CHAPTER – VI

DIRECTIVE PRINCIPLES
AND
ARTICLE 21

“When the people fear the government, there is tyranny. When the government fears the people, there is Liberty.”

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CHAPTER VI

DIRECTIVE PRINCIPLES AND ARTICLE 21

Article 21, which is the heart of all the Fundamental Rights has received, expanded meaning from time to time by its interpretation by the judiciary in the light of the Directive Principles. The initial agitation by the judiciary to recognize the profound significance of the part IV of the Constitution while interpreting the Fundamental Rights has been given up long ago. The court there after attempted to expand the reason, the reach and ambit of a Fundamental Rights rather than accentuate their meaning and content by process of judicial construction.

Mathew J. stated that the Fundamental Rights themselves have no fixed content; most of them are empty vessels into which each generation must pour its content in the light of its experience. In determining the scope and ambit of Fundamental Rights the court cannot ignore Directive Principles of state policy laid down in part IV of the Constitution, which are ‘instruments of instructions’ and fundamental principles in governance of the country\(^1\).

\(^1\) Kesavananda Bharti v State of Kerala Chapt. IV n.33
Fundamental Rights and Directive Principles constitute the ‘conscience’ of your Constitution. The purpose of Fundamental Rights is to create an egalitarian society, to free all citizens from coercion or restriction by society and to make liberty available for all. The purpose of the Directive Principles is to fix certain social and economic goals for immediate attainment by bringing about a nonviolent social revolution. Without faithfully implementing the Directive Principles it is not possible to achieve the welfare of the state contemplated by the Constitution. The Constitution aims at bringing about synthesis between Fundamental Rights and Directive Principles by giving the former a place of pride and to the later a place of permanence.\(^2\).

The relation between Fundamental Rights and Directive Principles were the matter of great concern judiciary since the inception of the Constitution. After initial resentence in late seventies and early eighties the Supreme Court adopted a dynamic approach and started interpreting article 21 broadly in the light of Directive Principles.

This approach was based on the following principle:-

“Right to life” is the compendious expression for all those rights which the court must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct

\(^2\) Austin Granville., Op. cit Chapt. IV n.8
which the individual is free to pursue. If the term life is to be interpreted, it has to be interpreted in the light of Directive Principles.

The Supreme Court propounded the theory of ‘emanation’ and has departed from the traditional view that Part III of the Constitution Provides an exhaustive list of Fundamental Rights. The theory basically means that, even though a right is not specifically mentioned in part III, it may still be regarded as a Fundamental Right. It can be regarded as an integral as a Fundamental Right; in other words, “it ‘emanates’ from a named fundamental right or its existence is ‘necessary’ in order to make the exercise of a named fundamental right meaningful and effective.

6.1 ARTICLE 21: RIGHT TO LIFE AND PERSONAL LIBERTY:

Articles 21 read as follows: “No person shall be deprived of his life or personally liberty except according to procedure established by law”.

The right to life guaranteed by Article 21 of the Constitution of India is not merely a fundamental right; it is a basic human right. Although right to life is basic and most fundamental of

4 Maneka Gandhi v. Union of India A.I.R. 1978 S.C.597
all the other rights, yet the term ‘life’ has not been defined in the Constitution and therefore we must turn to judiciary for its interpretation.

Article 21 did not positively confer a fundamental right to life or personal liberty like article 19. The reason is great concepts like liberty and life were purposefully lifted to gather meaning from experience. They relate to the whole domain of social and economic fact. The Constitution makers knew too well that only a stagnant society remains unchanged\(^5\).

Under Article 21 the rights which are related to life or personal liberty are not listed in detail as it is so under article 19, because right to life and liberty covers very wide amplitude of rights connected to life and liberty of a person, depending upon the political, social and economic changes in a society.

That, unlike such rights as required to be enumerated, it has long been recognized that the individual shall have full protection in person. It is a principle as old as law. However it has been found necessary from time to time to define a new, the exact nature and the extent of such protection. Political, social and economic changes entail the recognition of new rights and the law in its eternal youth grows to meet the demands of society. The right to

life and liberty inhere in every man. There is no need to provide for
the same in a positive manner.

Article 21 which acts as a shield against deprivation of
life or personal liberty do not define the term life or personal liberty.
The term life and personal liberty were given expanded meaning by
the Supreme Court by interpreting broadly Article 21 in various
cases from time to time.

6.2 PERSONAL LIBERTY: MEANING AND SCOPE:

Different interpretations have been given by various
eminent jurists to the expression ‘personal liberty’. Blackstone
emphasized on positive aspect of personal liberty. He states:
“Personal Liberty consists in the power of locomotion, of changing
situation or move one’s person to whatsoever place one’s own
inclination may direct.”

The negative approach in defining liberty of person is
adopted by dicey. According to him:

The right to personal liberty means in substance a
person’s right not to be subject to imprisonment, arrest, or other

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physical coercion in any manner that does not admit of legal justification.\(^7\)

Lord Denning has given another view, on the liberty of person, he observes:

By personal freedom I mean the freedom of every law abiding citizen to think what he will, to say what he will and to go where he will on his lawful occasions without let or endurance from any other person.\(^8\)

The meaning and the content of the words ‘personal liberty’ under Article 21 came up for discussion before Supreme Court in A.K. Gopalan V State of Madras\(^9\) and the Supreme Court chosen the narrower interpretation of the word personal liberty and confined it to the protection of freedom of the person against unlawful detention. The decision of the Supreme Court in this case was based on the definition of liberty given by Dicey. The majority of judges laid emphasis upon the word ‘personal’ in the expression ‘personal liberty’ and the crux of this view were to be found in the judgment of Justice Sastri. It was observed by Sastri, J. that, “whatever may be the generally accepted connotation of the

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7 Dicey., Constitutional Limitations (Ed.8th Vol.1) p.710
8 Lord Denning., Freedom Under Law (1949) p.5
9 A.I.R. 1950 S.C. 27
expression ‘personal liberty’; it is under in Article 21 in a sense which excludes the freedom dealt within Article 19\(^{10}\)."

But no definite pronouncement was made by the Supreme Court on the issue of meaning of personal liberty. Since the question before the court was not so much the interpretation of the word personal liberty as the inter relation between articles 19 and 21.

It was in Kharak Singh V State of U.P.\(^{11}\) that the question as to the proper scope and meaning of the expression ‘personal liberty’ came up pointedly for consideration for the first time before the Supreme Court. The majority of the judges took the view personal liberty is used in article as a compendious term to include within itself all the varieties of rights which go to make up the personal liberty of man other than those dealt within the several clauses of Article 19.

In other words while Article 19(1) deals with particular species of attributes of that freedom, personal liberty in article 21 takes in and comprises the residue.

Finally in Maneka Gandhi V Union of India\(^{12}\), the Supreme Court has not only overruled Gopalan’s\(^{13}\) case but has

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\(^{10}\) Ibid p.71
\(^{11}\) A.I.R. 1963 S.C. 1295
\(^{12}\) Supra n.4
\(^{13}\) Supra n.9
widened the scope of the words ‘personal liberty’ considerably. Bhagwati J. (as he then was) observed:

“The expression ‘personal liberty’ in Article 21 of the widest amplitude and it covers a variety which go to constitute the personal liberty of man and some of them have raised to the status of distinct Fundamental Rights and give additional protection under article 19.

The correct way of interpreting the provisions conferring Fundamental Rights the court said:

The attempt of the court should be to expand the reach and ambit of Fundamental Rights rather than to attenuate their meaning and content by process of judicial construction. The Court lays 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. It should not be arbitrary, oppressive and fanciful.14

Prior to Maneka Gandhi’s decision, Article 21 guaranteed the right to life and personal liberty to citizens only against the arbitrary action of the executive, and not from legislative action. The State could interfere with the liberty of citizens if it could support its action by a valid law. But after the Maneka Gandhi’s decision Article 21 now protects the right of life and personal liberty

14 Supra n.4
of citizen 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.\(^\text{15}\)

### 6.3 RIGHT TO LIFE

Most fundamental of all human right that man can aspire for is “right to life” Denial of this basic right means denial of all other rights because none of other rights would have any utility and exercise without it. So this right has been stressed by International, Regional and National documents. Right to life is the most precious fundamental right among all the human rights.

Although right to life is basic and most fundamental of all the other rights, yet the term ‘life’ has not been defined in the Constitution.

In *Kharak Singh V State of U.P.*\(^\text{16}\) The Supreme Court relied on the observation of Field, J. in *Munn V. Illinois*,\(^\text{17}\) an American case, to the effect that term ‘life’ means something more than mere animal existence and includes a right to the possession

\(^{15}\) Pandey T.N., Constitutional Law of India (1998) p.188  
\(^{16}\) Supra n.11  
\(^{17}\) (1876) 94 U.S.
of each of his organs-his arms and legs etc. Inhibition against its deprivation extends to all those limits and faculties by which life is enjoyed.

Through interpretations in various cases the apex court defined the term right to life and liberty in the following words: Right to life the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. If the term life is to be interpreted so it has to be interpreted in the light of Directive Principles.

The history of Judicial activism in India makes it clear that the Supreme Court after initial hesitation had interpreted article 21 mostly in the light of Directive Principles and has successfully enforced Directive Principles through Article 21. In course of time, from Art 21, a whole life of human rights jurisdiction has sprung up.

In Minerva Mills Ltd. V Union of India\textsuperscript{18} the Constitutional bench had held that the Fundamental Rights and Directive Principles are two wheels of the chariot in establishing the egalitarian social order. Right to life enshrined in Article 21 means something more than survival of animal existence.

\textsuperscript{18} Supra n.4
Article 21 includes right to live with human dignity Right to means to livelihood, right to health, right to potable water, right to pollution free environment and right to education have been held to be a fundamental right to be part of right to life.\textsuperscript{19}

The researcher, in the present chapter, has tried to evaluate the relation between Art 21 and Directive Principles by analyzing broader interpretation of Article 21 done by judiciary in the light of Directive Principles from time to time which has resulted into the development of some of the Directive Principles as Fundamental Rights under Art 21.

6.4 BROADER INTERPRETATION OF ARTICLE 21 IN LIGHT OF DIRECTIVE PRINCIPLES:

1) Article 38
   (a) Social justice
   (b) Right to livelihood
   (c) Protection of health of workers and human dignity.

2) Article 39A Free legal aid and Speedy Trial

3) Article 41  
   (a) Right to work  
   (b) Right to Education  

4) Article 42  Just and human condition of work  

5) Article 45  Free Education up to 14 years  

6) Article 46  Promotion of Educational Economic interest of Weaker section.  

7) Article 49  Protection of Monuments  

6.4.1. RIGHT TO SOCIAL JUSTICE:  

I. Social Justice:  

The preamble and Article 38 of the Constitution, envisage social justice as the arch to ensure life to be meaningful and livable with human dignity. The concept of social justice which the Constitution of India engrafted consists of diverse principles essential for the orderly growth and development of personality of every citizen. Social justice is thus the integral part of justice in the generic sense. Justice is the genus of which social justice is its species.  

Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits; tribals deprived and depressed sections of the society and to elevate them to the level of equality to live a life with dignity of person.
Social justice is not a single or simple idea of a society but it is an essential part of complex social change to relieve the poor etc. from handicaps, penury to ward off distress and to make their life livable for greater good of the society at large. In other words the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation and Constitutional goal. In a developing society like ours, steeped with unbridgeable and ever increasing gap of inequality in status and of opportunity, law is a catalyst, rubicund to the poor etc. to reach the ladder of social justice.\(^2\)

What is due cannot be ascertained by an absolute standard keep changing depending upon time, place and circumstances. The Constitutional concern of social justice as an elastic continuous process is to accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor, the workmen etc. are languishing and to secure dignity of their person.

The Constitution therefore mandates the state to accord justice to all members of the society in all facets of human activity. The concept of social justice embodies equality of favour and enlivens the practical content of life. Social justice and equality are

\(^2\) Air India Stationery Corporation v. Union Labour Union A.I.R. 1997 S.C.647
complementary to each other so that both should maintain their viability. Rule of law, therefore is a potent instrument of social justice to bring about equality in result.21

II. Social Justice as Fundamental Right:

Social justice has been held to be fundamental right in Consumer Education and Research Centre V Union of India22 considering Right to life under Article 21, its meaning, scope and consent this court has held that the Jurisprudence of personhood or philosophy of the right to life envisaged under Article 21 enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood to sustain the dignity of person and to live a life with dignity and equality.

The expression “life” assured in Article 21 does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standards of living, hygienic condition in the workplaces and leisure and right to health.

Social justice, equality and dignity of the persons are corner stones of social democracy.

21 Id
22 (1995) 3 S.C.C. 42
In *Dalmia Cement Ltd. V Union of India*\(^{23}\) the Court held that agriculturist have Fundamental Rights to social justice and economic empowerment. The preamble of the Constitution is the epitome of the basic structure built in the Constitution guaranteeing justice – social, political equality of status and of opportunity with of person and fraternity.

To establish an egalitarian social order the trinity, the preamble, the Fundamental Rights and Directive Principles of the Constitution delineated the socio – economic justice. The word justice envision in the preamble is used in broad spectrum to harmonize individual right with the general welfare of the society.

The Constitution is the supreme Law. The purpose of law is realization of justice where content and scopes very much depending upon the prevailing social environment.

While interpreting the Constitution and the law, endeavor need to be made to harmonize the individual interest with the paramount interest of the community keeping pace with the realization of ever changing social and economic life of the country envisaged in the Constitution.

Justice in the preamble implies equality consistent with the competing demands between distributive justices with them of

\(^{23}\) (1996) 4 J.T.(S.C.)555
cumulative justice. Justice aims to promote the general well-being of
the community as well as individual’s excellence.

Law is the foundation on which the potential of the society stands. Law is instrument of social change. Social justice is
the comprehensive form to remove social imbalances by law harmonizing the rival claims. The idea of economic justice is to
make equality of status meaningful and the life worth living at its best reasoning in equality of opportunity and of status social,
economic and political.

The Fundamental Rights and Directive Principles are therefore harmoniously interpreted to make the law a social engineering to provide flesh and blood to the dry bones of law. The Directives would serve the court as a beacon light to interpretation. The fundamental rights are rightful means to the end. Social Justice, therefore, forms the basis of progressive stability in the society and human progress.

6.4.2 RIGHT TO LIVELIHOOD:

Livelihood is ‘means of living, subsistence’ as given in the concise Oxford Dictionary. It would therefore be something necessary for a man to provide for his living and subsistence. It is
only such activity or means which is essential to earn one’s living for subsistence that would constitute the right to livelihood.

It was right to livelihood in this sense that was stated to be a constituent of the right to life as guaranteed by Article 21 by the Supreme Court in *Olga Telis V Bombay Municipal Corporation*\(^\text{24}\). It was held that right to livelihood is a component of right to life guaranteed by the Constitution.

The contention of the petitioners the slum dwellers was that the right to life which is guaranteed by Article 21 includes the right to livelihood, if they are evicted from their slums and pavement dwelling their eviction is tantamount to deprivation of their life and is hence unconstitutional.

The court held that: The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right livelihood because no person can live without the means of living that is, the means of livelihood. If the right to livelihood is not treated as a part of the Constitutional right to life, the easiest way depriving

\(^{24}\) A.I.R. 1986 S.C. 180
a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.

Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet such deprivation would not have to be in accordance with the procedure established by law, if the right of livelihood is not regarded as a part of the right to life. That which alone makes it possible to life, leave aside what makes life livable must be deemed to be an integral component of the right to life. The court held that right to earn livelihood is a component of the right to life.

In *Sodan Singh V New Delhi Municipal Committee*\(^25\) which was a case of street hawker. The contention that eviction of street hawker would deprive the right guaranteed under article 21 of the Constitution was rejected by the court. It held that there is difference between *Olga Tellis*\(^26\) case and this case. In *Olga Tellis* the issue involved was removing of huts of ‘Pavement dwellers’ from pavement and public places but not right to carry on any trade or business. The court held that eviction of the street traders will not amount to deprivation of right under article 21.


\(^{26}\) Supra n.26
The same was followed by Orissa High Court in *Bapujinagar Khudra Byabasai Association V State of Orissa*\(^27\) on the lines that though a person has a fundamental right to carry on a trade or business of his choice, he has no fundamental right to insist that he will carry on the business or profession from a particular place.

In a land mark judgment, In *Delhi Development Horticulture Employees Union V Delhi Administration*\(^28\), the Supreme Court has held that daily wages workmen employed under the Jawahar Rozgar Yojna has no right of automatic regularization even though they have put in work for 240 or more days.

The petitioners who were employed on daily wages in the Jawahar Rozgar Yojna filed a petition for their regular absorption as regular employees in the Development Department of the Delhi Administration. They contended that right to life, include the right to livelihood and therefore, right to work. The Court held that although broadly interpreted and as a necessary logical corollary, the right to life would include the right to livelihood and therefore right to work but this country has so far not found feasible to incorporate right to livelihood as a fundamental right in the Constitution. This is because the country has so far not attained the capacity to

\(^{27}\) A.I.R. 1987 Ori.189
\(^{28}\) A.I.R. 1992 S.C.1789
guarantee it, and not because it considers it any the less fundamental to life. Wisely, therefore it has been placed in the chapter on Directive Principles, Article 41 of which enjoins upon the State to make effective provision for securing the same, “within the limits of its economic capacity and development”. The ruling, of the court is good as it would help in preventing back door entry in government departments and public sector undertakings. The Court observed that:

“A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such back door entry in the employment are in need of the particular jobs”.

In a significant judgment in *D.K. Yadav V J.M.V. Industries*[^29] the Supreme Court has held that the right to life enshrined under article 21 includes the right to livelihood and therefore termination of the service of a worker without giving him reasonable opportunity of hearing is unjust, arbitrary and illegal. The Supreme Court held that the right to life enshrined under Article 21 includes right to livelihood and therefore before terminating the service of employee or workman fair play requires that a reasonable opportunity should be given to him to explain his case.

[^29]: 1993 (3) S.C.C. 258
The Procedure prescribed for depriving a person of livelihood must meet the requirement of Article 14 that is it must be right just and fair and not arbitrary fanciful or oppressive.

In LIC of India V Consumer Education & Research Centre\(^{30}\) it has been held that the right to life and livelihood as interpreted in *Olga Tellis* and several other cases by this court includes the ‘right to life insurance policies of LIC of India’ and it must be within the paying capacity and means of the insured. The preamble chapter on Fundamental Right and Directive Principles accord right to livelihood as a meaningful life social security and disablement benefits are integral scheme of socioeconomic justice to people in particular to the middle class and all affordable people. Life insurance coverage is against disablement or in the dependents, social security to livelihood of the insured or the dependents. The Supreme Court held that the term and conditions imposed by 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 in unconstitutional.

\(^{30}\) (1995) 5 S.C.C. 482
Justice Bhagwati in his landmark decision in *Francis Corlie’s*\(^{31}\) case laid down that the Right to life include the right to live with the human dignity and that goes along with it namely the bare necessities of life such as adequate nutrition clothing and shelter over the head and facilities for reading writing and expressing oneself in diverse forms with fellow human beings. Of course the magnitude the contents of the component of this right would depend upon the extent of the economic development of this country but it must in any view of the matter include the right to basic necessities of life.

Right to livelihood was more clearly explained by Calcutta High Court in *Md. Farooq V State of West Bengal*.\(^{32}\)

The right to livelihood as protected by Article 21 of the Constitution is only right to earn such livelihood as is necessary for the subsistence of persons and the deprivation of which would threaten their existence. This right cannot be equated with the right to earn to the extent of augmenting one’s opulence. If a person having sufficient means to live is being deprived of some of his earning capacity that would not be an interference with a right to livelihood as may attract the application of Article 21 of the Constitution, as it is not likely to have any impact on his right to life.

\(^{31}\) Supra n.21

\(^{32}\) A.I.R. 1995 Cal. 98
In *K. Sai Reddy V D.E.E. Irrigation*\(^{33}\), the A.P. High Court held that Government authority by taking over possession of petitioner’s agricultural land without recourse to law. The petitioners were deprived of property for more than six years and where by it has violated Article 21 of the Constitution which includes right to livelihood. The court directed the government to pay Rs. 30,000/- per acre by way of compensation for unlawful deprivation of property.

In this way the right to livelihood which is the Directive Principle was given states of Fundamental Rights.

### 6.4.3 RIGHT TO HUMAN DIGNITY:

In *Maneka Gandhi V Union of India*\(^{34}\) the Supreme Court gave a new dimension to Article 21. It held that the right to live is not merely confined to physical existence but it includes within its ambit the right to live with human dignity.

Elaborating the same view the court in *Francis Coralie V Union territory of Delhi*\(^{35}\) said that the right to live is not restricted to mere animal existence. It means something more than just physical survival. The right to live is not confined to the protection of

\(^{33}\) A.I.R. 1995 A.P. 208

\(^{34}\) Maneka Gandhi v. Union of India Supra Chapt.III n.2

\(^{35}\) Supra n.19
any faculty or limb through which life is enjoyed or the soul
communicates with the outside would but it also includes “the right
to live with human dignity” and all that goes along with it. Namely the
bare necessities of life such as adequate nutrition, clothing and
shelter and facilities for reasoning, uniting and expressing ourselves
in diverse forms, freely moving about, mixing and commingling with
fellow being.

In *Premshankar V Delhi administration* an the Supreme
Court held that hand cuffing is prima false inhuman and therefore
unreason is over harsh and at the first flush arbitrary it violates the
dignity of the person under trial.

In *Peoples Union for Democratic Rights V Union of India* the Supreme
Court held that non – payment of minimum wages to the workers employed in various Asiad projects in Delhi
was a denial to them of their right to live with basic human dignity
and violative of Article 21 the Constitution.

Bhagwati J. speaking for majority held that the rights
and benefits conferred on the workmen employed by a contractor
under various Labour law are “clearly intended to ensure basic
human dignity to workmen and if the workmen are deprived of any

36 A.I.R. 1980 S.C. 1535
37 A.I.R. 1982 S.C. 1473
of those rights and benefits that would clearly be a violation of Article 21.

This decision has heralded a new legal revolution. It has clothed millions of workers in factories, fields, mines and project sites with human dignity. They have Fundamental Rights to minimum wages, drinking water, shelter, clothing, medial aid and safety in the respective occupations covered by the various welfare legislators.

The right to life with human dignity encompasses within its fold, some of the finer facets of human civilization which makes life worth living. The expanded connotation of life would mean the tradition and cultural heritage of the person concerned.

In *Sunil Batra V Delhi Administration*\textsuperscript{38} considering the effect of solitary confinement of a prisoner sentenced to death and the meaning of the word ‘life’ enshrined under article 21, the Constitution bench held that the quality of life covered by Article 21 is something more than the dynamic meaning attained to life and liberty.

In *Charles Shobhraj V Supdt., Central Jail, Tihar*\textsuperscript{39} the court held that the right to life includes right to human dignity. The

\textsuperscript{38} A.I.R. 1978 S.C. 1575
\textsuperscript{39} A.I.R. 1978 S.C. 1514
right against torture, cruel or unusual punishment or degraded treatment was held to violate right to life.

In *Bandhu Mukti Morcha V Union of India*\(^{40}\) the court held that right to live with human dignity enshrined in Article 21, derives its life and breath from the Directive Principles of the state policy and particularly cl.(e) & (f) of Article 39, 41 and 42.

In *Delhi Domestic Working Women’s Forum V Union of India*\(^{41}\) the Supreme Court granted compensation to few rape victims, by admitting their writ petition inviolate of Article 21 which includes right to dignity.

In another landmark judgment i.e. in *Bodhisattva Sansthan v Subba Chakravarthy*\(^{42}\) the Supreme Court awarded an interim compensation of Rs. 1000/- per month to the victim of rape until charge of rape are decided by trial court, the court held that:

Women also have the right to life and liberty and they also have the right to be respected & treated as equal citizens. Their honour and dignity cannot be touched or violated. They also have the right to lead an honorable and peaceful life. Rape is a crime against human right and is also violative of the victims most cherished of Fundamental Rights normally the right to life contained in article 21.

\(^{40}\) A.I.R. 1984 S.C. 802
\(^{41}\) (1995) 1. S.C.C. 14
\(^{42}\) (1996) S.C.C 490
I. **Right to Health and Humane Conditions of Work:**

(i) **Constitutional Provisions:**

Article 38(1) lays down the foundation for human rights and enjoins the states to promote the welfare of the people by securing and protecting it effectively as it may, a social order in which justice, social economic and political shall inform all the institution of the national life. Article 42 mandates that the state shall make provision, statutory or executive to secure just and human condition of work.

Article 43 directs that the state shall “endeavor to secure all workers by suitable legislation or economic organization or any other way ensure decent standard of life and full enjoyment of leisure and social and cultural opportunities to the workers.

Article 46 directs the state to protect the poor from social injustice and all forms of exploitation. Article charges that the policy of the state shall be to secure “the health and strength of the workers”.

Article 48-A enjoins the state to protect and improve the environment. As human resources are valuable national assets for
peace industrial, material production, national wealth, progress, social stability, decent standard and of life of worker is an input.

(ii) **International Provisions relating to Right to Health:**

Article 25(2) of the Universal declaration of Human Rights ensures right to standard of adequate living, for health and welfare being of the individual, including medical care, sickness and disability.

Article 2 (b) of the International Convention of political, social and cultural right protects the right of worker to enjoy just and favorable condition of work ensuring safe and healthy working conditions.

II **Right to Health and Medical Aid as Fundamental Rights Under Article 21:**

In *C.E.S.C. Ltd. V Subash Chandra Bose*\(^{43}\) the Supreme Court considered the gamut the of operational efficiency of Human Rights and the Constitutional rights, the right to medical aid & health and held that the right to social justice are Fundamental Rights.

The Right to life with human dignity at least with minimum sustenance and shelter and all those rights and aspects of

\(^{43}\) (1992) 1. S.C.C. 441
life which would go to make a married life complete and worth living; the enjoyment of life and its attainment-social, cultural and intellectual, without life, cannot be meaningful & so would embrace the protection and presentation of life guaranteed by article 21.

In *Consumer Education and Research Centre V Union of India* 44; In a historic judgment, the Supreme Court has held that the right to health and medical care of a worker while in service or post retirement is a Fundamental Rights under article 21 of the Constitution read into Article 39(c), 41 and 43 as it is essential for making the right to life of the workman meaningful and purposeful with dignity of person.

Right to life in article 21 does not and cannot mean mere animal existence. It has a much under meaning which includes right to livelihood, better standard of life hygienic conditions in workplace and leisure. Right to life includes protection of the health and strength of the worker is a minimum requirement to enable a person to live with dignity. The health and strength of the worker is an integral face of right to life. Denial thereof denudes the work man the finer facets of life violating Article 21.

The health of the worker enables him to enjoy the fruit of his Labour. Medical facilities to protect the health of workers are

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therefore the fundamental human rights to make the life of workman meaningful and purposeful with dignity of person.

The court accordingly laid down that:

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

2) Every worker suffering from occupational health hazard would be entitled for compensation of Rs. 1.0 lakh.

3) All factories whether covered by the E.S.I. Act or workman compensation Act or otherwise should insure health coverage to every worker.

In *Kirloskar Boilers Ltd. V E.S.I.*\(^{45}\) the Supreme Court following the consumer Education and Research Centre’s case has held that ‘right to health’ is a fundamental right of the workmen. The court also held that this right is not only available against the state and its instrumentalities but even against private industries to ensure to the workmen to provide facilities and opportunities for health and vigor of the workman assured in the provision of part IV of the Constitution which are integral part of right to equality under Article 14 and right to invigorated life under Article 21 which are Fundamental Right to the workmen.

\(^{45}\) (1996) 2. S.C.C. 682
In *State of Punjab V. Mohinder Singh Chawla*\textsuperscript{46} the Court has held that the right to life in Article 21 of the Constitution includes the right to health, therefore, State employees are entitled to medical reimbursement of expense of treatment and room rent charges both in approved specialized hospital outside the Government hospital.

\textbf{6.4.4 RIGHT TO SPEEDY TRIAL AND LEGAL AID:}

‘Delay in justice is denial of justice’ is a well-known maximum. Speedy trial is the essence of criminal justice. It was added to the construction which deals in the equal justice and free legal aid to economically backward class under Art39 A. This article was added to the Constitution pursuant to the new policy of the government to give legal aid to economically backward classes of people.

Article 39A which was added to the Constitution by 42\textsuperscript{nd} amendment states that “the State shall secure that the operation of the legal system promotes justice, on a basis, of equal opportunity and shall in particular, provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities for

\textsuperscript{46} (1996) 2. S.C.C. 682
securing justice are not denied to any citizen by reason of economic or other disabilities”.

The right of free legal aid and speedy trial are guaranteed Fundamental Rights under Article 21. It is now fairly settled that the right to legal aid and speedy trial are part of the guarantees of human rights envisaged by article 21 of the Constitution of India after a series of decision of Supreme Court.

The state is under a duty to provide lawyer to poor person and it must pay to the lawyer his fee as fixed by the court.

I. **Right to speedy trial:**

Right to speedy trial was held as fundamental right for the first time by the Supreme Court in its landmark judgment in *Hussainara Khatoon V Home Secretary, State of Bihar*\(^47\), and 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 speedy trial’ a fundamental right in implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution.

No procedure which does not ensure a reasonable quick trial can be regarded as reasonable, fair or just.

\(^{47}\) A.I.R. 1979 S.C. 1360
In a significant judgment in *A.R. Antulay V R.S. Nayak*\(^{48}\) the Supreme Court has laid down detailed guidelines for speedy trial of an accused in criminal cases but it declined to fix any time limit for trial of offence. The burden lies on the prosecution to justifying and explain the delay. The court held that the right to speedy trial following from Article 21 is available to the accused at all stages namely at the stages of investigation injuring, trial, appeal, revision and retrial.

The concerns undertaking 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 short as possible.

b) Undue delay may result in impairment of the ability of the accused to defend.

c) The worry, anxiety, expense and disturbance to his vocation and peace resulting from underlying prolonged investigation, injuring or trial shall be minimal.

d) The accused cannot be denied the right of speedy trial merely on the ground that he failed to demand speedy trial.

e) No time limit can be fixed for speedy trial.

\(^{48}\) A.I.R. 1997 S.C. 3401
f) It is in the interest of all concerned that the guilt is determined as quickly as possible in the circumstances.

g) Each and every delay does not prejudice the accused.

h) An objection based on denial of right of speedy trial and for relief as that account should be first addressed to the High Court.

In *Mansukhlal Vithaldas Chanam V State of Gujarat*\(^{49}\), the court held that in bribery case 14 years lapsed since incident and the order according sanction found to be bad. It is not fair and just to direct initiation of proceedings again from stage of sanction so as to expose accused to another inning of litigation and keep him on trial for an indefinitely long period statutory to mandate of Article 21 In circumstances accused acquitted.

In *Commissioner of Police, Delhi V Registrar, Delhi High Court, New Delhi*\(^{50}\) the court held that Article 21 of the Constitution which enshrines and guarantees the precious right of life and liberty to a person, deprivable only on following the procedure established by in a fair trial, assured of the safety of the accused. Assurance of a fair trial is the first imperative of the dispensation of justice.

\(^{49}\) A.I.R. 1997 S.C. 95

\(^{50}\) A.I.R. 1996 S.C. 9
II. **Right to Free Legal Aid:**

Right to free legal aid was held as fundamental Right under Article 21 for the first time in *M.H. Hoskot V. State of Maharashtra*\(^{51}\).

Regarding the right to free legal aid, Krishna Iyer, J., declared, “This is the State’s duty and not Government’s charity.” If a prisoner is unable to exercise his Constitutional and statutory right of appeal including special leave to appeal for want of legal assistance, there is implicit in the court under Art 142, read with Art 21 and 39A of the Constitution, the power to assign counsel to the prisoner provided he does not object to the lawyer named by the court. Equally, is the implication that the state which sets the law in motion must pay the lawyer an amount fixed by the Court?

In *State of Maharashtra v Manubhai*\(^{52}\) the Supreme Court considered the combined effect of Article 21 and Article 39A of the Constitution of India as follows:

“The right to free legal aid and speedy trial are guaranteed Fundamental Rights under article 21 of the Constitution. The preamble to the Constitution of India assures Justice, social economic and political. Article 39A of the Constitution provides equal justice and free legal aid. The state shall secure that the

\(^{51}\) A.I.R. 1978 S.C. 1548

\(^{52}\) (1995) 5. S.C.C. 730
operation of the legal system promotes justice. It means justice according to law. In a democratic polity, governed by rule of law, it should be the main concern of the state to have a proper legal system”.

Article 39A mandates that the state shall provide free legal aid by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The crucial words are to provide free legal aid ‘by suitable legislation or by schemes or in any other way.

The Supreme Court further held that the above words occurring in Article 39A are of very wide import. In order to enable the state to afford free legal aid and guaranteed speedy trial a vast number of persons trained in law are essential. Legal aid is required in many from and at various stages, for obtaining guidance for resolving disputes in courts, tribunals or other authorities.

The explosion in population, the vast changes brought about by scientific technological and other developments and the all-round enlarged field of human activity reflected in modern society, and the consequent increase in litigation in court and other forums law demand that the service of competent persons with expertise in law is required in many stages and at different forms or levels and should be made available. The need for continuing and
well organized legal education is absolutely essential for reckoning the new trends in the world order to meet the ever growing challenges.

The legal education should be able to meet the ever growing demand of the society and should be thoroughly equipped to cater to the complexities of the different situations. Specialization in different branches of the law is necessary. The requirement is of such a great dimension that sizeable or vast number of dedicated persons is properly trained in different branches of law. This is possible only if adequate number of law colleges with proper infrastructure including expert law teachers and staff are established to deal with the situation in an appropriate manner.

If the state is unable to start colleges, which are duly recognized by the concerned universities/Bar Council of India or other appropriate authorities, as the case may be, should be afforded reasonable facilities, to function effectively and in a meaningful manner. Under the label of self-financing institutions the colleges should not be permitted to hike the fees to any extent in order to meet the expenses to provide the infrastructure and appointing competent teaching staff. The private colleges, on their own, may not afford to incur the huge cost required in that behalf. The standard of legal education is bound to suffer. It should not so happen for want of funds. The ‘quality’ should on no account suffer
on providing free legal aid and if it is not so, the free legal aid will only be a farce or make believe or illusory or meaningless ritual. That should not be there. It is in that direction the grant – in – aid by the state will facilitate and ensure the recognized private law colleges to function effectively and in a meaningful manner and turn out sufficient number of well-trained or properly equipped law graduates, in all branches year after year.

That will in turn enable the state and other authorities to provide free legal aid and ensure that opportunities for securing justice are not denied to any citizen on account of any disability. These aspects necessarily following from Article 21 and 39A of the Constitution were totally lost sight of by the Government when it denied the grant – in – aid to the recognized private law colleges as was afforded to other faculties.

The state has abdicated the duty enjoined on it by the relevant provisions of the Constitution aforesaid. In this perspective the Supreme Court held that Article 21 read with Article 39A of the Constitution mandates or castes duty on the state to afford grant – in – aid to recognized private law colleges similar to other faculties which qualify for the receipt of the grant. The aforesaid duty cast on the state cannot be whittled down in any manner either by pleading paucity of funds or otherwise.
In *Delhi Domestic Working Women’s Forum V. Union of India*\(^\text{53}\) a case which deals with rape of domestics women servants by seven army personnel in a running train the Supreme Court let down the following guidelines relating to legal aid and speedy trial

**a)** The complainant of sexual assaults cases should be provided with legal representation. Such a person must be well acquainted with criminal justice. The victims advocate’s role should not be only to explain to her the nature of proceedings, to prepare her for the case and to assist her in the police station and in Court but to provide her with guidance as to how she might obtain help of a different nature from other agencies. For example, mind consulting or 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.

**b)** Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in distressed state at the police station the guidance and support of a lawyer at this state would be of great help to her.

\(^{53}\) Supra n.41
c) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and the police report should state that the victim was informed.

d) A list of advocates willing to act in these cases should be kept at the police station for victims who did have any particular lawyer in mind, or whose own lawyer was unavailable.

e) 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 under delay Advocates would be authorized to act the police station before of the Court was sought or obtained.

6.4.5 RIGHT TO EDUCATION:

The citizens have a Fundamental right to education under the Constitution. Right to education is not stated expressly as Fundamental Right in part III of the Constitution. The said right flows from Article 21 read with Article 41 & 45. This right is, however, not an absolute right. Its content and parameters have to be determined in the light of Article 45 and 41. Every citizen has a right to free
education until he completes the age of 14 years. After this he right to education is subject to limits of economical capacity and declaration of the state. The right to education which is implicit in the right to life and personal liberty Article 41, 45 & 46 guaranteed by Article 21 must be construed in the light of the Directive Principles in part IV of the Constitution. So far as the right to education is concerned, there are several articles in Part IV which expressly speak of it.  

The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavor to provide educational facilities at all levels to its citizens. The Fundamental Right guaranteed under Part III of the Constitution of India including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.

The “right to education”, therefore, is concomitant to the Fundamental Rights enshrined under Part III of the Constitution. The State in under a Constitutional – mandate to provide educational institutions at all levels for the benefits of the citizens. The

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54 Unnikrishnan v. State of A.P. n.5
55 Id
educational institutions must function to the best advantage of the citizens.\footnote{Mohini Jain v. State of Karnataka (1992) 3 S.C.C. 666}

A true democracy is one where education is universal where people understand what is good for them and the nation and know how to govern themselves. The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development.

I. Importance of Education:

Learning is excellence of wealth that none can destroy. The fundamental purpose of Education is the same at all time and in all places. It is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of the body, the enrichment of the mind, the sublimation of the emotions and the illumination of the spirit. Education is a preparation for a living and for life, here and hereafter.

An old Sanskrit adage states: “That is Education which leads to liberation” from ignorance which shrouds the mind, liberation from superstition which paralyses effort, liberation from prejudices which blind the Vision of the truth.
In the context of a democratic form of Government which depends for its sustenance upon the enlightenment of the populace, education is at once a social and political necessity. Even several decades ago, our leaders harped upon universal primary education as a desideratum for national progress. It is rather sad that in this great land of ours the human mind soaped to the highest pinnacle of wisdom. The percentage of illiteracy should be appalling. Today, the frontiers of knowledge are enlarging with incredible swiftness. The foremost need to be satisfied by our education is therefore the eradication of illiteracy which persists in a depressing measure. Any effort taken in this direction cannot be deemed to be too much.

Victories are gained, peace is preserved progress is achieved, civilization is built up and history is made not on the battle fields where ghastly murders are committed in the name of patriotism, not in the Council Chambers where inspired speeches are spun out in the name of debate, not even in factories where are manufactured novel educational institutions which are the seed – beds of culture, where children in whose hands quiver the destinies of the future, are trained. From their ranks will come out when they grow up, statesmen and soldiers, patriots and philosophers, who will determine the progress of the land.
The importance of education has come to be recognized in various judicial decisions.

In Oliver Brown V Board of Education of Topeka\textsuperscript{57} it was observed.

“Today education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.

II. Article 21 and Right to Education:

The fact that right to education occurs in as many as three Articles in Part IV viz., Article 41, 45 and 46 shows the importance attached to it by the founding fathers, even some of the Articles in Part III viz., Article 29 and 30 speak of education.

Right to education came in to limelight by Supreme Court land mark judgment in Mohini Jain V State of Karnataka\textsuperscript{58} the facts of the case are:-

\begin{footnote}
\textsuperscript{57} U.S. Supreme Court Reports (1953) 98 Law Ed.873 at 880
\end{footnote}
The Karnataka State legislature with the object of eliminating the practice of collecting capitation fee for admitting students in educational institutions enacted the Karnataka Educational Institutions (prohibition of capitation fee) Act 1984. Purporting to regulate the tuition fee to be charged by the private medical colleges in the state the Karnataka Govt. issued a notification dated 5th June 1989 under section 5(1) of the Act thereby fixing the tuition fee, other fees and deposits to be charged from the students by the Private Medical College in the state.

Under the notification the candidate admitted against Govt. seats are to pay Rs. 2,000/- per year as tuition fee. The Karnataka students (other than those admitted against Govt. seats) are to be charged tuition fee not exceeding Rs. 25,000/- per annum. The third category is of “Indian students from outside Karnataka” from whom tuition fee not exceeding Rs. 60,000/- per annum is permitted to be charged.

Miss Mohini Jain a resident of Meerut was informed by the Management of Sri Siddhartha Medical College, Agalokote, Tumkur in the state of Karnataka that she could be admitted to the MBBS course in session commencing February 1991. According to the management she was asked to deposit Rs. 60,000/- as tuition fee for the remaining years of MBBS course. The petitioners father

58 Supra n.56
informed that it was beyond his means to pay the exorbitant annual fee of Rs. 60,000/- and as a consequence she was denied admission to the Medical College.

Justice Kuldip Singh and R.M. Shah framed the following questions after herein the learned counsel.

(1) Is there a ‘right to education’ guaranteed to the people of India under the Constitution? If so, does the concept of capitation fee infract the same?

(2) Whether the charging of capitation fee in consideration of admission to educational institutions is arbitrary, unfair, and unjust and as such, violates the equality clause contained in Article 14 of the Constitution.

(3) Whether the impugned notification permits the private Medical College to charge capitation fee in the guise of regulating fees under the Act.

(4) Whether the notification is violative of the provisions of the Act which in specific terms prohibit the charging of capitation fee by any education institution in the state of Karnataka.

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59 Id
The question which is relevant under the present chapter is whether there is a ‘right to education’ guaranteed to the people of India under the India Constitution?

The Supreme Court while dealing with the first question held that “Right to life” is the compendious expression for all those rights which the Court must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education.

The State is under the Constitutional mandate to provide educational institutions at all levels for the benefit of the citizens. The educational institutions must function to the best advantages of the citizens. Opportunity to acquire education cannot be confined to the richer sections of the society. The institutions are charging capitation fee as a consideration for admission. Capitation fee is nothing but a price for selling education. The concept of teaching shops is contrary to the Constitutional scheme and is wholly abhorrent to the India culture.

The Directive Principles which are fundamental in the governance of the country cannot be isolated from the Fundamental Rights guaranteed under Part III. These principles have to be read
into the Fundamental Rights. Both are supplementary to each other. The State is under a Constitutional mandate to create conditions in which the Fundamental Rights guaranteed to the individuals under Part III could be enjoyed by all. Without making right to education under Article 41 of the Constitution a reality, the Fundamental Rights under Chapter III shall remain beyond the reach of large majority which is illiterate.

The Fundamental Rights guaranteed under Part III of the Constitution of India including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.

The “right to education”, therefore, is concomitant to the Fundamental Rights enshrined under Part III of the Constitution.

The Supreme Court finally in *Mohini Jain’s* case held that the right to education at all level is a fundamental right of citizen under Article 21 of the Constitution. Further it held that charging capitation fee for admission to education institutions is illegal and amounted to denial of right to education; and is also violative of Article 14 as it was arbitrary, unfair and unjust. Capitation fee makes the availability of education beyond the reach of the poor. The right to education is concomitant to the Fundamental Rights enshrined under Part III of the Constitution. The fundamental right to speech
and expression cannot be fully enjoyed unless a citizen is educated and conscious of his individualistic dignity. The education in India has never been a commodity for sale.\textsuperscript{60}

In \textit{Unnikrishnan V State of A.P.}\textsuperscript{61} the Supreme Court was asked to examine the correctness of the decision given by the court in \textit{Mohini Jain’s}\textsuperscript{62} case. The question which arose was whether a citizen has a Fundamental right to education for a medical Engineering or other professional degree. The petitioners running Medical and Engineering College in the state of A.P., Karnataka, Maharashtra and Tamilnadu contended that if \textit{Mohini Jain’s}\textsuperscript{63} decision is correct and followed by the respective state government they will have to close down their colleges.

The Five judges’ bench, by 3:2 majority, partly agreed with the \textit{Mohini Jain’s}\textsuperscript{64} decision and held that the right to education is a fundamental right under article 21 of the Constitution as it directly flows from right to life. But as regard the content, the court partly overruled \textit{Mohini Jain’s}\textsuperscript{65} case.

J. B.P. Jeevan Reddy observed that the citizen has a fundamental right to education. The said right flow from Article 21. This right is, however, not an absolute right. Its content and

\begin{itemize}
  \item \textsuperscript{60} Id
  \item \textsuperscript{61} Supra n.5
  \item \textsuperscript{62} Supra n.56
  \item \textsuperscript{63} Id
  \item \textsuperscript{64} Id
  \item \textsuperscript{65} Id
\end{itemize}
parameter have to be determined in the light of Article 45 and Article 41. In other words, every child/citizen of this country has a right to free education until he completes the age of fourteen years.

The right to education further means that a citizen has a right to call upon the state to provide educational facilities to him within the limits of its economic capacity and development.

J. Mohan concurring with J. B.P. Jeevan Reddy observed: Article 21, which is the heart of fundamental right, has received expanded meaning from time to time. There is no justification as to why it cannot be interpreted in the light of Article 45 wherein the state is obligated to provide education up to 14 year of age within the prescribed time limit. 10 year spoken to under the article had long ago come to an end. We are in 43rd year of independence. Yet if Article 45 were to remain a pious wish and fond hope, what good of it have regard to the importance of primary education. A time limit was prescribed under this Article. If, therefore, endeavor has not been made till now to make this Article reverberate with life and articulate with meaning, the court should step in. The state can be obligated to ensure right to free education of every child up to the age of 14 years. Higher education calls heavily on natural economic resources. The right to it must necessarily be limited in any given country by its economic and social circumstances. The state’s obligation to provide it is therefore
not absolute and immediate but relative and progressive. It has to take steps to the maximum of its available resources with a view of achieving progressively the full realization of the right of education by all appropriate means. Therefore by holding education as a fundamental right up to the age of 14 years the court is not determining the properties.\footnote{Supra n.5}

In reply to the question, whether the Government of India guarantees a fundamental right to education to its citizens or not, the Supreme Court held that Right to education is not stated expressly as a fundamental right in part III. This court has, however not followed the rule that unless a right is expressly stated as a fundamental right it cannot be treated as one. Freedom of press is not expressly mentioned in part III, yet it has been read into and inferred from the freedom of speech and expression.\footnote{Id}

The right to education is implicit in and flows directly from right to life. The right to life under Article 21 and the dignity of the individual cannot be assured unless it is accompanied by the right to education.

The right to education has been treated as one of transcendental importance in the life of an individual, not only in this country since thousands of years, but all over the world.
The court observed in *Unnikrishnan* case that *Mohini Jain* was not wrong in so far as it declared that the “right to education flows directly from right to life”. But the question is what is the content of this right is. How much and what level of education is necessary to make the life meaningful? Does it mean that every citizen of this country can call upon the state to provide him education of his choice?

In other words, whether the citizens of this country can demand the state to provide adequate number of medical and engineering colleges to satisfy their educational needs, *Mohini Jain* seems to say yes. With respect, we cannot agree with such a broad proposition. The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the Directive Principles in part IV of the Constitution.

A true democracy is one where education is Universal, whose people understands what is good for them as well as for the nation and knows how to govern themselves. The three Articles, Article 45, 46, 41 are designed to achieve the said goals among others. It is the light of those articles that the content and parameter of the right to education have to be determined.

Right to education as understood in the content of Article 45 & 41 means: (a) every child citizen of this country has a right of free education until he completes the age of 14 years and
(b) after a child citizen completes 14 years, his right to education is circumcised by the limits of the economic capacity of the state and its development.

In *Vidyaranya Education Society, Koppulu Prakasam Dist. v Director of School Education, A.P.* 68 the A.P. High Court retreated the same view as expressed by S.C. in *Unnikrishnan*’s case and held that Article 21 has to be construed in the light of the Directive Principles and part IV of the court and the right to free education up to 14 years is a fundamental right reading Article 21 and 45 together.

In *K. Krishnamacharyulu & others V Sri Venkateshwara Hindu College of Engineering* 69 the Supreme Court held that State has obligation to provide facilities and opportunities to avail right of education private institution caters to the need of educational opportunities which has element of public interest, the teachers working in private institution can therefore avail remedy under Article 226.

In *A. Balasubramaniam V Secretary to Govt. education Department* 70 the court held that the right to education can be read under Article 21 and Article 45 but there can be no fundamental

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69 A.I.R. 1997 Ker. 133 B  
70 A.I.R. 1996 Mad. 95
right to claim higher education so also age limit can be prescribed for admission to educational courses.

In *Sathyaram Kottarakkara & others V State of Kerala & others*\(^{71}\) the court held that the right to education uninterrupted by any outside force, political or otherwise is a fundamental right guaranteed under Article 21 read with Article 39,41,46 and 46 of the Constitution which will make the life more meaningful and purposeful. If education is disrupted by any form of exploitation either politically or otherwise would offered their means of livelihood which is guaranteed under Article 21.

### 6.4.6 RIGHT TO CLEAN ENVIRONMENT & PROTECTION OF MONUMENTS AND ARTICLE 21

I. **Constitutional and Other Provisions:**

The jurisprudence of Environment Protection is laid down in the Article 48A and 51A of the Constitution of India (by the 42\(^{nd}\) Amendment Act, 1976.) Today, the state and the citizens are under a fundamental obligation to protect and improve the environment.

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\(^{71}\) A.I.R. 1998 S.C. 95
Article 48A reads:

“The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country”.

Article 51A (g) reads:

“It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures”.

The duties are also imposed under International Law.

The Stockholm Conference, 1971, resolved in its first principle: “Man had the fundamental right to adequate conditions of life, in an environment of a quality that permitted a life of dignity and well-being”.

The RIO Conference, 1992, in its declaration on environment and development in Principle I provided for “a healthy and productive life in harmony with nature”.

According to Section 2(a) of the Environment (Protection) Act 1986 Environment “includes water, air and land the inter–relationship which exists among and between water, air and land and human being, other living creatures, plants and micro–organism and property.”
The main cause for pollution is the scientific and technological developments which have given opportunities to man to meet his needs and aspirations. It is universally admitted that over industrialization and indiscriminate application of science and technology to economic development have been the principal cause for impairment of the quality of the human environment.

Dr. Tolbe of United Nations Environmental problem Executive Director has stated:

“There is a wide sense of possible, if not impending, environmental disaster. The limit of World’s capacity to sustain development and provide essential resources for life were perceived population is growing rapidly and the rate of growth seemed likely to accelerate. Natural resources are being consumed at alarming rates and pollution emissions are being poured into the biosphere in huge quantities.”

Environmental degradation is a social problem and considering its impact on the society, law courts have a social duty as it is a part of society.

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72 P.C. Patil Environment Protection and Judicial Activism in India A.I.R. Journal Section (1996) p.34
II. Importance of Environmental Protection:

The courts in India through its various have highlighted the importance of Environmental protection to have a polluted free India. In *People United for Better living in Calcutta V State of W.B.*\(^73\) the court held that it is a well settled principle that socioeconomic development and its conditions cannot be ignored by law courts and since ecological imbalance is a social problem ought to be decided by the law courts since benefit of the society is the prime consideration of the law courts.

It is not only the Apex courts but also the High Courts also have shown dynamism in evolving the right to environment in India. The burning example of judicial activism is *Ratlam Municipality case*\(^74\). The Supreme Court in this case held that the state would realize that Article 47 makes it a paramount principle of governance that steps are taken for the improvement of public health as amongst its primary duties and human right has to be respected regardless of budgetary provision.

The courts in India have dealt with the cases relating to development and environment and the principle has evolved that Socio-economic development shall have to be made in closest possible harmony with the environment.

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\(^{73}\) A.I.R. 1993 Cal. 215

In the case of People United for Better living in Calcutta V State of West Bengal\textsuperscript{75}, Calcutta High Court observed that:

In a developing country there shall have to be developments, but that development shall have to be in closest possible harmony with the environment as otherwise there would be development but no environment, which would result in total devastation, though however may not be felt in present but at some future point of time but when it will be too late".

In \textit{M.C. Mehta V Union of India}\textsuperscript{76}, the Supreme Court accepted the writ petition under Article 21 of the Constitution alongwith Article 47,48A for Environmental Protection of Taj Mahal.

The Supreme Court has laid down the law that Article 21 also includes Fundamental Right to have clean environment and protection of monuments.

\textbf{III. Article 21 and Environment Protection and Protection of Monuments:}

In \textit{Rural litigation and Entitlement Kendra V State of U.P.}\textsuperscript{77} the Supreme Court ordered closure of certain lime stone Ghannies on the ground that large scale pollution was caused by

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\textsuperscript{75} Supra n.73
\textsuperscript{76} A.I.R. 1997 S.C. 734
\textsuperscript{77} (1985) 2. S.C.C. 431
\end{flushleft}
lime stone Ghannies adversely affecting the safety and health of the people living in the area and is violating Article 21.

In *M.C. Mehta V Union of India*\textsuperscript{78} also known as Shriram Foods and Fertilizer Case, the Supreme Court directed the company, manufacturing hazardous and lethal chemicals and gases posing danger to health and life of the workmen and people living in its neighborhood, to take all necessary safety measures before re-opening of the plant. There was leakage of chlorine gas resulting into death of one person and causing hardship to workers and residents of the locality. This was due to the negligence of the management. The management was directed to deposit sum of Rs.20 lacs by way of security for payment of compensation claims of the victims.

In *M.C. Mehta V Union of India*\textsuperscript{79} the Supreme Court ordered the closure of tanneries at Jajman near Kanpur pollution the Ganga.

In *M.C. Mehta V Union of India*\textsuperscript{80} the Supreme Court gave directions to the Central and State Governments and various local bodies and Boards under the various Statutes to take appropriate action for prevention and control of pollution of water.

\textsuperscript{78} (1986) 2. S.C.C. 176  
\textsuperscript{79} (1987) 4. S.C.C. 436  
\textsuperscript{80} (1988) 1. S.C.C. 471
In *M.C. Mehta V Union of India*\(^{81}\) it was held that P.I.L. against pollution in Delhi caused by increasing number of petrol and diesel driver vehicle is maintainable.

In *M.C. Mehta V Union of India*\(^{82}\) the Supreme Court accepted the writ petition under Article 21 of the Constitution along with Article 47,48A for Environmental Protection of Taj Mahal.

In *Subhash Kumar V State of Bihar*\(^{83}\) it has been held that P.I.L. is maintainable for ensuring enjoyment of pollution free water and air which is included in the right to life under Article 21 of the Constitution. If anything endangers or impairs that quality of life in violation of laws a citizen has right to have recourse to Article 32 for pollution of water or air which may be detrimental to the quality of life. Such a petition under Article 32 and 21 is maintainable at the instance of affected persons or even by group of social workers or journalists.

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\(^{81}\) (1991) 2 S.C.C. 137

\(^{82}\) A.I.R. 1997 S.C. 734

\(^{83}\) A.I.R. 1991 S.C. 420