The Central theme of this thesis is to present a critical study of personal liberty under the Indian Constitution. This thesis has been developed in the course of the preceding eight Chapters.

The First Chapter is devoted for the introduction of the subject matter taken for the research work. In this chapter the researcher has made an attempt to stress the origin and background of personal liberty in the Indian context, describes the objective of the study and the plan of study and the methods he has chosen to proceed towards the goal i.e. to bring some suggestions to improve and avail the personal liberty to all the persons in the society.

In Chapter - II, the researcher devotes all his concentration to bring out the conceptual frame work of liberty. The different writers define the liberty in different ways and its need and application in the society has been the subject matter in this chapter. The discussion has also been made on different kinds of liberty in different countries and differences between
liberty and individual, liberty and socio economic planning, liberty and democracy. The concept of personal liberty in different countries like England, United States of America, Japan, Canada and Nepal with their constitutional provisions also have been discussed. The provisions in international charters like; Universal Declaration, 1948, Covenant on Civil and political Rights, 1966 and European Convention on Human Rights, 1953 and their acceptance in our constitution and administration has also been discussed.

In the Chapter – III, the scope of personal liberty has been dealt with in detail. The discussion in the Constituent Assembly and the debate to place the personal liberty in article 21 has been focused. All the interpretations made by the Apex Court, beginning from A.K.Gopalan case to till date have been analysed in regard to the personal liberty and its ambit and position in our country. Personal liberty with special reference to privacy of an individual, right to life and livelihood, right to free legal aid, right against handcuffing, right against delayed execution, speedy trial, right against solitary confinement, right to health and medical assistance and right against environment pollution etc. have been discussed in detail with Supreme Court observance.
Inter relationship between Articles 14, 19 and 21 have been discussed in Chapter-IV. The researcher has elaborately discussed, how the three articles under the Indian Constitution afford to the people in the Country an assurance that the promise that carry in the preamble of the constitution would be performed by promoting the all round development of personality of an individual in the society. In this chapter, the observation of the Supreme Court has been taken in to serious consideration when the Apex Court observed in the Maneka Gandhi case (AIR 1978 SC594) that Article 21 does not exclude Article 19 and 14. A law depriving a person of personal liberty has not only to stand the test of Article 21 but it must stand the test of Article 19 and 14 of the constitution. A procedure, which contemplated by Article 21 by Article 21 to be fare just and reasonable, the same has to satisfy the requirement of 14 also, which takes care of arbitrariness.

In Chapter-V, the researcher has devoted himself in discussing right of legal aid or providing free legal assistance to the poor in prosecuting the cases before the court of law. The provisions of legal aid under the Indian Constitution, particularly, much emphasise has been given to the spirit of the preamble of the constitution, Article 14, 38, 39 and 39A are
discussed. Besides the constitutional provisions, other statutory provisions like Criminal Procedure Code 1973 and Civil Procedure Code 1908 with Legal services Authorities Act, 1987 also have been discussed. The International charters like United Nations, Declaration on Human Rights, 1948, the International Covenant on Civil and Political Rights, 1966 and European convention for the protection of Human Rights and Fundamental Freedoms, 1953 have been discussed. Public Interest litigation and writ jurisdiction are the most significant and innovative dimension of judicial activism also found place in this chapter along with the concept of locus standi.

In Chapter-VI, discussion has been made on the enjoyment of personal liberty during emergent situation in the countries like, England, USA and India. Provisions of law, relating to promulgation of emergency and the span of personal liberty under the Indian Constitution, with special reference to 44th amendment 1978, have been discussed. Right to move to the court during emergency under Articles 358, 359 and proclamation of emergency under Article 352 are also discussed.
The relation between personal liberty and Human Rights in respect to International charters practices in different countries like England and United States of America have been discussed in Chapter-VII. Different case laws, particularly, cruelty in police custody, sexual harassment of working women, decided by the Supreme Court of India, International Court of justice and judiciary in England have been discussed in detail. The report of Amnesty International has been examined while taking into consideration of the protection of personal liberty both in India and abroad.

In Chapter-VIII, a discussion has been made on compensation for the illegal deprivation of personal liberty. The compensation to be made for depriving a person of his personal liberty both by the public official or by a private person has been considered. The socio-economic connotation of the right to personal liberty of a person after Maneka Gandhi case and the role of judiciary providing relief against the violation of Fundamental Rights have been examined. Different case laws decided by the Supreme Court of India and different High Courts also have been discussed.
After this brief survey of what has been presented in the previous chapters, it is now our task to bring the trends of discussions together and offer our concluding observations.

The Fundamental Right to life and liberty, which Article 21 deals, is the most precious human right and “forms the arch of all other rights”. What is more, this article has given to the people of India, as much they have wanted from it. The researcher is sure; it is capable of giving more, if they would so want in future. The founding fathers had perhaps not visualized that a short provision they were embodying in the constitution has so much potentiality.

Dr. Ambedkar and many others of the Constituent Assembly who had “felt dissatisfied” with the reach of Article 15, as was Article 21 numbered in a draft constitution, to “compensate” which Article 15A (predecessor of Article 22) was inserted, must be feeling happy in the heaven because of the immense content poured in Article 21 by lesser mortals. The journey is continuing in all its majesty. Law is never still, it can not be, it has also to be moulded by deft hands to meet the challenge of time, as, it has been well said that life of law is not logic, it is experience.
As free India moved forward, it was realized by the conscience-keepers of the nation that Article 21 has many promises to keep, and they sat down to work as custodians of the Fundamental Rights of the people to see how best the sharpest point of the trident built of articles 20, 21 and 22, or the apex point of the golden triangle formed by articles 14, 19 and 21, could be used to save the lives and liberties of persons residing in India from executive excess and how best they can enjoy dignified lives.

Article 21 guaranteeing the right to life and personal liberty has of late been infused with virtually infinite potential as a result of which this provision has assumed the character of a reservoir of legal principles to be drawn upon by the judiciary to sustain a wide range of claims and interests. Actually, by going through article 21 with articles 19 and 14, the court has for all practical purposes created a new right endowing the judiciary with a growing jurisprudence comparable with the due process jurisdiction of the American Supreme Court.

The Indian Supreme Court, relied upon the English law under which the judicial power was confined to the security of executive in order to ensure its conformity to the authority of
law and prescribed procedure in a case of deprivation of personal liberty. The only innovation made by the court during the first twenty-seven years was that in some cases the term personal liberty was given a liberal interpretation. The court became more open thereafter when it widened the meaning of the expression "life and personal liberty under article 21."

Maneka Gandhi v. Union of India\(^1\) is a landmark case of the post-emergency period. This case shows how liberal tendencies have influenced the Supreme Court in the matter of interpreting Fundamental Rights, particularly, Article 21. A great transformation has come about in the judicial attitude towards the protection of personal liberty after the traumatic experiences of the emergency during 1975-77. It was in this case, the Supreme Court for the first time, pressed articles 14 and 19 into the service of Article 21 in order to evolve the principle that the procedure for the deprivation of personal liberty had to be 'fair', 'just' and 'reasonable'. This has proved to be the Indian Counterpart of American doctrine of due process of law. Even the judges of the Supreme Court have considered it to be equivalent of procedural due process\(^2\).

---

\(^1\) AIR, 1978 SC 597; (1978) 1 SCC 248.

The Supreme Court of India has brought about two further changes in the sphere of personal liberty. It has connected article 21 with other articles of the constitution, such as articles, 14, 19 etc. and has propounded the theory of independence of the articles of the constitution. Secondly, the doctrine of intended and real effects and test of direct and indirect effects have been used to widen the ambit of article 21. Thus the domain of article 21 has increased considerably.

The main inspiring force behind the new jurisprudence of the court has been the American Legal thought. The decisions relating to capital punishment, grant of bail, speedy trials, prisoners rights, handcuffing and solitary confinement have overwhelmingly relied upon American decisions and Legal Literature. For example, Bhagwati, J. in Hussainara Khatoon case and Krishna Iyer, J. in Bail case also quoted the speech of the American President on the American Bail Reforms Act. Provisions of certain international instruments and the decisions of other countries have also been referred to in order to rationalize the decisions.

There has been considerable increase of the power of judicial review in the area of personal liberty. The court has
generally followed the indirect exercise of judicial review and
the doctrine of reading down the statutory provisions in order
to uphold the constitutionality. Modern theories of punishment
such as reformation, rehabilitation etc. have been emphasized
and some of the judgements have also gone to the extent of
recommending yoga, transcendental meditation, and
psychological treatment for criminals. Deterrent and retributive
aspects of the punishment has been supported only by a few
judges in the area of capital sentence.

There has been a clear departure from the judicial
traditions in certain cases where the court has issued general
directions for beyond the scope of question at issue in the case
at hand. The elaborate directions issued regarding the prison
administration might as well be considered, according to the
traditional standards to be an encroachment in the domain of
other departments of the government. These have been issued
mostly by two judges – Krishna Iyer and Bhagwati JJ.

In a number of cases like Charles Sobraj, Sunil Batra(II),
the court has adopted not totally unfamiliar judicial technique
of laying down a very wide principle though at the same time
not applying it in the case. The court in some of these cases
while coming very close to it, scrupulously avoided declaring a law to be unconstitutional under Article 21.

The court has at times also referred to "Directive Principles of State Policy" in determining the precise content of personal liberty, in the area of prison reforms and free legal aid. This however, seems to have been done particularly when the judicial view, otherwise formed, happened to conform to the policy contained in the Directives.

The court, while following the line of reasoning in some of the cases, completely obliterates the dividing line between the ratio decidendi and obiter dicta. According to established norms, all that the court said in M.H.Hoskot case is nothing more than obiter. The reason may be that the court in these cases did not have so much the parties to the case as 'the individuals situated in similar position' in view. Examined purely from the legal point of view, the post Meneka decisions may not be as revolutionary as it may be claimed by some. The directions issued in these cases and philosophy propounded may also be revolutionary.

The activism of the court also found expression in one more direction. The self-imposed limitations on its own
jurisdiction evolved in course of time have been discarded. The most radical change has taken place in the rule of locus standi. The court has even treated a telegram sent to one of the judges as a writ petition even though the sender of telegram complained of violations of the rights of co-prisoner. Similarly, petitions filed on the basis of newspaper reports have been accepted by the Supreme Court.

Assuming the role of a crusader, the court has used strong language involving emotive terms in order to condemn certain existing practices, which according to its standards were violative of the right to personal liberty. The court has for example, used the terms like, 'sadistic' 'capricious', 'despotic', and 'demoralising' to describe the handcuffing of prisoners, the practice of using bar fetters is termed as 'outrageous', 'scandalising' and 'cruel'. Judicial condemnation in strong language is bound to have a demoralizing effect on the law enforcement staff.

The study finds considerable gap between the judicial interpretation and social perception of the right to personal liberty. In a developing and traditional society there has to be some gap between the law and society. Actually, one of the
professed roles of law is to change the society for progress and
development. But the gap goes beyond a certain level it may
give rise to problems and the very efficacy of the legal
institutions may be adversely affected. How long can the
judiciary maintain its legitimacy in the face of such a wide gap
between ‘judicially determined norms’, and socially approved
norms? The problem becomes more complex when it is realized
that despite the judicial censure of practices condemned as
unconstitutional, the practices persist.

In modern society where the informal instruments of
social control have become less effective, the people do not want
the coercive machinery of the state to be handicapped in
dealing with the criminals. Moreover, the threat to liberty does
not come from the state alone no less serious threat to the
liberty of the individual may come from violence perpetrated by
hardened criminals. Consequently, while safeguarding
individual liberty from encroachment by the law enforcement
machinery, due caution has to be observed that the other
source of threat to liberty does not gain strength. Further, the
judges as much as legislators have always to keep in mind the
limits of effective legal action.
The observations are to be intended to undermine the importance of personal liberty in promoting the cherished quality of life in a civilized society. In fact, power of judicial review is essential in order to put a curb on the misuse of authority, particularly by the bureaucracy. What creates the problem is the absolutist approach, which at times received approval of the court. The public rejects the fallacy of identical norms of personal liberty being applied to the criminals and law abiding citizens. The judiciary has no means to distinguish between the two until the course of legal process for establishing the criminality is completed. This leads to loss of control over the criminal behaviour because the criminal takes full advantage of right to personal liberty making crime control more difficult.

The findings also bring forth the inherent contradictions between the legally proved injury and social injury which poses the dilemma before the judiciary as it can give no relief against the social injury this leaves the society defenceless in the face of private violence and retaliation. This might be one of the explanations why the public do not condemn even the tyranny by the police when official norms fail to meet the challenges of the situation.
This leads us to another dimension of personal liberty i.e., “positive” and “negative” use of liberty. The people are critical of the negative consequences of personal liberty granted to the criminal. In post-liberal democratic era, the concept of personal liberty should not be so sacrosanct judicially that the community suffers from the negative consequences. If a delicate balance of the level of perception of the common people and the judicially prescribed norms is not maintained, there is a possibility of people approving primitive devices of under Fundamentalism. Therefore, the following aspects, of the phenomenon of the gap between judicially prescribed norms and social expectations of the people should be taken into consideration:

(a) Resistance of the masses to advanced human values propounded by the legal system.

(b) The negative consequences of freedom and personal liberty are in the process of extinction in the era of post liberal democracy. If negative consequences of personal liberty are not taken into consideration by the court, a judicial sub-culture of fundamentalism may be acceptable to the community.
The judgements given by the courts must not be so sweep that such judgements are found to be impossible for implementation, which will cripple the judicial system since the prevailing tendency of the activist judges have been to see everything falling within Article 21. As such there is necessity of restraint on the part of the judiciary for interpretation of Article 21 to ensure the balanced decisions.

In Modern times, when there is still prevalence of practice of untouchability, gender negation, child labour and a host of other Constitutional vices, we should be more conscious about the liberty of the persons aforesaid, liberty of a person should not be a concept which is judicially acknowledged according to which life is more than animal existence but it must include all faculties and enjoyment and should extend to the full range of conduct which the individual is free to pursue.

We must agree when Rawls suggests that, "we can actually provide a scheme basic equal liberties which, when made part of the political constitution and instituted in the basic structure of the society (as the first subject of justice), ensures for all citizens the development and exercise of their
highest order interests, provided that certain all purpose means are fairly assured for every one³.

State, preferably the legislature and judiciary must be more responsive for the meaning of liberty to those who seldom figure in serious legal literature or who never could elevate themselves to the effective levels of political or social assertion and real democratic participation, particularly in India where illiteracy and poverty prevail in its maximum form. Otherwise, the evolution of Rule of Law will be still in its adolescence. To put it in nut shell, the relevance of liberty of the powerless in India must be given paramount importance, since the idea of a Constitution is more important than the Constitution itself.

The liberties of the wretched in the Indian context and for that the involvement of the affected members of the society in the process of participation for the transparent environments in governance will make it possible for them for the material conditions of liberty to be attaineded. The apex court in India has fashioned itself as a forum of not only to deliver justice and pay merely a lip service but it has become a forum of articulating, remoulding and reinventing the mechanism and

the rights to deliver justice to millions of starved and shackled Indians.

The point of interest in the larger context of liberty is the juridical perspective of the material condition of liberty, even though the Supreme Court has not journeyed into the constituents of liberty and the 'all purpose means' of their realization. Article 39 of the Constitution of India in particular clause (a), (b) and (c) (which obligate adequate means of livelihood, ownership and control of the material resources of the community to subserve the common good and injunct against concentration of wealth and means of production to the common detriment), recognize the material conditions of Liberty for all.

India has pulled of the astonishing feat of sustaining a regime of Constitutional liberty with vigorous judicial protection of human rights in a very large, very poor and very diverse society. In the face of daunting obstacles, the Indian Courts have succeeded in sustaining a regime of Constitutional order and legal regularity with scant material resources, they have managed to adapt the structure of colonial law to the vastly different conditions of independent democratic India and to
protect and extend Constitutional liberty, for all its flaws and imperfections, this is surely one of the epic legal accomplishments of this century, it has gone largely unappreciated by supporters of democracy and the rule of law⁴.

Last and not the least, the place of Article 21 in the constitutional tapestry, which has been woven with threads of different colours and is fitted with gems of different hues. Which gem is the brightest of all, which radiates the most? In the opinion of researcher, the sun of article 21 would never set in this democratic country of ours. This article would live in all its sublimity for eternity to serve the people of India whenever and wherever they would be in distress relating to anything having to do with their lives and personal liberties. Article 21 would be always a friend in need. Judged in the light of the interpretations made and the pronouncement delivered so far by the Apex Court, it may be urged that the concept of “liberty” under the Indian Constitution has added an important dimension to the study of Constitutional Jurisprudence.

⁴ Mare Galanter, 'Fifty years on' in Rajeev Bhavan, Ashok Desai and others (eds.) Supreme But not Infallible (2000), p.57.