SUMMARY

Liberty is the quality of a man. The struggle for liberty has furnished the noblest, the most thrilling and the most inspiring saga in human history. Law and liberty are counterparts of each other, law draws attention to the duties and obligations of the citizen, liberty—the freedom which the citizen enjoys upon which the State can make no encroachment. Doctrine of rights is a product of natural theory, evolved since ancient times. There was so much hue and cry in the ancient India. Medieval India, where the right to life was very vital. When Indian was undergoing through the trauma of being slave to Britain, this right lost its flavour. After British went away this right to life was crystallized in the supreme law of the land, that is the Constitution of India by the Constituent Assembly. What we lost during the British advent, we attempted to regain it but we forgot about it. Article 21 was meager in front of what we had enjoyed in past. Judiciary came to the rescue and whisked Article 21 in every pit and corner of the aspects of life which we live as life is not a passing by.

The concept of liberty is a modern political concept. Jurisprudential foundations of rights have seen the transformation of the doctrine from natural to fundamental and from fundamental to human. The human person possesses rights. Human rights, inherent in all the individuals irrespective of their caste, creed, religion, sex and nationality. These rights are essential for all the individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare. The concept of human rights in India has consistently and gradually developed in the Vedic period, post Samriti period, under Muslim legal system, in Mughal period and in British era. The present
Indian jurisprudence has a close affinity with that of English jurisprudence. With the advent of British rule in India the common law principles of England were gradually transplanted in the Indian sub-continent. In 1215 the principle of *Magna Carta* showing concern for liberty came to be understood for the first time. *Magna Carta* of 1215 of course, is the immediate precursor, as it was in that year that king John granted the charter of liberties under threat of civil war. *Magna Carta* was followed by petition of Rights in 1628; Habeas Corpus Acts of 1640 and 1679 and then by Bill of Rights in 1689 which declared the rights and liberties of the subjects. The next importance was reached in 1776 when the American Declaration of Independence was proclaimed. After re-issuance of the charter, the Bill of Rights came to be enacted in 1791.

Fifth amendment is important which says that 'no person shall be deprived of his life, liberty or property without due process of law'. The Constitution of India Bill came into existence. Various bills, reports, resolution expressing wishes of people of India were included. Right to life and personal liberty guaranteed under Article 21 of the Constitution came to be incorporated in it. Draft Article 15 renumbered as Article 21 of the Constitution finally reads as:

Protection of life and personal liberty–

'No person shall be deprived of his life or personal liberty except according to procedure established by law.'

Indian Constitutional Jurisprudence has seen a fascinating development in the extended dimensions given to Article 21 of the Constitution by the Supreme Court. The constitutional command of Right to life and Personal liberty under Article 21 pervades not only the Directive Principles contained in Part-III but also encompasses the
Fundamental Rights enshrined in Part-IV. The transformation witnessed was a result of several challenges and hazards faced by it. The horizons of right to life have been broadened not only to the extent of other fundamental rights but at the same time variety of rights have been read into it.

The question arose for consideration before the Supreme Court was whether Article 21 envisaged any procedure laid down by a law. It was laid down that Articles 14, 19 and 21 are mutually exclusive. When the national emergency was imposed in the year 1975, fundamental rights came to be suspended. In the year 1978, the Supreme Court had accorded very dynamic meaning and interpretation to right to life and personal liberty guaranteed under the Constitution and broadened its contents and scope, observing that procedure can not be arbitrary, unfair and unreasonable. In this work the relationship amongst Articles 14, 19, 21 and 22 have been discussed in context of right to life and personal liberty, judicial articulation of procedure established by law, emergency provisions viz-a-viz right to life and personal liberty. The position prior to the Constitution 44th amendment in the year 1978 and after that from Gopalan's case. Gopalan's case was the era of literal interpretation. Since Maneka's case now there is no literal interpretation, rather it is an era of dynamic and all inclusive approach.

Article 21 has proved to be multidimensional. The society has seen role of public interest litigations in expansion of right to life and personal liberty. A number of rights have been included therein. Right to live with human dignity includes an atmosphere which is free from exploitation, it is not mere animal existence. It includes protection of health and strength of workers, men and women and of the tender age of
the children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and human conditions of work and maternity relief. These are minimum conditions which must exist in order to enable a person to live with human dignity. The right to shelter and right to work have also been included as part of right to life. Both these rights are integrated and interdependent. Right to shelter includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. So as to have easy access to daily avocation, the right to shelter, therefore, does not mean a mere right to a roof over one’s head but right to all the infrastructure necessary to enable them to live and develop as a human being. Previously right to carry on any trade or business was not included in Article 21. In a series of cases the Supreme Court has observed that Article 21 clubs life with liberty, dignity of a person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence.

The people of India have also rights against police atrocities as expounded by the Supreme Court observing that police atrocities are always violative of constitutional mandate, particularly Articles 21 & 22. Tolerance of police atrocities would amount to acceptance of systematic subversion and erosion of the rule of law. The right against police atrocities includes right against torture, handcuffing, custodial death and freedom from domiciliary visits. The Supreme Court has in several cases condemned police brutality and torture on prisoners, accused persons and under trials. It was observed that it was deeply disturbing that there was diabolical recurrence of police torture resulting
in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of the law violate their human rights. The Supreme Court has stressed that police torture is disastrous to our human rights awareness and humanist constitutional order. The Court has squarely placed the responsibility to remedy the situation on the State. The offence of custodial deaths is aggravated by the fact that it is committed by a person who is supposed to protect the citizens and he misuses his uniform and authority to brutally assault them while he is in his custody. It must be curbed with a heavy hand. The punishment should be such as would deter others from indulging in such behavior.

It is a primary principle of criminal law that imprisonment follows the judgment and not precedes it. To keep under-trials in prolonged detention in a torture is an affront to all civilized norms of human dignity. Any meaningful concept of individual liberty must view with distress patently long period of imprisonment, before a person waiting trial could receive the attention of the administration of justice. Even persons accused of minor offences have to wait their trials for long periods if they are poor and helpless, they languish in jails as there is no one to bail them out. This perpetrates great injustice on the accused person and jeopardizes his personal liberty. Sometimes an under-trial may remain in prison for much longer than even the maximum sentence which can be awarded to him on conviction for the offence of which he is accused.

The Supreme Court has also protected the rights of under trials under Article 21 which includes the right of speedy trial which is fair, just and reasonable. It encompasses all the stages i.e. investigation,
inquiry, trial, appeal, revision and re-trial. The concerns underlying the right of speedy trial from the point of view of the accused are: (a) The period of remand and pre-conviction detention should be as short as possible (b) the worry, anxiety, expenses and disturbance to his vocation and peace resulting from an unduly prolonged investigation, inquiry or trial should be minimal (c) undue delay may result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witness or otherwise. While determining whether undue delay has occurred one must have regard to all the attending circumstances including nature of offence, number of accused and witnesses, the work load of the Court concerned, prevailing local conditions and so on what is called systematic delay. A realistic and practical approach should be adopted in such matters instead of a pedantic one.

It also includes right to bail and pre-arrest bail. Ultimately the Court has to balance and weigh the several relevant factors - balancing test or balancing - process and determine in each case whether the right to speedy trial has been denied in a given case. It is neither advisable nor practice to fix any time limit for trial of offences. Any such rule is bound to be, qualified one. Such rule can not be evolved merely to shift the burden or proving justification on to the shoulders of the prosecution.

An under trial has right to free legal aid and also fair trial. The obligation to provide free legal service to the poor accused arises not only when the trial begins but also when he is for the first time produced before the magistrate. It is that stage that the accused gets its first opportunity to apply for bail and obtain his release as also to resist remand to police or jail custody and so the accused needs competent legal advice and representation at that stage. The accused can also claim
free legal aid after he has been sentenced by a Court, as he is entitled to appeal against the verdict. The prisoners are also covered under the ambit of Article 21. Prisoners are still persons entitled to all constitutional rights curtailed by procedure that satisfy all requirements of due process. A prisoner does not shed his basic constitutional rights at the prison gate and interest of the inmates in freedom from imposition of serious discipline in a liberty entitled to the due process protection. Convicts are not, by mere reason of the conviction, denuded of all the fundamentals rights which they otherwise possess. Use of third degree methods is torture and violative of right to human dignity. All freedoms belong to him: to read and write, to exercise and recreation; to meditation and chart to creative comforts like protection from extreme cold and heat to freedom from exterior comforts like protection from indignity as nudity, forced sodomy and other unbearable vulgarities, to movement within the prison campus subject to requirement of discipline and security to the minimal joys of self-expression to acquire skills and techniques and all other fundamental rights tailored to the limitations of imprisonment.

Capital punishment as provided in heinous crimes has also come under the scanner of Right to Life under Article 21. The constitutionality of death sentence was exclaimed in a number of cases before the Supreme Court observing that the mitigating and the aggravating circumstances have to be considered while awarding death sentence. Death sentence is to be awarded in rarest of the rare case, in those exceptional cases where the crime is so brutal, diabolical and revolting as to shock the collective conscience of the community. The mode of execution of death sentence has been affirmed as hanging by neck.
Delay in disposal of mercy petitions in death sentence has played an important role in commuting the death sentence into life imprisonment. On January 21, 2014 a bunch of 15 petitions was disposed of by Full Bench of the Supreme Court observing that delay in disposal of mercy petitions either by the President or by the Governor had evoked the right to life and personal liberty of the convicts. On this ground the capital punishment awarded to the convicts by the trial Court which were affirmed by the different High Courts was commuted to life. Certain guidelines have been provided for safe-guarding the interest of death row convicts.

In this work the right to die including right to commit suicide, euthanasia/ mercy killing has also been discussed. Article 21 is a provision guarantying protection of life and personal liberty and by no stretch of imagination can extinction of life be read to be included in protection of life. The Court has observed further. Right to life is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and therefore incompatible and inconsistent with the concept of right to life. The Court thus has ruled that section 309 Indian Penal Code is not unconstitutional. Accordingly, section 306 Indian Penal Code, has also been held to be Constitutional.

The right to life and personal liberty in the context of woman covers the field of abortion, sexual harassment, rape, amendment of rape laws, in context of children including female infanticide, sexual abuse, enactment of the Protection of Children from Sexual Offences Act, 2012, child delinquency, juvenile laws, creation of Juvenile Justice Board, adoption and surrogacy. Looking into the increasing menace of rape cases, Amendment has been made in rape law and new sections
376A, B, C,D have been inserted. Special Courts have been constituted to deal with the cases to try offences against women.

Article 21 also covers the right to pollution free environment, right to health, access to medical treatment, HIV positive persons blood banks etc. Right of privacy has been held to be a fundamental right of a citizen being an integral part of Article 21 of the Constitution of India by Supreme Court. While interpreting Article 21, the Supreme Court has held that the Right to Education is an integral part of the Right to Life and in this context the Parliament has amended Article 21 and a new Article 21-A has been carved out by the constitutional amendment, another milestone in this regard is the Right to Education Act, 2009 which has been passed by the Parliament. The Supreme Court has issued guidelines and instructions for effective implementation of Article 21-A and the Right to Education Act. Emerging judicial trends have been discussed for giving compensation to the victims for violation of rights to life and personal liberty. It is not the case that when the fundamental rights were enacted all the rights were included. It is with the passage of time and intervention of the Supreme Court, the right to life and personal liberty now includes a number of rights which are covered under Article 21 of the Constitution. It may be part of judicial review or judicial activism that more rights are being included, yet it is the need of the day that the violation of the rights have to be considered and if need be it be included in the rights under Article 21 of the Constitution. With the advent of time, much more rights would find place in the heading 'Right to life and personal liberty' covered under Article 21 of the Constitution.