CHAPTER - 3

Judicial Delineation on Human Rights / Personal Liberty
CHAPTER-3

Judicial Delineation on Human Rights / Personal Liberty

1. The necessity of Judicial delineation:

The Importance of Judicial delineation on administrative actions vis-a-vis human rights may be gauged from the observation of the law commission of India (115th Report).

"... that the rule of law and judicial review acquire greater significance in a welfare state. The vast amount of legislation that has been enacted by the Union and the states during the last three years a great deal of which impinges in a variety of ways on our lives and occupation. Much of it also confers large powers on the executive. The greater, therefore, is the need for ceaseless enforcement of the rule of law, so that the executive may not in its belief of monopoly of wisdom and in its excessive zeal for administrative efficiency overstep the bounds of its power and spread its tentacles into the domain where the citizen should be free to enjoy the liberty guaranteed to him by the constitution."

It needs to be understood in this context that the administration has developed the habit and practice of trampling down the personal liberty of the people under the garb of reasonable restrictions.
2. **Reasonableness of Restrictions**:

   The criteria of reasonableness of restrictions may be examined in the light of the decision handed down by the supreme Court in State of Madras Vs. V. G. Rao.

   It is important to bear in mind in this context that the test of reasonableness wherever prescribed should be applied to each individual statute impugned and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the times should all enter into the Judicial verdict”.

2A. **Interpretation of Personal Liberty**:

   From the commencement of the Indian Constitution in 1949 the Hon'ble Supreme Court was called upon from time to time to give decisions on the meaning and import of the term 'personal liberty' in a lot of cases starting from A.K. Gopalan Vs. State of Madras in.

---

1. AIR 1952 SC 196.
2. AIR 1950 S.C
so far as the interpretation of Article 21 of the constitution was concerned.

In the above case the Hon'ble Supreme Court gave a very narrow interpretation of the Constitution. According to the apex court each Article of the Constitution dealt with separate rights and no Article of the Constitution could be interpreted as having a relationship with the other Articles of the Constitution.

In the case referred to above the apex court decided that if a law made by a competent legislature takes away the personal liberty of a person under Article 21 of the Constitution in that event the interpretation of Article 14 and Article 19 could not be taken into consideration in order to explain the vires of the law under which the personal liberty of the person has been snatched away and the victim would not have any remedy against such invasion upon his personal liberty by invoking the provisions of natural law or common law.

The interpretation of personal liberty as given by the Supreme Court in A. K.Gopalan case regarding the meaning of life, personal liberty, procedure established by law had hampered the judicial development of humanitarian and liberal jurisprudence for almost 28 years i.e. till the locus classicus Maneka Gandhi, barring a few decisions between 1950 and 1978, the Supreme Court had, had no opportunity to expand the scope of Article 21.
In Kharak Sing V. State of U.P.\textsuperscript{2} the apex court encountered a question relating to the right of privacy. The majority opinion of the Supreme Court judges in this case held that,

(1) Secret picketing of house does not violate Article 21,
(2) the meaning of "life" and "personal liberty" as laid down by the Supreme Court in A.K.Gopalan case was right, and
(3) the right to privacy was not guaranteed under Article 21 of the Constitution. However they found that domiciliary visits to the houses of suspect violate Article 21 in as much as they adversely affect the personal liberty of the persons concerned.

It may be stated, in this context that in this case\textsuperscript{3} (In Kharak Sing Vs State of U.P.\textsuperscript{3} the police action of Uttar Pradesh Police in making domiciliary visits to the house of a released convict Kharak Sing at dead hours of night violates the personal liberty of the convict Kharak Singh in so far as Article 21 of the Constitution of India is concerned.

In State of Maharashtra Vs. Prabhakar Pandurang\textsuperscript{4}, the apex court was called upon to determine the right of detenu to publish a book, he wrote during his detention. The Supreme Court in this case held (State of Maharashtra -Vs-Prabhakar Pandurang.) that the refusal by the Maharashtra Government to send the petitioners manuscript for

\textsuperscript{2} A I R 1963 S C 1295  
\textsuperscript{3} A I R 1963 S C 1295  
\textsuperscript{4} A I R. A 9 R 1986 S C. 424
publication infringes his personal liberty manifest under Article 21.

In Satwant Singh -Vs- A.P.O. New Delhi the Hon’ble Supreme Court held that the expression personal liberty as it appears in Article 21 takes in the right of locomotion and to travel abroad, but the right to move throughout the territories of India is not covered by it inasmuch as it is specially provided in Art.19. The Supreme Court further held that under Article 21, no person can be deprived of his right to travel abroad, except according to the procedure established by law.

3. Personal Liberty and Death Sentence:

In Jagmohan Singh-Vs-State of U.P. the apex court was called upon to decide the Constitutional validity of the death sentence under Section 302, I.P.C. The decision given by the Supreme Court in this case made it distinctly clear that the death sentence Imposed after trial in accordance with the procedure established by law is not unconstitutional and does not violate personal liberty under Article 21 of the Constitution.

In D.B.M. Patnaik vs. State of A.P. the Supreme Court was called

upon to decide whether armed police guards posted around the jail and the live wire electrical mechanism fixed on top of the jail violates the personal liberty of the convicts and under-trials lodged in a jail. The Hon'ble Supreme Court decided that such arrangements made by the jail authorities is not violative of the personal liberty of the inmates of the jail.

4. Right to Privacy:

In Govind vs. State of M.P.\(^8\) the Supreme Court decided that the right of privacy of the released convicts cannot be violated by domiciliary visits of police to the house of the released convict as part of the personal liberty unless such action of the police is supported by laws of regulations. In A.D.M. Jabalpur vs. S.Shukla\(^9\) the Hon'ble Supreme Court was called upon to decide whether a detenu has the personal liberty to move a writ-petition under Article 226 before a High Court for Habeas Corpus or for any other writ or order or direction to challenge the legality of the order of detention, made under Maintenance of Internal Security Act (MISA). The Supreme Court decided that no person has any locus stand to move such a writ petition for Habeas Corpus or for any other order to challenge the legality of the order of detention passed against the detenu.

---

\(^8\) A.I.R. 1975 S.C. 1379
\(^9\) A.I.R. 1976 S.C. 1207
The narrow interpretation given to the provisions of Article 21 in A.K. Gopalan vs. State of Madras, by the Supreme Court held sway over the courts in India for almost 28 years thereafter. In fact, such narrow interpretation given by the Supreme Court hampered the development of humanitarian jurisprudence under Article 21 of the Constitution for well over a quarter century. And this Judicial inertia was disturbed only when the Supreme Court rendered the epoch-making decision in Maneka Gandhi vs. Union of India.

4. Right to leave and Return back to the country:

Smt. Maneka Gandhi’s passport was impounded in public interest by an order issued by the Government of India. The Government declined to furnish to Mrs. Gandhi a Journalist in the interest of general public, the reasons for the impounding of her passport. Aggrieved by the Government order, she filed a writ petition under Article 32 before the Supreme Court challenging the order on the ground that it violated Articles 14, 19 and 21 of the Constitution. The Hon’ble Supreme Court rendered an epoch making decision in this case “Maneka Gandhi-Vs- Union of India”, the Supreme Court Held that Gopalan case gave a narrow interpretation of the Constitution in

10. A.I.R. 1950 S.C. 27
so far as the words personal liberty in Article 21 was concerned. Justice Bhagwati as he then was observed "the expression “personal liberty” in Article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of a man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19". The correct way of interpreting the provisions conferring fundamental rights is that the attempt of the court should be to expand the reach and ambit of the 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. In Malak Singh Vs. State of Punjab\textsuperscript{12} the question before the Supreme Court was whether a person whose name was included in the surveillance register had right of opportunity to be heard before such inclusion. The apex court held in this case that on the basis of the relevant records the Court was satisfied that there was sufficient ground for the inclusion of the petitioner's name in the surveillance register, and personal liberty of the petitioner was not infringed.

\textsuperscript{12} A.I.R. 1981 S.C. 760
7. **Prisoner's rights and Art. 21:**

In Babu Singh Vs. State of U.P.\(^{16}\) it was held that 'refusal to grant bail' in a murder case without reasonable ground would amount to deprivation of personal liberty under Art. 21. In Hussainara Khatoon Vs. Home Secretary\(^{17}\), State of Bihar, it was held by the Supreme Court that the right to a speedy trial is a fundamental right and is implicit in the guarantee of life and personal liberty enshrined in Art. 21 of the Constitution.

In Raghubir Singh Vs. State of Bihar\(^{18}\) the Supreme Court held that delay in investigation and trial in a case violates the right to speedy trial under Art. 21 of the Constitution. But in the instant case it was found that the delay in investigation and trial was the outcome of the nature of the case and the general situation prevailing in the country. In Suk Das Vs. Union Territory of Arunachal Pradesh\(^{19}\) the Court held (Supreme Court), that failure to provide free legal aid to an accused at the State cost, unless refused by the accused, would vitiate the trial. Free legal aid at the State cost is a fundamental right of a person accused of an offence and this right is implicit in the requirement of reasonable, fair and just procedure prescribed by Art. 21.

---

17. *A.I.R. 1979 S.C. 1377*
18. *A.I.R. 1986 S.C.C. 481*
In Sunil Batra Vs. Delhi Administration\textsuperscript{20}, (No. 2) the Supreme Court held that the practice of keeping under trials with convicts in jails offended the test of reasonableness in Art. 19 and fairness in Art. 21, in Prem Shankar Vs. Delhi Administration\textsuperscript{21}, the Supreme Court held that Handcuffing of prisoners should not be done at random by the Police Officers, and such practice is violative of Art. 14, 19, 21 of the Constitution. Handcuffing should be resorted to only when there is 'clear and present danger of escape' breaking out the police control and for this there must be clear material, not merely an assumption. This is implicit in Art. 21 which insists upon, fairness, reasonableness and justice in the procedure for deprivation of life and liberty. In Kishore Singh Vs. State of Rajasthan,\textsuperscript{22} the Supreme Court held that the use of "third degree" method by police is violative of Art.21 and directed the Government to take necessary steps to educate the police so as to inculcate a respect for the human person. In Veena Sethi Vs. State of Bihar\textsuperscript{23}, a complaint was made to the Court through a letter about the fact of illegal detention of certain prisoners in the Hazaribagh Jail for two or three decades without any justification. It was held in this case that the prisoners remained in jail for no fault

\textsuperscript{20} A.I.R. 1980 S.C. 1579
\textsuperscript{21} A.I.R. 1980 S.C. 1535
\textsuperscript{22} A.I.R. 1981 S.C. 625
\textsuperscript{23} A.I.R. 1983 S.C. 1575
of theirs but because of callous and lethargic attitude of the authorities and therefore entitled to be released forthwith. In T. V. Vatheeewan Vs. State of Tamil Nadu, the Supreme Court held that delay in execution of death sentence exceeding 2 years would be sufficient ground to invoke the protection of Art. 21 and the death sentence would be commuted to life imprisonment. In Sher Singh Vs. State of Punjab, the Supreme Court held that prolonged delay in the execution of a death sentence was an important consideration for invoking Art. 21 for judging whether sentence should be allowed to be executed or should be converted into sentence of imprisonment. In the instant case the delay was found to be due to the conduct of the convict and therefore it was held that the death sentence was not liable to be quashed. In Francis Cora-lie Vs. Union Territory of Delhi, the Supreme Court held that the detenue's right to have interview with his lawyer and family member is part of his personal liberty guaranteed by Art. 21 of the Constitution and cannot be interfered with except in accordance with reasonable, fair and just procedure established by law.

In Rajendra Prasad Vs. State of U.P., the Supreme Court held that
the capital punishment would not be justified unless it was shown that the criminal was dangerous to the society. Hon'ble Justice Krishna Iyer, observed that giving discretion to the judge to make choice between death sentence and life imprisonment on “special reasons” under Sec. 354(3), Cr. P. C. would be violative of Art.14 which condemns arbitrariness.

In Bachan Singh Vs. State of Punjab the Supreme Court has overruled Rajendra Prasad’s decision and has held that the provision of death penalty under sec. 302 I.P.C. as an alternative punishment for murder is not violative of Article 21.

8. Constitutional validity of Hanging by Rope:

In Deena Vs. Union of India, the constitutional validity of section 354 (5), Cr.P.C. 1973 was challenged on the ground that hanging by rope as prescribed by this section was barbarous, inhuman and degrading and therefore violative of Art. 21. But the Hon'ble Supreme Court held that section 354(5) which prescribed hanging as mode of execution, lays down fair, just and reasonable procedure within the meaning of Art.21 and hence is constitutional. In Attorney General of India V.Lachma Devi, it has been held by the Supreme Court that

the execution of death sentence by public hanging is barbaric and violative of Art. 21 of the Constitution. In Mithu Vs. State of Punjab\textsuperscript{29} the Supreme Court declared that section 303, I.P.C. as unconstitutional, as the same provided for mandatory death penalty for those life convicts who commit murders, as arbitrary and unreasonable.

In Allauddin Main Vs. State of Bihar\textsuperscript{30} the Hon'ble Supreme Court reiterated the position that imposition of death penalty does not violate Art. 21. In Shiv Ram Vs. State of Uttar Pradesh, the Supreme Court has once again declared that the death penalty can be imposed only in the rarest of rare cases.

In a recent case R. Trimbak Chouthmal vs. State of Maharashtra\textsuperscript{31} the apex court held that the dowry death has ceased to belong to the species of "the rarest of the rare" case.

With regard to Right under Article 21 and preventive Detention in A. K. Roy Vs. Union of India\textsuperscript{32} the Hon'ble Supreme Court upheld the validity of National Security Act. 1980. Yet in another case Kamala Vs. State of Maharashtra\textsuperscript{32A}, the Supreme Court held that the right to

\textsuperscript{29} A.I.R. (1983) S.C. C. 473
\textsuperscript{30} A.I.R. (1998) S.C. C. 49
\textsuperscript{32} A.I.R. 1982 S.C. 710
\textsuperscript{32A} A.I.R. 1981 S.C. 814
make a representation available to a detenue under Article 22(5) against preventive detention must be to make an effective representation and that it must be construed so as to provide a real and meaningful opportunity to the detenue to explain his case to the detaining authority in his representation. The Court has clearly laid down the principle that the procedure must be just, fair and reasonable as contemplated under Article 21.

In Union of India Vs. Vasanbharthi\(^33\), the Supreme Court held that right to be informed of passing of the detention order and of place of detention, to the family members of the detenue is a part of the fundamental rights under Article 21.

In Joginder Kumar Vs. State of U. P.\(^34\) the Supreme Court declared that the right of an arrestee to have someone informed about his arrest and the right to consult privately with lawyers are inherent in Articles 21 & 22. In the instant case, the court has issued number of directions for effective enforcement of fundamental rights guaranteed under Article 21 and 22.

\(^{33}\) A.I.R. 1990 S.C. 1216
\(^{34}\) A.I.R. 1994 S.C. 1349
9. Rights of Women against Torture and Gender Discrimination

To protect the human rights of the women the Hon'ble Supreme Court has handed down a catena of decisions. In Visakha Vs-Rajasthan the Hon'ble Supreme Court decided that any act of Sexual harassment of female employees at a working place by male staff should be severely dealt with in protecting the personal liberty of the women.

In Sarala Mudgal Vs. Union of India the Supreme Court held that if the husband of a wife converts to Islam for the purpose of another marriage during the lifetime of the wife, such marriage would be void and illegal. In Apparel export promotion council Vs. A.K.Chopra the Apex court upheld the decision of the departmental proceeding held against the senior officer who molested and physically assaulted the subordinate female employee and as a result of which the officer was dismissed from service.

9A. Rights of Children:

The Hon'ble Supreme Court for protecting and promoting the human rights of the children has given a number of decisions.

35. A.I.R. 1997 S.C. 3011
36. A.I.R. 1995 S.C. 1531
37. A.I.R. 1999 S.C. 625
In the Peoples Union for Democratic Rights Vs. Union of India the Supreme Court highlighted the cause of child workers and urged that the children should be given a fair treatment.

In Sheela Barse Vs. Maharastra the Hon'ble Supreme Court highlighted that children and women have a right to get legal assistance. In Vishall Jeet Vs. Union of India, the apex Court held that no women should be forced to adopt the profession of a prostitute and that children of a prostitute should also be given a fair treatment and protection.

In Promoting and advancing the human rights and personal liberty of the people the Hon'ble Supreme Court has also resorted to a System of compensatory jurisprudence. In Rudul Shah Vs. State of Bihar it was decided that monetary compensation to the tune of Rs. 30,000/- should be paid to the petitioner who was detained in jail for 14 years even after his acquittal in trial.

In Bhim Singh Vs. State of J & K the Supreme Court held that the petitioner who was an M.L.A. be awarded a compensation of Rs. 50,000/- for being not produced before a Magistrate after arrest.

38. A.I.R. 1982 S.C. 1473
40. A.I.R. 1990 S.C. 1412
41. A.I.R. 1983 S.C. 1086
42. A.I.R. 1986 S.C. 494
In People's Union for Civil Liberties Vs. Union of India\textsuperscript{43} the Hon'ble Supreme Court awarded Rs. 1,00,000/- to the family of each of the deceased taken away on the plea of terrorists and killing them thereafter. In Bodhisatwa Gautam Vs. Subhra Chakraborty\textsuperscript{44}, the Hon'ble Supreme Court awarded interim monetary compensation to the rape victims.

In the Chairman, Railway Board -Vs- Chandrima Das\textsuperscript{45} the Hon'ble Supreme Court awarded Rs. 1,00,000/- to the victim of a rape who was a Bangladeshi woman and was gang-raped by railway employees in a railway building.

In order to protect and ensure the human rights, life, and personal liberty of the People against police action, the Hon'ble Supreme Court have issued guidelines to the police which is to be complied with by all members of the Law enforcing agencies whenever police embarks upon the task of arresting a person while adjudicating the cases of Ashok Kumar Jahuri Vs. Uttar Pradesh\textsuperscript{46}, and Dilip Kumar Basu Vs. West Bengal\textsuperscript{47}, Both the cases were decided in December, 1996.

While deciding the above cases the Supreme Court re-iterated that if any police man disrespects the thirteen point guideline issued by

\textsuperscript{43} A.I.R. 1997 S.C. 1203  
\textsuperscript{44} A.I.R. 1996 S.C. 922  
\textsuperscript{45} A.I.R. 2000 S.C. 988  
\textsuperscript{46} A.I.R. S.C.  
\textsuperscript{47} A.I.R. 1997 S.C. 3017
the Supreme Court, in the instant cases they would be held liable for contempt of court proceedings and other statutory penal actions.

It is important to observe in this connection that the Hon'ble Supreme Court observed in Naga People's movement of Human Rights Vs. Union of India\textsuperscript{48}, that the powers conferred under the Armed forces Act, are not violative of Art. 21.

10. **Fundamental Justice** :

   (i) **Interpretation of Fundamental Justice** :

   No discussion on human right and personal liberty could be complete without taking into consideration fundamental justice which is an expression of great importance. In fact, Canadian Constitutional Law incorporates the explanation fundamental justice in Sec. VII of the instrument\textsuperscript{1} (Canadian Charter of Rights and Freedoms,) which is a part of the Canada Act 1982.

   If we analyse the expression in all its niceties, we find that the main principles of American Due process and those of English Natural Justice have been incorporated in the expression Fundamental Justice. But in so far as its application is concerned it is circumscribed to the specific right of Life liberty and security of the person.

\textsuperscript{48} A.I.R. 1998 S.C. 431

\textsuperscript{1} Canadian Charter of Rights and Freedoms, which is a part of the Canada Act 1982.
Further Article 21 of the Constitution of India may also be compared in this context to the expression Fundamental Justice which is under review.

The principles of natural justice only refers to procedure aspect but the expression due process contains both the procedural and substantive reasonableness. Thus the Apex Court of Canada while applying the procedural aspect of Sec. 7 heavily depended upon the British Jurisprudence which primarily centres around the doctrine of natural justice. But in so far as the application of its substantive aspect is concerned the Supreme Court of Canada leaned to a great extent upon the doctrine of American due process. According to Sec.7 of the Canadian Charter every person has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Now if we like to have a thread bare discussion on this provision it appears that the basic human rights of a person that is life, liberty and security of the individual are not inviolable but interference with such privileges of a person must be inconsonance with the doctrine of fundamental justice Morgentaler - Vs - R²

2. (1990) LRC (Const.) 242 (256. 331,33) S.C. (Can.)
(ii) Life, Liberty and Security:

Further it seems on a proper understanding of the concept of the fundamental justice as it appears in Sec. 7 of the Charter that this expression is nothing but a qualifier of the right not to be deprived of life, liberty and security of a person B.C. Motor Vehicle Reference Re Motor Vehicle Act.

It may also merit out attention that the protection of the provision of Sec. 7 may also arise not only when legislature deprived a person of such privilege but also the same protection will extend to executive action (operation Dismantle -Vs.- R).

It is also important, to note on this point that the plea of administrative conveniences or cost can not exonerate the non compliance with fundamental justice in executive action.

The provision of sec. 7 is not applicable to any civil action between private individuals without any State action being involved.

Apart from what has been stated above out attention should also be drawn to the consideration that applicability of Sec. 7 is to be undertaken under the over all limitation of Sec. 1.

It may be explained in the fashion that if a law is to be Challenged as violative of the right of an individual in respect of his life, liberty or

4. (1986) LRC (Const.)
security of the person the Court may adopt the following procedure:

(1) In the first instance it will be necessary to the court to ascertain whether the legislation under challenge violates any of the rights expressed in the first part of Sec. 7.

(2) In such event the consideration of the court should be the determination whether the violation could be saved under the second part of Section 7, which is nothing but the doctrine of fundamental justice.

It may be argued that if the above mentioned Situation does not solve the problems then it would be necessary to reach the final Stage in order to ascertain whether the infringement could be Saved under section 1 (R. V. Seaboye6)

In this context, it becomes necessary for ascertaining the constitutionality of the impugned law, the Court should take into consideration both the purpose and impact of that law.

With regard to the contents of fundamental justice the apex Court (Supreme Court) has ruled that fundamental justice in S.7 is highlighted by the expressed rights incorporated in Ss. 8 - 14.

Now coming to the aspect of expressed rights in Sec. 7 it is interesting to know that these are 'independent’ interest thereby

implying that the question of ascertainment of a particular fact that whether a prohibitive law infringes fundamental justice adequate consideration ought to be given to each of them—life, liberty and security of the person.

The word 'liberty' as mentioned in S. 7 is not qualified by the word 'personal' (as is mentioned in Art. 21 of the Constitution of India). Therefore, the Supreme Court of Canada, has a greater scope to expand the term 'liberty' in the American sense. It may however be noted in this context that the apex court of Canada has not yet moved to its full American length. But it is equally important to understand in this regard that many of the decisions of this apex court are running to expand its meaning in several directions, in its case to case approach, thereby investing section 7 with a generous interpretation in consonance with human dignity.

i) The term 'liberty' incorporates both physical and mental liberty and assumed something more than the freedom of physical locomotion. In so far as freedom of the mind is concerned it includes the freedom of the will to choose and the wisdom to reason.

ii) A law which prescribed absolute liability for an offence and mandates a minimum and compulsory sentence of imprisonment violates S. 7.7

7. (Re. Motor Vehicle Act, (1985) 2 SCR.)
iii) The word 'liberty' as is expressed in S.7 would include the privilege of each individual to a degree of personal autonomy over important decisions which relates to his or her private life for example – The right of a pregnant woman to abort her child or not etc.

iv) If the term 'liberty' is interpreted in the liberal sense in that event the same will incorporate many rights which were considered as privileges before the Charter came into force.

Basing on this doctrine the courts held that an arbitrary cancellation or suspension of a driving licence could be covered within the protection of S.7 in as much as such decision deprives a person of his right to exploit his driving competency for earning his livelihood.

Now the question of 'Security of the person' may engross our attention. This expression means the physical and mental integrity of a person, thereby implying that in a case of interference by the State with bodily integrity and causing psychological stress, would constitute a breach of the security of person. The situation may be understood by observing that if a person is subjected to criminal sanction his security of the person would be violated.

Some jurists however suggests that the term 'Security' of the person should incorporate provisions for adequate standard of living and for

the means necessary to attain that, such as food, shelter and such property as is necessary for physical survival, as well as the enjoyment of the standard of living consonant with human dignity.

But it should be understood on this point that the privilege of a person to life, liberty and security of the person, cannot be absolute and should be subjected to certain limitations.

This may be explained in the following fashion: In the first instance it should remain limited by the corresponding* rights of others.

Secondly such privilege should remain a subject to the risks which are inherent in the realities of the modern State.

Thirdly, a distinction should be maintained in this regard between indirect or remote threats which are distinct from direct threats which will only constitute a justiciable violation of S.7. (Operation Dismantle V.R.)

Fourthly, it is an important point which cannot be ignored that S.7. should not be invoked unless there has been a deprivation of liberty or security of the person, as for example where a child is kept in protective custody, in the interest of his own welfare.

9. (1986) LRC (Const,) 421 3C.
(iii) Civil and Criminal Cases:

Apart from what has been stated above attention should also be drawn to the fact that the protective formula of fundamental justice may be extended to both civil and criminal proceedings, which implies a right to notice and an opportunity of being heard prior to a decision is given against a party.

The protection as envisaged in S.7 may also be extended to deportation or extradition proceedings in so far as such proceedings are instituted within Canada/irrespective of the fact that such proceedings belong to the arena of trial or judicial proceeding.

Now we may advert to the problem whether the doctrine of 'fundamental justice' has a substantive as well as procedural content. The problem seems to have been solved and it is now clear that satisfaction of 'Fundamental Justice', comprehends that it should be both procedurally and substantially fair.  

(iv) PROCEDURAL ASPECTS

Insofar as the principle of procedural aspects is concerned fundamental justice, would incorporate the procedural requirements of 'natural justice' or 'procedural due process' or 'procedural fairness'.

Though many ingredients are incorporated in the concept of procedural fairness all such requirements might not be demanded in each case. The facts and circumstances of each case will however determine as to how many of such requirements should be complied with for satisfying fundamental justice.

The postulates of procedural fundamental justice may be summed up as follows: -

(v) Right to notice.

This implies that the person aggrieved should be communicated the case of allegations against him which he has to meet for the purpose of protecting himself from being deprived of his life, liberty or security of the person (R.V. Robson)\textsuperscript{11}.

In criminal proceedings the right to notice postulates that the accused person must be apprised of the charge which he has to meet and also that the charge must relate to a specific offence, which implies the breach of a law which involves a penal sanction. This right is specifically guaranteed by S.11 (a) of the Charter (Re. Warren)\textsuperscript{12}.

(vi) RIGHT TO A HEARING:

And an opportunity to the person aggrieved to state his case or to give full answer and defence. But this principle does not comprehend that a prior hearing even for interlocutory orders would be necessary to satisfy the concept of fundamental justice.

Besides it should also be understood on this particular point that the right to a hearing would necessarily involve an oral hearing in all cases; The solution lies in the fact that the circumstances of each case will decide the requirement of such a phenomenon in order to satisfy the provision of S.7.

Therefore, it appears that oral hearing may be ruled out in a case where the decision relates to a mere privilege as distinguished from a right.

On the other Hand a written submission would not constitute sufficient compliance with the notion of fundamental justice in a case where the decision is grounded upon the quantum of credibility of witnesses.

Further to satisfying the requirements of right to a hearing the opportunity given to the person affected must be effective thereby implying that the person aggrieved should have a timely notice of the date and place of hearing.
It is however, not an absolute right, but is subjected to reasonable restrictions, regard being had to the substantive interests which are affected. For example it may be maintained in cases of divorce proceedings a court should have a power to dispense with service whenever it appears to be necessary or expedient to do so. (Whitehead. Whitehead)\textsuperscript{13}.

Besides it is important to ensure that an affective opportunity to be heard or to present the individual's case against the State will comprehend a right to be supplied with the reasons and the materials upon which the policy and decision of the State has been grounded (Singh V. Min. of Employment)\textsuperscript{14}.

The requirements of the right to a fair hearing, also comprehends that the court which decides the question of the alleged infringement of a Charter right should conduct itself, fairly, in good faith, and of course without bias and in a judicial temper.\textsuperscript{15}

(VII) The requirement of a Right to Counsel.

In proceedings which are criminal in nature, this right is absolutely guaranteed by S.10 (b) of the Charter.

\textsuperscript{13} (1962) \textit{ALL ER} 800 (811).
\textsuperscript{14} (1985) \textit{17 DLR (4th)} 422 SC.
\textsuperscript{15} \textit{Prata V. Min.} (1975) \textit{52 DLR (3d)} 383 (SC), \textit{Mitchell v. R.} (1975) \textit{61 DLR (3rd)} 77 SC.
Right to cross examine witnesses in trial type of proceedings. (It is an inviolable right which is a part of the canons of human rights jurisprudence.)

Right to decision by a tribunal which heard the evidence (Re.Mason)\(^\text{18}\).

(VIII) Right to Reasoned Decision

Next arises the question of right to reasons for the decision.

Then we may advert to the important right to specific information - This incorporates the privilege to be informed without delay of the specific act of offence. However, the quantum of detail required by the expression Specific is not quite clear. The requirements of this right would be complied if the indictment comprehends the relevant time period of the offence, the place of commission, the parties to the offence and the subject matter (R.V.Finta)\(^\text{17}\).

Another important right in this context indicates right to trial within reasonable time - The Canadian Supreme Court has opined that the right to trial within reasonable time signifies an 'early trial'. The reckoning of time normally should begin with the charge R. V. Kalanj\(^\text{18}\).

---

16. (1983) 10 WCB 303 (Ont.)
One more important right in this context is right to non-compellability. Saccomanno V. Swanson\textsuperscript{19}.

The most important privilege of a person insofar as the procedural aspects of fundamental justice is concerned is incorporated in the right to be presumed innocent - The Principles of common law indicates that any person charged with an offence should invariably has the right to be presumed innocent has been embodied in Canadian Charter (R.V.Qakes)\textsuperscript{20}

It is important to note in this regard that the trend, in the international sphere, suggests that any court or authority who is entrusted to adjudicate a matter objectively, should invariably give reasons for decision. But to what extent the reasons should be given would depend on the nature of the tribunals. It should however, be understood in this context that the test of adequacy of reasons are such reasons which will enable the parties to know whether 'tribunal' has made no error of law in reaching its finding of fact. (Alexander V. Crabtree)\textsuperscript{21}.

(ix) SUBSTANTIVE ASPECT:

The question as to whether the principle of 'fundamental justice' has a substantive concept as well, was a subject of controversy in the

\textsuperscript{19} (1987) 34 DLR (4th) 462.
\textsuperscript{20} (1986) 1 SCR 103 : R. V. Bray, (1983) 144 DLR (3d) 305,
\textsuperscript{21} (1974) ICR 120(122), R. V. Mental Health Tribunal (1985) 3 All ER 699(703) Q.B.D.
earlier years. It is however, now settled that a restrictive law should be fair and reasonable substantially in order to satisfy the requirement of S.7. Jones V. R.22

In fact, the Supreme Court has given different rulings on the lines mentioned above by reading S.7 along with S.1 which means reasonable limits. What is required of the Courts, in this context, is that the Court has to balance the need for the protection of the guaranteed individual rights with the social interests which the State is enjoined by the Constitution to protect23.

The function of the Court is to review the substance of the legislation assailed for the purpose of ascertaining whether the restrictions imposed by it upon liberty or security of a person was so manifestly unfair which will run counter to the canons of fundamental justice, (Morgentaler V. R.)24

Besides, the Court is also required to ensure whether the limit imposed by the law upon the fundamental right is reasonable.

22. (1988) LRC (Const.) 289C.
23. (i) Re. Singh (1985) 17 DLR (4th) 422 (467) SC.
(ii) Morgentaler V.R. (1990) LRC (Const.) 242 SC
24. (1990) LRC (Const.) 242 SC.
Criteria for Ascertaining Substantive Fairness:

Next the question arises how to judge the substantive fairness of the law.

The question may be answered in the following fashion, by referring to the factors mentioned below –

a) The extent to which the liberty is deprived by legislation, Horgentaler V.R.25

b) The nature of the evil sought to be remedied thereby.

c) The impact of the restriction imposed upon the relevant right must not be out of proportion to the objective design to be achieved, R.V. Seaboyer26

d) The extent to which the legislation renders a person destitute of the right to liberty in situations which are not relevant to the evil to be curbed.

The apex court has ruled, in a landmark case R.V. Seaboyer27 that for the purpose of determining the reasonableness of the restrictions it would be the duty of the Court to look at the objective of the law as well as the means chosen to implement that objective.

It needs to be pointed out in this context that the meaning of reasonableness should comprehend –

25. (1990) LRC (Const. 242 SC.,
27. (1991) 83 DLR (4th) 193 SC (Can.)
(i) That the means chosen should be free of arbitrariness,
(ii) It should cause very little inconvenience to the right or freedom
under consideration. R.V.Seaboyer²⁸

Next, it may be argued that for ascertaining whether a restrictive
law is in consonance with substantive fairness or reasonableness, it
would also be the function of the Court to determine whether that
particular law lays down reasonable safeguards against arbitrary use
of the power conferred by the Law.

The nature of collective interest which the state is enjoined to
protect will determine the quantum of reasonable safeguard in a given
case.

Further it may also be noted that a law which makes provisions for
absolute liability would run counter to the doctrine of fundamental
justice, in as much as it has the potential to render a person convicted
who has not done anything wrong, Because it might appear that the
convict was denied an opportunity of showing that he had no mens
rea and was prompted to commit that act under an honest or reason-
able mistake.

(xi) **Exceptions** :

Of course exceptions might be cited to such proposition on the ground that in such cases the interest of public welfare envisaged that the forbidden acts should be absolute liability offences, for e.g. air and water pollution offences.

Another important aspect of the matter should also merit our attention.

All the rights incorporated in the Charter are to be read together. But it should also be understood that in such cases the Court should not enter into the question of the merits of public policy. Finally, it may be said that the failure of the requirement of fundamental justice will render any proceeding or decision made therein void\(^\text{29}\).

11. **RIGHT TO LEGAL AID AND PUBLIC INTEREST LITIGATION**

(a) **Legal Aid**

Human rights jurisprudence envisages the privilege of a person to be invested with the right to legal aid in the fulfillment of human rights whenever such rights are endangered. Because the question of free legal aid being made available to a person accused relevant for preservation of or avoiding violation of or for redressal action in case of

\(^{29}\) Cf. R. Vs. Big M (1985) W.W.R. 481 (SCC)
such violation of fundamental freedoms and equality or for securing justice.

We may consider the right of an accused person to be heard before conviction in this context. It is an essential and basic human right. This right would be of little value if it did not comprehend the right to be heard by counsel in as much as an intelligent and educated individual has hardly any skill in the science of law.

Therefore he requires the guiding hand of a counsel at every step in the proceeding against him.

Further the movement to provide free legal aid to the needy has spiritual, legal and political significance. The argument gains momentum in view of the fact, that tens of thousands of accused persons in India are below poverty line. And therefore it appears that in our country the poor are priced out of the judicial system with the result that they are losing faith in the capacity of our legal system to bring about change, in their life conditions and to deliver justice to them.

Owing to the condition that poor persons can hardly afford engagement of lawyers on their behalf the outcome of our legal system is lost of it's credibility for the weaker sections of the community. Hence, the fact remains, that it would be necessary that we should inject equal justice into legality and that can be done only by dynamic and activist scheme of legal services.
The U.N. Declaration on Human Rights provides that: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the Fundamental Rights guaranteed by the Constitution of the Law.

Besides we may reproduce Article 14(3)(d) of the International Covenant on Civil and political Rights, in this context, which guarantees to an accused person.

"the right to be tried in his presence and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of his right and to have legal assistance assigned to him in any case where the interest of justice shall require, and without payment by him in any such case, if he does not have sufficient means to pay for it."

We may also look to the European Convention for the protection of Human Rights and Fundamental freedoms in this regard whenever a situation arises that a particular person is charged with a criminal offence and he enjoys the following right:

"to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require"
It is also to be noted in this context that free legal aid to an applicant for representation of his case is also guaranteed by the European Convention on Human Rights.

If we take into consideration the American Convention on Human Rights it also becomes crystal clear that every person accused of a serious crime is entitled, with full equality to the inalienable right to be assisted by counsel provided by the State, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own Counsel within the time period established by law.

In so far as the provisions of Indian Constitution is concerned then Art. 14 may merit our attention. The provisions of Art. 14 guarantees in India to all persons equality before law and the equal protection of the laws.

Art. 21 of the Indian Constitution also provides no person shall be deprived of his life or personal liberty except according to the procedure established by law.

Article 22 of the Indian Constitution also incorporates the privilege of an accused person that he must be given the right to consult and to be defended by a lawyer of his own choice. Besides Article 39A of the Constitution of India expressly provides in the form of Directive principles the right of citizens to free legal aid, which are as follows :-
“The State shall secure that the operation of 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 securing justice are not denied to any citizen by reason of economic or other disabilities”.

It therefore follows that Article 39A of the Indian Constitution highlights that free legal service is an inalienable element of reasonable, fair and just procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice.

Legal aid should be given to prisoners to seek justice from prison authorities, and, if need be to challenge the decision in court, in cases where they are too poor to secure on their own. The inference therefore arises that if lawyer’s services are not given, the decisional process becomes unfair and unreasonable, especially because the rule of law perishes for a disabled prisoner if counsel is unapproachable and beyond purchase.

Therefore if an accused person remains unrepresented by a lawyer in the matter of adjudication of his guilt the trial procedure will be unjust, arbitrary, unfair, and unreasonable and Article 21 of the Indian Constitution will be automatically violated. And in Maneka Gandhi’s
case the rule has been highlighted beyond all mistakes. AIR 978, SC 597.

Fortunately Legal services Authorities Act 1987 has already been passed by the Indian Parliament which inter alia ensures legal assistance to accused persons facing trials in criminal cases. We may further look to the United States of America), in so far as the principles of legal aid to an accused person in criminal justice system is concerned. Of Course it is an admitted fact that free legal services to the needy is part of English Criminal justice system1.

(b) American Situation :

In Gideon v. Wainwright2, it was observed by the Hon’ble Justice Black, of the United States Supreme Court that -

"In our adversary system of criminal justice, any person hauled into Court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth”.

Again if we survey the activities of the U.S. Supreme Court then it becomes clear that the principle of legal aid to an indigent accused person is an essential element of justice particularly in criminal

1. H.N. Hoskaot V State of Maharashtra, AIR 1978 3C 1548,
jurisdiction. In Raymond Hamlin case the Supreme Court of the United States has extended the processual facet of poverty Jurisprudence, Justice Doughlas observed, in that case that “The right to be heard would be, in many cases of little avail if it did not comprehend the right to be heard by counsel³.

American convention of Human Rights also stipulates that every person accused of a serious crime is entitled, with full equality to the inalienable right to be assisted by Counsel provided by the State, paid or not as the domestic law provided if the accused does not defend himself personally or engage his own Counsel within the time period established by law.

(c) Indian Highlights / Position in India:

In a Landmark decision handed down by the Hon’ble Supreme Court of India in H.M. Hoskot vs. State of Maharashtra⁴, that “Judicial Justice, with procedural intricacies legal submissions and critical examination of evidence, leans upon professional expertise; and a failure of equal Justice under the law is on the cards where such supportive skill is absent for one side. Our Judicature, moulded by Anglo-American models and our Judicial process, engineered by

kindred legal technology, compel the collaboration of lawyer-power for stirring the wheels of equal Justice under the law”.

That the right to free legal services is an essential ingredient of reasonable fair and Just procedure for a person accused of an offence and it must be held implicit in the guarantee of Art. 21 of the Constitution of India has been highlighted from time to time by the Hon’ble Supreme Court of India in different cases. In Hussainara Khatoon vs. State of Bihar⁵ and also in Khatri vs. State of Bihar⁶ the mandate of the Supreme Court indicated that the this is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicable situation and the state is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of Justice so required, provided of course the accused person does not object to the provision of such lawyer.

The apex court of India further highlighted the importance of free legal service in Khatri vs. State of Bihar⁷ to the effect that to make available free legal service is such a binding obligation of the State

⁵. AIR 1979, SC 1369 Hussaina Khatoon Vs. State of Bihar.
⁷. AIR 1981 SC 928
that Justice Bhagawati said that the state cannot avoid it by pleading financial or administrative inability. Whatever is necessary for doing so has to be done by the State. Again in Ranjan vs. Union of India\(^8\) the observation of Supreme Court mandated that since most of the people do not know their rights, therefore, every Magistrate of the Session Judge before whom the accused appears, is under an obligation to enquire about poverty or indigence of the accused and to assure that he is entitled to obtain free legal services at the cost of the State. In Suk Das, Vs. Union Territory of Arunachal pradesh\(^9\), the observation of the Hon'ble Supreme Court of India reflected that it is not necessary that the accused should apply for free legal assistance. Any conviction reached without informing the accused that he was entitled to free legal assistance and inquiring from him whether he wanted a lawyer to be provided to him at state cost which resulted in the accused remaining unrepresented by a lawyer at the trial is clearly a violation of the right under Art. 21 and the trial must be held to be vitiated on account of a fatal constitutional infirmity. Yet in another important decision Kadra Pahadia vs. State of Bihar\(^10\), the Hon'ble Supreme Court underscored the importance of free legal

\(^{8}\) AIR 1983 SC 634 at p. 627  
\(^{9}\) AIR 1986 SC 991 at p. 92  
\(^{10}\) AIR 1981 SC 939
services by observing that the accused in the case must be provided legal representation by a fairly competent lawyer at the state cost.

It may however be noted in this context that the Hon'ble Supreme Court also laid down several exceptions in which free legal services might be dispensed with. Such cases would incorporate economic offences or offences against law forbidding prostitution or child abuse and the like, Social justice according to the Hon'ble Supreme Court might also require that free legal services need not be provided by the State.\(^\text{11}\).

In Sheela Barse Vs. State of Maharashtra\(^\text{12}\), the Hon'ble Supreme Court observed that it is a necessary sine qua non of justice and where legal aid is not provided to a poor or indigent accused who is arrested and put in jeopardy of his life or personal liberty, injustice is likely to result and undeniably every act of injustice corrodes the functions of democracy and the rule of law. So, it is absolutely essential that legal assistance must be made available to prisoners in jails whether they be under trials or convicted prisoners.

It was also further observed by the Hon'ble Supreme Court of India in the aforesaid case (Sheela Barse Vs. State of Maharashtra)\(^\text{13}\) that

---

it is a duty of the lawyers that they must help the poor, illiterate and ignorant persons in need of legal help. If the lawyers, instead of coming to the rescue of persons in distress, exploit and prey upon them, the legal profession will come into disrepute and large masses of people would lose faith in lawyers and that would be destructive of democracy and the rule of law.

12. PUBLIC INTEREST LITIGATION

Public interest Litigation may be described as an important tool in the hands of the public to have access to justice in order to seek human freedoms whenever they are in jeopardy. It is a recent institutional innovation of the Supreme Court of India.

The apex court ruled in a landmark case (PUDR V. Union of India)\(^{14}\) that PIL is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of poor masses, who constitute the low visibility area of humanity.

The concept of public interest litigation constitutes essentially a cooperative or collaborative effort on the part of the petitioner, the State or public authority and the Court to secure observance of the constitutional or legal rights, benefits or privileges conferred upon the

\(^{14}\) AIR 1982 WSC 1473
vulnerable sections of the community and to reach social justice to them.

It is a universally known truth that India is a poor country inhabited by illiterate masses. Due to poverty, it is frequently observed that the people whose human rights or fundamental freedoms have been transgressed can hardly knock at the doors of the judiciary for redressal action. Considering such helplessness of the large section of the masses to have access to justice the Hon’ble Supremement Court of India has innovated a new and unforeseen tool to enforce the rights of the helpless even at the cost of breaking certain well established barriers and traditional legal barricades which were firmly entrenched in our legal system.

The Public Interest Litigation envisages that a particular individual or individuals having sufficient interests in a subject matter relating to the human rights or fundamental freedoms whether personal or collective in nature can move the superior courts (High Court & Supreme Court) by way of representative proceedings or class actions or social action litigation or public interest litigation for redressal of grievances, in India.

It may however be noted in this context that the concept of PIL is not a unique and judicially fashioned tool in India alone but, it was the
U.S.A., which gave a lot of prominence to this idea, of course under a different name viz. Public Interest Law.

If British Legal system is compared with that of India we also witness the on-set of this phenomenon in the seventies of this century by judges like Lord Denning. But, it should be an undisputed point to note that the acceptance and admission of PIL into our constitutional jurisprudence (India) is a little late, as compared to the U.S.A. and the U.K.

Another important point to be discussed in this connection is that Public Interest Litigation (PIL), as it has become popular in India is one of the judiciary-led and judiciary-induced phenomenon, which has been brought into existence by the Supreme Court, in order to protect the rights and interests of the oppressed sections, weaker and vulnerable quarters and the unrepresented sections of the society.

We may quote in this context the observation of justice V. R. Krishna Iyer15.

"Only a judicial culture which, in its texture, has social justice, human dignity and egalite woven into it can make the judicature in a Third World country, based on a socialistic democratic order,

functional. The raw realities of Indian society to-day are colossal illiteracy, intractable indigency, and countless chronic injustices, blended with a militancy generated by the Preambular Rhetoric of the Constitution. The feudal-colonial status quo ante receive its legal death sentence with Indian Independence. The tryst with destiny Indians made, when the country awoke to Freedom, to wipe every tear from every eye and to underwrite a social order in which justice, social, economic and political shall inform all the institutions of the national life, is still a pious wish."

(1) Expansion of Locus standi Rule:

‘One of the important aspects of the concept of Public Interest Litigation is a change in the right of standing which is known as ‘Locus Standi’ in the legal parlance. With the advent of the concept of public Interest Litigation the traditional view that a petition could only be maintained by such a petitioner who has himself suffered infraction of his rights and is a person aggrieved has undergone important changes.

Exception was however maintained only in case of a petition for habeas corpus where a relative or friend could file a petition on his
behalf, as recognised by the Supreme Court of India in S. Batra Vs. Delhi Admn\textsuperscript{16}.

The locus standi concept or the terms "standing to sue" has been given relaxation by the Hon'ble Supreme Court of India only in the 1980's through the concept of Public Interest Litigation which was popularised by judges like Justice V. R. Krishna Iyer and Justice P. N. Bhagwati.

Public Interest Litigation or Pro Bono Public Litigation is a litigation at the instance of a Public spirited citizen espousing cause of others\textsuperscript{17}.

As the Hon'ble Supreme Court of India observed in PUDR Vs. Union of India\textsuperscript{18}, it is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of poor masses who constitute the low visibility area of humanity.

It also merits our attention that the Hon'ble Supreme Court of India in highlighting the concept of Public Interest Litigation observed that in India, Public Interest Litigation is an innovative strategy which has been invented by the Supreme court for the purpose of providing easy access to justice to the weaker sections of Indian humanity and it is a powerful tool in the hands of public spirited individuals and

\textsuperscript{16} AIR 1980 SC 1579
\textsuperscript{17} Dr. V. N. Shukla, Constitution of India, Lucknow, 1992, p.-226
\textsuperscript{18} AIR 1982 SC 1473
social action groups for combating exploitation and injustice and securing for the under privileged segments of society, their social and economic entitlements.

It is a highly effective weapon in the armory of the law for reaching social justice to the common man, (State of H.P. Vs. Parent of a student of Medical College)\textsuperscript{19}.

It may also be mentioned in this context that regarding civil remedies Indian legal system recognises only the locus standi of only the aggrieved persons, to seek a remedy in a Civil Court. However exceptions have been allowed in this matter under the Code of Civil Procedure, providing for class or representatives action\textsuperscript{20}, any one member of a class of persons affected in the same manner, can make a representative application, after obtaining the leave of the Court.

Though the public Interest Litigation is concerned primarily with the constitutional remedies sought under Article 32 or Article 226 of the Constitution of India, a few other instances of representative action however, are allowed in India under the Consumer Protection Act, 1986, But such voluntary organisation or consumer can initiate the legal proceedings only before certain fora like the District Forum

\textsuperscript{19. AIR 1985 SC 910 at P.914}
\textsuperscript{20. Under Order, 1, Rule 8 of the Code of Civil Procedure}
State Commission or National Commission and that too only regarding the consumer related complaints.

(ii) Factors Responsible for Growth of P.I.L.

Now we may cite reasons for Emergence of Public Interest Litigation in India. Though a lot of factors are responsible for the rapid growth and development of Public Interest Litigation in India, the following factors can be cited and highlighted here because of their importance.

(a) Socially and economically disadvantage position of a lot of people.
(b) Right of tax payers
(c) Injury to public Interest,
(d) Organised social action,
(e) Court's willingness to innovate,
(f) Judicial Activism,
(g) The Constitution 42nd Amendment (1976) - which inserted a new Article 39-A in Part IV of the Constitution.
(h) Human rights, it is well known, are enjoyable by all persons whether in or out of the prison.

It is a stark fact that prior to the advent of the Public Interest Litigation in India, the prisoners as a class, were really in a helpless
position. There was no means and forum to complaint against the inhuman conditions prevailing in the jails, protective homes and reformatories. The Public Interest Litigation has really opened a wide avenue of remedies for the prisoners victims.

In a Landmark decision Khatri Vs. State of Bihar\textsuperscript{21}, the apex court (The supreme Court of India ) interpreted the concept of the right to free legal services and issued directions, to the Administration to get a number of prisoners, blinded by the Jail Staff, to be treated by expert doctors. This case is popularly known as the ‘Bhagalpur Blindings case’.

The Hon’ble Suprme Court of India yet in another case Hussainara Khatoon vs. Home Secretary, Bihar\textsuperscript{22}, Ruled that detaining under, trials in prison without any trial for long durations, violates their right to speedy trial implicit in Article 21 of the Constitution of India.

Again through public Interest Litigation the Hon’ble Supreme Court in a landmark case Francis Coralie vs. Union Territory of Delhi\textsuperscript{23}, admitted a petition filed by a British National under trial charged under the COFEPOSA, 1974 and decided that the prisoners in jail and detenues in general, have the rights to have interview with a legal advisor and family members. This right of the prisoners was

\textsuperscript{21} AIR 1981 SC 928
\textsuperscript{22} (1980) Sec 81, 93, 98
\textsuperscript{23} AIR 1981 SC 746
considered to be a part of the right to life and personal liberty guaranteed under Article 21 of the Constitution.

(iii) Epistolary Jurisdiction

Yet, the Hon'ble Supreme Court through Public Interest Litigation in a case (Veena Sethi Vs. State of Bihar24 exercised the epistolary jurisdiction of the apex court on the basis of a letter addressed to the Hon'ble Supreme court by the Free Legal Aid Committee, Hazaribagh and set the Judicial process in motion. The Hon'ble Supreme Court decided in favour of the release of certain insane-prisoners, who were kept in jail for about 20 to 37 years, who were subsequently declared sane.

Another instance of the exercise of powers through Public Interest Litigation is provided by the decision given in Sheela Barse vs. State of Maharashtra25. In this case Supreme Court entertained writ petition which was based on a letter addressed by Sheela Barse, a journalist complaining of custodial violence to women prisoners while confined in the police lock-up in the city of Bombay. The verdict in this case indicated that female prisoners only to be detained in female lockups to be guarded by female constables and female prisoners accused

24. AIR 1983 SC 339
25. AIR 1983 SC 378
are to be interrogated only in the presence of the female police officials.

In Mathew Areepamtal Vs. State of Bihar\textsuperscript{26}, the Apex Court through public interest litigation directed the State to release the large number of people found in jails without trial for petty offences. In Kamala Devi Vs. State of Punjab\textsuperscript{27}, through Public Interest Litigation the apex court issued directions to Government to release all children detained in the Central Jails at Ludhiana and Amritsar, consequent to their rounding up in army action within the precincts of Golden Temple, Amritsar, because no reasons were submitted by the Government for such detention.

Yet in another landmark decision in Supreme Court Legal Aid Committee Vs. Union of India\textsuperscript{28} the Supreme Court highlighted the importance of Public Interest Litigation and directed the Government for providing relief to delinquent children detained in jails.

Another important instance of importance of Public Interest Litigation is provided by Supreme court's decision handed down in D.K. Basu Vs. State of West Bengal\textsuperscript{29}. In this case the Hon'ble supreme Court took action on a Public Interest Litigation filed by a

\textsuperscript{26} AIR 1984 SC 1854
\textsuperscript{27} AIR 1984 SC 1895
\textsuperscript{28} AIR 1989 SC 128
\textsuperscript{29} AIR 1997 SC 610
non-political organization 'Legal Aid Services' of West Bengal and issued directions against torture, cruel and inhuman treatment during investigation and interrogation of the accused. Another milestone in this success story of Public Interest Litigation is visible in Supreme Court's decisions given in Khedat Mazdoor Chetna Sangah Vs. Madhya Pradesh\textsuperscript{30} in which the apex court ruled that the handcuffing of under trial prisoners by police is unfair and unconstitutional. This decision is also reiterated by the Supreme Court yet in another case. Citizens for Democracy -Vs- Assam\textsuperscript{31}.

(vi) P.I.L. and the Privileges of Labour

The public Interest Litigation also contributed extensively in the arena of labour jurisprudence in India, particularly respecting the exploitation of the labour and workmen by the State and employers.

In an important case Fertilizer corporation Kamgar Union Vs- Union of India\textsuperscript{32} the apex Court recognised the 'locus standi of the workers, to challenge the legality of sale of certain plants of the Sindri Fertilizer Factory. And the Court decided that the workers of a factory have a locus standi to challenge any major decision taken by the management affecting their rights directly or indirectly.

\begin{itemize}
  \item \textsuperscript{30} AIR 1995 SC 31
  \item \textsuperscript{31} (1995) 3 SCC 743
  \item \textsuperscript{32} AIR 1981 SC 344
\end{itemize}
In Azad Rickshaw Pullers Union Vs. State of Punjab\textsuperscript{33} the Hon'ble Supreme Court through Public Interest Litigation approved the standing of the Rickshaw Pullers Association to challenge certain regulations framed by the Government of Punjab.

In Bandhu Mukti Morcha Vs. Union of India\textsuperscript{34}, the Supreme Court acting through Public Interest litigation entertained a petition filed by an organization dedicated to the cause of release of bonded labourers, who were allegedly working in a state of inhuman and intolerable conditions in stone quarries situated in Faridabad district of Haryana and many of such workers were bonded labourers. The decision given by the Supreme Court directed state Government and Central Government to free the bonded labourers and to rehabilitate them.

Acting on the basis of Public Interest Litigation the Supreme Court again ruled in Consumer Education and Research Centre, Vs. Union of India\textsuperscript{35}, that the right to health and medical care of workmen who were employed in Asbestos mines, continues to enjoy their fundamental right under Article 21 of the Constitution both during and after their service, and the authorities concerned are bound to compensate the workers whose health gets affected during their tenure of working.

\textsuperscript{33} AIR 1981 SC 14
\textsuperscript{34} AIR 1984 SC 802
\textsuperscript{35} AIR 1995 SC 922
And the employers are required to protect the health and hygiene of the workers. In Ram Kumar Vs. State of Bihar the Hon'ble Supreme Court dealt with a Public Interest Litigation which alleged that the owners of public ferries of Bhagalpur and Sultan Gunj, Bihar were not paying minimum wages to their workmen. The apex Court ruled for payment of the minimum wages to the concerned workers.

Through Public Interest Litigation the Supreme Court has also given relief to the pensioners.

In D. S. Nakara Vs. Union of India, the apex court accepted the locus standi of the third petitioner, a society registered under the Societies Registration Act, 1860 which sought to enforce the rights that may be available to a large number of old and infirm retirees. The apex court ruled that all pensioners, shall be entitled to pension and other retirement benefits.

(v) Consumer Rights and P.I.L.

With reference to protection of Rights of consumer and Public Interest Litigation it may be pointed out that in India, the Public Interest Litigation has played a positive role in protecting the rights of the consumers. The Supreme Court conferred standing on

36. AIR 1984 SC 537
37. (1989) (2) Scale 98 (541)
organizations like consumer Education and Research Centre (CERC) in many cases, to challenge the unfair or restrictive trade practices prevailing in the market.

In common cause, A registered Society Vs. Union of India. The Hon'ble Supreme Court Acting through Public Interest Litigation was confronted with allegations under Article 32 of the Constitution that certain provisions of the Consumer Protection Act, 1986 have not been implemented and that District Fora and State Commissions had not been established as contemplated under the Act. The apex court ruled that the Government is required to enquire with regard to the establishment of District Forums and State Commissions under Section 9 (b) of the Act (Consumer Protection Act, 1986).

(vi) Blood Preservation and P.I.L.

In common cause Vs. Union of India the Hon'ble supreme Court entertained a public Interest Litigation filed by Common Cause, a voluntary organization. In this case allegation were made that there existed serious deficiencies and short-comings in the matter of collection, storage and supply of blood through the various blood-centres operating in the country. Prayers were made through this

38. AIR 1983 SC 130
instant Public Interest Litigation to the apex court for directions to the Union of India, State Governments and the governments of Union Territories for ensuring proper positive and concrete steps, for removing obviating the malpractices, malfunctioning and inadequacies of blood banks all over the country and to place before the Supreme Court, a specific programme of action. The Hon’ble apex Court issued necessary directions in the matter.

(vii) Maintenance of Public Hygiene and Environment and P.I.L.

Yet in another landmark case Dr. B. L. Wadhera Vs. Union of India40 the Supreme Court acting on a Public Interest Litigation reminded the mandatory duties of the Municipal Corporation of Delhi, as to garbage clearance, scavenging and cleaning of the city of Delhi. This case highlights the judicial activism which was directed for the rescue of the common man.

Now we may advert to the contribution of Public Interest Litigation respect of pollution free environment causes. The most important area where the Public Interest Litigation has played a dominant role in protecting the interests of the community at large, it is the prevention of pollution and protection of environment. The

Government of India has given much importance for the last few decades for protection of environment. Many legislation in this matter have been passed such as Water (Prevention and Control of Pollution) Act, 1975, the Air (Prevention and Control of Pollution) Act, 1981, the Forest Conservation Act, 1980 and the Environment Protection Act, 1976. The 42nd Amendment Act, 1976 made to the Constitution of India has highlighted the importance of environmental issues which have found place in the form of Article 48-A in the Directive Principles Article 51-A(g) in the Fundamental Duties Chapter, and which gave a lot of impetus for environmental litigation in India.

It may however be noted, in this context, that inspite of such a large volume of legislation, the privilege of the citizens in India to have the right to pollution free environment remained illusive, because of the fact that the State by and large remained indifferent in this area.

The Hon’ble Supreme Court therefore took the necessary initiative for pollution prevention in this country, through Public Interest Litigation.

In a landmark case Rural Litigation and Entitlement Kendra -Vs- State of U.P.41 the apex court through Public Interest Litigation took cognizance of the imbalance to ecology and hazard to healthy

41. AIR 1987 SC 359
environment, due to working of limestone quarries in the Mussorie and Dehradun areas of U.P. The Hon'ble Court ruled the closure of the mining operations and issued necessary direction for environment and maintenance of ecological balance\textsuperscript{42}. (Rural Litigation and Entitlement Kendra Dehradun Vs. State of U.P.)

In M. C. Mehta Vs. Union of India the apex court through public interest Litigation took cognizance about environmental pollution because of leakage of oleum gas from the units of M/s. Shriram Foods and Fertilizer Industries and about the adverse effect of such leakage of gas upon the persons in the vicinity. The apex court gave direction to the respondent industry and also to the Union of India to prevent any future leakage and to take appropriate measures in this respect.

Yet, in another landmark decision M.C. Mehta Vs. Union of India\textsuperscript{44} the Supreme Court through Public Interest Litigation took cognizance of the pollution of 'Ganga' water due to industrialization on the banks of the river and also failure of the local self-government to discharge its obligation. Necessary directions were issued by the Supreme Court to the concerned authorities for taking suitable steps in the

\textsuperscript{42} Name of Case AIR 1985 SC 652
\textsuperscript{43} AIR 1987 SC 965
\textsuperscript{44} AIR 988 SC 1115
matter. In Tarun Bharat Sangh Vs. Union of India\textsuperscript{45}, the Supreme Court through Public Interest Litigation took cognizance of the mining activity in the vicinity of Sariska Tiger Park in Alwar District of the State of Rajasthan, which caused environmental pollution that affected not only human beings in that area but also the wild life. The apex court issued necessary directions to stop such activities (mining activity) in the concerned area.

In another important case S. Jagannath Vs. Union of India\textsuperscript{46} the Supreme Court through Public Interest Litigation issued directions to stop intensive and semi-intensive types of prawn farming activities in the ecologically fragile coastal areas, in the interest of safeguarding the marine life and coastal areas.

(viii) Compensatory jurisprudence and Public Interest Litigation

Another important area in which Public Interest Litigations have contributed a lot in the interest of human rights and personal liberty is to be found in the discipline of compensatory jurisprudence and Public Interest Litigation. A few leading decisions rendered by the Supreme Court in this area, may merit our attention. In a landmark decision Rudal Shah Vs. State of Bihar\textsuperscript{47} the Hon'ble Supreme Court

\textsuperscript{46} AIR 1996 SC 811
\textsuperscript{47} AIR 1983 SC 1086
dealt with a case wherein the petitioner was acquitted by the Court of session in 1968, but, was actually released from jail only 14 years later in 1982, for inexplicable reasons. The apex court issued directions for awarding compensation of Rs. 35,000/- to the victim for the deprivation of his liberty, without precluding the victim from bringing a suit to recover appropriate damages from the State and its erring officials, in the ordinary courts.

It may be noted further that even though the remedy handed down by the Supreme Court in this case was not in a Public Interest Litigation yet this case has been cited to explain the beginning of compensatory jurisprudence in writ proceedings in India.

In Saheli, a Womens' Resource Centre Vs. Commissioner of Police\textsuperscript{48}, the Hon'ble Supreme Court acting on a Public Interest Litigation directed the State Government to pay Rs. 75,000/- to the mother of a child 9 years old who died due to beating by the police.

In consumer Education and Research Centre Vs. Union of India\textsuperscript{49} the Supreme Court reiterated the principle that the remedy of award of compensation is available under Article 32 and 226 of the Constitution.

Therefore, it is clear that Public Interest Litigation has given an

\textsuperscript{48} AIR 1990 SC 513
\textsuperscript{49} AIR 1995 SC 922
impetus to the compensatory jurisprudence in writ proceedings, thereby establishing the principle that, any person whose fundamental rights or other statutory rights are violated either by the state action or private persons, the victims can ask for monetary compensation under Article 32 and 226 of the Constitution.

(ix) P.I.L. and Medical Treatment:

We may now examine the contribution of Public Interest Litigation in respect of the right of people to health & medical treatment. It is acknowledged that in so far as the right to health of the citizen is concerned the same has not been enumerated as a fundamental right in Part III of the Constitution. Reference to this right of the citizen only appears in the Directive Principles of State Policy, which are not justiciable per se. Likewise the privilege of the people for the enjoyment of another important human right that is right to medical treatment at a time of emergency is not a fundamental right or for that matter, could not even be considered as a legal right. Many decisions of the Supreme Court based on Public Interest Litigation in this regard have awakened the people regarding the importance of these rights. The state as well has also become conscious of its obligation to protect and enforce these rights because of landmark decisions of the apex court through public interest litigation.
The Hon'ble Supreme Court while deciding a Public Interest Litigation in a landmark case Vincent Vs. Union of India\textsuperscript{50} ruled in respect of the banning of the import, manufacture, sale and distribution of such drugs which are recommended for banning by the Drugs Consultative committee, that it was a question of national importance and it concerned health care of the citizens and accordingly the Central Government was directed to set-up regional Drug Laboratories in addition to the Central Laboratory.

In another important case Paramanand Katara vs. Union of India\textsuperscript{51}. The Hon'ble Supreme court acting through a Public Interest Litigation dealt with extensively with the professional ethics of the medical practitioner and handed down various directions for ensuring that an injured person must be instantaneously given medical aid, notwithstanding the formalities to be followed under the procedural criminal Jaw. It is a point of grave importance that the apex court held the right to medical treatment is a fundamental right of the people under Article 21 of the Constitution of India.

In Consumer Education and Research Centre -Vs- Union of India\textsuperscript{52}. The Hon'ble Supreme Court decided through Public Interest Litigation that the right to health and medical care of the workmen, both during

\textsuperscript{50} AIR 1987 SC 990,
\textsuperscript{51} AIR 1989 SC 2039
\textsuperscript{52} AIR 1995 SC 922
the tenure of their service and afterwards is a fundamental right envisaged by Article 21 of the Constitution of India. Otherwise, no citizen will be able to live with basic human dignity without health.

Yet in another important decision A.S. Mittal Vs. State of U.P.\textsuperscript{53} the apex court was confronted with the question of blindings of the persons operated in an "eye camp" in Uttar Pradesh, and the Union Government was directed to consider incorporation of guidelines, in order to protect the health of the citizens against random advertisement of careless people for such adventurous "eye camps". The ruling of the apex court given in this case also incorporated the payment of monetary compensation to each of the victims besides the payment of interim relief already paid to the sufferers.

Further, in assessing the contribution of Public Interest Litigation in the domain of life and health and medical care of the citizen, the decision of the Supreme Court handed down in Supreme Court Legal Aid-Committee Vs State of Bihar\textsuperscript{54} is a reminder on the point. The apex court considered in this case the negligence and failure of Police to administer proper medical care and aid to an injured person who is already in Police Custody and who ultimately died because of such negligence. The state of Bihar was directed by the apex court to pay Rs. 20,000/- to the legal representative of the deceased.

\textsuperscript{53} A I R 1989 SC 1570
\textsuperscript{54} (1991) 3 SCC 482.
It may not be out of place, to mention here that almost all the decisions of the apex court (Supreme Court) in the arena of Public Interest Litigation cases, relating to the pollution and environmental protection, also dealt with the right to health of the citizens, which is of course, one of the universally recognised human rights.

(x) Protection of Children and Women and P.I.L.

Next, the contribution of Public Interest Litigation, in protection of children and women would merit our attention. There is no denial of the truth that the subject of protection of the rights of the women and children, have been guaranteed by the provisions of the Constitution of India and other laws.

In a landmark case Dr. Upendra Baxi Vs. State of U.P.55 the apex court of India was confronted with the question of deteriorating conditions of women in Agra and Delhi Protective Homes. The Supreme Court decision in this PIL case contributed a lot in improving conditions of the above mentioned protective homes.

The Hon'ble Supreme Court of India in another case Sheela Varse Vs. State of Maharashtra56 swang into remedial action on a writ petition based on a letter addressed by a Journalist. While exercising

55. (1981) 3 SC AIE 1136
56. A I R 1983 SC 37 (8)
power in epistolary jurisdiction the apex court was confronted with the complaint of custodial violence on women prisoners while confined in the police lock-up in the city of Bombay. After considering the pros & cons of the subject matter the apex court issued directions inter alia, that (i) females should be locked up in female lock-ups to be guarded by the female constables and (ii) interrogation of female prisoners to be conducted only in the presence of female police officers.

The apex court yet again decided in a Public Interest Litigation (epistolary jurisdiction) in a case Kishen Vs-Orissa\textsuperscript{57} that suitable measures should be taken by the Government of Orissa for improving the conditions of the inhabitants of the Kalahandi District, Orissa, who were suffering from extreme poverty. The apex court also ruled in this PIL case that the Natural Calamities Committee, should be set-up for maintaining watch on the steps to be taken for ameliorating the wretched conditions of the said inhabitants and also for prevention of trafficking in children.

In a case All India Democratic Women's Association Vs. Union of India\textsuperscript{58} a Public Interest Litigation, the Supreme Court of India dealt with the after development of 'Sati' alleged to be committed by Roop

\textsuperscript{57} AIR 1989 SC 677
\textsuperscript{58} AIR 1989 SC 1280.
Kanwar in Rajasthan and ruled that the restriction imposed upon holding chunry ceremony, should be allowed to continue without any variation, for the purpose of preventing the glorification of Sati (Suicide by Widows).

The apex court again while exercising power in epistolary jurisdiction on the basis of a letter, the news item published in Anand Bazar Patrika, Calcutta took cognizance of a complaint about the sexual exploitation of blind girl students in a school located in Berhampur, Orissa. The ruling of the Court highlighted the necessity of the necessary directions to be given in the matter for proper management of the establishment Pratul Kumar Sinha -Vs- State of Orissa 59.

In another public Interest Litigation case Gaurav Jain Vs. Union of India 60 the Hon'ble Supreme Court attached much importance to the problems of the children born to prostitutes and ordered the Constitution of a Committee involving lawyers and social activists who will look into the matter and would offer remedial suggestions.

In Vishal Jeet Vs. Union of India 61 acting upon a petition filed by a lawyer under 32 Art. of the Constitution Hon'ble Supreme Court took cognizance of an allegation of sexual exploitation of children in the

59. AIR 1989 SC 1783.
60. AIR 1990 SC 292.
61. AIR 1990 SC 1412.
flesh trade, and appropriate directions were issued by the Court to the State Governments for the purpose of eradicating the child prostitution. In Lakshmi Kant Pandey Vs. Union of India⁶² the Hon'ble Supreme Court acting upon a Public Interest Litigation took cognizance of the allegation of malpractice indulged in by social Organisations and voluntary agencies who are engaged in the task of offering Indian Children in adoption to foreign parents. Accordingly, principles and norms were laid down by the apex court to be followed for the purpose of determination of a question whether a child should be allowed in adoption to the foreign parents.

The apex Court again used the tool of public Interest Litigation and highlighted Judicial activism, in coming to the rescue of the working women, who were subjected to sexual harassment at their working places. Invishakha VS. State of Rajasthan⁶³ the Hon'ble Supreme Court resorted to direct Judicial legislation by issuing a lot of guidelines and norms, for the purpose of prevention of such harassment. The pronouncement of the Hon'ble Supreme Court in this case should merit out attention particulary in the area of enjoyment and protection of human rights and gender dignity of working women. The apex court emphatically declared:

⁶². AIR 1992 SC 118
In view of the absence of enacted Law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereunder for due observance at all work places or other institutions, until a legislation is enacted for the purpose............

".................. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field."

If we analyse the decisions referred to above as handed down by the Hon'ble Supreme Court of India regarding the constructive use of Public Interest Litigation, it is crystal clear that the tool of Public Interest Litigation has been used by the apex court to our satisfaction for the purpose of protection of the human rights of women and children in India.

(xi) P.I.L. and Judicial Law Making

Besides it is also evident from the decisions of the Supreme Court in the field of Public Interest Litigation that the court has freely resorted to judicial legislation, judicial policy making and judicial administration in a lot of cases and the court's action in this area can be justified on the ground that the law which helps & takes care of the happiness of the greatest number of people is a good law.
It now may be argued that through the device of Public Interest Litigation, the Supreme Court has made a positive contribution to enforce the rights of prisoners, workers, pensioners, consumers, victims of environmental pollution and others. Besides it may be contended that public Interest Litigation has played an important role in ensuring that there is accountability of the administration to the people, there is a rule of law in all spheres of Public life and also in areas like maintaining the independence of judiciary.

Apart from what has been stated above the scope of Public Interest Litigation has been widened considerably in recent times as the arbit of 'Public interest' has undergone a metamorphosis. No one can dispute that the recent use of the tool of P.I.L. by the Hon’ble Supreme Court for ensuring the rule of law, independence of Judiciary and also for ensuring the proper exercise of administrative discretion by the ministers and bureaucrats poignantly highlights the expanding use of P.I.L in India. Further, it is also a fact that P.I.L. system/proceeding in the hands of the Supreme Court led to payment of adequate pecuniary compensation to the victims of violation of fundamental rights, which is an illustration of recognition and enforcement of the fundamental freedoms by higher Judiciary.

The journey of the Supreme Court in the direction of victory of personal liberty resulted in the achievement of most fruitful and
beneficial activism in winning human freedoms in all conceivable aspects. It has been the result of re-interpretation of Article 21 of the constitution, the pit-hihest provision of the Constitution which simply states “No person shall be deprived of his life or personal liberty except according to the procedure established by law”. Starting with the landmark decision in Maneka Gandhi -Vs -Union of India, AIR 1978 SC 597, the court by gradual phases, has for all practical purposes introduced the concept of due process of law in the expression” Procedure established by law” in the Article, allowing the Court to review the unreasonableness of any law or an order affecting a person’s individual liberty. The court itself has admitted “that the American doctrine of due process has been introduced in the conservative text of Article 21 of the Constitution”. (In Rajen Dwivedi -Vs- Union of India, AIR 1983 SC 624).63A

Further, it may also be noted that the human rights Jurisprudence have gained sufficient momentum in the hands of the Supreme Court particularly, in cases relating to personal liberty. The Judicial enthusiasm of the Supreme Court by extending the meaning of life in Article 21 has given a recondite meaning to it. Owing to Judicial activism of the summit Court life today means not merely animal existence of

63A. AIR 1983 SC 624
continued drudgery through life but the finer graces of human civilisation which makes the life worth living.

(Board of Trustees, port of Bombay - Vs - D.R. Nadkarni)\footnote{64}

(Frances Corralie Mullin - Vs - Union Territory of Delhi)\footnote{65}

The apex court in the exercise of Judicial activism has attempted to widen the ambit of "personal liberty" under Article 21 and has extended the same to even the prisoners, convicts, bonded labour, juveniles and also to the prostitutes.

Because of such liberal interpretation undertaken by the Supreme Court over a period of the last two decades, 'Law under Article 21 now means a valid and reasonable law, "procedure means just, fair and reasonable procedure and "right of life" means the right to live with basic human dignity. At present, as a result of the humanitarian interpretation of Article 21 by the Supreme Court, it guarantees almost 30 different kinds of implicit human rights, legal rights, social rights and also remedial rights.

In spite of the ardent will of the Supreme Court\footnote{64} in expanding the horizon of personal liberty by way of Judicial activism there might be criticism of such activities of the apex court. The Honorable Judges of the Supreme Court and High court must always remind themselves

\footnote{64. (1983) 1 SCC 124}
\footnote{65. AIR 1981 SC 746}
the statement of Mr. Justice Jackson of the U.S. Supreme Court that
- "we are not final because we are infallible, but we are infallible
because we are final"."

Constitutional democracy implies that the ultimate interpreter of
our fundamental law is not an autonomous Judiciary but the inter
active understanding of the people, their representatives and the
judges together. Judicial power and judicial pronouncements should
therefore be subjected to the same active but respectful, scrutiny for
their legitimacy as the actions of the political branches are subjected
to.