to life with human dignity. The concept of right to life and liberty as enriched in Article 21 of the Constitution of India, being a guaranteed number of fundamental rights to the citizen and non-citizen of India. The main intention of Constitution framer is to promote individual welfare as well as social welfare. Right to life is the most precious fundamental rights amongst all human rights. Undoubtedly its scope and applicability and with the advent of their modern strides in jurisprudence with revolutionary pronouncement by the various court so

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<sup>12</sup>. Indian Journal of International Law Vol. 51, No. 03 , July/ Sept. 2011, P. 408

has assumed wider connotations and amplifications. Under this noble concept every citizen has guaranteed the right to life and liberty. Article 21 imposes an obligation on the state to safeguard the right to life of every person and preservation of human life is thus of paramount importance.

The concept of dignity under the Indian Constitution is significant any form of violence against women is violation of the fundamental right to live with human dignified life. State has primary duty to protect the right to live with human dignity as fundamental rights of each citizen.

Constitution has not given any specific provision about human dignity. Article 21 of Constitution of India the right to life it has wider meaning which includes the right to life with human dignity. It is fundamental right without which we cannot live as human being and includes all those aspects of life which go to make a man's life meaningful worth of life. Life is not simply life physical act of breathing, it does not mean merely animal existence it has a much wider meaning which includes right to live with human dignity.

Chief justice of India, *J. S. Verma* absolutely expressed views about right to life with human dignity, as “the right to life is a recognised as a fundamental right under Article 21 of the Constitution of India. It is a basic human right inherent in human existence with is not gift of any law. The law merely recognised an inherent right and is not its source. Human rights are those rights has derived from the natural law which have evolved out of natural rights , rights inherent to people by virtue of their being human and being a moral and rational nature and having a common capacity of reason. This comprises a core base of basic guarantees, including the right to life, freedom form torture or inhuman or degrading

treatment or punishment, freedom from slavery, servitude and forced labour, the right to free movement and the right to food and shelter”.

This Article gives a constitutional importance of rights to the every citizen. Justice *Krishna Iyer* has stated that, Article 21 is characterised as protective of life and liberty and corresponds to the *Magna Carta case*<sup>13</sup>. The *Magna Carta* became the first document proclaims that the crown had legal rights and the law could bind the monarch, it grants legal rights to the all men. In India the judiciary has first and nicely interpreted in *A. K. Gopalan v. state of Madras*<sup>14</sup> right to life as it is nothing but fundamental freedoms which is guaranteed under Article 19 of the Constitution of India. It means that the right to life is not merely a fundamental right it also basic right to an individual i.e. no one should withdraw the life without following process of law.

The important landmark decision which leads to the widening the concept of Article 21 of Indian Constitution was in the case of *Maneka Gandhi v. Union of India*<sup>15</sup> of the world personal liberty, it covers variety of many more fundamental rights<sup>16</sup> i.e., right to speedy trial , Right to bail, right to against torture, right to live with human dignity etc., and has made it obligatory on part of the state to fulfil on many accepts, the term Life and personal liberty was elaborated in expensive meaning to move beyond mere animal existence. It means that life is not confine to the certain limit. Therefore no one can deprive the life without just and fair process of law. This case gave a new dimension to the Article 21 and apex court held that right to live is not merely confined to physical

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<sup>13</sup>. *Magna Carta of 1215*

<sup>14</sup>. *AIR 1950 SC 27*

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

<sup>16</sup>. *Article 19 of the Constitution of India*

existence but it includes within its ambit the right to live with human dignity.

The importance of right to life has been given by *Justice Krishna Iyer*. Right to life does not mean that mere existence of life but it must be a dignified quality life. In case of *Kharah Singh v. State of Uttar Pradesh*<sup>17</sup> apex court held that the expression 'Life' was not limited to bodily restraint or confinement to prison only but something more than mere animal existence. Under the Article 21 of Constitution is a right of a person to be free from any restriction or encroachment where directly or indirectly imposed on individual.

According to *Justice Krishna Iyer* depriving a person of his right is nothing but a murder. If state or anybody violate or deprived rights of any person of his constitutional rights, it also commits murder. He also observed that life is not vegetable existence. The Supreme Court quoted with approval *Field, J.* observation in case *Munn v. Illinois*<sup>18</sup> by the term 'Life' something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of the arm or leg or putting out of an eye or the destruction of any other organ of the body through which the soul communicate with the outer world. The deprivation not only of life but of whatever God has given to everyone with life or its growth and enjoyments is prohibited by the provision in question if its efficacy be not frittered away by judicial decision

*Justice Bhagwati* elaborated the extensive interpret the term 'Life' in the concept of right to life with human dignity in case of *Francis*

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<sup>17</sup>.AIR 1963 SC 1295

<sup>18</sup>. *Munn v. Illinois*, 153(1877)94 U.S. 113

*Coralie v. Union Territory of Delhi*<sup>19</sup>, “that right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading and expressing oneself in diverse forms freely moving about and mixing and commingling with fellow human beings” It means that life of a person is beyond the animal existence. Everyone should be treated with equally<sup>20</sup> no one should discriminate basing on sex, caste, religion, colour or any other reason being human race we should behave and pay dignified respect to others.

Supreme Court explained the meaning of the word ‘Life’ in the case *Board of Trustees v. Dilip*<sup>21</sup> that, life means does not merely connote animal existence or a continued drudgery through life. The expression life has a much wider meaning. Hence the apex court Article 21 of Indian constitution has been interpreted, that every citizen is entitled to a life of dignity<sup>22</sup>. The concept of right to life with human dignity Supreme Court has elaborated in the case of *Bandhu Mukti Morcha v. Union of India*<sup>23</sup>, as Article 21 of Indian Constitution assured that the right to live with human dignity and free from any exploitation. State has obligatory duty to protect from the violation of fundamental rights especially to the weaker section of the society.

Researcher finds that the ambit of right to life under Article 21 of Constitution is inclusion of social, political and cultural life of the person. This fundamental right assured to all citizens under the constitution includes the right to life with human dignity. Right to life is a phrase that describes the belief that a human being has an essential right to live with

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<sup>19</sup>. SCC 608 (1981)

<sup>20</sup>. Article 14 of Indian Constitution

<sup>21</sup>. AIR 1983 SC 109

<sup>22</sup>. S. Rathi v. Union of India, AIR 1998

<sup>23</sup>. (1989)4 SSC, 62

human dignified life, particularly which a human being has the right not to be killed in the name of protecting honour of the family or caste, community by another human being i.e. honour killing.

## **2.4. Development of Right to Life with Human Dignity**

Researcher is of the view that, a very fascinating development in the Indian Constitutional jurisprudence is the extended dimension given to Article 21 by the Indian judiciary in the modern era. The Supreme Court has asserted that in order to treat a right as a fundamental right. It is not necessary that it should be expressly stated in the Constitution as a fundamental right. Development of right to life with human dignity not only observed in Indian Constitutional jurisprudence but also observed in the international level.

Right to life strives towards human well-being from the British *Magna Carta* case in the year 1215 and provides that “No free man shall be taken or imprisoned or deceased or outlawed or banished or any ways destroyed, nor will the king pass upon him or commit him to prison unless by the judgment of his peers or the law of the land”.

In the year of 1948 Universal Declaration of Human Rights provides the Article 3 saying “*Everyone has the right to life, liberty and security of person*” as well as in Article 9 provides that, “*No one shall be subjected to arbitrary arrest, detention or exile*”.

In 1950, European Convention on Human Rights also provides Article 2 saying that “*Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law*”.

All these have considered a human being as a physical entity and attempted to safeguard him from the excesses by rulers or State by itself or violators of law. However, it is only In India that has envisaged the human being in totality and strived for his complete wellbeing, all round development, prosperity and freedom from suffering and attempted to protect the life from any kind of external aggression.

Our Constitution makers perceived the human being beyond a mere physical entity and incorporated Article 21 in Indian Constitution as-

*“No person shall be deprived of his life and personal liberty except according to procedure established by law”.*

In order to Protection and promotion of Indian citizens, the right to life and personal liberty, has been guaranteed by a Constitutional provision, which has received a widest possible interpretation under the canopy of Article 21 of the Indian Constitution. Right to life and personal liberty is basic for the development of individual’s personality. This right implies a reasonable standard of comfort and decency. Supreme Court of India has incorporating many more new rights. Because of these human rights jurisprudence has been developed in India. It has paved the way to common people to have a dignified life.

The Supreme Court did liberal and dynamic interpretation of Article 21 of the Constitution, the apex court evolved number of new fundamental rights available as part and parcel of right to life enriched in Article 21. Apex court interpreted the ambit of right to life very narrowly for almost three decades spanning between 1950 and 1977, wherein, in the landmark judgment of Supreme Court in *A. K. Gopalan v. State of Madras*<sup>24</sup> it was held that, the right to life under Article 21 was mutually

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<sup>24</sup>. AIR 1950 SC 27

exclusive of the fundamental freedoms guaranteed under Article 19 of the Constitution. This means that Article 19 was not applying to a law affecting personal liberty to which Article 21 would apply. It was further held in the *A. K. Gopalan Case* that a law affecting right to life and personal liberty could not be declared unconstitutional on grounds of its failure to guarantee natural justice or due procedure. Therefore, a law prescribing an unfair and arbitrary procedure could deprive a citizen of his right to life and personal liberty as long as such law was enacted by a valid legislature.

In *Gopalan* case interpretation of Article 21 of the Constitution was that a procedure established by law can deprive a person of his right to life. Earlier understanding of Article 21 was a narrow and procedural one. It did not matter whether the law just and fair. It is observed that, the expression personal liberty means only liberty relating to or concerning the person or body of the individual. Justice *Mukherjea* observed that, personal liberty is the anti-thesis of physical restraint or coercion. According to definition of Dicey ‘personal liberty means a personal right not to be subjected to imprisonment, arrest or other physical coercion in any manner that does not admit legal justification’.

In 1963 apex court observed in *Kharak Singh v. State of U.P.*<sup>25</sup> the personal liberty was not only limited to bodily restraint or confinement to prisons only, but was used as a compendious term including within itself all the verities of rights which go to make up the personal liberty of a man other than those dealt within Article 19.

In the year 1978 the Supreme Court observed in *Maneka Gandhi v. Union of India*<sup>26</sup> brought about a transformation in judicial attitude

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<sup>25</sup>. AIR 1978 SC 1295

<sup>26</sup>. AIR 1978 SC 597

attitude towards right to life and personal liberty guaranteed under the Constitution of India. Apex court not only overruled *Gopalan*'s case but widened the scope of the personal liberty Justice *Bhagwati* observed 'The expression personal liberty in Article 21 is widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have to the status of distinct fundamental rights and given additional protection under Article 19'. The term 'Life' and 'Personal Liberty' were given an expansive meaning to move beyond mere animal existence. The case also read in several fundamental rights into and as part of right to life under Article 21 even though these rights were not expressly mentioned in the Constitution of India.

In 1981 Supreme Court gave expansion of the right to life was carried forward in subsequent cases. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*<sup>27</sup> the court held that, 'the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter etc'. Apex court in *Olga Tellis v. Bombay Municipal Corporation*<sup>28</sup> wherein held that, the inhibition against deprivation of life extends to those limits and faculties by which life is enjoyed.

The Supreme Court emphasized on point that, the right to life under Article 21 must be guarantee to Indian citizen and aliens something beyond just the life of an animal to include the needs of a human being. In case of *P. Rathinam v. Union of India*<sup>29</sup>, that the term Life has been defined as 'the right to live with human dignity and the same does not connote continued drudgery, it takes within its fold some of the graces of

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<sup>27</sup> . AIR 1981 SC 746

<sup>28</sup> . AIR 1986 SC 180

<sup>29</sup> . (1994) 3 SCC 394

civilization which makes life worth living and that the widened concept of life would mean the tradition, culture and heritage of the concerned’.

One of the most crucial development and expansion of the right to life under Article 21 of the Constitution is the provision for inclusion of the social life of the person. Thus the fundamental right to life guaranteed to all persons under the Constitution includes the right to live with human dignity.

## **2.5. Interpretation of Right to Life**

Indian judiciary has been shown a liberal attitude towards interpretation of the Article 21 of the Constitution in different innovative process. Therefore, Supreme Court evolved number of new fundamental rights available as a part and parcel of right to life enshrined in Article 21. The expression “life or personal liberty” under Article 21 is interpreted by the Court to mean and include life with human dignity<sup>30</sup>. Article 21 is couched in negative phraseology. But by its creative interpretation of Article 21 in various cases, the Supreme Court has come to impose positive obligation upon the state to take steps for ensuring to the individual a better enjoyment of his life and dignity<sup>31</sup>. In *Smt. Gain Kaur v. The State of Punjab*,<sup>32</sup> The Supreme Court of India has not only reiterated that right to life includes right to dignity but also it has held that this expression means the existence of such a right up the end of natural life.

Dignity of human beings is construed as respect of human beings, not depends on any particular additional status. Right to dignity incorporation, has become inseparable part of right to life. Incorporation

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<sup>30</sup> . *Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1081) 1 SCC 608, See Bandua Mukti Morcha v. Union of India, (1984) 3 SCC 161*

<sup>31</sup> . M.P. Jain, ‘Indian Constitutional Law, sixth edition, 2012, Publ., Lexis Nexis Butterworths Wadhwa, Nagpur, P.1225

<sup>32</sup> . (1996) SCC (2) 648

of dignity within the meaning and ambit of right to life assures self-respect and recognition of individual in all transactions, in all relations, at all levels and everywhere. Dignity is one of the civil rights but it is now to be construed as defendant on the enjoyment of several economic, social and cultural rights. For instance, dignity protects self-respect of the individual. This in turn is dependent on food, water, shelter, health and clothing that are again dependent on right to work, just conditions of work, equal pay for equal work, etc. Therefore, right to dignity and its realization is to be considered from different perspectives.

Dignity means many things to many people. In common usage, dignity and dignified life is used to mean respect by others, self-respect, having access to food, health, clothing and shelter, ability to earn, being independent, honour, protect the honour of the family, prestige and status of the individual .

It is found that, recently in India young men and women are killed for marrying outside their case or refusing arranged marriage or having extra marital relation or sometimes marrying within the same *Gotra* or having premarital sex under the name of customary practice, considering it as an act of dishonour of the family, their caste or community. This act can be considered as an act carried in pursuance of right to dignity but it can be considered as a crime. In order to protect the dignity of family or religion or caste or community honour killing cases increases, such killing under the name of dishonour is against the right to life and it is clearly violation of human rights.

## 2.6 Expanding Horizon of Article 21

Article 21 of the Constitution of India is the heart and soul of our Constitution. Its scope is being widened in an ever expanding horizon, by various judicial pronouncements.

A Constitutional provision is treated as *sui generis*, calling for principles of interpretation of its own suitable to its character. Constitution is an organic instrument, must be interpreted broadly, liberally and purposively so as to enable it to continue to play a creative and dynamic role in the expression and the achievement of the ideals and aspirations of the nation. Accordingly, the judiciary has read into Article 21 the different facets of civilised meaningful human life.

It is observed that, through its innovative process the Indian judiciary has been expanded the scope of Article 21 of Indian Constitution. The Supreme Court did this by liberal and dynamic interpretation of the Article 21 of the Constitution. Likewise the Supreme Court evolved number of new fundamental rights available as a part and parcel of right to life.

Right to life is the most precious fundamental right amongst all human rights. The Indian Constitution, in part III, guarantees certain fundamental freedoms to the citizens, or the negative obligations of the state not to encroach upon such rights. The right to life and personal liberty is one of such important rights. The Constitution – makers took three long periods to decide the nature and scope of the right to life. *Dr Babasheab Ambedkar* Prepared a long list of fundamental rights. He observed that their necessity was recognised in all the old and new Constitution. He pointed out that the rights incorporated in his draft were

borrowed from the Constitution of various countries particularly those were more or less analogous to those existing in India.

In the very first year of Indian Constitution, the issue of personal liberty came up before the Supreme Court in case of *A. K. Gopalan v. State of Madras*<sup>33</sup>. In this case Supreme Court has examined the scope of Article 21 of Indian Constitution on different occasions to find out the limits within which the guarantee of personal liberty is available to the Indian citizens. The apex court has observed in the *Gopalan case*<sup>34</sup> that the expression of personal liberty means only liberty relating to or concerning the person or body of the individual. According to the view of the Chief justice *Kania* personal liberty means liberty of the physical body of the individuals. Again He gave wider interpreting the term personal liberty includes not only the freedom from the bodily restrain but also those rights which go to make human personality i.e., human dignity.

Right to life guaranteed by Article 21 of the Constitution of India is not merely a fundamental right. It is a basic human right without which person can't enjoy the real life. This Article is the heart and soul of our nation. The object of fundamental right is to prevent encroachment upon personal life and liberty except according to procedure of law. It is clearly indicate that right to life has been provided against the state.

Supreme Court given a major land mark decision in *Maneka Gandhi case*<sup>35</sup> which an expanded meaning to read the ambit of the fundamental rights rather than attenuate their meaning and content by a process of judicial construction. Article 21 Constitution of India has been liberally interpreted so as right to life means something more than mere

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<sup>33</sup>. AIR 1950 S.C. 27

<sup>34</sup>. Ibid.

<sup>35</sup>. Ibid.

survival and mere existence or animal existence. It therefore includes all those aspects of life which go to make a man's life meaningful, complete and worth living. In the case of *Unnikrishana v. state of Andhra Pradesh*<sup>36</sup> S. C. court stated that, Art. 21 of Constitution of India is the heart of fundamental right.

According to Justice *Krishna Iyer* the spirit of man is at the root of Article 21 Constitution of India. Article 21 scopes are being widened in an ever expanding horizon, by various judicial pronouncements. Right to life has been interpreted in a very dynamic fashion by the Supreme Court to include a number of rights not specifically mentioned in the Indian Constitution. Right to life is the most precious human right from all other rights.

Justice *Bhagwati* observed in *Francis Coralie Case*<sup>37</sup> "we think that the right to life includes the right to live with human dignity and all that goes with it, namely the bare necessities of life such as, adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and coming along with fellow human beings"

In addition to above, Supreme Court interpreted in case of *P. Rathinam v. Union of India*<sup>38</sup> 'life' means the right to live with human dignity and the same does not connote continued drudgery. It takes within its fold some of the fine grace of civilization which makes life worth living and that the expanded meaning of life would mean the tradition, culture and heritage of the person concerned.

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<sup>36</sup> . AIR 1993 SC 2178

<sup>37</sup> . AIR 1978 SC 597

<sup>38</sup> . (1994)3 SCC 394

Justice *Mukharjee* rightly pointed out in *Ramsaran v. Union of India*<sup>39</sup> a life in its expanded horizons today includes all that give meaning to human life including his tradition, culture and heritage and protection of that heritage it in its full measure would certainly come within the encompass of an expanded concept of Article 21 constitution of India. Now days it is like a protective umbrella of rights.

In *Board of Trustees, port of Bombay v. Dilip Kumar* apex court held that the right to live with dignity includes right to one's reputation, as the loss of one's reputation would disable one from enjoying right to live with dignity. Some examples of such right are- Right to dignity, Right to live hood, Right to shelter, Right to privacy, Right to a speedy trial, Right to health, Right to free legal aid and Right to pollution free water etc.

Researcher observed that from the above cases cited and conclude that, the judiciary has done a remarkable and quite impressive work in expanding the scope of the right to life and there by promoting and protecting the human rights of the people. Though it was criticised as over activism the judiciary with its innovative methods and devised new strategies boldly over stepped into legislative functions for the purpose of providing access to justice for the people, who were denied the basic rights and to whom freedom and liberty had no meaning.

We can say that in the quest of socio-economic justice it has been acting as the guardian of the basic rights of Indian citizens and aliens. In acting so it has emerged, from the adjudicatory role, as a forum for rising, redressing and providing solutions to the problems of have note, oppressed, women girl children victims, as well as victims of customary evil practices such as honour killing. With this it is proved that, today the

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<sup>39</sup>. AIR 1989 SC 549

judiciary has been acting as courts of justice instead of mere courts of law.

### **2.6.1.Right to livelihood**

The word life in Article 21 of Constitution of India includes the right to livelihood. In case of *Oliga Tellis v. Bombay Muncipal Corporation* also popularly known as *Pavement Dwellers Case*<sup>40</sup> in this case the Chief Minister of Maharashtra had made announcement that all pavement dwellers in the city of Bombay will be evicted forcibly and deported to their respective places outside the city. The announcement was made on the apparent justification that it was a very inhuman existence during the monsoon season. There was no way these people could live comfortably. When the pavement and slum dwellers approached the Supreme Court , the Court held that, Article 21 of Constitution gives the right to life and gave wide meaning as, “It does not mean merely that life cannot be extinguished or taken away as, for e.g., by imposition and execution of death sentence , except according to procedure established by law. That is but one aspect of right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of livelihood. If the right to live hood is not treated as a part of the constitutional right to life, the easiest ways of depriving a person of his right to life would be depriving him of his means of live hood”.

Furthermore the Court of law held that, Article 39 (a) and 41 of the Indian Constitution provides that the state to secure to the citizens and adequate means of live hood and right to work, it would be sheer pedantry to exclude the right to live hood from the content of the right to life. If any person who is deprived his right to live hood without procedure

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<sup>40</sup> . AIR 1986 SC 180

which is established by the law it would be considered as infringement of fundamental right which is conferred by Constitution of India.

## **2. 6.2.Right to shelter**

Right to shelter is a fundamental right under 21 of Constitution of India. In case of *Chameli Singh v. State of U. P*<sup>41</sup> Supreme Court held that, shelter for human being is not mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally and spiritually. Right to shelter therefore includes adequate living space, safe and decent structure, clean and decent surrounding, sufficient light, pure air and water, sanitation and other civil amenities like roads so as easy to access to daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head, but it includes the right to the entire infrastructure necessary to enable to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live, should be deemed to have been guaranteed as a fundamental right.

In view of importance of the right to shelter the mandate of constitution and obligation under the Universal Declaration of Human Right, The court held that it is the duty of state to provide housing facilities to Dalit's and tribes, to enable them to come into the mainstream of national life.

Similar view was reiterated in *P.G. Gupta v. State of Gujarat* and *Prabhakar Nair v. State of T.N.* the court held that shelter is a fundamental right.

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<sup>41</sup>. AIR 1996 SC 1051

### 2.6.3.Right to dignity

Constitution of India has not enumerated right of dignity expressly in part III of the Constitution of India, but The Supreme Court has recognised right to dignity as emanating from Article 14, 19 and 21 . In number of cases the Supreme Court has held that even prisoners are not denuded of all fundamental rights. They retain certain fundamental rights including right to be treated with humanity and with respect for the inherent dignity of human person<sup>42</sup>.

The right to human dignity explain in the Article 10 of the International Covenant on Civil and Political Rights as ‘All person deprived of their liberty shall be treated with humanity and with respect for inherent of the human person’ The preamble of the Covenant mentions that, recognition of the inherent dignity and of the equal and inalienable rights of all the members of the human family is the foundation of freedom, justice and peace in the world and recognises that these rights derived from the inherent dignity of the human beings.

Justice *Krishna Iyer* observed that, in *Jolly George Varghese v. The Bank of Cochin*<sup>43</sup> ‘The value of human dignity and the worth of human person enshrined in Article 21, read with Article 14 and 19 obligates the state not to incarcerate except under law which is fair, just and reasonable in its procedural essence..’ it is well settled that, right to life enshrined in Article 21 of the Constitution of India takes within its sweep right to life which is worth living, it includes the all essential required for living things.

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<sup>42</sup>.*Sobhraj v. Superintendent of jail, New Delhi, (1978) 4 SCC 494;*, *Sunil Batra v. Delhi Administration, AIR 1978 SC 1675,*

<sup>43</sup>. *AIR 1980 SC 470*

Right to dignity is one of the most recognised Human rights because without a right to live with human dignity other rights cannot be made enforceable. Recognizing this fact, the preamble to the charter of *the United Nation and Universal Declaration of Human Rights, 1948*, Article 1 reads “All human beings are born free and equal in dignity and rights” and article 2 includes, “Everyone is entitled to all the rights and freedom without distinction of any kind, such as race, colour, sex, language, religion, property, birth or other status” emphasized on maintain dignity of human being.

The right to life incorporates the right to dignity. It is more than mere existence; it is a right to be treated as a human being with dignity. Without dignity, human life is substantially diminished. In the Constitutional Court of South Africa, *O’Regan Judge* explained in case *The State v.Makwanyane*<sup>44</sup> that, the right to life is in one sense, antecedent to all rights. ‘Without life in the sense of existence, it would not be possible to exercise rights or to be the nearer of them. But the right to life was included in the Constitution not simply to enshrine the right to existence. It is not life as mere organic matter that the Constitution cherishes, but the right to human life; the right to live as a human being, to be a part of a broader community, to share in the experience of humanity this concept of human life is at the centre of our Constitutional value.

The apex court has used Article 21 of Constitution of India in a very creative and innovative manner to improve the living status and quality of human life. The Supreme Court has recognised in the case of *KeshvanandBharti v. State of Kerala*<sup>45</sup> it as a basic value of the

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<sup>44</sup>. *The State v.Makwanyane (1995)1 LRC 269*

<sup>45</sup>. *AIR 1973 SC 1461*

Constitution of India It has been made clear that the preamble contain the fundamental aspects of the Indian republic and it may be invoked to determine and find out certain true scope of various fundamental rights. Court has based its several judgments and interpreted the rights with the help of term dignity of the person used in the preamble. The underlying Importance given towards the value of human dignity has been exhibited by the Supreme Court in various cases.

Article 21 has been defined its widest amplitude including right to dignity. It is a fountain head of the right to human dignity. Right to dignity explain by the Supreme Court that the right to life does not mean only animal existence but to live with human dignity. Right to life extends to even to live in a dignified way unto natural death including the dignified procedure of death. The Supreme Court has given guideline in the case of *Nilabati Behera v. State of Orrisa*<sup>46</sup> that the state has ensured that the right to life is not violate by any public authority and public institution. Further Supreme Court has held that it is to be the primary duty of the state to ensure the protection of human dignity through proper statutes and by creation of suitable and adequate mechanisms<sup>47</sup>.

Researcher finds that, there are several long standing customary and traditional social evil practices prevailing in the Indian society. These evil practices sometimes violate the dignity of individual and deprived the life of individual e.g. Honour killing, slavery, beggar, exploitation of weaker section<sup>48</sup>, untouchability<sup>49</sup>, such social evil practices must be abolished.

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<sup>46</sup>. AIR 1993 SC 1960

<sup>47</sup>. *Vishakha v. State of Rajasthan*, AIR 1997 SC 311

<sup>48</sup>. Article 23 and 24 Constitution of India

<sup>49</sup>. Article 17 Constitution of India

Supreme Court in case of *Munshi Singh Gautam v. State of M.P.*<sup>50</sup>, explaining the luminary provision in the Constitution regarding the scope of personal liberty under Art 21 held that, “The sacred and cherished right i.e. personal liberty has an important role to play in the life of every citizen. Life or personal liberty includes the right to live with human dignity. There is an inbuilt guarantee against torture or assault by the state or its functionaries.

Since *Maneka Gandhi Case*<sup>51</sup> the Supreme Court gave a new dimension to the Article 21 which is most important guidelines to the progress the welfare of the citizens. And court held that right to life is not confine to physical existence but it includes within its ambit the right to live with human dignity. Supreme Court observed the same view in case *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*<sup>52</sup> Right to life enriched that in Article 21 cannot be restricted to mere animal existence it means something much more than just physical survival. Further Court held that, right to life is limited only protection of limb or faculty or does it goes further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it. E.g. the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings,

Similarly observation of Supreme Court in Case of *Consumer Education and Research Centre and others v. Union of India*<sup>53</sup> court held that right to life with human dignity includes within its fold some of finer

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<sup>50</sup>. AIR 2005 SC 402

<sup>51</sup>. Ibid

<sup>52</sup> AIR 1981 SC 746

<sup>53</sup>. AIR 1995 SC 922

accepts of human civilization which make life worth's living. The expanding meaning of life would mean the tradition and cultural heritage of the persons concerned. Supreme Court further laid down that right to life includes protection of health and strength of workers. This is minimum requirement of person to live with human dignity and happiness. Denial there of deprives the workmen facet of right to life, would amount violate Article 21 of Constitution of India. Apex court given importance to the right to human dignity, development and personality, social protection, and right to rest and leisure are fundamental human rights to workman. Which is assured in preamble , Article 38 “provides that the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political- shall inform all the institution of national life”<sup>54</sup> and Article 39 of Constitution of India and Human Rights Charter.

Following the *Maneka Gandhi Case*<sup>55</sup> and *Francis Coralie Mullin case*<sup>56</sup> Justice *Bhagwati* explain on same footing in the case of *Peoples Union for Democratic Rights v. Union of India*<sup>57</sup> court held that Non-payment of minimum wages to the workers employed in various Asiad Projects in Delhi was denial to them of their right to live with basic human dignity and violate of Article 21 of the Constitution, further Justice *Bhagwati* said, that the majority held that the rights and benefits conferred on the workmen employed by a contractor under various labour laws are “clearly intended to ensure basic human dignity to workmen and if the workmen and deprived of any of these rights and benefits, that would clearly be a violation of Article 21. Again he held that the non-

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<sup>54</sup>. Article 38 Constitution of India

<sup>55</sup>. Ibid

<sup>56</sup>. Ibid

<sup>57</sup>. AIR 1982SC 1473

implementation by the private contractors and non-enforcement by the state Authorities of the provisions of various labour laws violate the fundamental rights of workers to live with human dignity. This type of decision was brought a legal revolution; it has clothed millions of workers in factories, and mines, with human dignity<sup>58</sup>. Every person has fundamental rights to have drinking water, shelter, medical aid and safety in respective occupations covered by various welfare legislations.

Supreme Court held in number of cases right to life includes right to human dignity. If we can observe in the case of *Chandra Raja Kumari v. Police Commissioner Hyderabad*<sup>59</sup> right to live includes right to live with human dignity or decency and therefore, holding of beauty contest is repugnant to dignity or decency of women and offends Article 21 of the Constitution.

Supreme Court has shown broad view about right to life includes right to live with human dignity in case of *BandhuMuktiMorcha v. Union of India*<sup>60</sup> court stated that Article 21 is the heart of the fundamental rights and court gave expanded meaning of right to life is nothing but right to live with human dignity, free from exploitation. It includes protection of health and strength of workers, men and women and of the tender age of the children against abuse, opportunities and facilities for children to develop in a healthy manner and in condition of freedom and dignity.

Researcher identified that the Supreme Court has used the Article 21 of Constitution of India in very innovative manner and strongly recommended to the rights of the people of Indian country and a grand

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<sup>58</sup>. Dr. J. N. Pandey, "Constitutional Law of India" 44<sup>th</sup> edition 2007, Pub Central Law Agency, Allahabad, p. 231

<sup>59</sup>. *AIR 1998 AP 302*

<sup>60</sup>. *(1989)4 SSC, 62*

step was taken by the court in expanding the scope of article 21, when it argued that, right to life includes living with dignity of human being.

## **2. 6.4. Right to privacy**

A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. No one can interfere anything concerning the above matters without the consent whether truthful or otherwise and whether laudatory or critical. If he does, he would be violating the fundamental rights which are ensuring by Article 21 of Constitution of India. Supreme Court has expressly in case of *R. Rajagopal v. State of T.N*<sup>61</sup> that right to privacy or the right to be alone is guaranteed by Article 21 of Constitution of India.

In case of *State of Maharashtra v. Madulkar Narain*<sup>62</sup> Supreme Court has been held that, Right to privacy is available even to a woman of easy virtue and no one can invade her privacy. In another case *Sujit Singh Thind v. Kanwaljit Kaur*<sup>63</sup> allowing medical examination of a woman for her virginity amounts to violation of her right to privacy and personal liberty enshrined under Article 21 of Constitution of India.

Similarly number of cases recognised as a part of right to life enshrined in Article 21 of the Constitution. In *Vishaka v. State of Rajasthan*<sup>64</sup>, apex court held that, sexual harassment of women at work place was found to be against human dignity and violation of Article 21 of the Constitution. In *Bodhisattwa Gautam v. Subhra Chakraborty*<sup>65</sup>, the court held that rape is a crime against the basic human right and violation

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<sup>61</sup>. *R. Rajagopal v. State of T.N* (1994) 6 SCC 632

<sup>62</sup>. *AIR 1991 SC 207*

<sup>63</sup>. *AIR 2003 P&H See also Sharda v. Dharmapal*, 2003 AIR SCW 1950

<sup>64</sup>. *AIR 1997 SC 3011*

<sup>65</sup>. *AIR 1996 SC 922*

of the right to life enshrined in Article 21 of the Constitution and provided certain guidelines for awarding compensation to the rape victim.

### **2.6.5. Right to Reputation**

It is observed that, Supreme Court has shown broad view about right to life includes right to reputation. In *State of Bihar v. Lal Krishna Advani*<sup>66</sup> apex court observed that right to reputation is a facet of the right to life a citizen under Article 21. It takes within its sweep right to reputation. Right to breathe, Personal liberty<sup>67</sup> right to privacy<sup>68</sup>. It has been reiterated that since right to reputation is a person's valuable asset and is a facet of his right under Article 21.

In addition to above many more rights have been derived from Article 21 Of Indian Constitution, against delayed execution, right against custodial violence, right against public hanging, hand cuffing are some important them and various issues like child welfare, corruption, poverty and starvation for weaker sections, religious freedom, freedom of speech, expression, welfare of women etc., also have been very widely discussed and brought with in the ambit of fundamental rights guaranteed by the Indian Constitution.

### **2.7. Right to Life with Human Dignity and Directive Principle of State Policy**

Directive Principles of State Policy contained in scheduled IV of Constitution of India. The idea and novel features in the Constitution has been borrowed from the Ireland and copied from the Spanish Constitution. The makers of Constitution incorporated a few provisions in

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<sup>66</sup> . AIR 2003 SC 3357

<sup>67</sup> . Pawan Kumar v. State of Haryana (2003), 11 SCC 241; AIR 2003 SC 2987

<sup>68</sup> . shardav. Dharmapal, AIR 2003 SC 3450

the constitution with view Union and Governments must keep in mind while they formulate policy to pass a law. The idea of welfare State envisaged by our Constitution can only be achieved if the states endeavour to implement them with a high sense of moral duty. They lay down certain social, economic and political principles suitable to peculiar conditions prevailing in India<sup>69</sup>. They impose certain obligation on the state to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy. These principles gave directions to the legislatures and the executive in India as regards the manner in which they should exercise their power<sup>70</sup>. State has mainly concerned with the maintenance of law and order and the protection of life, liberty and property of the citizen of India.

Directive Principles of State Policy are not enforceable in a court of law, in spite of that, they are fundamental in governance of the nation. Directive Principles of State Policy are differing from the fundamental rights, which were enforceable in court of law. In case of *Confederation of Ex-servicemen and others v. Union of India*<sup>71</sup> bench of C. K. Thakker observed that, apart from fundamental rights guaranteed by Constitution of India it is duty of state to implement the Directive Principles of State Policy which is provided in the scheduled IV of the Constitution of India.

Justice *Bhagwathi* expressed his view in *Francis Mullen v. Administrator; Union of Territory of Delhi*<sup>72</sup> that, it is the fundamental

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<sup>69</sup>. DR. J. N. Pandey 'Constitutional Law of India' 44<sup>th</sup> edition, 2007, Pub, Central Law Agency, Allahabad, P 385

<sup>70</sup>. Prof. M. P. Jain 'Indian Constitution Law' Sixth edition Reprint 2012, Pub, Lexis Nexis Butterworths Wadhwa, Nagpur P. 1485

<sup>71</sup>. *Confederation of Ex-servicemen and others v. Union of India* SC 210, 1999

<sup>72</sup>. Ibid

right of every citizen of the India assured that, right to life<sup>73</sup> means to live with human dignity i.e. free from exploitation and torture.

Right to life with human dignity enriched in Article 21 of Indian Constitution derives its life breath from the Directive Principles of State Policy particularly Articles provided that, Article 39 Clause (e) that the health and strength of workers, men and women and tender age of children are not abused and that citizens are not forced by economic unsuited to their age or strength; and

Article 39 clause (f) that childhood and youth are protected against exploitation and against moral and material abandonment and

Article 41 provides that The state shall, within limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want and

Article 42 provided that the state shall make provision for securing just and humane conditions of work and for maternity relief.

Therefore it must be included health and strength of workers, men and women and tender age of children are not abuse, opportunities and facilities for children to develop in healthy manner and freedom of dignity. These are minimum requirements for existing for live with human dignity. No one has right to deprive the natural rights which we called as inalienable rights i.e. by birth rights deprived without procedure of law. No States or any persons take any actions which will deprive a person of enjoyment of these basic essentials. Hence the Directive Principles of State Policy provided Article 39 clause (e) and (f), Article

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<sup>73</sup>. *Article 21 of Constitution of India*

41 and 42 are not enforceable by court of law. Denial of right to live with human dignity which enshrined in Article 21 Constitution of India, it will be treated as violating the basic human rights. Victims are entitled for remedy under Article 226 and Article 32 of Constitution of India.

It is the primary duty of state to provide protection of every citizen, along with that to preserve the human dignity through various facilities and conditions. Justice *S. Rajendra Babu* and *S. N. Phukan* has rightly observed in case of *S. S. Ahuwalaiya v. Union of India and others*<sup>74</sup> that, Article 21 of the Constitution stated that, the state to create a climate where members of the society belonging to different faith, caste and creed live together and therefore, the state has a duty to protect their life, liberty, and worth of an individual which should not be endangered. If any circumstance the state is not to do so then it cannot escape the liability.

Therefore in order to preserving human dignity the parliament has enacted number of Act i.e. *Minimum Wages Act, 1948, Equal remuneration Act, 1978, Rule employment Guarantee Act, 2005, Child Labour , Act, 1986, Maternity Benefit Act, 1961* and other laws have progressively increase the concept of human dignity.

State playing the role of Paternity and maternity of the citizens, it is Constitutional obligation to look that; there is no infringement of fundamental rights of the citizens, especially for the weaker sections of the society. It is bound to the ensure observance of the various social welfare of the citizens. Both Central Government and State Government has to ensure all basic needs and facilities of life, Sanitation, Education, Drinking water, Food and other whichever required for development enhancement of human dignity.

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<sup>74</sup>. *S. S. Ahuwalaiya v. Union of India and others* 1997(232)

It is observed that, a plethora of rights have been held to be emanating from Article 21 of Indian Constitution, because of the judicial activism shown by the Indian judiciary.

In *BhagwanDass v. State of (NTC) of Delhi*, Supreme Court held mandated death sentence for honour killing i.e. killing of young men and women who married outside their caste or religion or community or in their same *gotra* or same village or thereby, dishonouring the parents or their case. The killing to the family or society members to a man or woman for marrying against parent's wishes, having extra-marital or pre-marital affairs, marrying outside one's caste or within the same *gotra* etc., in order to protect the social status and honour of the family.

Recently Supreme Court strongly condemned the practice of honour killing and intrusion of informal *panacahayat* taking law into their own hands and including in offensive activities which causes danger to the life of the person<sup>75</sup>.

## **2.8. Constitutional Remedy on right To Life with Human Dignity**

In the Constituent Assembly Debates *Dr. BabasheabAmbedkar* once said that, "If I was asked to name any particular Article in this Constitution as the most important- an Article without which this Constitution would be a nullity- I could not refer to any other Article except this one ..... It is very soul of the Constitution and the very heart of it,"

Constitution provides number of fundamental rights which are most important for the progress and development of the human life. The most

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<sup>75</sup>. *ArumugamServai v. State of Tamil Nadu (2011)*

unique feature of Indian Constitution provides Article 32. Right to remedy is a fundamental right guaranteed to citizens of India under scheduled III is guaranteed. Right to constitutional remedy was created as one of the main fundamental right because the Constitution protects the rights of the citizens.

Article 32(1) provides that, “Guarantees the right to move the Supreme Court by appropriate proceeding for the enforcement of the fundamental right conferred by part III of the Constitution”.

It is crystal clear that, the Supreme Court has power to enforce fundamental rights in widest sense. It is important features that whenever there is violation of right to live with dignified life or any person or state denial and deprived such rights, aggrieved person can move the Court for appropriate remedy.

Article 32(2) confers power of Supreme Court to issue appropriate directions or orders or writ including writ in nature of *Habeas Corpus*, *Mandamus*, *Prohibition*, *Quo-warranto* and *Certiorari* for the enforcement any of the rights conferred by part III of the Constitution. Because, Court has enforceable fundamental rights particularly right to life includes right to live with human dignity.

Simply providing the Article 21 of Constitution of India i.e. right to life is meaningless unless there is effective machinery for enforcement of the right. Right to life including right to live with human dignity<sup>76</sup>. If there is no remedy there is no fundamental right at all. Constitutional provisions made for the protection and preservation of right to life with human dignity.

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<sup>76</sup>. AIR SC 746

Constitution of India provides Constitutional remedies in case of violation of fundamental rights of the citizen or Any State or person denial and deprived the minimum conditions of dignified life of another person; aggrieved person can approach Supreme Court for enforcement of his rights. In addition to that, when there is infringement or violation of fundamental rights or rights guaranteed by law aggravated person get opportunity to file petition in a high court under article 226 of the Constitution of India.

## **2.9. Human Dignity and Social Justice**

The preamble to our Constitution assures the Dignity of the individual and unity and integrity of the nation .The balance between liberty and dignity of the individual on the one hand and the security of nation on the other is a delicate one. Life means does not signify mere existence or continued drudgery through life. Its wider meaning includes the right to live hood desirable standard of life<sup>77</sup>. Supreme Court stated in *OligaTellis v. Bombay Municipal Corporation*<sup>78</sup>, that no person can live without the means of living or live hood. The right to live hood is a part of the constitutional right to life. The right to life with human dignity encompasses its fold, some of finer facets of human civilization which make life worth living.

The aim of the protection enriched in Article 21 of constitution is not only to ensure the human dignity of the person concerned, but to ultimately contribute for the achievement of social justice<sup>79</sup>. In *Consumer Education and Research Centre v. Union of India*<sup>80</sup> the Supreme Court

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<sup>77</sup>. AIR 1995 SC 922

<sup>78</sup>. AIR 1986 SC 180

<sup>79</sup>. V. Parabrahmasastri “Right to Life and Personal Liberty (commentary and case-materials)”, Pub. Asia Law House, Hyderabad, 1<sup>st</sup> edition, 2005, reprint 2010, P.2

<sup>80</sup>. AIR 1995 SC 922

observed that, the preamble and Art. 38 of the constitution of India, the supreme law, envision social justice as its arch to ensure life to be meaningful and liveable with human dignity. Law is the ultimate aim of every civilized society as a key system in a given era, to meet the needs urge and commitment. The constitution commands justice, liberty, equality and fraternity as supreme values to usher in the egalitarian social, economic and political democracy. Social justice, equality and dignity of person are corner stones of social democracy.

## **2.10. Dignity of Women in India**

The notion of women dignity is connected with the gender equality and gender justice. During the National Struggle for Independence *Gandhi* gave a call for emancipation of women. *Gandhiji* struggled hard for women's rights and their empowerment as he was of the view of that woman are competent like men. The preamble of Constitution of India promises to secure to all its citizens justice- social, economic and political.

Article 51(A) (e) clearly stated that, 'to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounces practices derogatory to the dignity of women' Hence the apex court has held that the women should be treated with full dignity and any act, conducts and gesture of doing a work should not be derogatory to the dignity of women. It is the obligatory duty of state to protect and preserve the women dignity. Hence Constitution of India declared that, to renounce the practices derogatory to the dignity of women. Preamble of the constitution to promises the fraternity assuring the dignity of person.

In order to protect the women dignity the Constitution of India provides equality before the law<sup>81</sup> and strictly prohibited any type of discrimination grounds, 'State shall not discriminate against a citizen on grounds only of religion, race, caste, sex or place of birth'<sup>82</sup>

## **2.11 Women Dignity in Social Setup**

### **2.11.1 Ancient Period**

Status of women in a society should ideally start from the social framework. Social structure, cultural norms and value system are important determinates of women's roles and their position in society. A great leader *Pandit Jawaharlal Nehru* had rightly said; 'The status of women indicates the character of a country'. Emphasis of women dignity we can observe in the multi-cultural, multi-religious and social activities, which is most distinguished in the world. Since ancient period the concept of Indian women as in different parts of the country majority of devotees are worshiped Shakti Goddesses as *Lakshmi, Sara Swati, Parvati, Durga, Kali, JaiSantoshiMaa etc.*, and treated respectfully. We can observe the famous epic Mahabharata says that there is no guru like the mother. Indeed the women have a real first *Guru* of the house which she only teaches right and wrongs path for their children's.

### **2.11.2 Vedic Period**

In earlier Vedic period a woman held a supreme and honoured position in the society, as well as in the household as mentioned in *Rig veda* and other scriptures. Men and women were treated equally and enjoyed freedom in all sphere of house affairs. Without a wife the home

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<sup>81</sup>. Article 14 of Constitution of India 'The state shall not deny to any person equality before the law or the equal protection of the laws within the territory to India

<sup>82</sup>. Article 15 of Constitution of India

was not considered a home. She was the very centre of the domestic world and was its empress. It means she was enjoyed a superior to that of a man in the matter of performance of religious ceremonies. In the post Vedic period the position of women gradually stated declining. The wife status in the matrimonial home was less satisfactory. Moreover, *Manusmrithi* stated that husband is the lord and master of his wife; he must be adorned and obeyed even if devoid of all virtues.<sup>83</sup> *Manu* also suggested the ways and means to keep wife under subjugation. *Manu*, men have adopted those ways and cruelly exploited women through the ages. This kind of treatment of a wife is a natural consequence of *Manu's* theory that Marriage establishes the supremacy of the husband over the wife.<sup>84</sup> It seems that seeds of domestic violence were sown by *Manu* and *Dharmashastra*. Moreover, our society has adopted patriarchal system i.e., male dominated society women control under men, in the childhood age under her father, after the marriage she has custody under the husband and in the old age she has under custody of her son.

### 2.11.3 Medieval Period

During Medieval period the invasion of the country by the Muslims brought about deterioration in the position of women. Women were oppressed in feudal social order and patriarchal families. She had no place in the formal religious organisation and legal affairs of the community.<sup>85</sup> In British period the status of women in the society had reached the maximum degree of deterioration because of the evil socio-religious and sinner customary practices, which had crept in to the society<sup>86</sup>.

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<sup>83</sup>. *Manusumrithi*, IX 26

<sup>84</sup>. Dr. R. Revathi "Law Relating to Domestic Violence" New edition 2004, Pub Asia Law House, Hyderabad

<sup>85</sup>. Dr. N.K.Charkrabarti and Dr. (Mrs.) ShachiChakrabarty, " Gender Justice" First edition 2006, Pub R. Cambray and Co. Private Ltd, Kolkata

<sup>86</sup>. Ibid

### 2.11.4 Post Independent Period

After the Independence, efforts have been made to promote the welfare of women. The Constitution Provides several provision about protection of life and dignity of women. The Constitution guarantee that women in India should not be treated as inferior to the men, all are equally before the law irrespective of religion, race, caste, sex or place of birth.<sup>87</sup>

In deed Indian women have much better position than other developing countries. Since the last few years' number of women developed carrier in the social workers, reformers as an leaders, like *Indira Gandhi, Mother Terisa, Vijay Lakshmi Panditetc.*, really we fell very proud because their greats achievements in the society. Recently number of changes took place in our society, women allowed to enhancing her carrier in the society. Women occupy a unique position in the society, she will be future creator of the family and entire future of the family depends upon her. Women perform different role as sister, wife and mother etc. It is duty of every person to protect her life and provide such circumstance as she enjoys dignified life. But, there is diversity of cultural, tradition, customs and norms, caste, religion as well as patriarchal system that influences gender discrimination in the society. She will be faces every minute problems and struggle for dignified life not only within the house, but outside the house. There are several factors dehumanisation of women's dignity at every sphere of her life.

According to International Research Centre for women identified that, 'entire India, social norms and practices are mostly governed by patriarchal ideologies'<sup>88</sup>. Dignity of women always had been an object of

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<sup>87</sup>. Article 14, 15, and 16 of the Indian constitution

<sup>88</sup>. [www.Redressonline.com/2013/o1daughters-of-India-violated-and-abused/](http://www.Redressonline.com/2013/o1daughters-of-India-violated-and-abused/) assessed on 19/05/2015

gross and severe violence at the hands of male dominated society. Women always depend upon the men at every sphere of her life, since womb to tomb.

## **2.12. Human Dignity with Reference to Honour Killing**

Honour killing is not a new word to Indian society. It is a murder generally committed against women or girl for actual or perceived immoral behaviour that is deemed to have breached the honour code of a household or community. It is a customary practices generally committed by the family members for dishonouring code of family, community. Recently Supreme Court has strongly condemned these customary ill practices. Honour killing means acts of violence, usually murder, committed by male family members against female members, most of the timewho are held to have brought dishonour upon the family. A woman can be targeted by (individuals within) her family for a variety of reasons, including: refusing to enter in to an arranged marriage, being the victim of a sexual assault, seeking a divorce even from an abusive husband or (allegedly) committing adultery. The mere perception that a woman has behaved in a way that “dishonour” her family is sufficient to trigger an attack on her life.

Every human life is precious and beautiful. It must be essential to protect and preserve life of human beings. The right to life denotes the significance of human existence for this reason it is widely called the highest fundamental rights<sup>89</sup>.Our Indian Constitution provides fundamental rights in part IIIwhich are designed to protect and preserve the basic rights of individuals from the violation of right to life with human dignity. Right to life is the most precious fundamental rights

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<sup>89</sup>. *Indian Journal of International Law Vol. 51, No. 03 , July/ Sept. 2011, P. 408*

amongst all human rights. The concept of right to life and liberty as enshrined in Article 21 of the Constitution of India, has guaranteed number of fundamental rights to the citizen and non-citizens. The main intention of Constitution framer is to promote individual welfare as well as social welfare.

Right to life includes human dignity<sup>90</sup>, which is universally protected by law. Honour killing crimes deprive the right to life which is valuable, inalienable right. Honour killing practice is nothing but, violation right to life, liberty and freedom of the person<sup>91</sup>. Right to life is fundamental right which guaranteed by the Constitution of India. It has been recognised by judicially, and constitutionally. In case of honour killing In order to preserve Honour of the family, the family member used to commit murder of the person; it means that deprived the life of person.

Honour killing violate the guarantee of right to life in national and international level. Right to life is the highest right any act which causes harm or deprived the life of someone's it would be amount to violation of fundamental right. Human life is protected by national and international instruments. Right to life is universally accepted that inherent dignity and inalienable right, no one has right to withdraw the life of human being under the heading of any customary practice. *The Universal Declaration of Human Rights, 1948* clearly stated that, *everyone has a right to life liberty and security of the persons*<sup>92</sup>.

In Article 21 of European Convention for Protection of Human Rights and Fundamental Freedoms, 1950 provides that '*every one's right to life shall be protected by law*' and *every person has right to liberty and*

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<sup>90</sup>. Ibid.

<sup>91</sup>. Article 21 of Indian Constitution of India "Noperson shall be deprived of his life, liberty or personal liberty except according to a procedure established by law"

<sup>92</sup>. Article 2 of the Universal Declaration of Human Rights, 1948

*security of person save in accordance with the procedure established by law*<sup>93</sup>. It seems that even family members are not having right to deprived life under the name of custom i.e. honour killing or sati practice. In International Convention on Civil and Political Rights 1996 also provides that, ‘*every human being has an inherent right to life. This right shall be protected by the law and no one shall be arbitrarily deprived of such right*’<sup>94</sup>. Researcher has found that, right to life with human dignity is signifies that basic rights which cannot be deprived by state or any person in the name of preserving honour of the family, that is fundamental rights which is provided to the all human beings.

Life of human being is most precious things no one can withdraws or taken away for protecting the honour of the family. Justice Field, observed that life means ‘something more is meant than mere existence. The inhibition against its deprivation extends to all those limbs and faculties by which the life is enjoyed’<sup>95</sup>. In honour killing practice the family boy or the girl who does act against the desire of family member that act considered as dishonour the family, and members deprived the freedom, and exploited them by using anything with their life, sometime taken away life of both.

In *Francis Carolie v. Union Territory of Delhi*<sup>96</sup>, justice Bhagwati also stated that, ‘life means right to life means right to live with human dignity and all that which goes along with it namely the bare necessities such as adequate food, clothing and shelter and facilities for reading and writing and expressing oneself in diverse forms, freely moving about

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<sup>93</sup>. Article 5 of European Convention for Protection of Human Rights and Fundamental Freedoms, 1950

<sup>94</sup>. Article 6 of the International Convention on Civil and Political Rights 1996

<sup>95</sup>. *Munn v. Illions*, 1877 94 U. S. 113

<sup>96</sup>. AIR 1981 SC 746, 753 (1981) SC

mixing and comingle with the fellow human beings further pointing out that inhibition would extend to all faculties by which life enjoyed'

Recently Supreme Court strongly condemned the practice of honour killing and intrusion of informal *panacahayat* taking law into their own hands and including in offensive activities which causes danger to the life of the person<sup>97</sup>. Honour killing practice is purely violation fundamental rights of the person. It is an offence under the penal Code<sup>98</sup>. Innocent young youths are being murdered in the name of customary practices.

Article 21 of Constitution of India include within its ambit Right to marry and choose the life partner of one's own choice. There are several incidents of honour killing taking place in our society for protecting, the dignity or honour of their own clan, community and family on ground of inter-caste marriage, marriage took place in same *gotra*. Honour killing practice is clearly violating basic inalienable fundamental rights of the person. Right to life guaranteed at the national and international level gets violated by customary practice. The law protect the right to life and dignity of person, but question is can an own family member i.e. mother or father or brother or sister or uncle etc.Protect life of individual in case of dishonour the family.

Right to life is includes a right to marry, in famous case of *Lata Singh v. State of Uttar Pradesh*<sup>99</sup>the Supreme Court has observed that, 'India is free and democratic country and once person becomes major he or she can marry whosoever he /she like'. Not only in national legislation

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<sup>97</sup>. *ArumugamServai v. State of Tamil Nadu (2011)*

<sup>98</sup>. *U/S. 299, 302 Of the Indian Penal Code 1860*

<sup>99</sup>. *Lata Singh v. State of Uttar Pradesh 2006, SC2522*

there is prohibit from interfering in the life of another person, but also several international legislations provides to prohibits and preserve the right to marry out of choice. Right to life is applicable to universally all human beings irrespective of caste, community, religion and sex. National and international legislations provisions protect the life of human being, these provisions act as protective umbrellas against any violation of fundamental rights.