

# BOOK REVIEWS

PERSONAL LIBERTY UNDER THE CONSTITUTION OF INDIA (1993) By  
Thrity Dinshaw Patel B. Jain Publishers (P) Ltd., New Delhi. Pp. vi +307  
Price Rs. 250.

THE BOOK under review<sup>1</sup> is on a subject which is ever unfolding and developing. The author of the book seems to be a rising star in the field of constitutional and administrative law, and has undertaken an extensive study of the subject. The book is an attempt to give a new dimension to human rights jurisprudence by unfolding the contents and contours of the fundamental right to life and personal liberty as enshrined in article 21 of the Constitution of India.

The author has done an analytical study of almost all landmark decisions of the apex court. She has traced the historical background of right to life and liberty. The author has given a clear picture of the right to life and liberty as it is valued in UK and USA. The due process clause and its use by the judiciary in UK and USA has been analytically presented. The judicial activism in the field of social action litigation to secure social justice under article 21 of the Constitution has also been discussed. The author has declared article 21 as heart of all fundamental rights which supplied blood to them.

The book contains VII chapters. Chapter I being an introduction deals with the philosophy of the right to life and personal liberty. The author started from the point that the most cherished right of a human being is his life and personal liberty without which nothing can be enjoyed in this world. It is, therefore, inherent in the nature of a man that he wants to live with human dignity.

In chapter II the author has discussed the contents of article 21 of the Constitution. She has traced its development from common law and Fifth and Fourteenth Amendments of American Constitution. She has discussed the circumstances which compelled the framers of the Constitution to drop the phrase "due process of law" from article 15 (now article 21 of the Constitution) and the reasons for incorporating the words "procedure established by law" in its place. In *A.K. Gopalan v. State of Madras*,<sup>2</sup> the Supreme Court interpreted the words "procedure established by law" in its formal sense. The concept of positive law continued upto 21 January 1978, the day *Maneka Gandhi v. Union of India*,<sup>3</sup> was decided by the Supreme Court. Justice P.N. Bhagwati (as he then was) gave new orientation to the right to life and personal liberty. This case is

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1. Thrity Dinshaw Patel, *Personal Liberty under the Constitution of India* (1993).
  2. A.I.R. 1950 S.C. 27.
  3. A.I.R. 1978 S.C. 597.

still treated as Bible of the right to life and personal liberty. The judge declared that the procedure referred to in article 21 has to be fair, just and reasonable. Thus the doctrine of due process was made applicable while interpreting the right to life and personal liberty without effecting any change in the language of article 21 of the Constitution. This also enhanced the power of judicial review. The procedure established by law should thus comply with the reasonableness which is the basis of articles 14 and 19 of the Constitution. The scope of article 21 was expanded to include within its ambit articles 14 and 19.

Chapter III highlights the procedure which is followed in detaining a person punitively or preventively. Article 22 of the Constitution authorises the state to prescribe the procedure to put a person under punitive or preventive detention. The chapter is more informative than academic.

Chapter IV titled "selected dimensions of personal liberty" is the core of the book in which the author has discussed the right to privacy, right against self incrimination, right of undertrials, more particularly of women prisoners. More research is required in the field touched upon by the author.

Dynamics of processual justice has been dealt with in detail in chapter V of the book. The author has systematically and critically examined the role of judicial activism. She has holdly pointed out the custodial violence in the form of iron-fetter and handcuffing. The excesses committed by governmental agencies has been discussed. The right to bail, the right to speedy trial, the right to free legal aid have been described as personal liberty supportive measures.

Chapter VI titled "courts and liberty" is mainly on *habeas corpus*. The author has discussed the role of judiciary in the development of the concept of *habeas corpus* in India. How far the judiciary has been able to protect the basic human rights. The author has vividly pointed out the implications of *Habeas Corpus*<sup>4</sup> case which gave the executive "blank cheque". The author observed:

The Presidential Order under Article 359 makes his (detinue's) position even worse than a person accused of a ghastly crime. The latter gets a fair, open and impartial trial with a right of representation and is presumed innocent until he is proved to be guilty. But in a proclamation of emergency a person stands nowhere and is friendless.<sup>5</sup>

The author has discussed various aspects of emergency and its impact on the right of life and personal liberty. She has also dealt with restitutive justice with reference to personal liberty. She has discussed that under article 300 the government often put forth the defence of sovereign immunity whenever compensation claims are made by persons who are affected by actions of the

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4. *A.D.M. Jabalpur v. Shuv Kant Shukla*, A.I.R. 1976 S.C. 1207.

5. *Supra* note 1 at 229.

government. The state's right of sovereignty has been limited by the pronouncements of the apex court where the court has not only given relief but has also held the government liable to pay compensation to the family of the victims.<sup>6</sup> Chapter VII deals with the conclusion.

In brief it is submitted that the work is a commendable contribution in the area of the right to life and personal liberty. The book is a significant work and would prove very useful for teachers and students both. It will provide a fresh outlook to the teachers of constitutional law and would open new lines for the researchers. It has been written in simple language. It should find a place in every law library of this country.

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6. See, *Sebastian Hongary v. Union of India*, A.I.R. 1984 S.C. 1026.

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