CHAPTER - III
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SCOPE OF PERSONAL LIBERTY

The people of India under the Leadership of Mahatma Gandhi launched nonviolent struggle to achieve self government and fundamental rights for themselves. Though some militants took to violence also. Lokmanya Tilak advocated that the freedom is the birth right of Indians for which they will have to Fight\(^1\).

The Government of India Act, 1919 failed to provide any fundamental rights to the people. The Nagpur Session of the Congress demanded repeal of all repressive laws. On the basis of the report of Sapru Committee, some of these laws were repealed\(^2\). In 1925, The Commonwealth India Bill’ containing a Bill of rights was unsuccessfully moved. Bombay session of Congress in 1927 demanded inclusion of rights in the future constitution of India. In 1930, Congress Working Committee gave a call for the attainment of “Purna Swaraj”. The British Government adopted more repressive measures. Karachi Session of Congress in 1931 adopted a detailed programme of

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\(^1\) N.C.Kelkar, Life and times of Lokamanya Tilak Vol. 1, p.108.
"Fundamental Rights and Duties". The white paper issued by the British Government after the 3rd Round Table Conference provided that certain rights including the right to personal liberty may be included in the future constitution of India. But again the Government of India Act, 1935 did not contain a declaration of fundamental rights. Rather, more repressive measures were adopted to crush the liberties of the people during the Second World War. Under the Cabinet Mission Plan of 1946, Constituent Assembly was established to frame the constitution of India.

**Drafting of Article 21**

The Constituent Assembly got the privilege and responsibility to draft the constitution for the Indian people after a long freedom struggle. It was but natural to expect them and they were also under a moral but binding obligation to frame a constitution, which guarantees freedoms or liberties to all.

B.N. Rau, Constitution Advisor, in his note to the members of the constituent Assembly, suggested that provision relating

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3 B.M. Sharma, Expanding Dimensions of Freedom, p.250.
to personal liberty should neither be vague nor a meaningless guarantee against the oppressive Laws\textsuperscript{4}.

K.T. Shah pleaded for empowering the courts to protect the personal liberty of all persons, citizens as well as non-citizens\textsuperscript{5}.

The Constituent Assembly elected an Advisory Committee on fundamental rights, which constituted several sub-committees.

B.N. Rau, the Constitutional Adviser, prepared a draft constitution. The draft clause 16 provided, "No person shall be deprived of his life or personal liberty without due process of law, nor shall any person be denied equality before the law within the territories of the federation".

After a careful scrutiny of the draft, the Drafting Committee prepared a revised draft constitution and submitted it to the constituent Assembly. The right to personal liberty was included in Article 15, of the revised draft constitution, which provided:

\textsuperscript{4} B. Shiva Rao, "The Framing of India's Constitution – Select Documents", p.30-32.

\textsuperscript{5} Ibid., p.42.
“No person shall be deprived of his life or personal liberty except according to procedure established by law nor shall any person be denied equality before the law or the equal protection of the law within the territory of India”.

Thus, in the revised draft, the phrase, “without due process of law” was replaced by the phrase “except according to procedure established by law”\(^6\).

**Protection of Personal Liberty:**

Article 21 of the constitution of India declares: “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

This enshrines the high value of human dignity and the worth of human person\(^7\). The spirit of man is at the root of Article 21. Absent of liberty, other freedoms are frozen\(^8\).

Article 21 provides the protection to against deprivation of life and personal liberty to every person, whether a citizen or not. The right guaranteed by this article is, however, not an absolute right to life or personal liberty but a right not to be deprived of life or personal liberty without the procedure

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\(^6\) V.K.Bansal – Right to Life and Personal Liberty in India, p.97.
\(^8\) AIR 1978 SC. 597 at p.657.
established by law. On the one hand, it recognizes the right of the state to deprive a person of his life or personal liberty and on the other side, it requires that such a deprivation can not take place except according to procedure established by law and that procedure must be just, fair and reasonable.

Thus the state's authority to deprive an individual of his right to life or personal liberty is subject to the following of a just, fair and reasonable procedure prescribed by a valid law. The law also must not be arbitrary or unreasonable.

It is a protection, which is both substantive and procedural. Article 21, though apparently appears as a shield operating negatively against executive encroachment over something covered by that shield, in fact, it is the legal recognition of both of protection or the shield as well as of what it protects which lies beneath that shield. Article 21 now is not confined to procedural protection only, it extends to the substance of the law.

Article 21 provides protection not only against executive action but also against legislative action. What this article

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10 Mithu v. State of Punjab AIR 1983 SC. 473, Section 303 IPC was declared void.
requires is first that for depriving a person of his life or personal liberty, there must be a legal authorization for the purpose, and the authority must strictly follow the prescribed legal procedure for the purpose\textsuperscript{12}.

**Wider meaning of Personal Liberty**

The words "Personal Liberty" under Article 21 if interpreted widely are capable of including the rights mentioned in Article 19. But in Gopalan's case\textsuperscript{13}, the Supreme Court took a very liberal view and interpreted these words very narrowly. The Court took the view that since the word "Liberty is qualified by the word 'personal' which is of narrowed concept and therefore it does not include all that is implied in the term liberty. So interpreted, it means nothing more than the liberty of the physical body-freedom from arrest and detention from false imprisonment or wrongful confinement.

**A.K. Gopalan : 1950**

The meaning of the words personal liberty came up for consideration of the Supreme Court for the first time in A.K. Gopalan v. Union of India in 1950 SC.27. In that case the

\textsuperscript{12} Makhan Singh v. State of Punjab AIR 1964, SC.173.

petitioner, A.K. Gopalan, a Communist leader was detained under the Preventive Detention Act, 1950. The petitioner challenged the validity of his detention under the Act on the ground that it was violative of his right to freedom of movement under article 19(1)(d) which is the very essence of personal liberty guaranteed by Article 21 of the constitution. He argued that the words "Personal Liberty" include the freedom of movement also and therefore the Preventive Detention Act, 1950 must also satisfy the requirement of Article 19(5), in other words, the restrictions imposed by the detention law on the freedom of movement must be reasonable under Article 19(5) of the constitution. Rejecting both the contentions, the Supreme Court held that the 'personal liberty' in Article 21 means nothing expressing more than the liberty of the physical body, that is, freedom from arrest and detention without the authority of law. This was the definition of the phrase 'personal liberty' given by Prof. Dicey, according to him personal liberty means freedom from physical restraint and coercion, which is not authorized by law. But by qualifying the word liberty, the Court said, the import of the word 'personal liberty' is narrowed down to the meaning given in English law to the expression 'liberty of the person'. The majority took the view that Article 19 and 21
deal with different aspects of liberty. Article 21 is guarantee against deprivation of personal liberty while Article 19 affords protection against unreasonable restrictions on the right of movement\(^{14}\).

In Gopalan, the Supreme Court interpreted the 'law' as 'state made law' and rejected the plea that by the term law in Article 21 natural law should be understood. Fazal Ali, J. however, in his dissenting judgment held that the Act was liable to be challenged as violating the provisions of Article 19. He gave a wide and comprehensive meaning to the words 'personal liberty' as consisting of freedom of movement and locomotion. Therefore, any law, which deprives a person of his personal liberty must satisfy the requirements of both the Articles 19 and 21 of the constitution.

**Domiciliary Visit - Invasion of Personal Liberty:**

In Kharak Singh v. State of UP\(^{15}\) AIR 1963 SC. 1295 the Supreme Court held that the expression 'life' was not limited to bodily restraint or confinement to prison only but something more than mere animal existence. In that case the petitioner, Kharak Singh, had been charged in a dacoity case but was


\(^{15}\) AIR 1963 SC.1295.
released, as there was no evidence against him. Under the UP Police Regulations, the police opened, a history sheet for him and he was kept under police surveillance which included secret picketing of his house by the police, domiciliary visits at night and verification of his movements and activities.

Allowing the petition Supreme Court held that the domiciliary visits of the policemen were an invasion on the petitioner's personal liberty. By the term 'life' as used here something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limits and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg\textsuperscript{16}. It is true that in Article 21 the word liberty is qualified by a word personal but this qualification is employed in order to avoid overlapping between those incidents of liberty, which are mentioned in Article 19. An unauthorized intrusion into a person's home and the disturbance caused to him is the violation of the personal liberty of the individual. Hence, the Police Regulation authorizing domiciliary visits was plainly violative of Article 21 as there was no law on which it could be justified and it must be struck down as unconstitutional.

\textsuperscript{16} Munn v. Illinois (1876) 94 US 113.
But in Govind v. State of M.P.\textsuperscript{17} the Supreme Court held that M.P. Police Regulations 855 and 856 authorising domiciliary visits were constitutional as they have the force of law. These regulations were framed by the Government under Sec.46(2)(e) of the Police Act. The petitioner challenged the validity of those Regulations on the ground that they were violative of his fundamental right guaranteed in Article 21, which also includes the right of privacy. "The Supreme Court held that Regulations 855 and 856 have the force of law and, therefore, they were valid". As regards the 'right of privacy' the Court said that the right to privacy would necessarily have to go through a process of case-by-case development. Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an examination from them which can be characterized as a fundamental right, the right is not absolute.

**Right to Privacy :**

The right to privacy is not specifically mentioned in the constitution of India. So one has to see whether it is included in the right to personal liberty.

\textsuperscript{17} AIR 1975 SC. 1379.
The right to one’s protection is as old as the origin of life itself. ‘Might is right’, justified in the primitive society, stands replaced by the universally recognized state’s duty to protect its citizens in a politically organized society. Right to life and protection expanded its horizons and came to include the right to enjoy life, right to liberty, privacy etc.18

The right to privacy was judicially recognized in 1904, in Pavesich v. New England, etc., Co.19 where unauthorized use of portrait in an advertisement was held as violation of right to privacy. Where a movie studio released a picture called the Red Kimono, which described the life of a former prostitute, who was now living married life for the past seven years; the court held that it was invasion of her privacy20.

Under the Indian Constitution there is no specific provision relating to the right to privacy. In Gopalan’s Case21, the Court observed that the personal liberty means freedom from physical restraints. Such an interpretation does not include a number of personal rights, which a person enjoys under law. Some of these personal rights include the right to

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19 South Eastern Reporter, 68 Cited in 18 Harv. L.Rev. 625.
21 AIR 1950 SC.27.
eat, drink, smoke, work, leisure, play or sleep as much as one likes. These rights would not come under any of the clauses of Article 19, nor would they come within the restricted scope of Article 21 as interpreted by the majority in Gopalan’s case.

Right to Privacy vis-à-vis Telephone Tapping:

In a historic judgment in people’s union for civil Liberties V. Union of India\textsuperscript{22} popularly known as “Phone Tapping Case”, The Supreme Court has held that telephone tapping is a serious invasion of an individual’s right to privacy which is part of the right to “life and personal liberty” enshrined under Article 21 of the constitution, and it should not be resorted to by the state unless there is public emergency or interest of public safety requires. The petition was filed by way of a Public Interest Litigation under Article 32 of the constitution by the people’s union of civil liberties – a voluntary organisation – highlighting the incidents of telephone tapping in the recent years. The petitioners has challenged the constitutional validity of Section 5 of the Indian Telegraph Act, 1885, which authorizes the Central or State Government to resort to phone tapping in the circumstances mentioned therein. The writ

\textsuperscript{22} AIR 1997 SC.568.
petition was filed in the wake of the report on “Tapping of Politicians Phones” by the Central Bureau of Investigation (CBI).

The Court laid down exhaustive guidelines to regulate the discretion vested in the State under Section 5 of the Indian Telegraph Act, for the purposes of telephone tapping and interception of other messages so as to safeguard public interest against arbitrary and unlawful exercise of power by the Government. The Court has expressed displeasure that the state has so far not framed rules to prevent misuse of the power. In the absence of just and fair procedure for regulating the exercise of power under Section 5(2) of the Indian Telegraph Act, it is not possible to safeguard the rights of citizens guaranteed under Articles 19(1)(a) and 21 of the constitution. The C.B.I. investigations has revealed several lapses in the execution of the orders passed by the state while exercising power under the Act Section 5(2) of the Act permits the interception of messages in accordance with the provisions of the Act. “Occurrence of any public emergency” or in the interest of public safety “are the sine qua non” for the application of the provisions under Section 5(2) of the Act unless a public emergency has occurred or the interest of public safety demands, the authorities have no jurisdiction to exercise the
powers under the said legislation. The Court said public emergency would mean the prevailing of sudden condition or state of affairs affecting the people at large calling for immediate action. The expression public safety means the state or condition or grave danger or risk for the people at large. When either these two conditions are not in existence the Court said. The Central Government or the State Government or the authorized officers can not resort to telephone tapping even though there is satisfaction that it is necessary or expedient so to do in the interest of sovereignty and integrity of the country.

In judgment of the Supreme Court delivered by a Division Bench comprising Mr. Justice Kuldip Singh and Mr. Justice S.Sagir Ahmad will go a long way in protecting the right of privacy of Indian citizens and others enshrined under Article 21 of the constitutions. The Court noted that with the growth of highly sophisticated communication technology the right to hold telephone conversation in the privacy of one's home or office without interference is increasingly susceptible to abuse the privacy of the person and leads to violation of personal liberty.
In LIC of India v. Consumer Education and Research Centre\(^{23}\), it has been held that the "right to life and livelihood" as interpreted in Olga Tellis v. Bombay Municipal Corporation AIR 1986 SC 108 and several other cases by this Court includes the "right to Life Insurance Policies of LIC of India and it must be within the paying capacity and means of the insured. The spirit of fundamental rights and directive principles accord right to livelihood as a meaningful life, social security and disablement benefits are integral scheme of socio-economic justice to the people, in particular to the middle class and lower middle class and all affordable people. Life insurance coverage is against disablement or in the event of death of the insured, economic support for the dependants, social security to livelihood of the insured or the dependants. The appropriate life insurance policy within the paying capacity and means of the insured to pay premium is one of the social security measure envisaged under the constitution to make right of life meaningful, worth living and right to livelihood a means for substance. In that case the conditions imposed and denial to accept policies were challenged by the respondent as violative of right to life in Article 21 of the constitution. The Supreme Court

\(^{23}\) AIR (1995) 5 SCC 482.
held that the terms and conditions imposed by the LIC for accepting policy must be just, fair and reasonable. The policy can not be restricted only to salaried class in Government Service or quasi Government bodies or reputed commercial firms. The Court held that such a condition is unconstitutional.

In a remarkable judgment, Mumbai High Court in the year 1997\textsuperscript{24} has struck down Section 10 the Indian Divorce Act, 1869, under which a Christian wife had to prove adultery along with cruelty or desertion while seeking a divorce on the ground that it violates the fundamental right of Christian women guaranteed under Articles 21, 15 and 14 of the constitution. The Court also struck down Section 17 and 20 of the Indian Divorce Act, which stipulated that an annulment or divorce passed by a District Court needed to be confirmed by a 3 Judges Bench of the High Court. The Court held Section 10 compels the wife, who has been deserted or treated with cruelty, to continue her life, with a man she hates .... Such a life is sub human.

In R.Rajagopal v. State of Tamil Nadu\textsuperscript{25} popularly known as "Auto Shanker Case" the Supreme Court has expressly held

\textsuperscript{24} The Hindustan Times, July 16, 1997.
\textsuperscript{25} (1994) 6 SCC 632.
the "right to privacy", or the right to be let alone is guaranteed by Article 21 of the constitution. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right of the person concerned and would be liable in an action for damages.

However, this rule is subject to an exception that if any publications of such matters are based on public record including Court record it will be unobjectionable. If a matter becomes a matter of public record the right to privacy no longer exists and it becomes a legitimate subject for comment....

The second exception is that the right to privacy or the remedy of action for damage is simply not available to public officials as long as the criticism concerns the discharge of their public duties; not even when the publication is based on untrue facts and statements unless the official can establish that the statement had been made with reckless disregard of truth. All
the alleged contemnor needs to do is to prove that he has written after reasonable verification of facts.

Right to Free Legal Aid:

In M.H.Hoskot v. State of Maharastra\textsuperscript{26}, the Supreme Court applied the ruling of Maneka Gandhi's case. In that case the petitioner, who was a Reader holding M.Sc. and Ph.D. Degrees was convicted for the offence of attempting to issue Counter University degrees. The scheme was, however, foiled. He was tried by the Sessions Court, which found him guilty of grave offences but took a very lenient view and sentenced him to simple imprisonment till the rising of the Court. The High Court allowed he state appeal and enhanced punishment to three years. The High Court judgment was pronounced in November 1973, but he special leave petition was filed in the Supreme Court by the petitioner after four years. The petitioner had undergone his full term of punishment. The explanation given by him for the condonation of delay was that he was given the copy of the judgment of 1973 in 1978. It was disclosed that although a free copy of the order had been sent promptly by the High Court meant for the applicant to the Superintendent of the Jail but he claimed that he never received it.

\textsuperscript{26} AIR 1978 SC.527.
The Superintendent claimed that the copy had been delivered to him but later it was taken back for the purpose of enclosing it with a mercy petition to the Government for remission of sentence. The Supreme Court, although dismissed the special leave application because of the settled practice that the court could not interfere with the concurrent findings of the two lower courts, but it thought it proper to make the legal position clear. The court held that 'a single right of appeal' on facts where the conviction is fraught with long loss of liberty, is basic to civilized jurisprudence; one component of fair procedure is natural justice. Every step that makes the right of appeal fruitful is obligatory and every action or inaction, which stultifies it, is unfair and therefore offends Article 21.

There are two ingredients of a right of appeal, Service of a copy of a judgment to the prisoner in time to enable him to file an appeal, and provision of free legal service to a prisoner who is indigent or otherwise disabled from securing legal assistance. These are state responsibilities under Article 21. Any jailor, who by indifference withholds the copy thwarts the court process and violates Article 21 and may make the further imprisonment illegal. He suggested that the jail manuals should be updated
and should include the mandate and the state must make available a copy of the judgment to the prisoner.

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

Right against handcuffing:

In Prem Shankar v. Delhi Administration. The Supreme Court added yet another projectile in its armoury to be used against the war for prison reform and prisoners rights. In this case the validity of certain clauses of Punjab Police Rules were challenged as violation of Article 14, 19 and 21 of the constitution. Krishna Iyer, J. delivering the majority judgment held that provisions in paras 22, 26 that every under-trial who

\[27\text{AIR} 1980\text{SC.}1535.\]
was accused of non-bailable offence punishable with more than three years jail-term would be handcuffed, were violative of Articles 14, 19 and 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. In special circumstances the application of iron is not ruled out. But even where in extreme cases, handcuffing is to be put on the prisoner, the escorting authority must record simultaneously the reasons for doing so otherwise under Article 21 of the procedure would be unfair and bad in law. This is implicit in Article 21, which insists upon, fairness, reasonableness and justice in the procedure for deprivation of life and liberty.

In Sunil Gupta v. State of M.P., the petitioners were educated persons and social workers, who were remanded to judicial custody were taken to court from jail and back from court to the prison by the escort party handcuffed. They had staged a 'dharna' for a public cause and voluntarily submitted themselves for arrest. They had no tendency to escape from the jail. In fact, they even refused to come out on bail but chose to continue in prison of the public cause. It was held that this act

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28 (1990) 3 SCC 119.
of the escort party was violative of Article 21 of the constitution. There was no reason recorded by the escort party in writing for this inhuman act. The court directed the Government to take appropriate action against the erring escort party for having unjustly and unreasonably handcuffing the petitioner.

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

without warrant and the police officer is satisfied on the basis of the above guidelines that it is necessary to handcuff such a person he may do so till the time he is taken to the police station and thereafter his production before the magistrate. Further use of fetters thereafter can only be under the orders of the magistrate. The magistrate may grant the permission to handcuff the prisoner in rare case.

**Right against delayed execution:**

In T.V.Vatheeswaran v. State of Tamil Nadu\(^{30}\) a two-judge Bench of the Supreme Court held that delay in execution of death sentence exceeding 2 years would be sufficient ground to invoke the protection of Article 21 and the death sentence would be commuted to life imprisonment. In Sher Singh v. State of Punjab\(^{31}\), the three Judge Bench of the Court agreed with this view that prolonged delay in the execution of a death sentence was an important consideration for invoking Article 21 for judging whether sentence should be allowed to be executed or should be converted into sentence of imprisonment. Prolonged detention to await the execution of a sentence of death is an unjust, unfair and unreasonable procedure and the

\(^{30}\) AIR 1983 SC 361  
\(^{31}\) AIR 1983 SC 465
only way to undo the wrong is to quash the death sentence. However, the court held that this cannot be applied as a rule in every case and each case should be decided on its own facts. The court should consider whether the delay was due to the conduct of the convict, the nature of offence, its impact on the society, its likelihood of repetition, before deciding to commute the death penalty into a sentence of life imprisonment. In the instant case the delay was found to be the conduct of the convict and therefore it was held that the death sentence was not liable to be quashed. Accordingly, the court overruled the decision in T.V. Vatheeswaran v. State of Tamil Nadu.

But in Javed Ahmed v. State of Maharastra, the apex court was of opinion that where there is delay in execution of death sentence of more than 2 years and the conduct and behaviour of the accused in the jail, evident from the report of the jail authorities shows that he was showing genuine repentance it was held that the death sentence could be commuted to life imprisonment.

Finally, in Triveni Ben v. State of Gujarat, a five judge bench of the Supreme Court has set the matter at rest and held

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32 AIR 1985 SC.231.
33 AIR (1989) 1 SCC, 678.
that undue long delay in execution of the death sentence will entitle the condemned person to approach the court for conversion of death sentence into life imprisonment, but before doing so the court will examine the nature of delay and circumstances of the case. No fixed period of delay could be held to make the sentence of death in executable. In the present case the death penalty of the accused was converted into life imprisonment.

In Francis Coralie v. Union Territory of Delhi\textsuperscript{34} the Supreme Court held that the detenu's right to have interview with his lawyer and family member is part of his 'personal liberty' guaranteed by Article 21 of the constitution and can not be interfered with except in accordance with reasonable, fair and just procedure established by law.

In Vincent Parikurlangara v. Union of India\textsuperscript{35} the Supreme Court held that the right to maintenance and improvement of public health is included in the right to live with human dignity enshrined in Article 21. A healthy body is the very foundation of all human activities. In a welfare state this is the obligation of

\textsuperscript{34} AIR 1981 SC.746
\textsuperscript{35} (1987) 2 SCC 165
the state to ensure the creation and sustaining of conditions congenial to good health.

In an unreported\(^{36}\) judgment, the court directed Rs.2000 to be deducted from the salary of a constable of U.P. Police as part of the Rs.20,000 to be paid to 12 year old Aslam who had been handcuffed in violation of the judgment of the Supreme Court against handcuffing citizens. The balance of Rs.18,000 will be paid by the UP Government. The judges regretted that even after 10 years of the delivery of the courts judgment the police continued to function in its old way.

**Right against Solitary Confinement:**

In Sunil Batra (No.1) v. Delhi Administration\(^{37}\), the important question raised before the Supreme Court was whether 'Solitary Confinement' imposed upon prisoners who were under sentence of death was violative of Articles 14, 19, 20 and 21 of the constitution. In this case the two convicts who were confined in Tihar Central Jail filed two petitions under Article 32. Sunil Batra was sentenced to death by the District and Sessions Judge and his sentence was subject to the confirmation by the High Court and to a possible appeal to the

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\(^{36}\) The Hindustan Times, March 24, 1990.

\(^{37}\) AIR 1978 SC 1575, also in Sunil Batra (No.2) v. Delhi Admn. AIR 1980 SC.1579.
Supreme Court. Batra complained that since by date of his conviction by session judge that was on 6th July, 1976 he was kept in solitary confinement till the Supreme Court intervened on 24th February, 1978. Charls Sobhraj's, a foreigner, an under-trial prisoner challenged the action of the Superintendent of Jail putting him in to bar fetters. He was arrested on 6th July, 1976 and detained under section 3 of MISA. Since the time he was lodged in jail he was put in bar fetters not withstanding of the recommendation of the jail doctor that bar fetters be removed. It was contended that section 30 did not authorize prison authorities to impose the punishment of solitary confinement.

The Supreme Court accepted the argument of the petitioner and held that section 30 of the Prison Act did not empower the prison authorities to impose solitary confinement upon a prisoner under sentence of death. Under Section 73 and Section 74 I.P.C. solitary confinement is itself a substantive punishment, which can be imposed by a court of law. It can not be left within the caprice of prison authorities. The court held that the expression “Prisoner under sentence of death” in the context of section 30(2) could only mean the prisoner whose sentence of death had become final and could not be annulled
or violated by any judicial or constitutional procedure. Thus a prisoner was not under sentence of death till he had the right to appeal against this sentence or to appeal for mercy. If by imposing solitary confinement there is total deprivation of friendship amongst co-prisoners talking and being talked to, it would offend Article 21 of the constitution. The liberty to move, mix, mingle, talk, share company with co-prisoners if substantially curtailed would be violative of Article 21 unless curtailment has the backing of law. The court held that continuously keeping a prisoner in fetters day and night reduces the prisoner from a human being to an animal and that this treatment was cruel and unusual that the use of bar fetters was against the spirit of the constitution.

Right to health and Medical Assistance:

In Parmananda Katara v. Union of India38 - It has been held that it is the professional obligation of all doctors, whether government or private, to extend medical aid to the injured immediately to preserve life without waiting legal formalities to be complied with by the police under Cr. P.C. Article 21 of the constitution casts the obligation on the state to preserve life.

38 AIR 1989 SC. 2039.
It is the obligation of those who are in charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence which amounts legal punishment. No law or state action can intervene to delay the discharge of this paramount obligation of the members of the medical profession. The obligation being total, laws of procedure whether in statute or otherwise which would interfere with the discharge of this obligation can not be sustained and must, therefore, give way. The court directed that in order to make everyone aware of this position the decision of the court must be published in all journals reporting decisions of this court and adequate publicity highlighting these aspects should be given by the national media. The medical council must send copies of this judgment to every medical colleges affiliated to it.

This is a very significant ruling of the court. It is submitted that if this decision of the court is followed, in its true spirit it would help in saving the lives of many citizens who die in accidents because no immediate medical aid is given by the doctors on the ground that they are not authorized to treat medico-legal cases. Let us hope that all doctors Government
and private of this country should follow this ruling of the court earnestly.

In Paschim Bang Khet Mazdoor Samiti v. State of W.B.\textsuperscript{39} Following Peramanand Katara's ruling the supreme court has held that denial of medical aid by governments' hospitals to an injured persons on the ground of non-availability of bed amounted to violation of right to life under Article 21 of the constitution.

In this case, the petitioner, Hakim Singh who was a member of an organisation of an agricultural Labourers, had fallen from a running train and had suffered serious head injuries and brain hemorrhage. He was taken to various government hospitals in the city of Calcutta but because of non-availability of bed he was not admitted. Ultimately he was admitted in a private hospital as an indoor patient and he had to incur an expenditure of Rs.17,000 in his treatment. The Supreme Court held that Article 21 imposes an obligation on the state to provide medical assistance to every judicial injured person. Preservation of human life is of paramount importance. Failure on the part of a government hospitals to provide timely medical treatment to a person in need of such treatment results

\textsuperscript{39} (1996) 4.SCC 37.
in violation of his right to life—guaranteed under Article 21 of the constitution. The court directed the state of pay Rs.25,000 to the petitioner as compensation.

In a historic judgment in consumer Education and Research Center v. Union of India\textsuperscript{40}, the Supreme Court has held that the right to health and medical care is a Fundamental right under Article 21 of the constitution as it is essential for making the life of the workman meaningful and purposeful with dignity of person "right to life in Article 21 includes protection of health and strength of the worker". The expression, "Life" in Article 21 does not connote mere animal existence. It has much wider meaning which includes right to livelihood, better standard of life, hygienic conditions in workplace and leisure.

The court held that the state, be it Union or State Government or an industry, public or private is enjoined to take all such actions which will promote health, strength and vigour of the workmen during period of employment and leisure and health even after retirement as basic essentials to life with health and happiness. The right to life with human dignity encompasses within its fold, some of the finer facets of human civilization, which makes life worth living.

\textsuperscript{40} (1995) 3 SCC 42; AIR 1995 SC 1811.
**Right to die:**

Right to die is not a Fundamental Right under Article 21. The question whether the right to die is included in Article 21 of the constitution came for consideration for the first time before the Bombay High court in state of Maharastra v. Maruty Sripati Dubal. The Bombay High Court held that the right to life guaranteed by Article 21 includes a right to die and consequently they struck down section 309 IPC, which provides punishment for attempt to commit suicide by a person as unconstitutional. The judges felt that the desire to die is not unnatural but merely abnormal and uncommon. They listed several circumstances in which people may wish to end their lives, including disease, cruel or unbearable condition of life, a sense of shame or disenchantment with life. They held that everyone should have the Freedom to dispose of his life as and when he desires. In this case, a Bombay police constable who was mentally deranged was refused permission to set up a shop and earn a living. Out of frustration he tried to set himself a fire in the corporation's office room.

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41 1987 Cri. LJ 743.
On the other hand, the Andhra Pradesh High Court in Chenna - Jagadeswar v. State of A.P.\textsuperscript{42} held that the right to die is not a Fundamental Right within the meaning of Article 21 and hence section 309 IPC is not unconstitutional. In this case the petitioner a practicing doctor and his wife Saroja killed their Four Children and attempted to suicide themselves.

In P. Rathinan v. Union of India\textsuperscript{43} a Division Bench of the Supreme court comprising Mr. Justice M. Sahai and MR. Justice B.L. Hansaria agreeing with the view of the Bombay High Court in Maruti Sripati Dubal case held that a person has a “right to die” and declared unconstitutional, section 309 of the Indian penal code which makes “attempt to commit suicide” a penal offence. The 'right to live’ in Article 21 of the constitution includes “the right not to live”.

In the present case the petitioners had challenged the validity of section 309 on the ground that it was violative of Article 14 and 21 of the constitution and prayed for quashing the proceeding initiated against the petitioner (Nagbhusan Pattnaik) under section 309 pending in the court of sub-judge,

\textsuperscript{42} 1988 Cri. LJ 549.
\textsuperscript{43} (1994) 3 SCC 394; AIR 1994 SC 1844.
Gunpur, in the District of Koraput, Orissa for attempting to commit suicide.

The court held that Section 309 of the IPC was violative of Article 21 and hence it is void. A person cannot be forced to enjoy right to life to his detriment, disadvantage or disliking. The court held that Section 309 of the IPC was, "a cruel and irrational provision". The court further held that right to life of which Article 21 of the constitution speaks of can be said to bring in its trial the right not to live a forced life".

Explaining the reason for its decision the court said that "Section 309 IPC, deserves to be effaced from the Statute Book to humanize our Penal laws. It is a cruel and irrational provision and may result in punishing a person again who has suffered agony and would be undergoing ignominy because of his failure to commit suicide".

However, the court rejected the plea that 'euthanasia' (mercy killing) should be permitted by law. The judges said that they would not decide this point as firstly it is beyond the scope of the present petition and secondly also because in euthanasia a third person is either actively or passively involved about whom it may said that he aids or abets the killing of another
person. There is a distinction between an attempt of a person to take his life and action of some others to bring to an end the life of a third person such a distinction can be made on principle and is conceptually permissible.

The court who rejected the contention that section 309 was violative of Article 14 on the ground that attempt to commit suicide is undefined and unguided.

Attempt to commit suicide has ceased to be legal offence in most countries. The court approved the decision of the Bombay High court in Maruti Shripati Dubal v. State of Maharastra in 1987.

In Gian Kaur v. State of Punjab a Five Judge constitution bench of the Supreme Court has now overruled the P.Rathinam's case and, rightly, held that “right to life” under Article 21 of the constitution does not include “right to die” or “right to be killed”. “The right to die”, is inherently inconsistent with the “right to life” as is “death with life”.

Delivering the unanimous judgment of the court Hon’ble Justice J.S.Verma observed

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“Any aspect of life which makes it dignified may be read in to Article 21 of the constitution but not that which extinguishes it and is, therefore in consistent with the continued existence of life resulting in effacing the right itself”.

‘Right to life’ is a natural right embodied in Article 21 but suicide an unnatural termination or extinction of life and, incompatible and inconsistent with the concept of ‘right to life’.

The court accordingly held that section 309 of IPC is not violative of Article 21 of the constitution.

Protection against illegal arrest detentions and custodial Death: - In Jogindar Kumar v. State of U.P.\textsuperscript{45} the Supreme Court has laid down guidelines governing arrest of a person during investigation. This has been done with a view to strike a balance between the needs of police on the one hand and the protection of human rights of citizens from oppression and injustice at the hands of law enforcing agencies.

The court has held that a person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the police.

\textsuperscript{45}(1994) 4 SCC 260; AIR 1994 SC 1349.
officer affecting the arrest that such arrest was necessary and justified.

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

Following are the guidelines laid down by the court:

1. An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to have an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.
2. The Police officer shall inform the arrested person when he is brought to the police station of their right.

3. An entry shall be required to be made in the Diary as to who was informed of the arrest.

These protections flow from Article 21 and Article 22 of the constitution and therefore, they must be enforced strictly.

Custodial Death:

In a Landmark judgment of Nilabati Behera v. State of Orissa.\(^46\) the Supreme Court awarded compensation of Rs.1,50,000 to the mother of the deceased who died in the police custody at about 8 a.m. on December 1, 1987 by ASI in connection with the investigation of an offence of theft in village, and detained at the police out post. He was handcuffed, tied and kept in custody in the police station. His mother went to the police station at about 8 p.m. with food for him, which he ate. At about 2 p.m. on December 2, the petitioner came to know that the dead body of her son with a handcuff and multiple injurious was found laying on the railway track. The police version was that the deceased had escaped from police custody at about 3 a.m. by chewing off the rope and thereafter

his body was found at the railway track. On the basis of evidence and medical report, it was found that the deceased had died due to beating and the court awarded Rs. 1,50,000 as compensation to the deceased’s mother.

In a landmark judgment in DK Basu v. State of West Bengal\textsuperscript{47} the Supreme Court has laid down detailed guidelines to be followed by the central and state investigating and security agencies in all cases of arrest and detention. The matter was brought before the court by Dr. D.K. Basu, Executive Chairman of the Legal Aid services, a non-political organisation, West Bengal through a public Interest litigation. He addressed a letter to the chief justice drawing his attention to certain news items published in the Telegraph and Statesman and Indian Express regarding death in police lock-up and custody. This letter was treated as a writ petition by the court.

"Custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of Law" Kuldip Singh and Dr. A.S. Anand JJ observed, Dr. Justice Anand who delivered the said judgment on behalf of the court held that, any form of torture or cruel, in human or degrading treatment, would fall

\textsuperscript{47} AIR 1997 SC. 610.
within the inhibition of Article 21 of the constitution whether it occurs during investigation, interrogation or otherwise.

The court held that the precious right guaranteed under Article 21 of the constitution could not be denied to convicts, under trials, determines and other prisoners in custody, except according to the procedure established by law.

The court made it clear that failure to comply with the guidelines should, apart from rendering the official concerned liable for departmental action, also render him liable to contempt of the court and the proceedings for contempt may be instituted in any High Court of the country, having territorial jurisdiction over the matter. The requirements referred to above flow from Article 21 and 22 (1) of the constitution and need to be strictly followed. These would with equal force to the other Governmental agencies like Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard, CRPP, BSF, CISF, the state Armed police Intelligence agencies like the Intelligence Bureau, RAW, CBI, CID and Traffic Police.

The requirements are in addition to the constitutional and statutory safeguards and do not detract from various other
directions given by courts from time to time in connection with the safeguarding of the right and dignity of the arrestee.

The court directed these directions shall be widely circulated among the concerned authorities and personnel's, and would be broadcasted on the All India Radio and Doordarshan.

**Right Against Environmental Pollution:**

The Supreme Court of India has made a significant contribution to the welfare of the people by using Art. 21 for the improvement of the environment.

The expansive interpretation of 'life' in Art.21 has led to the salutary development of an environmental jurisprudence in India. Although a number of statutes have been enacted with a view to protect environment against pollution, and an administrative machinery has been put in place for the purpose of enforcement of these statutes, the unfortunate fact remains that the Administration has done nothing concrete towards reducing environmental pollution.

In this context, the Supreme Court has performed a yeoman service by taking cognizance, in a number of cases, of
various environmental problems and giving necessary directions to the Administration. The Court has thus compelled an inactive and inert Administration to make some movement towards reducing environmental pollution. In this way, the Court has promoted a broad social interest. For this purpose, the Court has depended upon such Directive Principles as those contained in Arts. 47 and 48A as well as on the fundamental Duty contained in Art.51A(g) of the constitution.48

On the question of relationship between ecology and Art.21, the thinking of the Court is that since the right to life is a Fundamental Right under Art.21, and since the right to life connotes “quality of life”, a person has a right to the enjoyment of pollution free water and air to enjoy life fully.

Any disturbance of the basic environment elements, namely, air, water and soil, which are necessary for ‘life’ would be hazardous to ‘life’ within the meaning of Art. 21 of the Constitution. The Supreme Court has accepted the doctrine of public trust which rests on the premise that certain natural resources like air, sea, waters are means for general use and cannot be restricted to private ownership. These resources are a gift of nature and the Sate, as a trustee thereof, is duty bound

to protect them. The State is the trustee, and general public the beneficiary, of such natural resources as sea, running waters, air, forests, ecologically fragile lands.\textsuperscript{49}

Therefore, if anything endangers or impairs that quality of life in derogation of laws, a person can take recourse to Art.32 or Art.226 for removal of pollution of water or air which may be detrimental to the quality of life. A petition for prevention of pollution is maintainable at the instance of the affected person or persons, or even by a group of social workers or journalists.\textsuperscript{50} Numerous cases complaining of environmental pollution have come before the courts by way of public interest litigation.

Environmental, ecological, air, water pollution etc. amount to violation of Art.21. Hygienic environment is thus an integral fact of the right to healthy life as it is not possible to live with human dignity without a humane and healthy environment. There is, therefore, a constitutional imperative on the government not only to ensure and safeguard proper environment but also to take adequate measures to promote, protect and improve both the man-made and the natural environment.

In Subhash Kumar v. Bihar, the Apex Court has held that enjoyment of pollution free environment is included in the right to life under Art.21. The Court has observed:

"Right to live is a fundamental right under Art.21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Art.32 of the constitution for removing the pollution of water or air which may be detrimental to the quality of life".

In A.P. Pollution Control Board v. M.V. Nayudu, the Supreme Court has made very valuable suggestions for improvement of the adjudicatory machinery under the various environmental laws. The main burden of these suggestions is that in all environmental courts, tribunals and appellate authorities, there should be a judge of the rank of a High Court or a supreme Court Judge, sitting or retired, and a scientist or a group of scientists of high ranking and experience so as to help a proper and fair ad-judication of disputes relating to environment and pollution.

Further, a provision ought to be made for an appeal to the Supreme Court. The present day system of adjudication is not satisfactory. The scientific and technological issues arising in environmental matters are extremely complex and, therefore, there is need for technical persons well versed in environmental laws to handle these issues.

The following are some of the well-known cases on environment under Art.21, In M.C. Mehta v. Union of India.\textsuperscript{53} The Supreme Court ordered closure of tanneries which were polluting water.

In M.C. Mehta v. Union of India,\textsuperscript{54} the Supreme Court issued several guidelines and directions for the protection of the Taj Mahal, an ancient monument, from environmental degradation.

In Vellore Citizens Welfare Forum v. Union of India,\textsuperscript{55} the Court took cognizance of environmental problems being caused by tanneries which were polluting all water resources, rivers, canals, underground water and agricultural land. The Court issued several directions to deal with the problem.

\textsuperscript{54} AIR 1997 SC 734.
\textsuperscript{55} AIR 1996 SC 2721 : (1996) 5 SCC 647.
To protect the rapidly deteriorating quality of air so as to protect the health of the people in Delhi, which is a facet of Art.21 of the Constitution, the Supreme Court has directed that the entire fleet of public transport buses be run on CNG and not diesel. The Court has put a ban on running of diesel buses in Delhi.56

The Supreme Court has laid down that the "Precautionary Principle" and the "Polluter Pays Principle" are essential features of "sustainable development". These concepts are part of Environmental Law of the country.

The "Precautionary Principle" means that the State Government and the concerned statutory authorities must anticipate, prevent and attack cause of environmental degradation.

The principle of "polluter pays" means that one who carries on a hazardous activity is liable to make good the loss caused to another person by such activity. The Court has ruled:57

56. This matter has come before the Court several times, e.g. : M.C. Mehta v. Union of India, AIR 1998 SC 2663.
“One the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on”.

In M.C. Mehta v. Union of India,⁵⁸ the court has observed:

“The 'polluter pays' principle as interpreted by the Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation”⁵⁹.

This means that the polluting industries are “absolutely liable to compensate for the harm caused by them to villagers in the affected area”. “Remediation of the damaged environment is part of the process of “sustainable development” and, as such, polluter is liable to pay the cost to the individual suffers as well as the cost of reversing the damaged ecology.”⁶⁰

The Supreme Court has recently explained the implication of the “Polluter-Pays” Principle. Under Art. 32, the Supreme

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⁵⁸ AIR 1997 SC at 761.
⁶⁰ The principle has been explained further in Nature Lovers Movement v. State of Kerala, AIR 2000 Ker 131.
Court awards damages against those who disturb ecological balance by causing pollution in the environment. The "Polluter Pays" Principle is a means of paying for the cost of pollution. The polluter is under an obligation to make good the damage caused to the environment. Under the principle, the polluter may be directed to pay damages not only for restoration of ecological balance but also to pay damages to the victims who have suffered because of ecological disturbance. The Court may also award exemplary damages against the polluter so as to deter others from causing pollution. The Court has characterized pollution as a tort—a civil wrong against the society.61

The Court has also evolved the special burden of proof in environmental cases. The Court has stated in Vellore:62

"The 'onus of proof' is on the actor or the developer/industrialist to show that his action is environmentally benign".

The Supreme Court has explained the inter-relation between ecological issues and Fundamental Rights as follows:63

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"Environmental concerns arising in this Court under Article 32 or under Article 136 or under Article 226 in the High Courts are, in our view, of equal importance as human Rights concerns. In fact both are to be traced to Article 21 which deals with fundamental rights to life and liberty. While environmental aspects concern 'life' human rights aspects concern 'liberty'.

Right to live being a Fundamental Right under Art.21, it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has a right to take recourse to Art.32 or 226 of the Constitution for removal of pollution of water or air which may be detrimental to the quality of life.

In Rural Litigation and Entitlement Kendra v. State of U.P., the Court ordered the closure of certain lime stone quarries on the ground that there were serious deficiencies regarding safety and hazards in them. The Court had appointed a committee for the purpose of inspecting certain lime stone-quarries. The Committee had suggested the closure of certain categories of stone quarries having regard to adverse impact of

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65. Ibid. p.421.
mining operations therein. A large scale pollution was caused by lime stone quarries adversely affecting the safety and health of the people living in the area.

In Shiram Food and Fertilizer case\textsuperscript{67} the Supreme Court directed the company manufacturing hazardous and lethal chemicals and gases posing danger to health and life of workmen and people living in its neighbourhood, to take all necessary safety measures before reopening the plant. There was a leakage of Chlorine gas from the plant resulting in death of one person and causing hardships to workers and residents of the locality. This was due to the negligence of the management in maintenance and operation of the caustic chlorine plant of the company. The matter was brought before the Court through a public interest litigation. The management was directed to deposit a sum of rs.20 lacs by way of security for payment of compensation claims of the victims of Oleum gas leak with the Registrar of the Court. In addition, a bank guarantee for a sum of 15 lacs was also directed to be deposited which shall be encashed in case of any escape of Chlorine gas within a period of three years from the date of the judgment resulting in death or injury to any workman or any person.

\textsuperscript{67} M.C.Mehta v. Union of India, (1986) 2 SCC 176.
living in the vicinity. Subject of these conditions the Court allowed the partial reopening of the plant.

The efforts of the highest Court in environment pollution control through public interest litigation is indeed laudable particularly when the Legislature is lagging behind in bridging the lacuna in the existing legal system by not making the appropriate legislation and administration is not well equipped to meet the challenge arising out of environment pollution.

Hence, in this chapter an attempt has been made to discuss elaborately the scope of personal liberty under the provisions of the constitution of India. This includes the discussion in the Constituent Assembly, the determination of the Apex Court of personal liberty from 1950 in the A.K.Gopalan's case till date. However, it is felt that, the discussion on the scope of personal liberty will not be complete and exhaustive for the purpose of research without a discussion on the inter-relationship between the rule of law, freedom and personal liberty, which are the matters of inevitable necessity for an individual to realize his life, which is to be dignified, for which he will realize his existence of that of a human being. This aspect of mutual relation will be dealt with in the next chapter.