



# CHALLENGES BEFORE THE RIGHTS RELATED TO ARTICLE 21 OF INDIAN CONSTITUTION-AN ANALYTICAL STUDY

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## ABSTRACT

This article is an attempt to mirror the concept and to focus on various challenges before the rights related to Article 21, this article is considered to be the coronary to the heart of the constitution of India, Article 21 fundamentally protects the 'right to life and personal liberty' and states that "no one shall be deprived of his life and liberty except according to the procedure established by law", however, technological, social, political changes in the society lead to the inclusion of various new rights under the ambit of article 21 such as right to livelihood, right to pollution free environment, right education, right to shelter, right to free legal aid e.t.c. (some of these rights were earlier a part of the directive principles of state policy) through various judicial precedents but as the scope of the Article 21 widened, various challenges also came in the way of the actual implementation of these rights on the ground level, this article aims towards defining the plethora of rights that owe their origin to Article 21, the challenges before those rights and the steps which should be taken by various government for the proper implementation of those rights.

**KEYWORDS** - *Article 21, right to life, constitution of India, implementation, challenges etc.*

## INTRODUCTION

**DUE PROCESS OF LAW:** (THIS DOCTRINE ORIGINATED FROM THE CONSTITUTION OF USA).

This doctrine now has a high-quality assessment which is based upon the fundamental principle that there can be a law to deprive the right of private liberty from someone, however additionally it is to be seen that whether or not the regulation made is just, equitable and not arbitrary. If the Supreme Court apprehends that any law as unfair, it will declare it as null and void. This doctrine provides an efficient remedy to other human rights. It gives the judiciary to pick out the vital elements like equity, justice, and liberty in any law passed by the

legislature. Thus, the doctrine of 'due process' protects the person from the arbitrary policies of each and every government and various legislative bodies.

This concept is based upon 3 most vital subjects: Justice, Equity and Good Conscience, but in the case of *Maneka Gandhi vs. Union of India*, the Supreme Court has overruled the *A.K.Gopalan's* case and held that the act of both legislature and executive must comply with the due process requirements under article 21.

In *Sunil Batra vs. Delhi Administration*<sup>1</sup>, Justice Krishna Iyer stated that: 'Truly our Constitution has no 'due method clause' as the VIIIth Amendment (of the American Constitution) however in this wing of law, but after *Cooper* and *Maneka Gandhi's* case the outcome is identical.

In the case of *Ramleela Maidan Incident*<sup>2</sup> Justice B.S. Chauhan in his opinion wrote that once police disturbed the organization at night at 1:00 a.m., their right to sleep was violated, he held that right to sleep forms an important part of Article 21 which ensures non-public liberty and existence to all, Sleep forms a vital a part of residing a peaceful life, because of this it's one of the most essential rights, In *Selvi vs. State of Karnataka* (the landmark judgment that laid down the principle that the proofs given by the way of narco-evaluation, FMRI and polygraphs to be inadmissible & Violative of the right to personal liberty and privacy), the Supreme Court has time and again held that procedure established by law and due process of law typically are a part of Indian Constitutional law under Article 21 of the Constitution.

As there is an old saying "you don't know what you don't know" and it is absolutely correct in context of current scenario for individuals who are trying to confront the legal system alone, a large section of the Indian population is uneducated and is consequently unaware of their rights mentioned under the Indian constitution, Indian government needs to increase the amount of funds to increase the legal education amongst the Indian population, that way the majority of Indian population will be in the position to avail various right guaranteed under Indian constitution.

## **VARIOUS RIGHTS COVERED UNDER ARTICLE 21**

If we look at Article 21 in a literal sense it contains 'right to life and personal Liberty' but the mere right to life and liberty are meaningless if we do not include within the ambit of article 21, other rights which provide meaning to the 'right to life and Liberty' , there are various other rights which flow through the fountain of article 21 which are right to shelter, right to education, right to human dignity, right to livelihood, right to medical care, right to pollution free environment, right to privacy e.t.c. , all these rights help in providing meaning to article 21, thus the bare necessities, minimum and basic requirements which are important and crucial for the dignified existence of a human being form a core to the concept of 'right to life and liberty'.

<sup>1</sup> (1978) 4 SCC 409

<sup>2</sup> Writ Petition (CRL.) NO. 122 OF 2011

## **RIGHT TO SHELTER**

In *Chameli Singh v. Province of U.P.*<sup>3</sup> A 3 Judge bench of the Supreme Court that the right to shelter is a crucial right available in every circumstance and it perused into Article 21 of the Constitution of India together with its internal ambit, the right to a cozy house to make the right to life more meaningful. The Court observed that: Safe house for someone, is not an easy insurance but it is certainly one of the most important one. It provides the chance to an individual to boom physically, rationally, mentally and profoundly. Right to shelter, in the long run, consists of an excellent dwelling space, sheltered and better than average shape, spotless and not too terrible surroundings, sufficiently mild, unadulterated air and water, sanitation and different network conveniences like streets and so on to have a convenience to travel to his everyday job and other places as well. This right, along those lines, does not merely endorse a person to a rooftop over his head however it paves the way to all of the framework critical to empower them to live and create as a person.

In *Ramlila Maidan case*<sup>4</sup>, the Honorable Supreme Court held that citizens/men and women have right to laser, to sleep, now not to proper right here and to stay silent. The Knock at the door weather via day or by way of manner of way of night time as a prelude to a are looking for without authority of regulation quantities to police incursion into privacy and violation of critical right of a citizen. Right to privacy has been held to be a crucial proper of a citizen being an essential a part of article 21 of the Indian Constitution. It became moreover stated that the right to existence and private liberty furthermore includes right to sleep.

In 2017 alone, state governments in various Indian states demolished about one hundred and fifty homes everyday going against international human rights norms, behind India's shelter related problem, there are various factors involved such as land politics, a shortage of low cost housing facilities, increasing homelessness, forced ousting from houses, land acquisition and real estate speculations, Indian government should invest more on low cost housing, the homeless people should be given the first priority while allotting of the houses by the government, in the end the government should develop a long term and efficient, individual centered solutions in continuation of the housing rights, varying from emergency humanitarian steps like shelters to the facilities like permanent housing facilities.

## **RIGHT TO EDUCATION**

Right to schooling is one of the most essential right with the citizens without which no person can lead a suitable, exquisite and dignified lifestyle. Earlier, it was a part of Directive Principles of State Policy, however

<sup>3</sup> AIR 1986 Patna 242

<sup>4</sup> AIR 1954 SC 92

as steady with the converting desires of the society *Supreme Court in Mohini Jain Vs. State of Karnataka (1992 SC)*<sup>5</sup> and *Unni Krishna Vs. State of Andhra Pradesh (1993 SC)* ruled that the right to schooling is a crucial right as it flows from the right to existence.

Earlier the Court interpreted the right to schooling under article 21 however within the year 2002, with the 86<sup>th</sup> amendment to the constitution, article 21-A got inserted into to the Indian Constitution and the right to education got expressly mentioned in part 3 of the constitution.

There are various barriers which pose a threat to the proper implementation of the right to education in India such as quality of education and teachers, poverty, gender discrimination, lack of proper infrastructure facilities, poor pupil-teacher ratio etc. The Indian government needs to invest in various things like teacher training programs, ensuring on ground implementation of the infrastructural facilities e.t.c. so the right to education can be availed by more people in India and in the end, the government should make a proper legislation on the point that the ‘education minister’ of the country should be properly educated so that he could understand various challenges before different educational facilities in India and take efficient steps to raise the level of education in India.

## **RIGHT TO LIFE**

Article 21 of the Constitution of India, 1950 presents that, “No man or woman can be disadvantaged of his existence or private liberty except by the procedure established by way of regulation.” ‘Life’ in Article 21 of the Constitution isn't merely the bodily act of respiration. It does no longer connote mere animal existence or persevered drudgery. It has a way wider meaning which includes right to live with human dignity, right to livelihood, right to fitness, right to pollution free air, and so on.

Right to life is vital to our very life without which we cannot survive and it consists of all additional rights, which go on to make a person's life whole, and truly simply worth dwelling. It is the simplest article inside the Constitution that has obtained the widest feasible interpretation. Under the head of Article 21, such loads of rights are present. Thus, the bare necessities, minimum and smooth requirements which may be crucial and unavoidable for someone and it is the center concept to the right to life.

In the case of *Kharak Singh v. State of Uttar Pradesh*<sup>6</sup>, the Supreme Court quoted and held that the term “life” as used here is something that connotes more than mere animal life. The inhibition against its deprivation extends to all the limbs of a human being and schools with the resource of which life is loved. The provision similarly prohibits the mutilation of the body through amputation of an armored leg or the pulling out of an eye or the destruction of some special organ of the body via which the soul communicates with the outer realm.

<sup>5</sup> AIR 1992 SC 1630

<sup>6</sup> AIR 1963 SC 1295

In *Sunil Batra v. Delhi Administration*<sup>7</sup>, the Supreme Court reiterated with the approval the above observations and held that the “right to life” protected the right to lead a healthy lifestyle that allows you to experience all the experiences and pleasures of the human body and senses in their pinnacle condition. It also includes the right to protection of a person’s existence, way of lifestyle, and all that gives the meaning to someone’s lifestyle, the right to live in peace, to sleep in peace and the right to stay fit and healthy.

The biggest challenge to the right to life is the poor implementation of other rights that give meaning to the right to life as right to life in current times means something more than the mere act of breathing and as various other rights that flow from article 21 like right to live with human dignity, right to pollution free environment, right to education, right to free legal aid, right to livelihood e.t.c. will have a proper implementation on the ground then the right to life will become more meaningful in the practical sense.

### **RIGHT TO LIVE WITH HUMAN DIGNITY**

In *Maneka Gandhi v. Union of India*<sup>8</sup>, the Supreme Court gave a current-day length to Art. 21 and held that the right to stay isn't complete within itself as includes within its ambit the right to stay with human dignity. Elaborating the same view, the Court in *Francis Coralie v. Union Territory of Delhi*[iv], observed that:

“The right to live includes the right to stay with human dignity and all that is entering into conjunction with it, viz., the bare requirements of existence collectively with with proper nutrition, apparel and safe haven over the top and centers for analyzing writing and expressing oneself in numerous paperwork, freely moving about and mixing & mingling with fellow human beings and need to embody the right to fundamental necessities which are the primary requirements of life and furthermore the right to pursue hobbies constitute the bare minimal expression of human self.”

Another huge tool of the assignment of life to dignity can be observed in *Bandhua Mukti Morcha v. Union of India*<sup>9</sup>. Characterizing Art. 21 as the heart of fundamental rights, the Court gave it an improved interpretation. Bhagwati J. Observed:

“It is the essential right for all the citizens of this country to live with human dignity and free from exploitation, this right to stay with human dignity enshrined in Article 21 derives its origin from the Directive Principles of State Policy and in particular clauses (e) and (f) of Article 39 and Articles 40 and 41 and as a minimum, therefore, it need to includes safety of the health and energy of humans, males and females, and at the tender age of kids should be free from abuse, availability of possibilities and facilities for kids to bloom in a

<sup>7</sup> AIR 1978 SC 1675

<sup>8</sup> 1978 SCR (2) 621

<sup>9</sup> [1982] 2 SCR 365



wholesome way and in conditions of freedom and dignity, academic centers and humane conditions of laborious work should be ensured and maternity treatment should be ensured for women.

“These are the minimal requirements which have to exist so that you can allow a person to live with human dignity and no State neither the Central Government nor any State Government-has the right to take any step that allows them to deprive someone of these essential requirements.”

Following the above-said cases, the Supreme Court in *Peoples Union for Democratic Rights v. Union of India*<sup>10</sup>, held that non-payment of minimum wages to the workers hired in several Asiad Projects in Delhi is basically denying to them their right to live with critical human dignity and is violative of Article 21 of the Constitution.

Bhagwati J. Held that rights and advantages conferred to workmen hired by the contractor and there are certain guidelines that are surely presupposed to make certain essential human rights to the workmen. He held that the non-implementation through the private contractors engaged for building a structure for holding Asian Games in Delhi, and non-enforcement of these recommendations by the State Authorities has been held to be violative of the essential right of humans to live with human dignity contained in Art. 21<sup>11</sup>.

In *Chandra Raja Kumar v. Police Commissioner Hyderabad*<sup>12</sup>, it's been held that the proper to life includes right to live with human dignity and decency and, therefore, preserving of beauty contest that is repugnant to dignity or decency of ladies and offends Article 21 of the Constitution exquisitely if the activities are grossly indecent, scurrilous, obscene or meant for blackmailing. The government is empowered to declare the competition as objectionable underneath Section three of the Andhra Pradesh Objectionable Performances Prohibition Act, 1956.

In *State of Maharashtra v. Chandrabhan*<sup>13</sup>, the Court struck down a provision of Bombay Civil Service Rules, 1959, which provided for charge of only a nominal subsistence allowance of Re. 1 consistent with month to a suspended Government Servant upon his conviction, eventually during the pendency of his appeal the provision was declared unconstitutional on the ground that it emerged violative of Article 21 of the Constitution.

The universal declaration of human rights in it's prelude mentions the inborn pride of the individuals of the human family as the cornerstone for opportunity harmony and equity, but various incidents in different parts of India perpetrated by the government authorities pose a question that whether the right to live with human dignity is really implemented on the ground in India, like in Karnataka two incidents of the police forcing the

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<sup>10</sup> 1983 SCR (1) 456

<sup>11</sup> J.N. Pandey, Constitutional Law of India, Central Law Agency, 42<sup>nd</sup> Ed. (2005), p. 222

<sup>12</sup> AIR 1998 AP 302

<sup>13</sup> 1983 SCR (3) 327

alleged violators of the lockdown to strip took place, while a common man risks getting thrashed by the police or getting embarrassed for going out to even buy monthly or daily rations of food and other household requirements which are the fundamental requirement for living, on the other hand, there have been various incidents of rich and powerful people like MLAs, MPs and Ministers blatantly violating the lockdown, and public authorities taking no steps to stop them, this discriminatory treatment of the common man by the government authorities should end for the actual implementation of the 'right to live with human dignity'.

## **RIGHT TO LIVELIHOOD**

To start with, the Supreme Court earlier took the view that the right to existence in Art. 21 does not embody the right to livelihood and In Re Sant Ram[xviii], a case which arose earlier than Maneka Gandhi case, wherein the Supreme Court held that the right to livelihood could not fall within the expression "existence" in Article 21. The court stated that:

"The right to livelihood is probably protected in the freedoms enumerated in Art.19, or even in Art. 16, in a constrained experience, but the language of Art.21 can't be understood in such things a way that the word 'life' in Art. 21 consists of 'livelihood' moreover."

But then the view underwent a trade. With the definition of the phrase "life" in Article 21 in a huge and expansive way, the courtroom in Board of Trustees of the *Port of Bombay v. Dilipkumar Raghavendranath Nandkarni*<sup>14</sup>, finally concluded that "the right to existence" is assured via Article 21 and the word 'life' includes "the right to livelihood" as well.

The ambit of the right to existence conferred through Art. 21 is quite large and it took a long time to evolve into the form that it is in right now. It does not endorse, absolutely that existence can't be extinguished or taken away at all but it lays down the principle that it is to be done through the manner prescribed by law, as an instance, the imposition and execution of death sentence, can be done only through the manner set up through regulation. That is however one element of the right to life, a similarly essential element of the right to existence is the right to livelihood due to the fact that no individual can live without the livelihood."

Various factors which stand as an obstacle before the proper implementation of right to livelihood are as follows- increasing population, uneducated youth, closing businesses(due to lockdown by the government as measure to control and fight the corona pandemic), downfall in the market (due to lockdown), distress migration from rural to urban areas e.t.c. and the steps which should be taken by the Indian government so that more and more people in India can avail the right to livelihood are as follows-proper implementation of skill development initiatives in rural areas, to provide insurance for the crops sown by farmers(as still a majority of Indian population is still reliant on agriculture), promoting small business enterprises by the government and

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<sup>14</sup> 1983 SCR (3) 327

creating a favorable environment for businesses so that not only the local businesses bloom but more and more FDI (foreign direct investment) comes into India which consequently will create more employment.

## **RIGHT TO MEDICAL CARE**

In *Parmananda Katara v. Union of India*<sup>15</sup>, the Supreme Court has very specifically clarified that safety of life is of paramount importance. The Apex Court stated that ‘as soon as life is out of vicinity, fame quo ante cannot be restored[xlviii].’ It was held that the professional obligation of all scientific medical doctors (government or personal) to extent clinical aid to the injured was held to be the professional duty for doctors.

No regulation or State motion can intrude to keep away from/eliminate the paramount obligation imposed upon the health workers and doctors. The duty being absolute and paramount, legal guidelines or statute which could probably intervene with the release of this duty can't be sustained and will be held unconstitutional.

In an exclusive case *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*<sup>16</sup>, someone suffered an excessive head injury from a train accident who was taken to several hospitals and all of them refused treatment at the excuse that they lacked the sufficient equipment and infrastructure to provide treatment.

In this case, the Supreme Court advanced the right to emergency treatment and during the pendency of this suit the state government constituted a committee headed by a retired judge of Kolkata High court, the committee suggested various remedial measures so that such incidents do not repeat in the future and to ensure immediate medical treatment and attention to the patients who are in need. The supreme court held that the constitution emphasizes on the establishment of a welfare state on all levels and under a welfare state, it is a primary duty of the elected government to ensure the welfare of it's citizens, providing essential medical equipment and infrastructure is an essential part of the obligations undertaken by the government in a welfare state.

It has been reiterated, again and again, that there should be no obstacle on providing emergency medical care. In *Pravat Kumar Mukherjee v. Ruby General Hospital & Others*<sup>17</sup>, it was held that a hospital has obligation to advance treatment to patients who're in crucial scenario and that it cannot refuse treatment at the ground that the sufferer or his relatives have not given their consent for the treatment, consent is implied in the cases which require immediate medical treatment. The courtroom laid stress on a completely important issue, viz., the government cannot plead lack of economic resources to give the basic medical facilities and

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<sup>15</sup> (1989) SCR (3) 997

<sup>16</sup> 1987 SCR (2) 468

<sup>17</sup> (2005) CPJ 35 NC



infrastructure to the people and it cannot revert from its constitutional obligation to offer adequate clinical services to its citizens because of financial constraints.

Despite various judicial pronouncements and various initiatives taken by the governments there are still different challenges which stand in the way of an efficient implementation of right to medical care which are as follows-lack of awareness of medical care amongst the general population, shortage of skilled medical workforce, lack of healthcare infrastructure (hospitals, equipment, medical care goods like medicines, gloves, syringes e.t.c.) and the steps which the governments should take to ensure a proper access to right to medical care are to ensure that quality medicines are available to more and more people in India and the integrity of the drug is maintained during the distribution process, government should invest more in making people aware about their own health, healthcare infrastructure should be improved and more hospitals should be created in remote areas where there is no access to healthcare (especially in rural and tribal areas), and the government should also invest more towards training more and more healthcare professionals in India, these steps will make the right to medical care accessible to more and more people in India.

### **RIGHT TO POLLUTION FREE ENVIRONMENT**

In *Subhas Kumar v. State of Bihar*<sup>18</sup>, it has held that a Public Interest Litigation is maintainable for making sure that the essential elements required for the wellbeing of a human being like pollutant-free water and air is included in the 'right to live' under Art.21 of the constitution. The court determined:

“Right to live is a vital right beneath Art 21 of the Constitution and it consists of the right of enjoyment of pollution free water and air for the sustenance of a healthy life, if this right gets violated then the victim has the right to have recourse to Art.32 of the Constitution to reach supreme court which will ensure the reduction or elimination in the pollution present in air or water which may be harmful to the health of the people.”

The “Right to Life” beneath Article 21 means a life of dignity to live in proper surroundings free from the dangers of diseases and contamination. Maintenance of health, preservation of the sanitation and environment were held to fall in the purview of Article 21 because it adversely influences the life of the residents and it portions to gradual poisoning and reducing the lifespan of the residents, if not checked on time.

The following are some of the famous cases on the surroundings underneath Article 21:

In *M.C. Mehta v. Union of India (1997)*<sup>19</sup>, the Supreme Court issued several pointers and instructions for the safety of the Taj Mahal, an ancient monument, from environmental degradation.

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<sup>18</sup> AIR 420, 1991 SCR (1) 5

<sup>19</sup> AIR 1997 SC 734

In *Vellore Citizens Welfare Forum v. Union of India*<sup>20</sup>, the Court took recognition of the environmental issues being due to tanneries that were polluting the water resources, rivers, canals, underground water, and agricultural land. The Court issued numerous directions to deal with the hassle.

In *Milk Men Colony Vikas Samiti v. State Of Rajasthan*<sup>21</sup>, the Supreme Court held that the “right to life” includes clean surrounding which results in wholesome body and mind. It consists of the right to freedom from stray farm animals and animals in town regions.

In *M.C. Mehta v. Union of India (2006)*<sup>22</sup>, the Court held that the blatant and massive-scale misuse of residential premises for industrial use in Delhi violated the right to salubrious and pollution free environment, after examining the problem thoroughly, the Court issued directives to the Government on the issue of industrial usage.

In *Murli S. Deora v. Union of India*<sup>23</sup>, the people who do not indulge in smoking cannot be forced to or subjected to passive smoking on account of the act of individuals who smoke. Right to Life under Article 21 is affected as a non-smoker may additionally furthermore end up a sufferer because of a person smoking in a public location.

Despite various judicial pronouncements and various policies made by the respective governments in this regard, on ground implementation of the policies and the principles reiterated by various high courts and the supreme court has been not very satisfactory and there are various challenges which stand in the way of pollution free environment in India which are excessive urbanization, excessive stress on natural resources, increased mining, thermal power plants run by coal, deforestation, forest fires, vehicular emissions, unprocessed waste released by the factories in both air and water e.t.c. and the steps which the respective governments should take to reduce the level of pollution in India is that, rather than merely making policies, the governments should invest more on the implementation of these policies on the ground, restrict open burning of biomass and fossil fuels, tighter implementation of vehicular emission norms on the ground, make people aware about recycling of waste, promoting recycling of waste, encourage people to use public transportation through advertisements and other mediums, and impose heavy penalty as well as imprisonment(if needed) on the people and factories who violate the laws relating to air, water, land and sound pollution in India.

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<sup>20</sup> AIR 1996 SC 2721

<sup>21</sup> (2007) 2 SCC 413

<sup>22</sup> (2006) 3 SCC 399

<sup>23</sup> AIR 2002 SC 40

## **RIGHT TO PRIVATE LIBERTY**

“No person should be deprived of his privacy except according to the procedure established by law”.

The safety of our liberty is the obligation of our law as our Constitution of India quotes in article 21, as we see the Supreme Court is the guardian of the Constitution of India. So the Supreme Court has the obligation to guard and guarantee the crucial rights. As a citizen of India, we've got all the important rights which are created by law. So we can get it restored through the Supreme Court on every occasion our constitutional rights get violated.

Right to constitutional treatment is the part of fundamental rights so it is the obligation of the Supreme Court to workout the Judicial Review via writs or orders for the enforcement of crucial rights. The Supreme court has made the judicial review as a bulwark of privacy.

*Kharak Singh vs State of Tamilnadu*<sup>24</sup>, this problem was raised for the first time, justice Subba Rao his Minority judgement stated that the right to privacy flows from the expression personal liberty. This minority judgement paved way for the further improvement of the right to privacy.

In *PUCL vs Union of India*<sup>25</sup>, Telephonic conversation, the court stated in today's era of technology is an essential part of a person's personal life. Therefore, the Court stated that telephone tapping breached the person's right to privacy and created various safeguards against arbitrariness in exercise of surveillance power of the state.

In *Selvi vs State of Karnataka*,<sup>26</sup> court held that during involuntary subsection of an individual to narco assessment, polygraph examination and similar lie detection mechanisms moreover violate the right to privacy of an individual.

“The Article 32 of the Constitution is the soul of the constitution of India and it's also considered the coronary to the heart of Indian Constitution due to the fact that in case of violation of Right to life or any other right which belongs to human beings we have the remedy to refer to Article 32 of the Indian Constitution”.

In India, the right to privacy is a right that has been guaranteed against governmental infringement of the right and not against the infringement done by private individuals, if the offender is a private person then the only option left in front of the victim to is to file a civil suit for tort against that person where he can claim damages for intrusion of his privacy, thus, currently the greatest challenge before the right of privacy is that there is absence of proper legislation against the infringement of right to privacy by the private person so, to protect

<sup>24</sup> AIR 1295 1964 SCR

<sup>25</sup> AIR 1997 SC 568

<sup>26</sup> (2010) 7 SCC 263

this particular right of the citizens, the government should bring an effective and efficient legislation where there are preventive as well as punitive measures against the infringement of this right by the private person as well.

## **RIGHT TO FREE LEGAL AID**

In *Hussainara Khatoon & ors. Vs State of Bihar*<sup>27</sup>, the Supreme Court held that if any accused is not able to bear the cost of litigation then he has a right or free legal aid at any point of time, the state cannot avoid its constitutional obligation to provide fair trial to the accused by pleading financial or administrative inability. The court cited the case of *Rhem vs Malclm* and held that "the law does not permit any government to deprive its citizens of constitutional rights on plea of poverty".

The preamble of the Indian constitution basically aims to secure to the people of India justice socio economic and political. His Lordship Justice P.N. Bhagwati aptly stated that legal aid means providing an arrangement in the society which makes the machinery of administration of Justice easily accessible and in reach of those who have to resort to it for enforcement of rights given to them by law...

It is the duty of the State to see that the legal system promotes justice on the basis of equal opportunity for all its citizens. It must therefore arrange to provide free legal aid to those who cannot access justice due to economic and other disabilities.

—(Art.39 A of the Constitution of India)

If the accused does not have sufficient means to engage a lawyer, the court must provide one for the defense of the accused at the expense of the state.

—(Sec. 304 of Code of Criminal Procedure, 1973)

Despite effective legislation in this regard the right to free legal aid still faces various challenges which stand as a barrier before the proper implementation of the right to free legal aid which are as follows-lack of public legal education and awareness, lack of support by the legal fraternity (lawyers, solicitors, attorneys) towards this cause, limited power of the lok adalats, underutilization of the para-legal volunteers e.t.c. and the following steps should be taken by the governments, legal fraternity and the NGOs working towards this cause for the accessibility of the right to free legal aid by more and more people which are involvement and increase in the role of NGOs to create awareness amongst people about the legal rights, more and more legal aid camps should be organized by both the government and NGOs to create awareness amongst poor and uneducated people, legal literacy mission should be carried out by the government as a 2 year or 5 year plans, the work of the

<sup>27</sup> (1980) 1 SCC 98

counsels should also be evaluated and monitored through the feedback approach and there should be a proper progress report of every advocate in this regard, this should be analysed by a proper monitoring committee setup in this regard.

## **CONCLUSION**

Article 21 is the most dynamic provision in the constitution of India which continuously evolves like an organism and inherits the trends of dynamism that caters the desires of the society. The Ambit of right to life and personal liberty keeps on growing and will evolve further in future via numerous judicial pronouncements and legislative enactments. It serves as an inclusive provision that touches each important right in part III of the Indian Constitution.

The right to life is undoubtedly the most fundamental of all rights. Everyone has the right to life, liberty and the security of person. All other rights add quality to this right and depend on the pre-existence of life itself for their operation. As human rights can only attach to living beings, one might expect the right to life itself to be in some sense primary, since none of the other rights would have any value or utility without it

On the basis of reasonability, non-arbitrariness and the standards of natural justice which are covered within the ambit of article 21, many rights have been advanced until date through Hon'ble Supreme Court's interpretations in various cases.

Thus, to fulfill the current stressful conditions in the society and to fulfil the dynamic dreams of the society the judicial device or the legislature will have to come up with new aspects related to article 21 from time to time.

## **REFERENCES**

- Pandey, J.N., The Constitutional Law of India 47<sup>th</sup>Ed., Central Law Agency, Allahabad, 2010, p. 269
- Kumar, Narender, The Constitutional Law of India, 1<sup>st</sup>Ed., Allahabad Law Agency, Allahabad, 2009, p-158
- Jain, M.P., Indian Constitutional Law, 6<sup>th</sup>Ed., LexisNexis Butterworths Wadhwa Nagpur, Gurgaon, 2010, p.1200
- Forum, Prevention of Environment & Sound Pollution v. Union Of India &Anr, AIR 2005 SC 3136 : (2005) 5 SCC 439
- M.P. Jain, Indian Constitutional Law, Wadhwa, 5<sup>th</sup> Ed. (2003), p. 1315.
- J.N. Pandey, Constitutional Law of India, Central Law Agency, 42<sup>nd</sup> Ed. (2005), p. 222