CHAPTER II

PROTECTION OF LIFE AND PERSONAL LIBERTY (ART.21)
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An attempt is made to discuss how the SC started evolving Art.21 though various judgments by interpreting the Fundamental Rights in liberal way.

INTRODUCTION: ART.21

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

Prior to Maneka Gandhi’s decision, Art.21 guaranteed to citizens only protection against the arbitrary action of the executive and not from legislative action. The State could interfere with the liberty by a valid law. But after the Maneka Gandhi’s decision Art.21 now protects not only from the executive action but from the legislative action also. A person can be deprived of his life and personal liberty if two conditions are complied with first, there must be a law and secondly there must be a procedure prescribed by that law, provided that the procedure is just, fair and reasonable. 1

The Fifth Amendment of the American Constitution also provided that – “No person shall be deprived of his life or personal liberty, except according to the procedure established by law.” The Fourteenth Amendment imposes a similar limitation on the State Authorities.

The right guaranteed in Art.21 is available to ‘Citizens’ as well as to ‘Non-citizens’.

PERSONAL LIBERTY: MEANING AND SCOPE PRIOR TO MANEKA GANDHI’S DECISION –

The meaning of the word “personal liberty” came up for consideration of the SC for the first time in A.K. Gopalan v. Union of India 2 the petitioner, A. K. Gopalan, a communist leader was detained under the Preventive Detention Act –

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1 AIR 1981 SC 746
2 AIR 1950 SC 88
1950. The Petitioner challenged the validity of his detention under the Act on the

Grounds –

1. That it was violation of Art.19 (1) (d), Art.21 and Art.19 (5).
2. The restrictions must be reasonable under Art.19 (5).
3. That Art.19 (1) and Art. 21 should be read together because Art. 19 (1) dealt with substantive rights and Art. 21 dealt with procedural rights.

In Art.21 “Procedure established by law” meant “Due process of Law” of the American constitution which includes the principles of Natural Justice and since the impugned law does not satisfy the requirement of due process it is invalid.

Rejecting both the contention, the SC by the majority held that the “Personal Liberty” in Art.21 means nothing more than the liberty of the physical body, that is, freedom from arrest and detention without the authority of Law.

The majority took the view that Art.19 to Art.21 deal with different aspects of ‘Liberty’. Art.21 is guarantee against deprivation (total loss) of personal liberty while Art. 19 afford protection against unreasonable restrictions (which is only partial control) on the right of movement. Freedom guaranteed by Art.19 can be enjoyed by a citizen only when he is a freeman and not if his personal liberty is deprived under a valid law.

In Goapalan the SC interpreted the law as State made law and rejected the plea that by the term ‘law’ in Art. 21 meant not the state made law but ‘jus natural’ or the principal of natural justice.

Fazaal Ali, J. however, in his dissenting judgment held that the Act was liable to be challenged as violating the provisions of Art.19. He gave a wide and comprehensive meaning to the words ‘Personal liberty’ as consisting of freedom of movement and locomotion. Therefore, any law which deprives a person of his personal liberty must satisfy the requirements of Art.19 and Art.21 both.

This interpretation in Gopalan’s case has not been followed by the SC in its later decisions. In Kharak Singh’s case it was held that ‘Personal Liberty’ was not only limited to bodily restraint or confinement to prisons only, Art. 19

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3 AIR 1963 SC 1295
(1) deals with particular species or attributes of that freedom, ‘Personal Liberty’ in Art.21 take in and comprise the residue.

The expression life means Human Life and not the life of an animal.

Finally, in Maneka Gandhi v. Union of India 4 the SC has not only overruled Gopalan’s Case but has widened the scope of the words ‘Personal Liberty’ considerably.

**Bhagwati, J, said:**

“The attempt of the Court should be to expand the reach and ambit of the fundamental Rights rather that to attenuate their meaning and content by a process of judicial construction.”

The Court laid down great stress on the procedural safeguards. The Procedure must satisfy the requirement of natural justice i.e. it must be just, fair and reasonable.

In Kharak Singh v. State of U.P. 5 It was held that domiciliary visits of the policemen were an invasion of personal liberty.

In Munn v. Illinois 6 The provision equality prohibits the mutilation of the body or amputation of an arm or leg.

In Govind v. State of M.P. 7 The SC held that M.P. Police regulations 855 and 856 authorizing domiciliary visits were constitutional as they have the force of law.

In Kharak Singh’s case, 8 the validity of a similar Police Regulation was challenged. The regulations were declared unconstitutional because they did not have the force of law. On the other hand, in Govind’s case the validity of similar Police regulations was upheld as they had the force of law.

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4 AIR 1978 SC 597
5 AIR 1963 SC 1295
6 AIR 1876 94 US 113
7 AIR 1975 SC 1379
8 AIR 1963 SC 1295
1. **RIGHT TO TRAVEL ABROAD:**

In *Satwant Singh v. Assistant Passport office, New Delhi* ⁹ The SC held that the “Right to travel abroad” was part of a person’s ‘Personal Liberty’ within the meaning of Art.21, Person could not be deprived of his right to travel abroad except according to procedure established by law.

**MANEKA GANDHI’S CASE – NEW DIMENSION:-**

In *Maneka Gandhi case* - the petitioner’s passport was impounded by the Central Government under Sec. 10(3) (c) of The Passport Act, 1967. The Act authorized the Government to do so if it was necessary ‘In the interest of the general public’. The petitioner challenged the validity of the said order on the following grounds that – Sect. 10 (3) (c) was violative of Art. 14, 19 (1)(a) and (g) and Art.21.

Thus Art.21 requires the following conditions to be fulfilled before a person is deprived of the property:-

1. There must be a valid Law.
2. The law must provide a procedure.
3. The procedure must be just, fair and reasonable.
4. The law must satisfy the requirements of Art.14 and 19 i.e. it must be reasonable.

**PRIOR TO THE CASE OF MANEKA GANDHI :-**

The Courts were not allowed –

- To see validity

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SC  - Law  - To see the due Process of law
      |        |
      V        V
Due Process of law  Natural Justice  - To see the natural justice
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⁹ AIR 1967 SC 1836
AFTER THE CASE OF MANEKA GANDHI:-

The Courts are allowed –

- To see the validity
- To see the due process of law
- To see the natural justice

Inter-relation of Art.14, Art.19 and Art.21 [Old View] :- In Gopalan’s Case – it was held that Art.19 and Art.21 dealt with different subjects. That so long as a law of preventive detention satisfies the requirements of Art.22 it would not be required to meet the challenges of Art.19.

Present View:- In Maneka Gandhi’s case the SC has overruled the view expressed by the majority in Gopalan’s case and held that Art.21 is controlled by Art.19.

In Sunil Batra v. Delhi Administration 10 SC held that after Maneka Gandhi’s case the Court can look in to the validity of the Law as well as procedure prescribed by Law.

In Nand Lal v. State of Punjab 11 Court applying the Maneka Gandhi’s principle, held that the procedure adopted by the advisory board was arbitrary and illegal and consequently, the detention order was liable to be quashed.

It is true that Art.21 is worded in negative terms but it is now well settled that Art.21 has both negative and affirmative dimension. Positive rights are very well conferred under Art.21. The Following rights are held to be covered under Art.21.

2. RIGHT TO LIVE WITH HUMAN DIGNITY:

Thus in Maneka Gandhi’s case the Court gave a new dimension to Art. 21. It held that the right to live is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. Elaborating the

10 AIR 1978 SC 1675
11 AIR 1981 SC 2041
same view the Court in *Francis Coralie v. Union Territory of Delhi* \(^{12}\) said that the right to live is not restricted to mere animal existence – It means something more than just physical survival.

The SC in *People’s Union for Democratic Rights v. Union of India* \(^{13}\) held that non-payment of minimum wages to the workers employed in various Asiad projects in Delhi was a denial to them of their right to live. The SC held that the non-implementation by the private contractors and non-enforcement by the State Authorities of the provisions of various labour laws violated the fundamental right of workers i.e. to live with human dignity.

They had fundamental right to minimum wages, drinking water, shelter, crèches, medical aid and safety in the respective occupations covered by the various welfare legislations.

In *State of Maharashtra v. Chandrabhan* \(^{14}\) the SC struck down a provision of the Bombay Civil Service Rules, 1959 which provided for payment of only nominal subsistence allowance of Rs.1 per month to a suspended Government Servant upon his conviction during the pendency of his appeal as unconstitutional on the ground that it was violative of Art.21.

In *Neeraja Chaudhari v. State of M.P.* \(^{15}\) Bhagwati, J. held that under the Bonded Labour System (Abolition) Act, 1976 it is not enough merely to identify and release bonded laborers but it is more important that they must be rehabilitated because without rehabilitation they would be driven to poverty, helplessness and despair thus into serfdom once again.

In *Chandra Raja Kumari v. Police Commissioner Hyderabad* \(^{16}\) it has been held that the right to live includes right to live with human dignity or decency and, therefore, holding of beauty contest is repugnant to dignity or decency of women and it offends Art.21. The Government is empowered to prohibit the contest as objectionable performance under Sec.3 of the Andhra

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\(^{12}\) AIR 1981 SC 746

\(^{13}\) AIR 1982 SC 1473

\(^{14}\) AIR 1983 3SCC 387

\(^{15}\) AIR 1984 SC 1099

\(^{16}\) AIR 1998 AP 302
Pradesh objectionable performances prohibitions Act 1956 if it is grossly indecent or obscene or intended for blackmailing.

NON-CITIZENS ALSO ENTITLED TO RIGHT TO LIFE (CHAKMAS MIGRANTS CASE):

In *National Human Rights Commission v. State of Arunachal Pradesh*, the SC has held that the State is bound to protect the life and liberty of every human being whether he is a citizen or non-citizen. In this case Public Interest Litigation was filed by the National Human Rights Commission under Art.32 for enforcing the rights under Art.21 of about 65,000 Chakmas. The facts of the case was that a large number of Chakmas who migrated from East Pakistan (now Bangladesh) in 1964, first settled in Assam and Tripura and became Indian citizen in due course. Since the State of Assam had expressed its inability to rehabilitate all of them then about 65,000 of them were shifted to the State of Arunachal Pradesh. They have been residing in the State for more than three decades and have raised their families in the State. Their children were born in India. They have developed close social, religious and economic ties. The All Arunachal Pradesh Student Union (AAPSU) had threatened to forcibly expel them from the State. Since all efforts to tackle the problem of their security had failed the National Human Rights Commission was compelled to approach the SC for appropriate relief.

The SC held that the State is bound to protect the life and liberty of every being whether citizen or non-citizen. It is the constitutional duty of the State to safeguard the life, health and well being of Chakmas. The Court directed the State of Arunachal Pradesh to take all possible steps to ensure safety of their life and personal liberty. They shall be protected and any attempt to forcibly evict or drive them out of State by AAPSU must be repelled by force considered necessary to carry out the direction of the Court.

The Court also directed the State to pay to the petitioner (Human Rights Commission) Rs. 10,000 as cost of the petition for bringing the matter before the Court.

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17 AIR 1996 1SCC 742
3. **RIGHT TO LIVELIHOOD:**

In *Sodan Singh v. New Delhi Municipal Committee* 18 the SC has held the right to carry on any trade or business is not included in the concept of life and personal liberty. Art.21 is not attracted in a case of trade and business.

In *Delhi Development Horticulture Employees Union v. Delhi Administration* 19 the SC has held that workmen employed on daily wages under the Jawahar Rozgar Yojna has no right of automatic regulations even though they have put in work for 240 or more days.

In *D.K. Yadav v. J.M.A.* 20 the SC has held that the right to life enshrined under Art.21 includes the right to livelihood and termination of the service of a worker without giving him reasonable opportunity of hearing is unjust, arbitrary and illegal. The procedure prescribed for depriving a person of livelihood must meet the requirement of Art.14, i.e it must be right, just and fair and not arbitrary, fanciful or oppressive.

In *All India Imam Organization v. Union of India,* 21 the SC has held Imams who are in charge of religious activities of Mosque are entitled to emoluments even in absence of statutory provisions in the Wakf Act, 1954. In a number of cases it has been held that right to life enshrined in Article 21 means right to live with human dignity.

In *Olga Tellis v. Bombay Municipal Corporation,* 22 popularly known as the ‘Pavement Dwellers Case’ the SC has finally ruled that the word ‘life’ in Art. 21 include the ‘right to livelihood’ also. The Court said that “No person can live without the means of livelihood. If the right to livelihood 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 to deprive him of his means of livelihood. Art. 39 (a) and 41 require the State to secure to the citizen an adequate means of livelihood and the right to work.

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18 AIR 1989 SC 1988
19 AIR 1992 SC 789
20 AIR 1993 3SCC 258
21 AIR 1993 SC 2086
22 AIR 1986 SC 180
SUBSISTENCE ALLOWANCE:


Employment’s rights to subsistence allowance, during his suspension from service pending an enquiry, as considered as a feature of his fundamental right to life. In this case the respondent was suspended pending enquiry in to a criminal offence. On his acquittal the court observed that, suspension order passed by the corporation is only pending enquiry in to criminal offence and it merges with the order of acquittal or discharge.

RIGHT TO ELECTRICITY IS RIGHT TO LIFE:

In M.K. Acharaya v. C.M.D.W.B.S.E. Distribution Co. Ltd. 24 the Court has held that the right to electricity is right to life and liberty in terms of Article 21. In modern days no one can survive without electricity.

4. RIGHT TO SHELTER:

In Chameli Singh v. State of U.P. 25 it has been held that the right to shelter is a fundamental right under Art. 21. In any organised society, the right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to benefit himself. Right to live includes in any society the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without the basic human rights. Shelter for human being, therefore, is not a mere protection of his life and limb. It is home where he had opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter includes adequate living place, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation.

23 AIR 1999 SC 1416
24 AIR 2008 KAL 47
25 AIR 1996 2SCC 549
The right to shelter does not mean a mere right to a roof over one's head but right
to the entire infrastructure necessary to live and develop as a human being.

5. **RIGHT TO HEALTH AND MEDICAL ASSISTANCE:**

In *Parmananda Katara v. Union of India*,

it has been held that it is the professional obligation of all doctors, whether *government* or *private*, to extend medical aid to the injured immediately to preserve life without waiting legal formalities to be complied with by the police under Cr.P.C. Art.21 casts the obligation on the State to preserve life. It is the obligation of those who are in charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence. No law or State action can intervene to delay the discharge of this paramount obligation of the members of the medical profession. The Court directed that the decision of the Court must be published in all journals reporting decisions of this Court and adequate publicity highlighting these aspects should be given by the national media. The Medical Council must send copies of this judgment to every medical college affiliated to it.

In *Paschim Bang Khet Mazdoor Samiti v. State of W.B.*, following *Permanand Katara's* ruling the Supreme Court has held that denial of medical aid by governments hospitals to an injured person on the ground of non-availability of beds amounted to violation of right to life under Art.21. The petitioner, Hakim Singh had fallen from a running train and had suffered serious head injuries and brain haemorrhage. He was admitted in a private hospital as an indoor patient and he had to incur an expenditure of Rs. 17,000 in his treatment. The Court directed the State to pay Rs. 25,000 to the petitioner as compensation.

In *Consumer Education and Research Centre v. Union of India*, The SC held that - the life of the workman is meaningful and purposeful with dignity of person. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic conditions in workplace and leisure.

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26 AIR 1989 SC 2039
27 AIR 1996 4SCC 37
28 AIR 1995 3SCC 42
The Court has laid down following guidelines to be followed by all asbestos industries (in the country there were about 74 asbestos industries).

1. All asbestos industries must make health insurance of workers employed.
2. Every worker suffering is entitled for compensation of Rs. 1 lakh. All asbestos industries must maintain the health record of every worker up to a minimum period of 40 years from the beginning of the employment or 15 years after retirement or cessation of the employment whichever was latter.
3. "Membrane filter test" to detect asbestos fiber should be adopted by all the factories at par with Metalliferrous Mines Regulations, 1961 and Vienna Convention.
4. All the factories whether covered by the Employees' State Insurance Act or Workmen's Compensation Act or otherwise, should insure health coverage to every worker.
5. To review after every 10 years.
6. The standards of permissible exposure limit value of fibre in tune with the international standard.
7. The authorities to consider inclusion of small scale industries engaged in the manufacture of asbestos or its ancillary products.

In *Kirloskar Brothers Ltd. v. Employees' State Insurance Corp.* 29 the SC held that private industries must take care of the workmen and they must provide facilities and opportunities for health and vigour.

In *State of Punjab v. Mohinder Singh Chawla*, 30 the right to life in Art.21 includes the right to health and the State employees are entitled to medical reimbursement of expenses for treatment and room rent charges both in approved specialized hospitals outside the Government hospitals. Since the facility of the treatment was not available in the State and the patient was sent for treatment in the AIIMS at New Delhi. The Court held that the State has to bear the expenses for the Government servant's treatment while in service or after retirement from service.

29 AIR 1996 2SCC 682
30 AIR 1997 SCC 1225
In *Vincent Parikurlangara v. Union of India*, the SC held that the right to maintenance and improvement of public health is included in the right to live with human dignity enshrined in Art. 21. A healthy body is the very foundation of all human activities. In a welfare State this is the obligation of the State to ensure the creation and sustaining of conditions congenial to good health.

**COMPENSATION FOR MEDICAL NEGLIGENCE: CHILD BORN DESPITE STERILIZATION:**

In *Naval v. Union of India*, the petitioner gave birth to a child despite sterilization operation. It was prima facie negligence on the part of the doctor. The petitioner was entitled to compensation.

6. **ENVIRONMENTAL RIGHTS AND ART. 21 - RIGHT TO GET POLLUTION FREE WATER AND AIR:**

In *Subhas Kumar v. State of Bihar*, it has been held that public interest litigation is maintainable for ensuring enjoyment of pollution free water and air which is included in the "right to live" under Art. 21.

**PROTECTION OF ECOLOGY AND ENVIRONMENTAL POLLUTION:**

In *Rural Litigation and Entitlement Kendra v. State of U.P.*, the Court ordered the closure of certain lime stone quarries on the ground that there were serious deficiencies regarding safety. The Court appointed a committee for the purpose of inspecting certain lime stone-quarries. The Committee suggested the closure of certain categories of stone quarries having regard to adverse impact of mining operations therein. Large scale pollution was caused by lime stone quarries adversely affecting the safety and health of the people living in the area.

In *Shri Ram Food and Fertilizer v. Union of India* the SC directed the company manufacturing hazardous and lethal chemicals and gases posing danger to health and life of workmen and people living in its neighborhood, to take all

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31 AIR 1987 2SCC 165
32 AIR 2009 RAJ. 63
33 AIR 1991 SC 420
34 AIR 1985 2SCC 431
35 AIR 1986 2SCC 176
necessary safety measures before reopening the plant. There was a leakage of Chlorine gas from the plant resulting in death of one person and causing hardships to workers and residents of the locality. This was due to the negligence of the management in maintenance and operation of the caustic chlorine plant of the Company. The matter was brought before the Court through public interest litigation. The management was directed to deposit a sum with the Registrar of the Court of Rs.20 lakhs by way of security for payment of compensation claims. In addition, a bank guarantee for a sum of 15 lakhs was also directed to be deposited which shall be paid in case of any escape of Chlorine gas within a period of three years from the date of the judgment resulting in death or injury to any workman or any person living in the vicinity. Subject to these conditions the Court allowed the partial reopening of the plant.

In *M.C.Mehta v. Union of India*, the SC ordered the closure of tanneries at Jammu near Kanpur, polluting the river Ganga. The matter was brought to the notice of the Court by the petitioner, a social worker, through public interest litigation.

The Court said that notwithstanding the comprehensive provisions contained in the Water (Prevention and Control of Pollution) Act and the Environmental (Protection) Act, no effective steps were taken by the Government to stop the grave public nuisance caused by the tanneries at Jammu (Kanpur). In the circumstances, it was held that the Court was entitled to order the closure of tanneries unless they took steps to set up treatment plants.

In *M.C.Metha(2) v. Union of India*, the petitioner brought a public interest litigation against Ganga water pollution requiring the Court to issue appropriate directions for the prevention of Ganga water pollution. He claimed that although Parliament and the State Legislatures have passed several laws imposing duties on the Central and State Boards constituted under the Water (Prevention and Control of Pollution) Act and the municipalities under the U.P. Nagar Mahapalika Adhiniyam, they have just remained on paper and no proper action had been taken pursuant thereto. The SC held that the petitioner although

36 AIR 1987 4SCC 463A
37 AIR 1988 1SCC 171
not a riparian owner (living on the river side) was entitled to move the Court for the enforcement of various statutory provisions which impose duties on the municipal and other authorities.

The above directions apply mutatis mutandis to all other Mahapalikas and municipalities which have the jurisdiction over the areas through which the river Ganga flows.

In *Indian Council for Enviro-Legal Action v. Union of India* 38 the Supreme Court has held that if by the action of private corporate bodies a person's fundamental right is violated the Court would not accept the argument that it is not 'State' within the meaning of Art. 12 and, therefore, action cannot be taken against it. If the Court finds that the Government or authorities concerned have not taken the action required of them by law and this has resulted in violation of the right to life of the citizens it will be the duty of the Court to intervene. In this case an environmentalist organization filed a writ petition under Art. 32 before the Court complaining the plight of people living in the vicinity of chemical industrial plants in India and requesting for appropriate remedial measures.

In *M.C. Mehta v. Union of India* (Taz Mahal Case) 39 the Supreme Court ordered the shifting of 168 hazardous industries operating in Delhi as they were causing danger to the ecology and directed that they be reallocated in the Master Plan for Delhi. The Court directed these industries to close down w.e.f. 30.11.1996. The Court gave necessary specific directions for the protection of the rights and benefits of the workmen employed in these industries.

In *Council for Enviro-legal Action v. Union of India* 40 the Court issued appropriate orders and directions for implementing and enforcing the laws to protect ecology. The petition was filed by a registered voluntary organization working for the cause of environmental protection in India as a public interest litigation complaining ecological degradation in coastal areas. It

38 AIR 1996 3SCC 212
39 AIR 1996 4SCC 150
40 AIR 1996 5SCC 281
was contended that the Government was not implementing its own Notification which was issued to regulate activities in the said zone. It was said that there was blatant violation of this Notification and industries were being set up causing serious damage to the environment and ecology of that area. It was held that the matter be raised before the concerned State High Courts which shall issue necessary orders or directions.

In *Vellore Citizen's v. Welfare Forum Union of India*, the petitioner, Vellore Citizen's Welfare Forum, filed a writ petition by way of public interest litigation drawing the attention of the Court towards the pollution caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. The tanneries were discharging untreated affluent into agricultural fields, Waterways, open lands, and rivers rendering the river water unfit for human consumption, contaminating the subsoil water and had spoiled the physical and chemical properties of the soil making it unfit for agricultural purposes.

The Supreme Court held that such industries though are of vital importance to the country's development but they cannot be allowed to destroy the ecology, degrade the environment and pose a health hazard and cannot be permitted to continue their operation unless they set up pollution control devices. The Court held that the "precautionary principle" and the "Polluter Pays Principle," is essential feature of "sustainable development"

In *S. Jagannath v. Union of India* the Court held that prohibition from using the waste land, wet lands for prawn farming and the constitution of a National Coastal Management Authority to safeguard the marine life and coastal areas is essential. It was contended that a large member of private and multinational companies have started setting up Shrimp farm in the coastal areas of the country causing serious threat to the environment and ecology of these areas.

The Court held that setting up of shrimp (small fish) culture farms within the prohibited areas and in ecology fragile coastal areas have adverse effect on
environment and coastal ecology and economics and, therefore, they cannot be permitted to operate. Shrimp culture industry is neither "directly related to water front" nor "directly needing foreshore facilities" and cannot be allowed to be set up anywhere in the Coastal Regulation Zone under CRZ Notification. The damage caused to ecology and economics by the aquaculture farming is higher than the earning from the sale of coastal aquaculture produce. The Court further held that the traditional type of shrimp farming is environmentally benign and pollution free. But the modern technological type of farming using chemical to create more produce create pollution and degrading effect on the environment and ecology and therefore, such type of shrimp farming cannot be permitted.

MINING IN ARAVALLI HILLS RANGE BANNED:

In *M. C. Mehta v. Union of India*, the Court made it clear that the mining activity can be permitted only on the basis of sustainable development and on compliance of stringent conditions. The Aravalli Hill Range has to be protected at any cost. The Court said that the development and protection of environment are not enemies. Development is possible on principles of sustainable development. A balance has to be maintained. If an activity is allowed to go ahead there may be irreparable damage to the environment and if it is stopped there may be irreparable damage to economic interest. In case of doubt, however, protection of environment has to be precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not necessary that there should be direct evidence of harm to the environment.

IN THE NAME OF URBAN DEVELOPMENT ENVIRONMENT CANNOT BE DESTROYED:

In *Intellectual Forum Tirupathi v. State of Andhra Pradesh*, the Supreme Court has held that under Article 21 and Article 51A it is the constitutional obligation of the Governments to protect and preserve the

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43 AIR 2004 SC 4016
44 AIR 2006 SC 1350
environment. In the instant case, the appeal was filed in the Supreme Court by a registered society, called Intellectual Forum, against the decision of the High Court of Andhra Pradesh dismissing their writ petition. They contended that the HC had given precedence to the economic growth by the two tanks situated in the suburbs of Tirupathi Town which is a world renowned pilgrim centre and the only source of water for that area. The lakhs of pilgrims visit Tirupathi every year. The Government of Andhra Pradesh issued orders for alienation of Avilala tank bed area to Andhra Pradesh Housing Board for housing purposes. The society filed a writ petition in the High Court challenging the Governments orders allocating tank bed area land to Andhra Pradesh Housing Board. On behalf of the Government, it was contended that the High Court dismissed the petition on the ground that there was no illegality in the action of the Government. The Supreme Court reversed the decision of the High Court and stayed the Government order for alienating lands in the vicinity of the above tanks and directed the Board to stop further construction. The Court held that the above tanks are important for protection of environment and supply of water to those areas. The Government is responsible to protect and preserve historical tanks on the basis of 'sustainable development' and 'public trust' and under Articles 21 and 48A and 51A. It is the constitutional obligation of the Government. 'Sustainable development' as defined in the World Commission on Environment and Development Report, means development that meets the needs of the present without compromising ability of future generations to meet their own needs.

7. PRISONER'S RIGHT AND ARTICLE 21:

In D.B.M. Patnaik v. State of A. P. the petitioners, who were naxalite under trial prisoners, were undergoing the sentence in the Central Jail, Vishakhapatnam. They contended that the armed police guards posted around the jail and the live-wire electrical mechanism fixed on the top of the jail was an infringement of their right to 'life' and personal liberty' guaranteed by Article 21. The Court said, "A convict has no right, more than anyone else, to dictate, where

45 AIR 1974 SC 2092
guard to be posted to prevent the escape of prisoners. The installation of live-wire mechanism does not offend their right. It is a preventive measure.

In *Babu Singh v. State of U.P.*[^46] it was held that ‘refusal to grant bail’ in a murder case without reasonable ground would amount to deprivation of personal liberty under Article 21.

**RIGHT TO FREE LEGAL AID:**

In *M.H. Hoskot v. State of Maharashtra,*[^47] the Supreme Court applied the ruling of *Maneka Gandhi*’s case. Every step that makes the right of appeal fruitful is obligatory and every action or inaction which nullifies it is unfair and therefore offends Article 21. There are two ingredients of a right of appeal:

1. Service of a copy of a judgment to the prisoner in time to enable him to file an appeal, and
2. Provision of free legal service to a prisoner who is indigent or otherwise disabled from securing legal assistance. These are State’s responsibility under Art. 21. Any jailer who by indifference withholds the copy violates Article 21 and may make the imprisonment illegal. Jail Manuals should be updated and State must provide a copy of the judgment. Krishna Iyer, J., declared “This is the State’s duty and not Government’s charity.”

In *State of Maharashtra v. M.P. Vashi*[^48] the court has widened the scope of “the free legal aid.”. The Court held it is necessary to have well trained lawyers in the country. The government must afford grants in aid to duly recognized private law colleges like government recognized law colleges.

In *Suk Das v. Union Territory of Arunachal Pradesh,*[^49] the Court has held that failure to provide free legal aid to an accused at the State cost, unless refused by the accused, would vitiate the trial. He need not apply for the same. Free legal aid at the State cost is a fundamental right of a person accused of an offence and this right is implicit in the requirement of reasonable, fair and just procedure prescribed by Art.21. This right cannot be denied to him on the ground

[^46]: AIR 1978 SC 527
[^47]: AIR 1978 SC 1548
[^48]: AIR 1995 5SCC 730
[^49]: AIR 1986 25SCC 401
that he has failed to apply for it. The Magistrate is under an obligation to inform
the accused of this right and inquire that - whether he wishes to be represented on
the State's cost.

The appellant was tried and sentenced to two years imprisonment under
Section 506 read with Section 34, IPC. He was not represented at the trial by any
lawyer by reason of his inability to afford legal representation. The High Court
held that the trial was not vitiated since no application was made by him. On
appeal the Supreme Court set aside the conviction on the ground that he was not
provided legal aid at the trial which was violative of Art.21.

In *Veena Sethi v. State of Bihar* 50 the Free Legal Aid Committee
Hazaribagh brought to the notice of the Court through a letter about the illegal
detention of certain prisoners in the Hazaribagh Jail for two or three decades
without any justification. At the time of their detention prisoners were declared
insane but afterwards they became sane but due to the inaction of authorities to
take steps to release them they remained in jails for 20 to 37 years. It was held
that the prisoners remained in jail for no fault of theirs but because of callous and
lethargic attitude of the authorities and therefore entitled to be released forthwith.

**RIGHT AGAINST SOLITARY CONFINEMENT:**

In *Sunit Batra (No I) v. Delhi Administration*, 51 The Court held that
continuously keeping a prisoner in fetters day and night reduces the prisoner from
a human being to an animal and that this treatment was cruel and unusual.

**RIGHT TO SPEEDY TRIAL :**

In *Hussainara Khatoon (No.1) v. Home Secretary, State of Bihar*, 52 a
petition for a writ of Habeas Corpus was filed by number of under-trial prisoners
who were in jails in the State of Bihar for years awaiting their trial. The Supreme
Court held that "right to a speedy trial" a fundamental right is implicit in the
guarantee of life and personal liberty enshrined in Article 21. Speedy trial is the

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50 AIR 1983 p 399
51 AIR 1980 SC 1579
52 AIR 1979 SC 1360
essence of criminal justice. In United States speedy trial is one of the constitutionally guaranteed right under the Sixth Amendment. Bhagwati, J., held that although, unlike the American Constitution speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21. No procedure which does not ensure a reasonable quick trial can be regarded as 'reasonable, fair or just'. For this reason the Court ordered the Bihar Government to release forthwith the under-trial prisoners on their personal bonds.

In *Husainara Khatoon (No.2)* 53 and *Husainara Khatoon (No.3)* cases the Court reiterated the same view.

In *Abdul Rehman Antuley v. R.S. Nayak* 54 the Supreme Court has laid down detail guidelines for speedy trial of an accused in a criminal case but it declined to fix any time limit for trial of offences. The burden lies on the prosecution to justify and explain the delay. The court held that the right to speedy trial flowing from Article 21 is available to accused at all stages namely the stage of investigation, inquiry, trial, appeal, revision and retrial.

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

a. The period of remand and pre-conviction detention should be as short as possible.

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

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

In *Raghubir Singh v. State of Bihar* 55 the Court held that the right of a speedy trial is one of the dimensions of the fundamental right to life and liberty guaranteed by Article 21. But the question whether the right to speedy trial was infringed depends upon various factors. Was the delay owing to the nature of the

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53 AIR 1979 SC 1377  
54 AIR 1992 SC 1630  
55 AIR 1986 4SCC 481
case? Was the delay caused by the prosecuting agency? Was it due to the tactics of the defence? etc.

In *Sunil Batra (No. 2) v. Delhi Administration* 56 it was held that the practice of keeping under-trials with convicts in jails offended the test of reasonableness in Art.19 and fairness in Art.21. The under-trials are presumed innocent until convicted and if they are kept with criminals in jail it violates the test of fairness of Art. 21.

**DELAY IN SPEEDY JUSTICE VIOLATES ARTICLE 21.—**

In *Moses Wilson v. Karturba* 57 the SC expressed concern in delay in disposal of cases and directed the concerned authorities to do needful. In this case, a suit was filed in 1947 for a sum of Rs. 7000/- and continued for 60 years and had not been disposed of until now. The Court expressed deep concern at the delay in disposing of cases in courts. The Court remarked because of delay in disposal of cases people in this country are losing faith in the Judiciary. This situation should be set right as soon as possible.

In *Vakil Prasad Singh v. State of Bihar* 58 the Court has again emphasized the need for speedy investigation and trial and of constitutional protection enshrined in Article 21.

**RIGHT AGAINST HANDCUFFING:**

In *Prem Shankar v. Delhi Administration*, 59 the Supreme Court added yet another projectile in its armoury to be used against the war for prison reform and prisoners rights. The Court held handcuffing is inhuman and unreasonable.

In *Sunil Gupta v. State of M.P.* 60 the petitioners were educated persons and social workers, who were remanded to judicial custody and were taken to court from jail and back from court to the prison by the escort party handcuffed. They had staged a ‘dharna’ for a public cause and voluntarily submitted

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56 AIR 1980 SC 1579  
57 AIR 2008 SC 379  
58 AIR 2009 SC 1822  
59 AIR 1988 SC 1535  
60 AIR 1990 3SCC 119
themselves for arrest. They had no tendency to escape from the jail. In fact, they even refused to come out on bail but chose to continue in prison for the public cause. It was held that the act of handcuffing was violating by Art.21.

In *Citizen for Democracy v. State of Assam* 61 the SC expressed serious concern over the violation of the law laid down by that Court in *Prem Shankar Shukla's* case against handcuffing of under trial or convicted prisoners by the police authorities. In the instance case, Mr. Kuldip Nayar an eminent journalist in his capacity as president of "Citizen for Democracy" through a letter brought out to the notice of the Court that the seven TADA detunes lodged in the hospital in the State of Assam were handcuffed and tied with a long rope to check their movement. Security guards were also posted outside the hospital. The Court treated the letter as a petition under Art. 32 and held that handcuffing and in addition tying with ropes of the patient-prisoners who are lodged in the hospital is inhuman and in violation of human rights guaranteed to an individual under international law and the law of the land.

**RIGHT AGAINST INHUMAN TREATMENT:**

In *Kishore Singh v. State of Rajasthan*, 62 the SC held that the use of "third degree" method by police is violative of Art. 21 and directed the Government to take necessary steps to educate the police so as to inculcate a respect for the human person. The court also held that the punishment of solitary confinement for a long period from 8 to 11 months and putting bar fetters on the prisoner in jail for several days on flimsy ground like "loitering in the prison", "behaving insolently and in an uncivilised manner", "tearing of his history ticket" must be regarded as barbarous and against human dignity and hence violative of Arts.21, 19 and 14. Torture and ill-treatment of women suspects in police lockups has been held to be violative of Art. 21. The Court gave detail instruction to concerned authorities for providing security and safety in police lockup and particularly to women suspects.

61 AIR 1995 3SCC 743
62 AIR 1981 SC 625
Female suspects should be kept in separate police lockups and not in the same in which male accused are detained and should be guarded by female constables. The Court directed the I.G. Prisons and State Board of Legal Aid Advice Committee to provide legal assistance to the poor and indigent accused (male and female) whether they are under-trial or convicted prisoners (*Sheela Barse v. State of Maharaashtra*)

**RIGHT TO MEMBERS OF PROTECTIVE HOMES:**

In *Vikram Deo Singh Tomar v. State of Bihar*, through a public interest litigation it was brought to the notice of the Court that the female inmates of the 'Care Home Patna' were compelled to live in inhuman conditions in an old ruined building. They are illiterate and are provided with insufficient and poor quality food, and no medical attention is afforded to them. The Supreme Court held that 'the right to live with human dignity' is the fundamental right of every citizen and the State is under duty to provide at least the minimum conditions ensuring human dignity. Accordingly, the Court directed the State to take immediate steps for the welfare of inmates of 'Care Home Patna.' Pending construction of new building, the Court directed that the existing building must be renovated and sufficient amenities by way of living rooms, bath rooms and toilets within the building and adequate water and electricity etc., must be provided. The Court also directed the State to appoint a full time superintendent to take care of the home and to ensure that a doctor visits the home daily.

In *S. R. Kapoor v. Union of India*, where through a public interest litigation mismanagement of hospital for mental disease located at Shahadara in Delhi was brought to the notice of the Court. The Court directed that the Government of India to take over its management from Delhi Administration and to take steps to improve its working on the lines of institution run by NIMHANS at Bangalore.

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63 AIR 1983 SC 378
64 AIR 1988 SC 1782
65 AIR 1990 SC 752
RIGHT AGAINST DELAYED EXECUTION:

In *T. V. Vatheeswaran v. State of Tamil Nadu*, the two-Judge Bench of the SC held that delay in execution of death sentence exceeding 2 years would be sufficient ground to invoke the protection of Art. 21 and the death sentence would be commuted to life imprisonment.

In *Sher Singh v. State of Punjab*, the three-Judge Bench of the Court agreed with this view that prolonged delay in the execution of a death sentence was an important consideration for invoking Art.21 for judging whether sentence should be allowed to be executed or should be converted into sentence of imprisonment. Prolonged detention to await the execution of a sentence of death is an unjust, unfair and unreasonable procedure and the only way to undo the wrong is to quash the death sentence. However, the Court held that this cannot be applied as a rule in every case and each case should be decided on its own facts. The Court should consider whether the delay was due to the conduct of the convict (where he pursues series of legal remedies), the nature of offence, its impact on the society, its likelihood of repetition, before deciding to commute the death penalty into a sentence of life imprisonment.

In the instant case the delay was found to be due to the conduct of the convict and therefore it was held that the death sentence was not liable to be quashed. Accordingly, the Court overruled the decision (in *T. V. Vatheeswaran v. State of Tamil Nadu*) 68

But where there is delay in execution of death sentence of more than 2 years and the conduct and behavior of the accused in the jail, evident form the report of the jail authorities show that he was showing genuine repentance it was held that the death sentence could be commuted to life imprisonment (*Javed Ahmad v. State of Maharashtra*) 69

Finally, in *Triveni Ben v. State of Gujarat*, a five judge Bench of the Supreme Court has set the matter at rest and held that undue long delay in

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66 AIR 1981 SC 643
67 AIR 1983 SC 4635
68 AIR 1981 SC 643
69 AIR 1985 SC 231
70 AIR 1989 SC 142
execution of the death sentence will entitle the condemned person to approach the Court for conversion of death sentence into life imprisonment, but before doing so the Court will examine the nature of delay and circumstances of the case. No fixed period of delay could be held to make the sentence of death in executable. In the present case the death penalty of the accused was converted into life imprisonment.

In *Madhu Mehta v. Union of India*, the mercy petition of the petitioner who was sentenced to death was pending before the President of India for about 8 or 9 years. The matter was brought to the notice of the Court by Madhu Mehta, the National Convener of death of Hindustani Andolan. Following Triveniben's decision the Court directed the death sentence to be commuted to life imprisonment as there were no sufficient reasons to justify such a long delay.

In *Francis Coralie v. Union Territory of Delhi*, the SC held that the right of detune to have interview with his lawyer and family member is part of his 'personal liberty' guaranteed by Art. 21 and cannot be interfered with except in accordance with reasonable, fair and just procedure established by law. The Court held that the provisions of the COFEPOSA which permitted only one interview in a month to detune with members of his family were violation of Art.14 and 21 and unconstitutional and void.

**RIGHT TO INTERVEIW:-**

**FAIR TRIAL INCLUDES FAIR INVESTIGATION:**

In *Nirmal Singh Kahlon v. State of Punjab*, the Court has held that fair trial includes fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Art.21. But the State has a larger obligation, i.e., to maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation.

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71 AIR 1989 4SCC 62
72 AIR 1981 SC 746
73 AIR 2009 SC 984
8. SENTENCE OF DEATH AND ART. 21:

In Jagmohan Singh v. Uttar Pradesh, the petitioner challenged the validity of death sentence on the ground that it was violative of Arts. 19 and 21 because it did not provide any procedure. It was contended that the procedure prescribed under Criminal Procedure Code was confined only to findings of guilt and not awarding death sentence. The Supreme Court held that the choice of awarding death sentence is done in accordance with the procedure established by law. The Judge makes the choice between capital sentence or imprisonment of life on the basis of circumstances and facts and nature of crime brought on record during trial. Accordingly, the Court held that capital punishment was not violative of Arts. 14, 19 and 21 and was therefore constitutionally valid.

But in the case of Rajendra Prasad v. State of U.P., Krishna Iyer, J., held that capital punishment would not be justified unless it was shown that the criminal was dangerous to the society. He held that giving discretion to the Judge to make choice between death sentence and life imprisonment on "special reasons" under Section 354 (3), Cr. P.C., would be violative of Art.14 which condemns arbitrariness. He pleaded for the abolition of death penalty and retention of it only for punishing "white collar offences".

Sen. J., in his dissenting judgment, held that the question is to be decided by Parliament and not by the Court. It is submitted that the minority judgment is correct because -after the amendment in the Cr.P.C. and the decision in Jagmohan Singh's case the death penalty is only an exception and the life imprisonment is the rule. The discretion to make choice between the two punishments is left to the Judges and not to the Executive.

In Bachan Singh v. State of Punjab the SC (Bhagwati, J. dissenting) has overruled Rajendra Prasad's decision and has held that the provision of death penalty under Section 302, I.P.C. as an alternative punishment for murder is not violative of Article 21. The death penalty for the offence of murder does not violate the basic feature of the Constitution. The International Covenant of Civil
and Political Rights to which India has become party in 1979 do not abolish imposition of death penalty in all circumstances. All that it requires is, that

1. Death penalty should not be arbitrarily inflicted,
2. It should be imposed only for most serious crimes.

In *Deena v. Union of India*, the constitutional validity of Section 354 (5) Cr.P.C. 1973 was challenged on the ground that hanging by rope as prescribed by this section was barbarous, inhuman and degrading and therefore violative of Art. 21. It was urged that State must provide a humane and dignified method for executing death sentence. The Court unanimously held that the method prescribed by Section 354 (5) for executing the death sentence by hanging by rope does not violate Art. 21. Relying on the report of U.K. Royal Commission, 1949, the opinion of the Director General of Health Services of India, the 35th report of the Law Commission, opinion of Prison Advisers and forensic medicine, the Court held that hanging by rope is the best and least painful method of carrying out the death sentence than any other methods. The Judges declared that neither electrocution, nor lethal gas, or shooting, nor even the lethal injection has "any distinct advantage" over the system of hanging by rope.

In *Attorney General of India v. Lachma Devi*, it has been held that the execution of death sentence by public hanging is barbaric and violative of Art. 21. It is true that the crime of which the accused have been found guilty is barbaric, but a barbaric crime does not have to be visited with a barbaric penalty such as public hanging.

**PROTECTION AGAINST ILLEGAL ARREST, DETentions AND CUSTODIAL DEATH:**

In *Jogindar Kumar v. State of U.P.*, The Court has held that a person is not liable to be arrested merely on the suspicion of complicity in an offence.

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77 AIR 1983 4SCC 645
78 AIR 1986 SC 467
79 AIR 1994 4SCC 260
There must be some reasonable justification in the opinion of the police officer effecting the arrest that such arrest was necessary and justified.

In the instant case, a practising lawyer was called to the police station in connection with a case under inquiry on 7.1.1994. On not receiving any satisfactory account of his whereabouts the family member of the detained lawyer filed a habeas corpus petition before the Supreme Court and in compliance with the notice, the lawyer was produced on 14.1.1994 before the Court. The police contended that the lawyer was not in detention but was only assisting the police to detect some cases. The Court held that though at this stage the relief in habeas corpus could not be granted yet the Supreme Court laid down certain requirements to be followed by the police before arresting a person.

In *Jolly George Varghese v. Bank of Cochin*, 80 it has been held that the arrest and detention of an honest judgment-debtor in civil prison, who has no means to pay the debt in absence of *mala fide* and dishonesty, violates Article 11 of the International Covenant on Civil and Political Rights and Article 21 of the Constitution.

*In D.K. Basu v. State of W.B.*, 81 the Supreme Court has laid down detailed guidelines to be followed by the Central and State investigating and security agencies in all cases of arrest and detention. The matter was brought before the Court by Dr D.K. Basu, Executive Chairman of the Legal Aid Services, a non-political organisation West Bengal through a public interest litigation. He addressed a letter to the Chief Justice drawing his attention to certain news items published in the Telegraph and Statesman and Indian Express regarding deaths in police lock ups and custody. This letter was treated as a writ petition by the Court. The Court held that it is violation of Art. 21 and gave the detail guidelines in the matter.

**FOLLOWING ARE THE GUIDELINES LAID DOWN BY THE COURT:**

1. An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to have an

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80 AIR 1980 SC 470
81 AIR 1997 SC 610.
interest in his welfare told as far as is practicable that he has been arrested and where he is being detained.

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

3. An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power flow from Art. 21 and Art. 22 and therefore they must be enforced strictly.

4. Guidelines given by the SC in all cases of arrest and detention -
   a) The Police officer should bear accurate visible and clear identification and name with their designation. The particular of all such police personnel who handle interrogation of the arrestee must be recorded in the register.
      b) The police officer carrying out the arrest of the arrestee to prepare a memo of arrest at the time of arrest and such memo to be attested by at least one witness, who may either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It is to be counter-signed by the arrestee and it should contain the time and place of arrest.
      c) The time, place of arrest and venue of custody of the arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of that area concerned telegraphically within a period of 8 to 12 hours after the arrest.
      d) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of this person who has been informed of the arrest and the name of the particulars of the police officials in whose custody the arrestee is.
      e) The arrestee should when he so requests, be also examined at the time of arrest and major and minor injuries, if any present on his or her body must be recorded at that time. The "inspection memo" must be signed by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee.
      f) The arrestee is to be subjected to medical examination by a trained doctor every 48 hours during his detention in custody, by a doctor of the panel approved doctors appointed by Director, Health Services of the State or Union
Territory concerned. Director, Health Services to prepare such a panel for all tehsil and districts as well.

\textbf{g)} Copies of all documents including the memo of arrest should be sent to the Magistrate for his record. The arrestee may be permitted to meet his lawyer during interrogations, though not throughout the interrogation.

\textbf{h)} A police control-room should be provided at all district and State Headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control-room, it should be displayed on a conspicuous notice board.

\textbf{9. COMPENSATION FOR VIOLATION OF ART.21:}

In \textit{Rudal Shah v. State of Bihar}, $^82$ the SC has held that the Court has power to award monetary compensation in appropriate cases where there has been violation of the constitutional right of citizens. In the present case the SC directed Bihar Government to pay "Compensation" of Rs. 30,000 to Rudal Shah who had to remain in the jail for 14 years because of the irresponsible behavior of the State Government Officers even after his acquittal. He was acquitted by the Sessions Court on June 30, 1968 but was released from jail only on Oct. 16, 1982 when the Court intervened. Describing this state of affairs as "sordid and disturbing" the Court asked the Patna HC to find out if there were any other detunes suffering a fate similar to Rudal Shah. Thus it is clear from this ruling that the Court can order payment of compensation to victims of State violence.

In \textit{Bhim Singh v. State of J.K}, $^83$ the Court awarded a sum of Rs. 50,000 to the petitioner as compensation for the violation of his constitutional right of personal liberty under Art. 21. MLA was arrested and detained in police custody and deliberately prevented from attending Session of the Legislative Assembly.

In \textit{People's Union for Democratic Rights v. Police Commissioner, Delhi Headquarter}, $^84$ a laborer was taken to the police station for doing some work. He was severely beaten when he demanded wages and ultimately succumbed to

\footnotesize{$^82$ AIR 1983 4SCC 141}

\footnotesize{$^83$ AIR 1985 4SCC 677}

\footnotesize{$^84$ AIR 1989 4 SCC 730}
the injuries. It was held that the State was liable to pay compensation of Rs. 75,000/-.

In *Saheli v. Commr. of Police*, the SC directed the Delhi Administration to pay Rs. 75,000/- as exemplary compensation to the mother of a 9-year-old child who died due to beating by the Police officer.

In *State of Maharashtra v. Ravikant S. Patil*, an under-trial prisoner was handcuffed and paraded on streets. He was suspected to be involved in a murder case. A local newspaper carried a news item that he was taken in a procession from Police station through the main streets of the city for the purpose of investigation. The Bombay High Court held that handcuffing and parading of the petitioner was unwarranted and violative of Art. 21 and directed the Inspector of Police who was responsible for this, to pay Rs. 10,000 by way of compensation. It also directed that this act of violation of Art. 21 should also be entered in his service record.

The SC upheld the judgment of the HC directing a payment of compensation but held that the police officer was not personally liable as he acted as an official.

In *Nilabati Behera v. State of Orissa*, the SC awarded compensation of Rs. 1,50,000/- to the mother of the deceased who died in the police custody due to beating. The police version was that the deceased had escaped from police custody at about 3 a.m. by chewing off the rope and thereafter his body was found at the railway track. On the basis of evidence and medical report it was found that the deceased had died due to beating.

In *Chiranjit Kaur v. Union of India*, an Army Officer died in service due to negligence of army officers resulting in great mental agony and physical and financial hardship to the widow of the deceased and two minor children. The Court awarded the widow of the deceased a compensation of Rs. 6 lakhs as well as special Family Pension and Children Allowance.

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85 AIR 1990 SC 513
86 AIR 1991 2SCC 373
87 AIR 1993 2SCC 746
88 AIR 1994 2 SCC 1
In *Shakuntala Devi v. Delhi Electric Supply Undertaking* 89 the petitioner's husband died when he came into contact with the live electric wire while returning from the place of his employment and got electrocuted. The live electricity wire was lying open in the field in a rainy season and was not repaired in spite of many complaints. The Court held the Delhi Electric Supply Undertaking liable for the negligence and awarded compensation of ex-gratia amount to the widow and her minor children.

In *Kewal Pali v. State of Uttar Pradesh*, 90 the Court has awarded compensation to the widow of a convict who was killed in jail by a co-accused while serving his sentence under Section 302 I.P.C. as it resulted in deprivation of his life contrary to law and in violation of Art.21. His death was caused due to the failure of jail authorities to protect him. Accordingly, the Court directed the Government to pay a compensation of Rs.1,00,000/- to the widow and children of the deceased.

Compensation has been awarded in cases, *inter alia*, of -

a. Death or injury caused by Police atrocities, such as unlawful assault, *Saheli v. C.P.* 91 or unjustifiable firing on an innocent mob; (*Ega v. Govt. of A.P.*) 92 or death in police custody (*Golkha v. D.G.P.*) 93

b. Preventing a Member of the Legislature from attending its session by detaining him high-handedly and maliciously. (*Bhim v. State of J.K.*) 94

c. Arresting a person on the basis of alleged recovery of arms and ammunitions and manipulating records to that effect by the police (*Mohd. Sahid v. Govt. NCT, Delhi*) 95

d. Abduction and elimination of seven persons by police party misusing the official position to take private revenge. (*Inder Shingh v. State of Punjab*) 96

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89 AIR 1995 2SCC 369 
90 AIR 1995 3 SCC 600
91 AIR 1990 SC 513
92 AIR 1993 Cr.LJ 691 (Para – 25)
93 AIR 1992 Cr.LJ 2901 (Para -13)
94 AIR 1985 4SCC 677
95 AIR 1998 SC 2023
96 AIR 1995 3SCC 702
e. Compensation was awarded in cases where an under trial lunatic prisoner was languishing in jail for more than thirty years without any treatment. *(R.D. Upadhyay v. State of A.P.)* ⁹⁷

f. Negligence of jail authorities in taking timely preventive action, which caused the death of an under trial prisoner. *(Nurthy Devi v. State of Delhi)* ⁹⁸

g. Loss of life due to dereliction of duty by Government servants. In the case of rape, robbery and murder in running trains, the guard and motorman refusing to stop train in spite of the alarm chain was pulled. The court held that the railways, has failed to take reasonable care as was expected from a common carrier. *(P.A. Narayanan v. Union of India)* ⁹⁹

h. In the case of negligence of Government officials, the State is vicariously liable and it cannot claim any immunity. *(N. Nagendra Rao v. State of A.P.)* ¹⁰⁰

i. A six year child died due to falling in "uncovered sewerage tank". Court directed the State Government to pay compensation granting liberty to the Government to take proceedings to claim the said amount from any other authority which may be responsible for keeping the sewerage tank open. *(Kumari v. State of T.N.)* ¹⁰¹

j. A public functionary if acts maliciously or oppressively and the exercise of power results in harassment and agony, then it is not exercise of power, but its abuse. No law gives protection in such cases. Compensation or damages may arise even the officer discharges his duty honestly and bona fide. But when it arises due to arbitrary or capricious behavior, then it loses its individual character and assumes social significance. Award of compensation for harassment by public authority not only compensates individual, satisfies him personally, but helps in curing social evil. *(Lucknow Development Authority v. M.K. Gupta)* ¹⁰²

k. After filing habeas corpus petition, the detune was released, but the petition does not become in fractious. The petition can be proceeded to determine

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⁹⁷ AIR 2000 SC 1946  
⁹⁸ AIR 1998 9 SCC 604  
⁹⁹ AIR 1998 3 SCC 67  
¹⁰⁰ AIR 1994 SC 2633  
¹⁰¹ AIR 1992 SC 2069 : (1992) 2 SCC 223  
¹⁰² AIR 1994 SC 787
whether the petitioner was entitled to compensation as a public law remedy under Art.21. (Arvinder Singh Bagga v. State of U.P.) 103

I. In the case of riot, the State is not necessarily liable in every case where there is loss of life or damage to the property during rioting. Where, however, it is established that the Officers of the State ordained with duty of maintaining law and order have failed to protect the life and property of person and such failure amounts to dereliction of duty, the State bound to compensate the victim. Such law can be enforced by public law remedy or common law remedy. Where necessary facts to establish culpable negligence on the part of the official are available, the High Court under Art. 226 can issue appropriate directions. (P. P.M. Thangiah Nadar Firm v. Government of Tamil Nadu,) 104.

POLICE ATROCITIES AND CUSTODIAL DEATH:

In Shakila Abdul Gaffar v. Vasant Raghunath Dhokale 105 Death due to police atrocity – the Court awarded compensation of Rs. 10000/-

COMPENSATION TO PERSONS KILLED IN "FAKE ENCOUNTER":

In People's Union for Civil Liberties v. Union of India, 106 the petitioner, Peoples Union for Civil Liberties, filed a writ petition under Art. 32 of the Constitution for issuing appropriate direction for instituting a judicial inquiry into the fake encounter by Imphal Police in which two persons were killed, to direct appropriate action to be taken against the erring officials and to award compensation to the members of the family of deceased. The police authorities denied the allegation of "fake encounter". The Supreme Court held that killing of two persons in fake encounter by the police was clear violation of the right to life guaranteed in Art. 21 and the defense of sovereign immunity do not apply in such case. The Court awarded Rs.1, 00,000/- as compensation for each deceased.

103 AIR 1995 (Supp-3) SCC 716
104 (2006) 5 CTC 97 (FB)(Mad)
105 AIR 2003 SC 4567
106 AIR 1997 SC 1203
COMPENSATION TO RAPE VICTIMS:

In *Delhi Domestic Working Women's Forum v. Union of India*, the petitioner Women's Forum through a Public Interest Litigation brought the pathetic condition of four domestic women servants who were raped by seven army personnel in a running train while travelling by the Muri Express from Ranchi to Delhi. The victims were helpless tribal women belonging to State of Bihar. Notwithstanding the occurrence of such barbaric assault on the person and dignity of women neither the Central Government nor the State Government has bestowed any serious attention as to the need for rehabilitation and the Court expressed serious concern about the increase of crimes against women in recent times and suggested that the defects in criminal laws be removed soon.

The Court observed as follows:

"The defects in the present system are complaints are handled roughly and are not given such attention as is warranted. The victims, more often than not, are humiliated by the police. The victims have invariably found rape trials a bad experience. The experience of giving evidence in Court has been negative and destructive. The victims often say, they considered the ordeal to be even worse than the rape itself. Undoubtedly the Court proceedings added to and prolonged the psychological stress they had to suffer as a result of the rape itself."

In view of this, the Court laid down the following guidelines for trial of rape cases—

1. The complainants of sexual assaults cases should be provided with legal representation. A person must be well acquainted with criminal justice. Advocate's role to explain to her the nature of proceedings, to prepare her for the case, to assist her in the police station and in Court, to provide her with guidance as to how to obtain help from other agencies, for example, medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represents her till the end of the case.

2. Legal assistance at the police station.

\[107\] AIR 1995 1 SC 40
3. The police should be under a duty to inform the victim of her right to representation before any questions were asked to her and the police report should state that the victim was so informed.

4. A list of advocates willing to act in these cases should be kept at the police station.

5. The advocate shall be appointed by the Court on application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay advocates would be authorised to act at the police station before leave of the Court was sought or obtained.

6. In all rape trials anonymity, (name not to be disclosed), of the victim must be maintained.

7. It is necessary to set Criminal Injuries Compensation Board. Rape victims frequently incur substantial loss. Some are too terrorised to continue in employment.

8. Compensation for victims to be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board to take into account pain, suffering and shock as well as the loss of earnings due to pregnancy and child birth if this accrued as a result of rape.

   The National Commission for Women was asked to frame schemes for compensation and rehabilitation to ensure justice to victims of such crimes. The Union of India to examine and take necessary steps to implement them at the earliest.

**GANG RAPE ON BANGLADESHI WOMAN—COMPENSATION CAN BE GIVEN UNDER PUBLIC LAW:**

In *Chairman, Railway Board v. Chandrima Das*\(^{108}\), the SC has held that where a foreign national, a Bangladeshi woman was gang raped compensation can be granted under Public Law (Constitution) for violation of fundamental rights, on the ground of Domestic Jurisdiction based on constitutional provisions and Human Rights jurisprudence.

\(^{108}\) AIR 2000 SC 988
As regards the question whether Fundamental Rights are available to foreign nationals, or not the Court held that the relief can be granted to the victim for two reasons, firstly, on ground of Domestic Jurisprudence based on constitutional provisions and secondly, on the ground of Human Rights Jurisprudence based on the Universal Declaration of Human Rights, 1948 which has the international recognition.

According to the tenor of the language used in Art.21 it will be available not only to every citizen of this country, but also to a "person" who may not be a citizen of the country.

**INTERIM COMPENSATION TO RAPE VICTIM:**

In *Bodhisathwa Gautam v. Sublira Chakraborty* 109 the accused induced the complainant and cohabited with her, giving her a false assurance of marriage but also fraudulently went through a certain marriage ceremony and made the complainant to believe that she was a lawfully married wife of the accused.

The SC held that,

"Women also have the right to life and liberty; they also have the right to be respected as equal citizens. Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life."

Rape is a crime against basic human rights and is also violative of the victim's most cherished of the fundamental rights, normally, the right to life contained in Art.21.

**10. PREVENTION OF SEXUAL HARASSMENT OF WORKING WOMEN:**

In *Vishaka v. State of Rajasthan* 110 the SC has laid down exhaustive guidelines to prevent sexual harassment of working women in places of their work until legislation is enacted for the purpose. The Court held that it is the duty of the employer or other responsible person in work-places or other institutions, whether public or private, to prevent sexual harassment of working women.

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109 AIR 1996 1 SCC 490

110 AIR 1997 SC 3011
A writ petition filed by Vishaka, a nongovernmental organisation working for "gender equality" by way of PIL seeking enforcement of fundamental rights of working women under Arts.14, 19 and 21. The Court relied on International conventions and norms which are significant in interpretation of guarantee of gender equality, right to work with human dignity in Art.14, 15, 19 (1) (a) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. The immediate cause for filing the petition was alleged brutal gang rape of a social worker of Rajasthan. The SC, in absence of enacted law to provide for effective enforcement of basic human rights of gender equality and guarantee against sexual harassment, laid down the following guidelines:

1. All employers persons in charge of work place whether in the public or private sector, should take appropriate steps to prevent sexual harassment without prejudice to the generality of his obligation, he should take the following steps:
   a) Express prohibition of sexual harassment which include physical contact and advances; a demand or request for sexual favours; sexually coloured remarks; showing pornographic or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.
   b) The rule or regulation of Government and Public Sector bodies relating to conduct and discipline should include rules prohibiting sexual harassment and provide for appropriate penalties.
   c) As regards to private employers, steps to be taken to include the aforesaid prohibitions in the Standing Orders under the Industrial Employment (Standing Orders).Act, 1946.
   d) Appropriate work conditions should be provided in respect of work leisure, health and hygiene to further ensure that there is no hostile environment towards women at work place and no woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

2. Where such conduct amounts to specific offences under the Indian Penal Code or under any other law, the employer to initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

3. The victims of sexual harassment to have the option to seek transfer of the perpetrator or their own transfer.
This decision of the Court will go a long way in increasing a sense of security in the minds of working women that their honour and dignity will be safe in their place of work.

In Apparel Export Promotion, Council v. A. K Chopra,\textsuperscript{111} is the first case in which the Supreme Court applied the law laid down in the case of Vishaka v. State of Rajasthan\textsuperscript{112} and upheld the dismissal from service of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexual harassment of a subordinate female employee at the place of work on the ground that it violated her fundamental right guaranteed by Art. 21. The court said that each attempt of sexual harassment of female at the place of work results in violation of the fundamental right to Gender Equality in Art. 14 and Art. 21

\section*{11. CHILDREN LIVING IN JAIL WITH PRISONER MOTHER: DIRECTIONS FOR SAFEGUARDING THEIR WELFARE:}

In \textit{R.D. Upadhayay v. State of Andhra Pradesh}\textsuperscript{113} - a writ petition was filed by the Women’s Action Research and Legal Action for Women highlighting the plight of children living in jails with their prisoner mother and requesting the Court to pass appropriate directions for their proper care, welfare and development. It was said that in spite of several constitutional provisions and laws made there under, such as Art.15, 15(3), 21 A, 14, 21, 23, 39 (e), 39 (f), 42, 45, 46, 47 and laws, such as Guardian and Wards Act, 1890, Child Marriage Restraint Act, 1929, Factories Act, 1948, Hindu Adoption and Maintenance Act, 1956, Probation of Offenders Act, 1958, Orphanages and other Charitable Homes (Supervision and Control) Act, 1960, Child Labour (Prohibition and Regulatory) Act, 1986, Juvenile Justice (Care and Protection of Children) Act, 2000 etc. and National Policy of the State and its commitment of Government of India to U.N. Convention of Rights of Children, the plight of children particularly living in jails has not been improved. The Supreme Court showing serious concern issued detail directions for their interest regarding food, shelter, medical care, clothing,

\textsuperscript{111} AIR 1999 SC 625
\textsuperscript{112} AIR 1997 SC 3011
\textsuperscript{113} AIR 2006 SC 1946
education and recreation facilities which are declared to be child's right. The Court also issued directions as regards to their diet. The Court held that before sending to jail a woman who is pregnant the authorities concerned must ensure that jail in question has basic minimum child delivery as well as for providing pre-natal and post-natal care for both, the mother and child. Birth of child should not to be recorded as born in 'prison'. It shall be registered in a local birth registration office. Child above 6 years is not to be kept with female prisoners. The Court directed that the Jail Manual must be amended suitably so as to incorporate these changes.

12. RIGHT TO FOOD-
STRAWNATION DEATH: STATE TO PROVIDE FREE FOOD:

In *PUCL v. Union of India*,\(^{114}\) the SC has held that the people who are starving because of their inability to purchase foods grains have right to get food under Art. 21 and therefore they ought to be provided the same free of cost by the States out of surplus stock lying with the States particularly when it is unused and jottting. The Court directed the States to make surplus food grains lying in godowns available to all of them immediately through PDS shops to avoid starvation and mal-nourishment.

Art. 21, in its true meaning includes the basic right to food, clothing and shelter, *(Chameli Singh v. State of U.P.)*\(^{115}\), *(Pachim Banga Khet Majdoor Samittee v. State of W.B.)*\(^{116}\), *(Francis Coralie Mullin v. Union Territory of Delhi)*\(^{117}\) it is indeed surprising that the justiciability of the specific right to food as an integral right under Article 21 had never been articulated or enforced until 2001 *(Kishan Pattnayak v. State of Orissa)*\(^{118}\)

In 2001, there was a massive drought in several States in India especially Orissa, Rajasthan and Madhya Pradesh. The poor were starving in the drought -hit villages; the Central Government had excess food grains in its storehouses,

\(^{114}\) AIR 2000(5) SC ALE 30
\(^{115}\) AIR 1996 2SCC 459
\(^{116}\) AIR 1996 4SCC 37
\(^{117}\) AIR 1981 1 SCC 746
\(^{118}\) AIR 1989 Supp (1) SCC 258
which were not being distributed. The agitation in the country over lack of access to food grains took rapid momentum after shocking incidents of death due to starvation.

THE RIGHT TO FOOD PETITION:
A public interest litigation was filed by the People's Union for Civil Liberties (PUCL) in April 2001.

The right to food petition raised three major questions:

1. Starvation deaths had become a national phenomenon while there is a surplus stock of food grains in government granaries.

2. Does not the right to life under Article 21 include the right to food?

3. Does not the State has a duty to provide food especially in situations of drought to people who are not in a position to purchase food?

The petition demanded the immediate release of food stocks for drought relief, provision of work for every able-bodied person and the increase in quota of food grains under the Public Distribution Scheme (PDS) for every person.

THE SC AND ENFORCEMENT:

The SC expressed serious concern and broadened the scope of the petition from the initially mentioned six drought-affected States, to include the entire country.

FOOD DISTRIBUTION SCHEMES MADE INTO ENTITLEMENTS:

The Court, in an unprecedented interim order on 28-11-2001\(^\text{119}\) directed all the State Governments and the Union of India to effectively enforce following different Centrally-sponsored food schemes to the poor. These food security schemes were declared as entitlements (rights) of the poor, and the Court also laid down very specific time-limits for the implementation of these schemes with the responsibility on the States to submit compliance affidavits to the Court. These include–

1. The Antyodaya Anna Yojna,

2. The Annapurna Scheme and several employment schemes,
3. The Integrated Child Development Services (ICDS) Programme,
4. The National Midday Meals Programme (NMMP),
5. The National Old Age Pension Scheme,
6. The National Maternity Benefit Scheme and
7. The National Family Benefit Scheme providing food for work.

Of the above schemes, the most significant is the order directing all State Governments to provide cooked midday meals in all government schools by January 2002. Midday meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days. Governments providing dry rations instead of cooked meals must within three months start providing cooked meals in all government and government-aided primary schools in at least half the districts of the State (in order of poverty) and must within a further period of three months extend the provision of cooked meals to the remaining parts of the State.

In addition, all State Governments were directed to take their “entire allotment of food grains from the Central Government under the various schemes and disburse the same in accordance with the schemes”.

The SC went several steps further in directing strict implementation of already formulated schemes within fixed time-frames, to make them entitlements and to ensure accountability.

With a view to ensuring adequate food to the poorest of the poor, the Supreme Court in March 2002 asked all States and Union Territories to respond to an application seeking the framing of wage employment schemes such as the Sampoorna Gramin Rozgar Yojna (SGRY) ensuring the right to work to adults in rural areas.

On 8-5-2002, the Supreme Court agreed on a system of monitoring. The Bench also added that the States are to provide funds utilisation certificate before the money is released for use.

**ENFORCEMENT OF THE RIGHT TO FOOD:**

The orders of the Supreme Court in the right to food petition are already being implemented at the ground level. Since the beginning of the 2002 academic
year, a daily attendance of children in the schools has also increased and this was attributed to the midday meals.\textsuperscript{120}

These orders of the Supreme Court bear great relevance for social rights jurisprudence. Pleas on financial constraints did not seem to have affected the Court in making this order for enforcement of the right to food.

There is increasing recognition worldwide that food and nutrition is a human right and thus there is a legal obligation to assure that all people are adequately nourished.\textsuperscript{121}

Ground-level reports and surveys done for the implementation of the Supreme Court orders are indeed encouraging and several State Governments along with the NGOs are actually implementing the several schemes although by no means is the implementation of all the schemes perfect in any way, and there remains a lot of scope for further improvement.

13. **EMERGENCY AND ART. 21:**

Prior to the 44th Amendment the Constitution provided for the suspension of the right guaranteed by Art. 21. Under Art. 359 the President is empowered by Order to suspend the right to move any court for the enforcement of right conferred by Art. 21. For the first time, Art. 21 was suspended during the Emergency arising out of the Chinese attack in 1962. In 1971, it was suspended for the second time when Pakistan attacked India. In 1976, this Article was again suspended when the Government headed by Prime Minister Indira Gandhi declared emergency on the ground of internal disturbance.

In *A.D.M., Jabalpur v. S. Shukla* \textsuperscript{122} popularly known as the habeas corpus case, it was held that Article 21 was the sole repository of the right to life and personal liberty and if the right to move court for the enforcement of that right was suspended by the Presidential Order under Art. 359 the detenue had no ‘locus standi’ to file a writ-petition for challenging the legality of their detention.

\textsuperscript{120} R. Khera Midday Meals in Rajasthan the Hindu, Benglor (13/11/2002)

\textsuperscript{121} G. Kent. *The Human Right to Food in India* (2002)

\textsuperscript{122} AIR 1976 SC 1207
44TH AMENDMENT AND ART.21:

The 44th amendment has amended Art.359 which now provides that the enforcement of the right to life and liberty under Art.21 cannot be suspended by the Presidential Order. This amendment is intended to prevent the re-occurrence of the situation in future which arose in the habeas corpus case. In view of the 44th amendment, the A.D.M., Jabalpur v. S. Shukla 123 is no longer a good law.

14. RIGHT TO EDUCATION:

In Mohini Jain v. State of Karnataka, 124 popularly known as the "Capitation Fee case" the Supreme Court has held that the right to education is a fundamental right under Article 21 which cannot be denied to a citizen by charging higher fee known as the capitation fee. The right to education flows directly from right to life.

The education in India has never been a commodity for sale, their Lordships declared.

In Unni Krishnan v. State of A. P.,125 the SC held that right to education is a fundamental right under Article 21. But as regards its content the Court partly overruled the Mohini Jain's case and held that the right to free education is available only to children until they complete the age of 14 years. Mohini Jain's case was not right in holding that charging of any amount must be described as capitation fee. The majority, held that admission to all recognised private educational institutions particularly medical and engineering shall be based on merit, but 50 per cent of seats in all professional colleges be filled by candidates prepared to pay a higher fee. The court held that there shall be no quota reserved for the management or for any family, caste or community which may have established such college. The criteria of eligibility and all other conditions shall be the same in respect of both "free seats" and "payment seats".

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123 ibid
124 AIR 1992 3SCC 666
125 AIR 1993 1SCC 654
In *TMA Pai Foundation v. State of Karnataka*, an 11 Judge Constitution Bench of the Supreme Court has overruled the *Unni Krishnan* decision partly. The Court held that the scheme relating to admission and the fixing of fee were not correct and, to that extent, they are overruled.

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

Making education compulsory would not solve the problem. The only alternative is to encourage non-governmental organisations to come forward and participate in it to fulfill the mandate of the Constitution. Of course, the government must help them and see that teachers and employees working in these private educational institutions get minimum salary to survive and make the scheme successful.

In the absence of these initiatives, it is doubtful that the constitutional mandate to provide free education to all children in order to become able citizens of the country would be successful. Private public schools have become centres for exploitation.

**PASSPORT FOR EDUCATIONAL PURPOSE:**

In *Francis Manjooram and others v. Government of India, Ministry of external affairs*.

A young graduate in medicine and surgery, obtained facilities for higher training and study in the USA and applied for a passport. The application was rejected and he challenged the validity of that rejection. The question was – Whether the state can have such a consideration namely, the country’s own need to retain qualified personal within itself?

The Court observed that, on the basis of state’s responsibility owed to another state in the comity of nations whether the state has to consider any

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126 AIR 2003 SC 355
127 AIR 1996 ker.20
detriment which its citizen-applicant might cause to the country to which he proposes to travel? The court held that, the denial of a passport amounts to violation of Art.19 (1) (d) and 21.

15. **RIGHT TO PRIVACY:**

In *R. Rajagopal v. State of T.N.*,\(^{128}\) popularly known as "Auto Shanker’s case. The SC has expressly held the "right to privacy" or the right to be let alone is guaranteed by Art.21. A citizen has a right to safeguard the privacy of his own, his family, person concerned would be liable in an action for damages. However, position may be different if he voluntarily puts into controversy or voluntarily invites or raises a controversy.

This rule is subject to an exception that if any publications of such matters are based on public record including court record it will be unobjectionable.

An exception in the interests of decency under Art.19 (2) in the following cases, viz., a female who is the victim of a sexual assault, kidnapping, abduction or a like offence should not further be subjected to the indignity by publishing her name in press or media.

The second exception is that the right to privacy or the remedy of action for damages is simply not available to public officials as long as the criticism concerns the discharge of their public duties.

Autobiography written by the prisoner cannot be restrained on the grounds that it is defamatory. The officers can take action if publication is false.

In *State of Maharashtra v. Madhukar Narayan*\(^{129}\) it has been held that the right to privacy is available to the prostitute also.

In *Mr. X v. Z Hospital*\(^{130}\) it was held that to disclose that the appellant was suffering from AIDS the doctor has not violated the right to privacy.

In *Mrs. X v. Mr. Z*\(^{131}\) It was held that when adultery has been alleged for divorce and if husband is demanding the DNA test of preserved foetus - then there is no violation of Art.21.

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\(^{128}\) AIR 1994 6SCC 632

\(^{129}\) AIR 1991 SC 207

\(^{130}\) AIR 1995 SC 495
CHILD CUSTODY:

In *L.Chandran v. Venkatalakshmi* 132 the father’s right to custody of his child was contended as absolute and unqualified. It was held that child is a person within the meaning of Article 21 and it has right to its life. Recognition of father’s unlimited right to the custody of the child would almost reduce the child to the position of a chattel.

MOSQUITO – MENACE:

In *an Niyamakendram, Kochi v. Secretary Corporation of Kochi.* 133

The Court held that, a responsible local body constituted for the purpose of preserving public health cannot shirk from its duty by pleading financial inability.

VALIDITY OF SECTION 9, HINDU MARRIAGE ACT, 1955:

In *Smt. Hanrinder Kaur v. Harmonder Singh Choudhry* 134

Sect. 9 of the Hindu Marriage Act, 1955 founding the matrimonial relief of restitution of conjugal rights is held to be not violation of Article 14 and 21. In domestic affairs, like matrimonial life and its privacy, there is no question of importing Art.21.

DUTY OF DISCLOSURE:

*People’s Union for Civil Liberties v. Union of India* 135

Is a case under the Prevention of Terrorism Act, 2002, where it was held that any person can be compelled to furnish the information about terrorist acts and in that context, the supreme court made the following observations-

“Section 39 of the code of Criminal Procedure, 1973 casts a duty upon every person to furnish information regarding offences. Criminal justice system cannot

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131 AIR 2002 Delhi 217
132 AIR 1900 Ap.1
133 AIR 1997 Ker. 152
134 AIR 1984 Delhi 66
135 AIR 2002 SC 456
function without the co-operation of people. Rather it is the duty of everybody to assist the State in detection of the crime and bringing criminal to justice. Withholding such information cannot be traced to right to privacy, which itself is not an absolute right (Sharda v. Dharmpal)\textsuperscript{136}, “Right to privacy is subservient to that of security of state.”

**OVERLOADING SCHOOL BUS VIOLATIVE OF ARTICLE 21:**

In *Swapan Kumar Saha v. South Point Montessori High School and others*\textsuperscript{137}, the Gauhati HC has held that the school management is under obligation to provide safe journey to children to school. The Court held that the overloading of school bus is violation of the right of school children. The Court directed the State to take remedial measures to enforce provisions of Motor Vehicles Act. The Court issued directions to school authorities to comply with the provisions of the Act.

**RIGHT TO LIFE AND DONATION OF AN ORGAN -**

In *Smt. Sumakurian Mathava v. Secretary Medical and Health Secretarial Building Saifabad and others*,\textsuperscript{138} the Court held that donation of organ by husband to his ailing father cannot be objected to by wife on the ground of violation of her fundamental right to life under Article 21. No material has been produced in support of her assertion that donation of part of liver would affect health of donor. Moreover, the act of husband who is a private individual is not comprehended by Article 21 and consequently not amenable to judicial review under Article 226.

**BAN ON SMOKING IN PUBLIC:**

In *Murli S. Deora*\textsuperscript{139} the Court considering the adverse effect of smoking on smokers and other persons directed the Central and State Govt. to issue orders banning smoking in public places. A non-smokers is afflicted by various

\textsuperscript{136} AIR 2003 (4) SCC 493
\textsuperscript{137} AIR 2008 (NOC) 136 (GAU)
\textsuperscript{138} AIR 2008 (NOC) 374
\textsuperscript{139} AIR 2002 SC 40
diseases including lung cancer or heart disease only because he has to go to public place.

**VIRGINITY TEST VIOLATES RIGHT TO PRIVACY UNDER ART 21:**

In *Surjit Singh Thind v. Kanwaljit Kaur* the wife filed a petition for a decree of nullity of marriage on the ground that the marriage has never been consummated because the husband was impotent. In order to prove that the wife was not virgin the husband filed an application for her medical examination. The Court held that allowing the medical examination of a woman's virginity violates her right to privacy under Article 21.

**SURVEILLANCE:**

In *Malak Singh v. State of Punjab* the SC held that under Section 23 of the Punjab Police Act it was the duty of the police officers to keep surveillance over bad characters, and habitual offenders for the purposes of preventing crimes. So long as surveillance is for the purposes of prevention of crimes and confined to the limits prescribed by Rule 23 (7) of the Punjab Police Rule, a person cannot complain against the inclusion of his name in the surveillance register.

**PUBLICATION:**

In *State of Maharashtra v. Prabhakar Pandurang,* the petitioner was detained in jail under the Preventive Detention Act. He wrote a scientific book in prison and sought permission from the Government to send it to his wife for publication. The Government refused permission to him. The Court held that this was an infringement of his personal liberty as the restriction was not authorised by the Preventive Detention Act.

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140 AIR 2003 P&H 353
141 AIR 981 SC 760
142 AIR 1986 SC 424
DIVORCE PETITION:

Husband tapping conversation of his wife with others seeking to produce in Court, violates her right to privacy under Article 21.

In *Rayala M. Bhuvaneswari v. Nagaphainender Rayala* 143 the petitioner filed a divorce petition in the Court against his wife and to substantiate his case sought to produce a hard disc relating to the conversation of his wife recorded in U.S. with others. She denied some portions of the conversation. The Court held that the act of tapping by the husband of conversation of his wife with others without her knowledge was illegal and amounted to infringement of her right to privacy under Art.21.

In *Pragati Varghare v. Cyril George Varghese* 144 Mumbai HC has struck down Section 10 the Indian Divorce Act, 1869 under which a Christian wife had to prove adultery along with cruelty or desertion while seeking a divorce on the ground that it violates the fundamental right of Christian women guaranteed under Art.21, 15 and 14.

The Court also struck down Sections 17 and 20 of the Act which, stipulated that an annulment or divorce passed by a district Court needed to be confirmed by a 3 Judge Bench of the High Court. The Court held Section 10 compels the wife, who has been deserted or treated with cruelty to continue her life with a man she hates. Such a life is sub-human. There is denial to dissolve the marriage when the marriage has broken down irretrievably.

TELEPHONE - TAPPING: AN INVASION ON RIGHT TO PRIVACY:-

In *People Union for Civil Liberties v. Union of India* 145 popularly known as ‘Phone Tapping Case’. The Supreme Court has held that telephone tapping is a serious invasion of an individual's right to privacy which is part of the right to "life and personal liberty" enshrined under Art.21, and it should not be resorted to by the State unless there is public emergency or interest of public safety.

143 AIR 2008 AP 98
144 AIR 1978 SC 1675
145 AIR 1997 SC 568
Section 5(2) of the Act permits the interception of messages in accordance with the provisions of the Act. "Occurrence of any public emergency" or “in the interest of public safety are the *sine qua non*” for the application of the provisions under Section 5(2) of the Act.

If the Central Government is satisfied that it is necessary or expedient so to do in the interest of the sovereignty or integrity of the country or the security of the State or friendly relations with foreign States or public order or for preventing for incitements to the commission of an offence - it cannot intercept the message or resort to telephone tapping *unless a public emergency* has occurred or the interest of public safety or the existence of the interest of public safety.

The Court has laid down the following procedural safeguards for the exercise of power under Section 5(2) of the Indian Telegraph Act—

1. An order for telephone tapping can be issued only by the Home Secretary of the Central Government or the State Governments. In an urgent case, the power may be delegated to an officer of the Home Department of the Central and State Governments not below the rank of Joint Secretary.

2. The copy of the order must be sent to the Review Committee within one week of the passing of order.

3. The order ceases to have effect at the end of two months from the date of issue. The authority making the order may review before that period if it considers that it is necessary to continue the order in terms of Section 5(2) of the Act.

4. The authority must maintain the records of intercepted communications, the extent the material to be disclosed, number of persons, their identity and to whom the material is disclosed.

5. The use of the intercepted material must be limited to the minimum that is necessary in terms of Section 5(2) the Act.

6. The Review Committee to investigate whether there is or has been a relevant order under Section 5(2) of the Act.

In the case of contravention of the provisions of Sec. 5 (2) of the Act, the Court to set aside the order. It can also direct the destruction of the copies of the intercepted material.
No contravention of the relevant provision of the Act, record the finding.

The judgment will go a long way in protecting the right of privacy enshrined under Art.21.

**ILLEGALLYRecorded Conversation:**

*Willie Israel Aldermanet al. v. United stat’s* 146

The question before the American court was -Whether any of the Government’s evidence supporting the convictions was the product of any illegal surveillance to which any of the petitioners could object? It was held that, any petitioner would be entitled to the suppression of government evidence originated in electronic surveillance. It is violation of his right.

**INSURANCE POLICY AND ART.21**

In *LIC of India v. Consumer Education & Research Centre*,147 in the case - the conditions imposed and denial to accept policies under Table 58 were challenged by the respondent as violation of right to life in Art.21. The SC held that the terms and conditions imposed by the LIC for accepting policy must be just, fair and reasonable. The policy cannot be restricted only to salaried class in Government service or quasi Government bodies or reputed commercial firms. The Court held that such a condition is unconstitutional. However, since Table 58 is severable from rest of the condition the Court held that whole of Table 58 need not be declared unconstitutional.

**COMPULSORY BLOOD TEST TO DETERMINE PATERNITY VIOLATES ART. 21:**

In *Ningammar v. Chikkaiah* 148 the Karnataka HC has held that compelling a person to submit himself to medical examination of his blood test without his consent or against his wish amounts to interference with his fundamental right of life or liberty particularly even where there is no provision

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146 394 US 165, 22L Ed 2d 176.
147 AIR 1995 5SCC 482
148 AIR 2000 KAR 50
either in the Code of Civil Procedure or in the Evidence Act or any other law which may be said to authorise to court to compel a person to undergo such a blood test and create a doubt about the chastity of a woman or create a doubt about man's paternity. The facts of the case are that plaintiffs (1) wife and (2) daughter filed a suit for maintenance against defendant respondent. The defendant denied the allegation that plaintiff 2 was the, daughter of plaintiff (1) from defendant (1). The defendant moved an application with the prayer to the effect that in the circumstances of the case, the Court may direct plaintiffs (1) and (2) to subject themselves for Medical Examination of their blood group test in order to determine the paternity of plaintiff (2). The HC held that such an order by the trial Court was violation of Art.21 of the Constitution and the plaintiffs cannot be compelled to submit to Medical Examination of their blood group.

However, in Veeran v. Veeravarualle 149 the petitioner filed writ for DNA test to prove particularly for declaration that she is legitimate child born to her parents, i.e. (father and respondent mother). It was held that, the DNA test of father will only prove that the petitioner is father without any test conducted on mother. The mother was not made a party in the case.

**BIRTH TO THE CHILD:**

In *Hindustan Times* 150 a two-Judge Bench of the Madras HC held that a minor girl had the right to bear a child. In this case a 16 year old minor girl, Sashikala became pregnant and wanted to have the child against the opposition from her father. The father had filed a case in the Court seeking permission to have the pregnancy medically terminated on the ground that she was legally and otherwise also too young to take the decision to bear the child. It was argued that this would be injurious to the health of the minor mother and to the child born. On the other hand, the public prosecutor, defending the case of the girl, had argued that she had the right to bear the child under the broader "right to privacy". The Court accepted that Sashikala was a minor but did not agree with the petitioner's father. The Court held -

149 AIR 2009 MAD 64

150 3 DECEMBER, 1993
“The younger the mother; the better the birth”. On the other hand, termination of the first pregnancy could lead to sterility.

RIGHT TO MARRY AND IMMIGRATION:

In *R. v. Secretary of State For Home Affairs and another, Ex parte Bhajan Singh* 151

It was held that, Mr. Bhajan Singh came to England in 1973 quite illegally and personal freedom cannot be claimed as above the immigration law of the land. It is available only during the free state of living.

OBSCENE FILMS AND PRIVACY:

*Paris Adult theatre I et al v. Lewis R Slaton, District Attorney, Atlanta Judicial Circuit, et al* 152

In this case the State of Georgia demanded that - The two movies, ‘Magic Mirror’ and ‘It All Comes Out in the end’ be declared obscene and be prohibited. The American court held that, there is no fundamental privacy right in this regard.

USE OF CONTRACEPTIVES:

The use of contraceptives is held to be a matter of privacy which cannot be violated. (*Estelle T Griswold et al v. State of Connecticut.*) 153

DETENTION OF UNSOUND PERSONS:

Indefinite detention of mentally unsound persons is held, to constitute deprivation of their personal liberty, when they are no more a danger to the society. (*Terry Foucha, Louisiana*) 154

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151 1975 -2 All E.R. 1081(Court of Appeal
152 412 Us 49, 37 L Ed 2d 446
153 381 US 479. 14 L Ed 2d 510
154 504 US -118 L Ed 2d 437
RIGHT TO PRIVACY AND DATA PROTECTION:

Privacy is closely connected to Data Protection. An individual's data like his name address, telephone numbers, profession, family, choices, etc. are often available at various places like schools, colleges, banks, directories, surveys and on various web sites. Passing on such information to interested parties can lead to intrusion in privacy like incessant marketing calls.

By enactment of the Information Technology Act, 2000, the Indian Parliament provided a new legal idiom to data protection and privacy. The main principles on data protection and privacy enumerated under the Information Technology Act, 2000 are:

1. Defining 'data', 'computer database', 'information', 'electronic form', 'originator', 'addressee' etc.
2. Creating Civil Liability if any person accesses or secures access to computer, computer system or computer network.
3. Creating criminal liability if any person accesses or secures access to computer, computer system or computer network.
4. Declaring any computer, computer system or computer network as a protected system.
5. Imposing penalty for breach of confidentiality and privacy.
6. Setting up of hierarchy of regulatory authorities, namely adjudicating officers, the Cyber Regulations Appellate Tribunal etc.


There were three reasons:
1. To facilitate the development of a secure regulatory environment for electronic commerce by providing a legal infrastructure governing electronic contracting, security and integrity of electronic transactions;
2. To enable the use of digital signatures in authentication of electronic records; and
3. To show the role of Government in safeguarding and promoting IT sector and attracting FDI in the said sector.

16. NOISE POLLUTION:
A. In *Free Legal Aid Cell v. Govt of NCT of Delhi*, PIL was filed - main grievance was that - as a result of display of fireworks during festivals and marriages and because of indiscriminate use of loudspeakers, noise pollution has become a routine affair affecting mental as well as physical health of citizens. The Delhi High Court observed that - Noise can well be regarded as a pollutant because it contaminates environment, causes nuisance and affects the health of a person and would, therefore, offend article 21, if it exceeds a reasonable limit.

   Article 21 includes freedom from Noise.—

   In *Re Noise Pollution*, the SC held that under Art.21 every person has the right to live with a noise free atmosphere which cannot be defeated by exercise of right under Art.19 (1) (a).

   The Court said that in the modern days noise has become one of the major sources of pollution and it has a serious effect on human health. It affects sleep, hearing, and communication, mental and physical health. It may even lead to the madness of people.

   The Court has issued the following directives:
1. The evaluation of fire crackers should be done on the basis of chemical composition unless and until replaced by a better system.
2. There shall be complete ban on bursting sound emitting fire-crackers between 10 P.M. to 6 A.M.

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155 AIR 2001 DEL 455
156 AIR 1999 Ker. 15
3. There shall be two categories of fire crackers one for export and the other for use in own country. Both must have different colours. Fire crackers for sale in India must contain full particular of chemical compound.

4. The noise level at the boundary of public place shall not exceed to 10 db or noise standard area or 75 db whichever is lower.

5. No beating of a drum or tom-tom or blow of trumpet or use of amplifier between 10 P.M. and 6 A.M. (except in emergencies).

6. No horn should be allowed to be used at night (between 10 P.M. to 6 A.M.) in residential area except in exceptional circumstances.

7. Need to create general awareness towards the hazardous effects of noise pollution—to children in schools and police authorities.

8. State must play an active role in this process. The Court said that the above guidelines are issued in exercise of power conferred on this Court under Articles 141 and 142 of the Constitution and shall be binding on governments and municipal authorities in every cities.

ARTICLES 19 AND 21 AND NOISE POLLUTION:

A citizen cannot exercise this fundamental freedom under article 19(l)(g) in such a manner so as to violate the fundamental right of the people under article 21. In *Ram Lai v. Mustafabad OH and Cotton Ginning Factory*,\(^{157}\) the Punjab and Haryana HC observed:

> Once a noise is considered to be a nuisance of the requisite degree it is no defense to contend that it was in consequence of a lawful business or arose from lawful amusements or from places or religious worship.

In *V. Lakshmipathy v. State*,\(^{158}\) The Court held that there is no inherent or fundamental right in a citizen to manufacture, sell and deal with fireworks which will generate pollution /which would endanger the health and the public order. The Karnataka High Court directed fireworks industries to be stopped and further held that earmarked residential area should not be used for such industries. The Court directed the authorities to remove all encroachments in public lands within

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\(^{157}\) AIR 1968 P&H 399

\(^{158}\) AIR 1992 KAR 57
sixty days from the date of the receipt of the copy of the order. The petitioners, were also held entitled to costs of Rs.3,000/- from the respondents.

**ARTICLES 19, 21, 25 AND NOISE POLLUTION**

In *State of Bombay v. Narasu Apa Mali* 159 the Bombay HC while distinguishing religious faith from religious practice observed:

*The State protects is religious faith and belief. If religious practice run counter to public order, morality or health or a policy of social welfare then the religious practice must give way before the good of the people.*

The Court observed: A particular fundamental right cannot exist in isolation in a watertight compartment. One fundamental right of a person may have to coexist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the light of the Directive Principles.

In *Bedi Gurcharan Singh v. State of Haryana* 160, The SC observed:

*The right to propagate religion freely is subject to the condition that it does not violate similar fundamental rights of the followers of other religions.*

The Calcutta High Court in *Masud Alam v. Commissioner of Police*, 161 upheld the ban on the use of loudspeakers for calling Azan five times a day. It was held that such a use, causing disturbance in the area could not be justified on the ground that it was in connection with religious purposes.

In *Om Birangana Religious Society v. State* 162 the Calcutta HC held that - noise generated from loudspeakers and microphones posed a serious threat to public health. The Court also urged the police to be vigilant in the discharge of its duties and directed All India Radio and Doordarshan to disseminate information and create awareness on the harmful effects of noise pollution.

In *Chairman, Guruvayur Devaswom Managing Committee v. Supdt of Police, Thrissur* 163, the Court allowed the petitioner to use horn type loudspeakers

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159 AIR 1952 Bombay 82
160 1975 Cr. LJ 917 (SC)
161 59 CWN 293 (1954-55)
162 1996 100 CWN 617
163 AIR 1998 Ker.122
which were used only for a limited duration every day for broadcasting devotional songs and the audibility of which was limited within the temple area only.

In *Moulana Mufti Syed Md Noorur Rehman Barkati v. State of West Bengal* \(^{164}\) the Calcutta HC upheld the restriction on the use of microphone and loudspeaker at the time of giving Azan and held that this restriction does not violate freedom of religion under Art. 25 of the Constitution.

The SC after referring to article 19(l)(a) and the Noise Pollution (Regulation and Control) Rules, 2000 dismissed the appeal of the appellant.

The judiciary has shown its deep concern to keep the environment free from noise pollution. The Legislature enacted the Noise Pollution (Control and Regulation) Rules, 2000. There is lack of awareness as well as implementation of these rules. The need of the hour is to create awareness among the people about the noise pollution and its effects on their health. It is also the duty of the law enforcing agencies/authorities to implement the law in letter and spirit.

**17. RIGHT TO DIE – NOT A FUNDAMENTAL RIGHT UNDER ART. 21.**

The question whether the right to die is included in Art.21 came for consideration for the first time before the Bombay HC (*State of Maharashtra v. Maruty Sripati Dubal*) \(^{165}\)

The Bombay HC held that the right to life guaranteed by Art. 21 includes a right to die, and consequently the court struck down Section 309, IPC which provides punishment for attempt to commit suicide by a person as unconstitutional.

The Andhra Pradesh HC in *Chenna Jagadeeswar v. State of A. P.*, \(^{166}\) held that the right to die is not a fundamental right within the meaning of Art. 21 and hence Section 309 I.P.C. is not unconstitutional.

In *P. Rathinam v. Union of India* \(^{167}\) a Division Bench of the Supreme Court agreeing with the view of the Bombay High Court in *Maruti Sripati Dubal*

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\(^{164}\) AIR 1999 Cal. 15

\(^{165}\) 1987 Cr.LJ. 549

\(^{166}\) AIR 1988 Cr.L.J. 549
case held that a person has a "right to die" and declared Section 309 of the Indian Penal Code unconstitutional which makes "attempt to commit suicide" a penal offence.

Attempt to commit suicide has ceased to be legal offence in most countries.

In *Gian Kaur v. State of Punjab*\(^{168}\) a five judge Constitution Bench of the Supreme Court has now overruled the *P. Rathinam's* case and, rightly, held that "right to life" under Art. 21. does not include "right to die" or "right to be killed". "The right to die", is inherently inconsistent with "the right to life" as is "death with life".

The Court accordingly held that, Section 309 of IPC is not violative of Art. 21.

The Court upheld the judgment of the Andhra Pradesh High Court holding that Section 309 of the IPC was not violation of Arts.14 and 21.

Law Commission of India in its report no. 2010 given to the govt. in Oct.2008 has recommended that – “Attempt to suicide may be regarded as a manifestation of a diseased condition of mind deserving treatment and care rather than an offence to be visited with punishment.” The commission has recommended to the govt. to repeal Sec. 309 of I.P.C.

**EUTHANASIA:**

In *Aruna Ramchandra Shanbaug v. Union of India and others*\(^{169}\) – The Supreme Court rejected the concept of passive euthanasia and rejected the application of the petitioner by differentiating between active and passive euthanasia.

**THE BASIC DEFINITIONS:**

Euthanasia is generally classified as either "active" or "passive", and as either "voluntary" or "involuntary". Similar to euthanasia is "assisted suicide".

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\(^{167}\) AIR 1994 3SCC 394

\(^{168}\) AIR 1996 2SCC 648

\(^{169}\) AIR 2003 SC 3176
ACTIVE VS PASSIVE:

"Passive euthanasia" – defined as withdrawing medical treatment with the deliberate intention of causing the patient's death. For example, if a patient requires kidney dialysis to survive, and the doctors disconnect the dialysis machine, the patient will presumably die fairly soon. If a patient has a heart attack or similar sudden interruption in life functions, medical staff will attempt to revive them. If they make no such effort but simply stand and watch the patient die, this is passive euthanasia.

"Active euthanasia" is taking specific steps to cause the patient's death, such as injecting the patient with poison. In practice, this is usually an overdose of pain-killers or sleeping pills.

The difference between "active" and "passive" is that in active euthanasia, something is done to end the patient's life; in passive euthanasia, something is not done that would have preserved the patient's life.

VOLUNTARY VS INVOLUNTARY:

"Voluntary euthanasia" is when the patient requests that action be taken to end his life, or that life-saving treatment be stopped, with full knowledge that this will lead to his death.

"Involuntary euthanasia" is when a patient's life is ended without the patient's knowledge and consent.

ASSISTED SUICIDE:

In "assisted suicide", a doctor provides a patient with the means to end his own life, but the doctor does not administer it.

18. SOME OTHER RIGHTS INCLUDED:

1. Right to water is a right to life under Art. 21. Water is the basic need of survival of human being and is part of right to life and human right as enshrined in Art. 21 and can be served only by providing sources of water where there is none. Pollution free drinking water was held to be paramount and the same would
prevail over other needs (Delhi Water Supply and Suvage Disposal Undertaking v. State of Haryana).  

2. Economic empowerment to tribals, dalits and poor is a facet of right to life under Art. 21. Government policy to allot agricultural land to them is to render socioeconomic justice and a stipulation in the grant that prior permission is necessary for alienation or sale of such land is only to effectuate the constitutional policy of economic empowerment which is protected under Arts. 14, 21, 38, 39 and 46 read with Preamble of the Constitution. (Murlidhar Kesekar v. Vishvanath Barde).  

3. Right to agriculturist to cultivation is a part of their fundamental right to livelihood under Art. 21. (Dalmiya Cement v. Union of India). Where agricultural lands were acquired by the executive action of the State in flagrant violation of Art. 300A and second proviso to Art. 31A(1), there will be a violation of right to livelihood under Art.21. (K. Sai Redde v. Dyputy Engineer).  

Even though every acquisition of compulsory nature, the owner may be deprived of the land, and means of livelihood, an acquisition in accordance with the procedure is a valid exercise of power which would not amount to deprivation of right to livelihood. (Chameli Singh v. State of U.P.).  

4. Right to dignity is not confined to the living man but also to his dead body.  

5. The offence of Kidnapping violates Art. 21 and there must be deterrent punishment (Tarun Bora v. State of Assam).  

6. Right to road to resident of hilly areas is within the ambit of Art.21. (State of H.P. v. Umed Ram Sharma).  

7. Right to Family Pension included in Art.21 (S.K. Mastan B v. G.M. South

170 AIR 1986 SC 2992  
171 AIR 1995 SCC 549  
172 AIR 1996 10 SCC 104  
173 AIR 1995 A.P. 208  
174 AIR 1996 2SCC 569  
175 AIR 2002 SC 2926  
176 AIR 1986 2SCC 68
8. The customer can claim right to privacy from banker and the power to search and size without any material is violation of Art.21 \((\text{District Registrar and Collector v. Caneral Bank})^{178}\).

9. Life and unborn child – Sec. 315 of IPC acknowledges that the embryo is entitled to legal protection.

Sec. 312 to 316 of IPC provides for punishment for abortion or for destruction of the unborn child.

Sec. 3 to 5 of MTP ACT, 1997 - are more or less exception to the provision of IPC or abortion.

Pre-conception and pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994 –prohibits the determination of Sex.

11. Hindu Succession Act 1956 – Sec. 20 – has conferred right to succeed to the father’s estate to the child who was in the mother’s womb when the father died without making any will and who is born alive after such death.

19. PERSONAL LIBERTY:

It comprises:-

1. Autonomous control over the development and expression of one’s intellect, interest, tastes and personality.

2. Freedom of choice – in the basic decision of life i.e. marriage, divorce, procreation, contraception and the education and upbringing of children.

3. Freedom of care of one’s health and person, freedom to walk, stroll or loaf. – freedom from bodily restraint or compulsion.

4. It thus includes :-

   a. the right of locomotion, except in so far as it is included in Art. 19 (l) (d) \((\text{Satwant v. Assistant Passport Officer})^{179}\)

   b. the right to travel abroad, i.e., to move out of India, \((\text{Maneka Gandhi v. Union of India})^{180}\) and to return to India.
c. the right to socialise with members of one's family and friends (Hussaninara v. Home Secretory) 181;
d. the right of a prisoner to a speedy trial; (Hussaninara v. Home Secretory) 182
e. Loss of citizenship, which would entail deportation, was assumed to be included in this expression (State of U.P. v. Shah M.D.) 183
f. an order made under s. 144, Cr. P.C. to shoot anybody violating a curfew order has been held to violate Art. 21, since an order to shoot was ultra vires Sec. 144 of the Cr. P.C. (Jayantilal v. Eric) 184
g. the right of an employee in a disciplinary proceeding, (Board of Trustee v. Dilipkumar Nadkarni) 185. or of a detune before an Advisory Board A.K. Roy v. Union of India 186 to take legal aid, where the employer or the Government is represented by a lawyer;
h. Right of appeal from a judgment of conviction affecting liberty of a person keeping in view of the expansive definition of Art. 21 as also the international covenants operating in the fields is also a fundamental right and such a right is an absolute one. Right of appeal, can neither be interfered with or impaired nor it can be subjected to any condition. (Dilip S. Dahanukar v. Kotak Mahendra Co. Ltd.) 187.

It would not include:
1. The right to be admitted to a college. (State v. Lavu) 188.
2. The right to own property or not to be deprived of it by laws for compulsory acquisition or imposing land ceiling, (State of Maharashtra v. Basanti Bai) 189

180 AIR 1978 SC 597
181 AIR 1979 SC 1360
182 ibid
183 AIR 1969 SC 1234
184 1975 Cr.LJ 661 Guj. (Para 15-17)
185 AIR 1983 SC 109
186 AIR 1982 SC 710
187 AIR 2007 6 SCC 528
188 AIR 1971 1 SCC 601
3. The right of a foreigner to reside and settle in this country. (Louis v. Union of India)\textsuperscript{190}. The Government of India has the power to make the lawful arrest or detention of a person to prevent his affecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition. (Hansmuner v. Supdt)\textsuperscript{191}.

The right of a commercial firm to remain in unauthorised occupation of a 'public premises' in contravention of the Public Premises Eviction of Unauthorised Occupants) Act, 1971. (Asoka Marketing v. P. N. B.)\textsuperscript{192}

4. The right to carry on any business, big or small. Sodhan v. N.D.M.C.\textsuperscript{193}

5. Contesting to an elected officer is not a fundamental right. Hence no grievance could be made out in the ground that the right to liberty and right to privacy of an individual are deprived, if a legislative provides for certain disqualification. (B.K. Parthasarathy v. A.P.)\textsuperscript{194}

20. PROCEDURE ESTABLISHED BY LAW:

'Procedure' means the manner and form of enforcing the law. Art. 21 simply means that you cannot deprive a man of his personal liberty, unless you follow and act according to the law which provides for the deprivation of such liberty.

CONCLUSION:-

How the SC evolved Art. 21 (the concept of life and liberty) in creative way is discussed in detail with the help of the judgment of the SC and HC’s in this Chapter.

\textsuperscript{189} AIR 1986 SC 1466(Para 16)
\textsuperscript{190} AIR 1991 3 SCJ 141 (Para 13)
\textsuperscript{191} AIR 1955 1 SCR 1284
\textsuperscript{192} AIR 1999 3SCJ 116 (Para 28)
\textsuperscript{193} AIR 1989 SC 1988
\textsuperscript{194} AIR 2000 A.P.156