



Article 21: Cornerstone of Human Rights in the 21st Century

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Where, after all, do universal human rights begin? In small places, close to home-so close and so small that they can't be seen on any map of the world. Yet they are the world of the individual person.

Eleanor Roosevelt

Abstract: The new millennium is bound to be of Human rights. The vision of rule of law and of equal and inalienable right of all members of the human family is the foundation of freedom, justice, peace and security in the world. Mutual understanding, mutual respect and friendly living are necessary to make the Mother Earth better place to live in. Human rights norms have a trans-national character and the fundamental rights in the Indian Constitution are linked with them. The core value of Indian culture is "Unity in Diversity" which binds different segments of the people to work together for the common constitutional purpose of formation of a Welfare State in a democratic republic. The basic principle of our culture is enshrined in following Sanskrit verse:

Sarve Bhavantu Sukhina, Sarve Santu Niramaya

Sarve Bhadrani Pashyant, Ma kashchid dukh Bhag Bhavet.

Key words: Human rights, rule of law, justice, terrorism, environmental degradation, information technology

1. Introduction

One of the 20th century's hallmark achievement was its progress in human rights jurisprudence. All nations incorporated human rights in their constitutions. The mark of 20th century is the respect that nations accord to human rights, human dignity and freedom. On the dawn of the 21st century, millions of men, women and children are facing several threats posed by a range of global challenges-human rights violations, terrorism, organized crimes and corruption, abject poverty, the hunger and threats of violence, and environmental degradation. Threats posed by terrorism, misuse of information technology and pornography are no less deadly. The United Nations Charter, innumerable Conventions, legislations, government policies and schemes, and the judgments of the Courts have tended to globalize the perspective of constitutional jurisprudence and extended the frontiers of human rights. 'It is the solemn obligation of governments to

protect and promote the human rights of every person. Unfortunately, some states are blatant violators of human rights. Consequently, the role of protection of human rights falls to the lot of judiciary in countries which have Bill of Rights and which entrust courts with the power of judicial review' (Sorabji: 2001/55).

II. United Nations: beginning of Global Human Rights

The Preamble of the Charter of the United Nations states that, 'We the peoples of the United Nations [are] determined...to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small'. The UN Charter echoed the four freedoms which were enunciated by President Roosevelt in his message in 1941,-

- freedom of speech and expression;
- freedom of every person to worship God in his own way;
- freedom from want,
- freedom from fear.

Humanitarian principles embodied in the UN Charter and the Universal Declaration of Human Rights marked the beginning of a global human rights regime. The Declaration established a standard of civilised conduct which applies to all governments in the treatment of their citizens.

All human rights: universal, indivisible and interdependent

The UN Charter was followed by Universal Declaration of Human Rights (1948), a milestone in world history, which initiated a global process of defining and protecting human rights. The Declaration reaffirms faith in fundamental human rights that *All human beings are born free and equal in dignity and rights*. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. It urges member nations to promote a number of civil, political, economic and social rights, asserting these rights are part of the "foundation of freedom, justice and peace in the world." Vienna Declaration and Programme of Action, World Conference on Human Rights, 1993 declared that *All human rights are universal, indivisible and interdependent and related*. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. In 2000, 189 Heads of State signed Millennium Declaration at UN Millennium Summit and pledged to implement *Millennium Development Goals* to maximise their efforts to alleviate poverty, suffering and injustice, both at home and abroad up to 2015. The MDGs are founded on basic human rights for ensuring *Development, Security and Human Rights*.

III. India's Commitment to Human Rights

In the Constituent Assembly, the members laid emphasis to create great India, united and strong, where everyone will have an equal opportunity, an equal freedom, an equal status so that he or she could develop himself or herself to the best of his or her talents. Pandit Jawahar Lal Nehru trusted that the Constitution will lead the nation to the real freedom which in turn "will bring food to our starving people, clothing for them, housing for them and all manner of opportunities of progress" (Nehru:C.A.D, vol.I). Dr.S.Radha Krishnan assured a smooth and rapid transition from "a state of serfdom to one of freedom for the establishment of Swaraj." and "to achieve full independence of India, where no individual will suffer from undeserved want" (Krishnan: C.A.D, vol.I).

Since independence, India has adopted a democratic polity based on universal adult suffrage, respect for the dignity of the individual, the rule of law and thus has sought to institutionalize its commitment to human

rights jurisprudence. The Constitution of India shows its deep commitment to human rights by recognizing them as fundamental rights and directive principles in part III and IV respectively. The legislature, the executive and the judiciary are playing their respective roles within the framework of the Constitution. Independent judiciary is the custodian of the people's rights which is acting zealously to protect them particularly through public interest litigation.

IV. Dawn of Public Interest Litigation Jurisprudence

The decade of 1980 is a memorable one in the development of a new jurisprudence of public interest litigation on the horizons of Indian judicial system. According to Justice Bhagwati, through public interest litigation jurisprudence the problems of the poor are now coming to the forefront and the entire theatre of the law is changing. It holds out great possibilities for future (Bhagwati: PUDR/1982). Public interest litigation is primarily judge-led. It is the product of judicial activism on the part of great judges. Judges have expanded their empire by giving way to simpler and broader rules. Public interest litigation is a welcome tendency towards simplification which is 'a product of the ever increasing range of judicial review' (Wade:1988).

In order to fulfil Directive Principles mentioned in Part IV, several welfare legislations have been passed by the government. Part III and Part IV of the Constitution contain the core of the commitment to the social revolution to realise the pledges made by Pandit Jawahar Lal Nehru. According to him,

The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity.To wipe every tear from every eye. That may be beyond us but as long as there are tears and suffering, so long our work will not be over (Nehru:C.A.D.vol.V).

These welfare legislations so passed in pursuance of Directive Principles create social rights. If these rights are violated by the State, a new approach is required for their enforcement. Through judicial activism the Supreme Court fashioned a new instrument of Public Interest Litigation for social control to ensure accountability of the state or public authority to the people.

i) Social Action Litigation: Rescuer of Struggling Masses

The benefits of various social and economic rescue programmes initiated by the Central and State governments through legislative and administrative measures have not effectively reached to the weaker sections of the community. Even where these are implemented, the benefits have been confined to the upper crust of the weaker sections. Realising the gravity of the problem, the judiciary came to the rescue of these struggling masses through public interest litigation. Upendra Baxi has thus given it the name of social action litigation. The landmark judgements in *Asiad Workers*, *Bandhua Mukti Morcha* and a number of pronouncements that followed them, proved to be a turning point in the history of the weaker sections of the society. Justice Bhagwati strongly realised the need of judicial interference at this juncture, "The legal and judicial process must become the vehicle for establishing the claims and demands of the haves and have nots which are struggling to find expression. This can be done only through public interest litigation" (Bhagwati J: p24).

ii) Class Actions for the Poor: Access to the Courts

Public Interest Litigation represents a revolutionary landmark in the history of India because the Supreme Court as the *sentinel on the qui-vive* is realising the aspirations of the Constitution framers that political freedom without socio-economic justice would be valueless for the teeming millions of the country. Public Interest Litigation is concerned largely with class actions of the poor rather than individuals claims. Characterizing the 20th century with the outgrowth of massification. Cappelletti points out the need:

Whether we like it or not, modern societies are characterized by mass production, mass commerce and consumption, mass urbanization, and mass labour conflicts, all of which require regulation. These new pressing needs and interests must find access to the Courts. (Cappelletti: 1979).

He further pointed out that the public interest actions reflect the most heated ideological struggle between solitary individualism and *laissez faire*, on the one hand, and a social conception of the law and state's role, on the other.

iii) Post Maneka Era

PIL is essentially an integral part of the poverty jurisprudence of the Supreme Court by which the court had made a great effort to re-establish its institutional credibility as a bulwark against state repression and as the protector of people's rights. According to S.P. Sathe it did it in two ways: first by reinterpreting the constitutional provisions more liberally and thus expanding the scope and content of various Fundamental Rights and then, by restating various rules of procedure such as standing, prematurity and laches, with a view to facilitating the common man's access to the Court. A new paradigm of public law litigation, which includes public interest litigation emerged out of such judicial activism (Sathe:1997).

V. A Major Breakthrough Through New Innovations

Public Interest Litigation is an important weapon in the armory of legal aid. Legal aid movement aims at fulfilling an objective set out in Art. 39A of the Constitution of India. The Supreme Court has brought about a silent revolution by removing procedural hurdles in having access to the temple of justice. Its doors are now open for the down-trodden people of India. It has devised new methods which are as follows:

- (1) Liberalizing the rules of locus-standi.
- (2) PIL v. Adversarial litigation.
- (3) Epistolary jurisdiction.
- (4) New relief and remedies.

VI) Article 21: Inexhaustible Reservoir of Unenumerated Rights

The PIL pronouncements of the Supreme Court are living examples of protection of human rights in which Art. 21 of the Constitution has become the cornerstone of many human rights judgements. The Court has considerably expanded the scope of Art. 21 and has progressively brought more and more rights within its circumference. The concept of personal liberty is now no longer confined to liberty from illegal arrest or against physical coercion by State. It includes the right live with human dignity and all that goes along with

it. Former Attorney General Soli Sorabji has stated that “Art. 21 has been proved to be a vast inexhaustible reservoir of unenumerated rights. A significant contribution of PIL has been the enlargement of fundamental rights by deducing or spelling out fundamental rights, which are not specifically enumerated in the charter on fundamental rights’ (Sorabji:2002).

i) Vigorous Campaign for prisoners

In a number of PIL cases, which came before the Supreme Court in 1980s, the Court has emphasized that the conviction does not reduce a person into non-person and provided necessary relief (*Sunil Batra v. Delhi Administration* (1980), *Hussainara Khatoon v. State of Bihar* (1980), *Vatheeswaran v. State of Tamilnadu* (1983), *Sheela Barse v. State of Maharashtra* (1983), *A.G. v. Lachmandevi* (1986). In a landmark judgment of *D.K. Basu* (1997) the Court acted upon a letter petition by the chairman of the Legal Aid Services, West Bengal, which drew attention to the repeated instances of custodial deaths in West Bengal. In this case the Court laid down the extensive directions applicable to whole of India as to the procedure to be followed by the police upon the arrest of a person and the minimum facilities available to such person.

ii) A new era of Compensatory Jurisprudence

The Supreme Court has started a new era of compensatory jurisprudence in Indian legal history in many of its PIL decisions relating to torture and custodial death inflicted by the State or its agencies. The newly forged weapon has been sharpened in many of its decisions (*Rudul Shah v. State of Bihar*, 1983 and *Saheli v. Commissioner of Police*, 1990). In *Saheli* (1990), the state was held liable for the death of a 9 year old boy by police assault and beating. Delhi administration was ordered to pay compensation of Rs.75000/-. The Court further crystallized the judicial right to compensation in *Nilabati* case (1993).

iii) Bonded Labour

The Supreme Court has taken effective measures to effectuate the welfare legislations meant to eradicate the pernicious practice of bonded labour from the national scene and to bring socio-economic justice within their reach. However, failure of state in implementing the Bonded Labour System (Abolition) Act, 1970 gave rise to early PILs.

In *Bandhua Mukti Morcha* (1984) and in a number of other cases *PUDR v. Union of India* 1982, and *Neerja Choudhary v. State of M.P.* 1984, the Court gave several directions for implementing labour laws and Bonded Labour Act. The Court directed that bonded labourers should be identified, released and rehabilitated in order to implement the Act. Various directions were also given so as to ensure minimum wages, healthy conditions of work and to provide medical facilities etc. to the labourers. The Supreme Court has also directed the National Human Rights Commission (NHRC) to monitor this scheme (NHRC: 2001-2002). A PIL brought to the notice of the Supreme Court the plight of migrant labourers from Tamil Nadu who were subjected to exploitation in Madhya Pradesh (*PUCL v. State of TamilNadu*, 2004). On the report of the expert group, responses by the Government, and of the National Human Rights Commission the Court came to the conclusion that the major issue to be solved was the rehabilitation of freed bonded labourers which had so far not received adequate attention by the governments. Observing that, if the released bonded labourers were not rehabilitated forthwith, they would languish in the streets, the Court issued several directions for the rehabilitation of released bonded labourers.

Children	Age	Percent
Working (% and population)	5 to 14	1.4 (3,253,202)
Attending School (%)	5 to 14	90.7
Combining Work and School (%)	7 to 14	0.3
Primary Completion Rate (%)		94.5

Source for primary completion rate: Data from 2017, published by UNESCO Institute for Statistics, 2019.(4)

Public Union for Civil Liberties v. State of Tamilnadu, 2013

Through Public Interest Litigation, the petitioner brought to the notice of the Supreme Court the miseries and exploitation of bonded labourers in the country and the necessity of identifying and to rehabilitate those who are victims of this practice. The Supreme Court directed the NHRC to monitor the situation of the bonded labourers. The NHRC submitted its revised report dated 3.9.2011 before the Court that the response from Andhra Pradesh, West Bengal, Jharkhand and Bihar is not satisfactory-

- a) No fresh surveys are being conducted in the States. Wherever surveys have been conducted in the last few years, no bonded labourers could be found.
- b) Whereabouts of about 20,000 bonded labourers are reported to be untraced. Registers about bonded labourers identified, released and rehabilitated are not being maintained as required under Rule 7 of the BLS (A) rules.
- c) Budget provisions are not being made on the ground that there are no bonded labourers.
- d) All the Union Territories have been reporting that they have no Bonded labourers.”

The Court directed the NHRC to take appropriate steps and to effectively supervise for carrying out the directions issued by the Court and the provision of BLS (A) Act.

iv) Child Labour

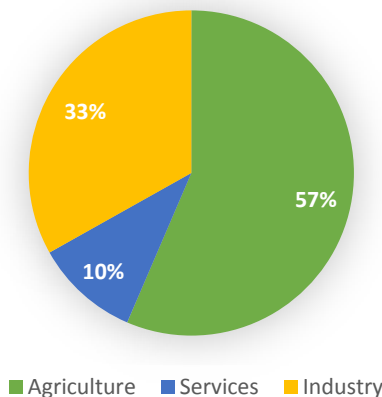
Children in India engage in the worst forms of child labor, including in forced labor producing garments and quarrying stones. Children also perform dangerous tasks in the production of thread and yarn. Children work in unsafe and unhealthy environments for long periods of time, and penalties for employing children may be insufficient to deter violations.

Statistics on Children’s Work and Education

M.C. Mehta v. State of Tamilnadu, 1997, the Supreme Court observed that abolition of child labour was the obligation of the state and the practice of the child labour was held to be the violation of the basic human rights. A PIL was brought before the Supreme Court complaining that thousands of children were employed in match factory in Sivakasi, Tamil Nadu. The Supreme Court directed that the offending employer of child labour in match factories would pay Rs. 20,000/-, which would then be deposited in a child labour Rehabilitation-cum-Welfare fund. The children illegally employed would receive education at the cost of the employer. The National Human Rights Commission is working in complementarity with the Supreme Court and is continuously monitoring the child labour and bonded labour for the enforcement of their rights (NHRC: 2002-2003).

In Narendra Malva v. State of Gujrat (2004) the poor plight of the child labour in various salt mines in the State of Gujrat was highlighted alleging their exploitation. The Court requested the amicus curiae and SEWA, a social action organization, to investigate with regard to the welfare of the salt workers, particularly with reference to educational facilities of the children of salt workers, availability of proper housing and medical facilities

Working Children by Sector, Ages 5-14



Bachpan Bachao Andolan v. Union of India, 2011

This petition had been filed in public interest under Article 32 of the Constitution in the wake of serious violations and abuse of children, forcefully detained in circuses, in many instances, children were without any access to their families under extreme inhuman conditions. Bachpan Bachao Andolan has been able to liberate thousands of children from their servitude with the help of the judiciary and the executive as well as through persuasion, social mobilization and education.

There are no labour or any welfare laws, which protect the rights of these children. Children are frequently physically, emotionally and sexually abused in these places. Expressing its serious concern about the problems of the children who are trafficked into these circuses the Supreme Court observed that the Police, Labour Department or any other State Agency is not prepared to deal with the issue of trafficking of girls from Nepal holding them in bondage and unlawful

confinement. There is perpetual sexual harassment, violation of the Juvenile Justice Act and all International treaties and Conventions related to Human Rights and Child Rights where India is a signatory. The Supreme Court thus gave following directions:

(i) In order to implement the fundamental right of the children under Article 21A, the Central Government must issue suitable notifications prohibiting the employment of children in circuses within two months from today.

(ii) The respondents are directed to conduct simultaneous raids in all the circuses to liberate the children and check the violation of fundamental rights of the children. The rescued children be kept in the Care and Protective Homes till they attain the age of 18 years.

(iii) The respondents are also directed to talk to the parents of the children and in case they are willing to take their children back to their homes, they should be allowed to take them back to their homes.

v) Right to Live with Human Dignity

In Francis Coralie Mullin case (1981) the Supreme Court observed that the right to life under Art. 21 includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as food, clothing & shelter and facilities for reading, writing and expressing oneself in diverse forms. The right to life is the right to live with dignity; therefore, it includes some of the finer graces of human civilization, which makes life worth living. It includes the right to live with reputation (Board of Trustees Port of Bombay v. Dilip Kumar, (1983). In Madhu Kishwar case (1996) the Court observed that life in its expanded horizon includes all that gives meaning to a person's life including culture, heritage and tradition and protection of that heritage in full measure.

In famous Pavement Dweller's case the Court observed that this right manifestly includes right to shelter over one's head, therefore, those who are living in slums or pavements in metropolis have a right under Art.21 to continue living there until they are provided alternative accommodation. The Supreme Court recognized that right to life includes right to livelihood. Any person who is deprived of his right to livelihood except according to just and fair procedure can challenge the act as offending Art. 21 (Olega Tellis v. Municipal Commissioner, Bombay, 1985).

vi) Right to Education

The right to education was not originally incorporated as fundamental right in Part III of the Constitution. The Supreme Court in PIL judgements has observed that having regard to fundamental significance of education to the life of an individual and the nation, right to education is implicit in and flows from right to life guaranteed by Art.21. (Unni Krishnan v. State of A.P., 1993 and Mohini Jain v. State of Karnataka, 1992).It has been treated as one of transcendental importance all over the world. Fully realising that without education, the objectives set forth in the preamble to the Constitution cannot be achieved, the Court has made it the duty of State to provide education. The right has been contingent on the economic capacity. The state must provide free education up to the primary level, that is to all till the age of 14. After so many years of discourse and struggle after the judgement of the Supreme Court in Unnikrishnan, the Indian Parliament has passed the Constitution 86th Amendment Act, 2002 to make elementary education a fundamental right under Art. 21A for children in the age group of 6-14 years. It is proposed to bring a follow-up legislation with detailed mechanism to implement this Act.

vii) Gender Justice: Interim relief to rape victims

Violence against women affects the lives of millions of women worldwide to freely and fully participate in the development process. On account of gender based violence, fundamental human rights have been systematically denied to half of the world's population, irrespective of the type of political and legal systems under which they lived. The Supreme Court is increasingly laying emphasis on gender-oriented approach by providing compensatory justice for women. The Court has spelt out the parameters of expeditious conduct and investigation of trial in one of its famous case of Delhi Domestic Working Women's Forum (1995).

In Chandrima Das case (2000) the Court has provided one new dimension to the jurisprudence of PIL by awarding interim compensation of Rs. Ten Lakhs, to the victim, a lady from Bangladesh from the railway department for being raped by railway employees at Howrah railway station. The Court observed that the lady was entitled to be treated with dignity under Art. 21.

viii) Sexual harassment of women at work place

In land mark judgements of Vishaka (1997) and Apparel Export Promotion Council (1999) the Supreme Court held that the sexual harassment of working women amounts to violation of right of gender equality and right to life and personal liberty. The apex Court laid down the 'guidelines and norms' and directed that these guidelines be treated as 'law declared by the Supreme Court' under Art.141 of the Constitution. The Court placed heavy reliance on the relevant International Conventions, resolutions and norms to construe the Fundamental Rights of a woman guaranteed under Arts.14, 15, 19(I)(g) and 21 of the Constitution and to assume in the absence of domestic law, the legislative power 'to fill the legislative vacuum'. NHRC has been conducting surveys from time to time to monitor the compliance of these guidelines.

ix) Protection of open space in urban areas

In **L.K. Khurana v. State of U.P.**, 2015, the High Court of Allahabad referring to various decisions of the Supreme Court, on the issue of violation of urban planning norms resulting in diversion of public parks and open spaces for alien purposes, reiterated that protection of the environment, open spaces for recreation and fresh air, playgrounds for children and other conveniences or amenities were matters of great public concern and of vital interest to be taken care of in a development scheme. Hence, the plan of the Meerut Development Authority as well as the Nagar Nigam to convert an open space which was used for recreation by the public, including morning walkers, into a multi-level car parking facility with a park on the roof top, was held to be not justified.

The Meerut Development Authority argued that the re-development plan was proposed due to acute shortage of parking space for vehicles and the present location was chosen as it was situated in the center of the city and was of great interest to the public at large. The court rejected the contention and held that the commissioner of the Nagar Nigam had clearly ignored the duty to ensure that the right to life of the citizens of the city, which was protected by Article 21 of the Constitution, was not violated by depriving the citizens of the use of open spaces. Constructing a multi-level car parking facility and expecting citizens to use the terrace of a concrete structure as a playground and as a park would be travesty of urban planning. The court directed the Meerut Development Authority to pursue any alternative proposal for constructing a multi-level car parking facility while maintaining the area of the park as a park.

The court expressed its concern over the manner in which public authorities were eyeing the few remaining open spaces in urban areas for commercial development, and emphasised that the need of citizens to a holistic pattern of life in the urban areas could not be sacrificed at the altar of human avarice and greed.

The Supreme Court and High Courts have exercised self-restraints while entertaining PILs. The courts have always emphasised that it would be for the petitioner to prove a concrete and credible basis before maintaining a cause before the court. In *Satya Narain Shukla v. State of U.P.*, 2015 Lucknow Bench of the High Court of Allahabad declined to entertain the PIL where it was to take up the policy matter for issuing direction for implementation of directive principles enshrined in Part IV of the Constitution. A writ of mandamus was sought from the respondents to come out with a comprehensive, concrete, and time-bound action plan for fulfilling by 2030 the promises made in the Preamble of Constitution and the mandate formulated in the directive principles for eradication of poverty along with some ancillary reliefs. The petitioner sought information from the planning department of the state government with respect to various schemes for the persons living below poverty line, but the department failed to provide the information. The high court, holding that it would be acting in excess of its jurisdiction and that it was "not the domain of the judicial courts to step in the domain of the legislatures or the executives ..." refused to entertain the PIL.

To sum up, PIL is a milestone in opening the doors of justice to the bonded labourers and poverty stricken people of India for whom justice was a distant dream for a number of years. Justice Sujata Manohar has aptly observed that in India, where a right based approach is adopted to shape the future of Indian polity and above all right based agenda is needed to become a part of national culture, the judiciary has evolved its own mechanism for better protection of human rights of vulnerable and disempowered section of Indian society through PIL (Manohar J., 2003). Soli Sorabji, the former Attorney General stated that 'it is the solemn obligation of governments to protect and promote the human rights of every person. Unfortunately experience has shown that governments are notoriously remiss in discharging their obligations, indeed, some states are blatant violators of human rights' (Sorabji: 2001). In such a scenario, the PIL has emerged as the most extraordinary innovation in the Indian judicial process for the protection of human rights, which has no parallel in the world. (Singh, P.: 2000).

The Court entertains a PIL action in the discharge of its own constitutional obligation to protect fundamental rights. The very rationale of relaxing locus standi is to enable an individual to initiate judicial action to protect the fundamental rights of those who lack access to courts due to poverty, disability or helplessness. It is the quest for justice of the great judges, that the courts are entertaining the PILs when a matter relating to diffuse, collective and meta-individual rights of society is brought before it. The Court must necessarily have to be cautious as to whether such matter is being litigated as a proxy litigation for ulterior motives, rivalry or personal benefits. The Courts are always cautious to confine scope and ambit of PIL to actions on behalf of the poor, marginalised and vulnerable sections of society for whom PIL was originally conceived. The criticism of judicial accountability stands nowhere in view of credibility regained by the judiciary through PIL jurisprudence which is the need of the hour.

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Art. 21 provides that "No person shall be deprived of his right to life or personal liberty except according to procedure established by law".

The Directive Principles of free legal aid envisaged in Art. 39A, health and strength of workers in Art. 39 (e) and (f), right to work in Art.41 and right to just and humane conditions of work in Art. 42 etc. were made a part of Art.21.

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