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Constitutionalizing Human Rights in India: The Evolution of Article 21 and The Expanding Role of Judiciary

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Constitutionalizing Human Rights in India: The Evolution of Article 21 and The Expanding Role of Judiciary

ABSTRACT

This paper examines the constitutionalization of human rights in India through the evolution and judicial interpretation of Article 21 of the Constitution. It traces the transformation of Article 21 from the narrow interpretation adopted in A.K. Gopalan v. State of Madras to the broader substantive due process approach established in Maneka Gandhi v. Union of India. The paper analyses the expansion of Article 21 to encompass rights relating to human dignity, livelihood, education, health, privacy, environmental protection and prisoners' rights. It further examines the role of international human rights instruments, including the UDHR, ICCPR and CEDAW, in constitutional interpretation under Article 51(c). The paper critically evaluates judicial activism, considering both its contribution to the protection of vulnerable groups and concerns relating to separation of powers and judicial overreach. It also examines the institutional role of the National Human Rights Commission under the Protection of Human Rights Act, 1993, and identifies implementation gaps that continue to affect the effective realization of constitutional rights. The paper concludes that the continued protection of human rights requires effective coordination between the judiciary, legislature, executive and human rights institutions.

KEYWORDS

Article 21, Human Rights, Judicial Activism, Constitutional Law, Fundamental Rights

INTRODUCTION

Human rights are "inherent, inalienable, and indispensable rights that accrue to every individual by virtue of being human; they constitute the foundation for equality, liberty, dignity, and the holistic development of personality"¹. In India, these rights are mostly constitutionalized by judicial interpretation rather than only being based on statutes. While the Constitution's Part III enumerates a wide range of essential rights (Articles 14-18, 19-22, 21, 32, etc.), Article 21, which guarantees the "protection of life and personal liberty," has emerged as the cornerstone

¹ Upendra Baxi, The Development of Human Rights in India, in Human Rights: A Reference Handbook 45, 47 (Asma Jahangir & Colin Gonsalves eds., 2000).

for the defense of human rights. Beginning in the 1970s, a surge of judicial activism extended Article 21 beyond "procedure established by law" to include substantive rights (a "due process" norm), connecting it to freedoms (Art. 19) and equality (Art. 14)². At the same time, India's commitment under Article 51(c) of the Constitution led courts to draw on international human rights instruments (UDHR, ICCPR, CEDAW, etc.) as interpretive aids³.

HUMAN RIGHTS UNDER THE INDIAN CONSTITUTION

India's Constitution guarantees a wide range of civil and political rights from the beginning. Articles 19–22 guarantee freedoms (speech, assembly, profession, mobility, etc.) and fundamental legal protections against arrest and detention; Articles 14–18 guarantee equality and prevent discrimination; and Article 32 grants a right to constitutional remedies. A fundamental framework of human rights that is enforceable against the state is formed by these rights taken together. However, judges have always stressed that this framework must be interpreted in accordance with the constitutional spirit and the Directive Principles (Part IV). The Directive Principles "cannot be detached from the basic rights," as the Supreme Court noted in *Mohini Jain v. Karnataka*, since "without making the 'right to education' under Art. 41 a reality, the fundamental rights under Part III is of no use.

In a similar vein, the Court determined in *Bandhua Mukti Morcha v. Union of India* that the Article 21 right "to live with human dignity" must "include protection of the health and strength of workers... to enable a person to live with human dignity" because it "derives its life-breath from the Directive Principles" (Art. 39(e), (f), 41, 42)⁴. Although Article 21 was originally limited (see below), it implicitly foresees a dignified existence in its text, and Article 32 ensures that it is enforced. Therefore, the Constitution already anticipated socioeconomic rights (health, education, employment, etc.) through DPS and Fundamental Duties prior to the development of Article 21. For instance, Arts. 45–47 call on the State to improve literacy, nutrition, and living standards, while Arts. 41–43 guarantee employment, education, and maternity benefits.

For example, the Court emphasized in *Bandhua Mukti Morcha* that certain DPS laws "derive its life-breath from" the protection of decent life in Article 21. The State is "under an obligation to endeavour to provide educational facilities at all levels" in order to enable the meaningful

² *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

³ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

⁴ *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161.

enjoyment of basic rights, according to the Mohini Jain ruling. (In addition to these rights, every citizen has Fundamental Duties (Article 51A). In conclusion, even before activism enlarged Article 21, India's constitutional framework envisioned a broad human rights ethos. However, in the end, Article 21 emerged as the pivotal point, with its interpretation serving as the foundation for almost all significant rights.

EVOLUTION OF ARTICLE 21: FROM "PROCEDURE ESTABLISHED BY LAW" TO DUE PROCESS

A. Narrow Interpretation

Article 21 stated that "no person shall be deprived of his life or personal liberty except according to procedure established by law" at the time of independence. This was given a formalist interpretation by a six-judge bench in *A.K. Gopalan v. State of Madras* (1950). According to the Court, "procedure established by law" refers to any process that is enacted by the State or Parliament without regard to any substantive fairness norms. Gopalan rejected the idea of due process and maintained preventative detention as long as the Detention Act's procedures were followed. It also maintained that the fundamental rights (Articles 14–22) were separate chapters that should not be read in tandem. Gopalan "ruled that Article 21...did not require...a due process of law standard,"⁵ according to one critic.

B. Constitutional Revolution: Maneka Gandhi v. Union of India

A "constitutional revolution" occurred when a seven-judge bench adopted a drastically different stance in *Maneka Gandhi v. Union of India* (1978). The Court ruled that the principles of the entire Constitution must be taken into consideration when interpreting the words "procedure established by law." It famously decided that the process for restricting someone's freedom must be "fair, just, and reasonable, not fanciful, oppressive or arbitrary." To put it another way, Article 21 procedures must adhere to substantive due process requirements. Importantly, the Court connected Articles 14, 19, and 21, ruling that any legislation restricting life or liberty must also uphold equality and other core values⁶. As a result, Gopalan's segmented viewpoint was essentially overturned, opening the door for significant rights increases under Article 21.

JUDICIAL CONSTITUTIONALIZING OF HUMAN RIGHTS

⁵ *A.K. Gopalan v. State of Madras*, 1950 SCC 228 (India); see also S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* 12–14 (Oxford Univ. Press 2002).

⁶ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, 267–68 (India); see also M.P. Jain, *Judicial Review and the Expansion of Article 21*, 2 J. Indian L. Inst. 45, 48–52 (1979).

UNDER ARTICLE 21

The Supreme Court methodically read a variety of rights into Article 21 after *Maneka Gandhi*. The following themes, rather than a list of instances, show how the Court recognized each of the major rights as a component of "life" and "liberty."

- ***Right to Human Dignity:*** The Court ruled in *Francis Coralie Mullin v. Delhi Administration* (1981) that the Article 21 guarantee of life "includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing, and shelter." It maintained that even standard correctional procedures must uphold human dignity by prohibiting torture and cruel treatment. Importantly, the Court ruled that "the right to protection against torture or cruel, inhuman or degrading treatment which is enunciated in Article 5 [of the UDHR] and guaranteed by Article 7 of the ICCPR is implicit in Article 21. The right to live with dignity "derives its life-breath from the Directive Principles" (Arts. 39(e), (f), 41, 42), according to *Bandhua Mukti Morcha*, and it must involve safeguarding the needs of children and the health of employees⁷. In essence, Article 21 was animated by the fundamental principle of human dignity.
- ***Right to Livelihood:*** The Court acknowledged that "it would be sheer pedantry to exclude the right to livelihood from the content of the right to life" in *Olga Tellis v. Bombay Municipal Corporation* (1985)⁸. It concluded that unless a just and fair procedure standard was fulfilled, the forceful eviction of pavement dwellers was a violation of Article 21. Thus, *Olga Tellis* solidified the right to pursue one's livelihood within the scope of Article 21.
- ***Right to Education:*** The Court ruled in *Mohini Jain v. State of Karnataka* (1992)⁹ that the right to life "cannot be assured unless it is accompanied by the right to education." It stated that the State must make an effort to offer educational resources at all levels. Article 21A (right to education) was later added to the Constitution as a result of Unni Krishnan's (1993) reaffirmation that education is fundamental to Article 21. When taken as a

⁷ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608, 617–18 (India); see also Rakesh Sharma, *Right to Health under the Domain of Article 21*, 1 Int'l J. L. & Just. Jurisprudence 85, 86 (2021).

⁸ *Olga Tellis v. Bombay Municipal Corp.*, (1985) 3 SCC 545, 559 (India).

⁹ *Mohini Jain v. State of Karnataka*, (1992) 3 SCC 666, 679–80 (India).

whole, these cases demonstrate how education was acknowledged as a constitutional right derived from Article 21.

- ***Right to Health:*** The Court gravely said in *Parmanand Katara v. Union of India* (1989)¹⁰ that "Article 21...casts the obligation on the State to preserve life." It even declared that "every doctor...has the professional obligation to extend his services...for protecting life." This meant that hospitals had to give emergency care right away. In a same vein, the Court made it clear in *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* (1996)¹¹ that the right to life encompasses the duty "to provide timely medical treatment necessary to preserve human life." These rulings established emergency medical assistance and healthcare access under Article 21 of the Constitution.
- ***Right to Privacy:*** The right to privacy is a basic right safeguarded by Article 21, according to a landmark ruling in *Justice K.S. Puttaswamy v. Union of India* (2017)¹². The Court noted that privacy "safeguards one's freedom to make personal choices" and is "an attribute of human dignity." It was decided that the right to privacy is "primarily" derived from Article 21 of the Constitution. The ruling further linked privacy to international law by pointing out that the right to privacy is guaranteed by UDHR Article 12 and ICCPR Article 17. As a result, life and liberty are now equal to privacy and individual autonomy.
- ***Environmental Rights:*** Additionally, the courts have interpreted Article 21 to include environmental quality. The Court made it clear in *Subhash Kumar v. State of Bihar* (1991)¹³ that "the right to life... includes the right of enjoyment of pollution-free water and air for full enjoyment of life." The Supreme Court clarified in several *M.C. Mehta* decisions that the government must safeguard natural resources (clean air, rivers, and forests) in order to guarantee citizens' right to life. When taken as a whole, these cases treat a healthy environment as a component of the fundamental right to life.
- ***Prisoners' Rights:*** The Court has maintained that being imprisoned does not equate to losing one's human rights. It was

¹⁰ *Parmanand Katara v. Union of India*, (1989) 4 SCC 286, 289 (India).

¹¹ *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, (1996) 4 SCC 37 (India).

¹² *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1, 140–45 (India).

¹³ *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598, 607 (India); see also *Suhana & Sunidhi Khabya, M.C. Mehta and the Quest for a Pollution-Free Environment*, Nat'l L. Univ. Jodhpur Env't L. Rev. 10, 12–15 (2024).

notably decided in *Sunil Batra v. Delhi Administration* (1978–80)¹⁴ that "prisoners are persons, not animals" in the eyes of the law. It emphasized that "fundamental rights do not flee the person as he enters the prison" and rejected any "hands off" attitude to prisoners. The Court decided that prison circumstances must respect human dignity and that inmates maintain fundamental human rights, such as the prohibition against torture and cruel treatment. In *D.K. Basu v. State of West Bengal* (1997)¹⁵, the Court emphasized that even those incarcerated are protected by Article 21 by issuing comprehensive custodial guidelines (on arrest processes, detention records, medical examinations, etc.) to avoid police abuse of prisoners.

INTERNATIONAL HUMAN RIGHTS NORMS AND CONSTITUTIONAL INTERPRETATION

Article 21 has not been interpreted in a vacuum by the Indian judiciary. Respect for international law and treaty responsibilities is urged by the Constitution itself (Art. 51(c)). Due to India's dualist legal system, courts are increasingly using international treaties as interpretive guidelines even if they are not self-executing domestically. For instance, the Court used the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and ILO conventions to establish legally binding workplace guidelines under Articles 14, 19, and 21 (protecting equality and dignity) in *Vishaka v. State of Rajasthan* (1997)¹⁶, a case involving sexual harassment at work. In a similar vein, the Court specifically ordered that Indian law be interpreted in accordance with international standards in *Apparel Export Promotion Council v. Chopra* (1999)¹⁷. It concluded that courts "must...give due regard to International Conventions and Norms for construing domestic laws," particularly when there is no discrepancy, and pointed out that instruments like CEDAW, the ICCPR, and the UDHR impose obligations on India¹⁸.

This strategy has been used in other Supreme Court cases. For example, the Putta swamy ruling elaborated on privacy by referencing Article 12 of the UDHR and Article 17 of the ICCPR. In decriminalizing homosexuality, *Navtej Singh Johar* (2018) referenced international

¹⁴ *Sunil Batra v. Delhi Administration*, (1980) 3 SCC 488, 493–95 (India).

¹⁵ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416, 426–30 (India); see also Pratap Alexander Muthalaly, *Case Analysis on Sunil Batra v. Delhi Administration & Others*, Gov't L. Coll. Trivandrum J. (2021).

¹⁶ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (India).

¹⁷ *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759 (India).

¹⁸ S.P. Sathe, *Judicial Activism and the Enforcement of Directive Principles Through Fundamental Rights in India*, 2 J. Indian L. Inst. 45, 49 (2000).

human rights documents and the Yogyakarta Principles. Transgender rights were acknowledged in *NALSA v. Union of India* (2014) based on international human rights norms. Judges, however, have taken care to use treaties to uphold and strengthen domestic constitutional ideals rather than to "mechanically apply" them. In *Chopra*, the Court clarified that while international law does not supersede the Constitution, it does offer a "core principle" that Indian rights should adhere to; in cases where domestic law is unclear or silent, the court must interpret it in accordance with international standards.

JUDICIAL ACTIVISM: PROTECTOR OR POLICY-MAKER?

There have been many benefits to the activist extension of Article 21. Courts have served as a check on the disregard of the legislative and executive branches. For instance, they prescribed women's rights and environmental protections (*Vishaka*) long before Parliament passed legislation, filling gaps. Judicial activism has been "an effective tool for upholding citizens' rights and implementing constitutional principles when the executive and legislature fail to do so," according to one analysis¹⁹. Public Interest Litigation (PIL) itself democratized access to justice by enabling victims without a voice to seek redress. Vulnerable populations have been proactively safeguarded by the judiciary in areas such as child rights, mental health, pollution, elder abuse, and custodial abuse. When other branches fall behind, this proactive function can advance social justice and act as "the guardian and protector of the Constitution."

Critics counter that there are issues with this broad approach. The separation of powers may be obscured by excessive judicial activism, as courts may seem to "overrule any existing law" and meddle in matters of policy that are better left to the legislature. One writer notes that judges occasionally blend "personal bias and opinions" with the law in the name of activism, "to a toss" the distinction between the legislative, executive, and judicial branches. Opponents are concerned about implementation gaps (judgments not being implemented by officials), inconsistency (various benches taking different tactics), and democratic legitimacy (unelected judges deciding broad social policies). The "floodgates" argument is frequently brought up, arguing that if every complaint constitutes a constitutional issue, the courts may be overburdened with cases.

The argument is actually complex. Critics argue that unchecked activism can result in "judicial adventurism" and even injustice in certain situations, while supporters emphasize that many rights would remain

¹⁹ Sneha Hitendra Soni, *The Role of Judicial Activism in Advancing Human Rights in India: A Critical Analysis*, 5 *Indian J. Leg. Rev.* 50, 52 (2025).

unenforced in practice without judicial initiative. Given India's socioeconomic difficulties, the general assumption is that some judicial inventiveness is required, but it must be used responsibly. Numerous activist rulings have expanded justice to the underprivileged, as one analysis indicates, but courts must also recognize elected branches' dominance in policymaking and guarantee accountability in their use of this authority.

INSTITUTIONAL PROTECTION OF HUMAN RIGHTS: THE PHR ACT, 1993 AND THE NHRC

Under the Protection of Human Rights Act, 1993, India created the National Human Rights Commission (NHRC), an autonomous human rights organization, along with legal channels. The NHRC "shall consist of (a) a Chairperson who has been a Chief Justice of the Supreme Court; (b) one Member who is, or has been, a Judge of the Supreme Court; (c) one Member who is, or has been, the Chief Justice of a High Court; (d) two Members...having knowledge or practical experience in matters relating to human rights," according to Section 3 of the Act. (In addition, the heads of the Commissions for Minorities, SC/ST, and Women serve as ex officio members for specific functions.)²⁰

The NHRC has the authority to look into human rights abuses under Section 12²¹. It may act suo motu or upon petition, according to the law: "The Commission will carry out all or any of the following tasks: (a) investigate complaints of (i) human rights violations by public servants, either on its own initiative or in response to a petition." It may also visit prisons and other facilities to observe conditions and get involved in relevant judicial processes. NHRC has investigative powers similar to those of a civil court (summoning witnesses, requisitioning records). Section 18²² allows it to make recommendations following an investigation. The government (state or central) is statutorily required to respond to NHRC's recommendations: it must inform the NHRC of action taken within one month (three months if armed forces are involved).

In actuality, the NHRC has looked into thousands of complaints (discrimination, deaths in custody, etc.) and made a number of recommendations. It has supported a number of causes, including

²⁰ Dr. Arun Kumar Verma & Abhay Tiwari, *Judicial Activism and the Expansion of Socio-Economic Rights under Article 21*, 7 Int'l J. L. & Just. Jurisprudence 4361, 4370 (2026); see also Protection of Human Rights Act, 1993, § 3 (India).

²¹ Protection of Human Rights Act, 1993, § 12 (India).

²² Protection of Human Rights Act, 1993, § 18 (India); see also NHRC, *Frequently Asked Questions* (NHRC 2000).

bonded labour, jail conditions, and police reform. However, its mandate and structure restrict its role. The NHRC cannot impose its rulings; it can only make recommendations. Its directives are morally and politically significant, but adherence is not assured. It typically rejects complaints that are more than a year old or sub-judice, and it does not have jurisdiction over solely private conduct or, to some extent, the armed services. It has also been impeded by staffing and resource limitations. Critics point out that although the NHRC might draw attention to infractions, actual protection frequently depends on executive agencies' goodwill.

CHALLENGES AND THE WAY FORWARD

In India, upholding human rights is nevertheless difficult despite this strong legal framework. Implementation gaps are a common problem. Significant rulings (such as those pertaining to healthcare, education, or jail reforms) are frequently only partially carried out or bogged down in red tape. Courts may declare rights, but many people do not have access to fundamental services or justice. The issue of "effective" remedies is made worse by overcrowded courts and delays. Despite the broad interpretation of Article 21, researchers note that "implementation gaps, judicial delays, and socio-economic inequalities continue to hinder its full realization."

Reform is still needed in the areas of prison environment and custodial brutality. Millions of people remain incarcerated awaiting trial, and illegal arrests and torture continue even after Basu's directives.

In a same vein, despite the recognition of the right to health, public healthcare is still underfunded and inconsistent, and outbreaks like COVID-19 have shown systemic flaws. Digital privacy and surveillance are currently emerging issues. Despite Putta swamy's assurances of privacy, India still lacks a robust data protection law, and the growing use of biometrics, face recognition, and artificial intelligence by corporations and the government poses new threats to civil liberties²³. Climate change, air pollution, and ecological degradation are challenges to environmental rights that force the legislature and courts to take swift action²⁴.

It is essential to strengthen institutional systems. More teeth (perhaps the ability to hear and enforce older claims) and steady funding are necessary for the NHRC and state commissions to carry out proactive

²³ Vrinda Bhandari & Renuka Sane, Protecting Citizens From the State Post Puttaswamy: Analysing the Privacy Implications of the Justice Srikrishna Committee Report and the Data Protection Bill, 2018, 14 Socio-Legal Rev. 143, 145 (2018).

²⁴ Suhana & Sunidhi Khabya, M.C. Mehta and the Quest for a Pollution-Free Environment, Nat'l L. Univ. Jodhpur Env't L. Rev. 10, 12-15 (2024).

investigations. The legislature, NHRC, and judiciary working together more effectively could enhance the implementation of recommendations. Moving beyond dualism, India should fully implement its treaty obligations through legislation, such as incorporating UN agreements into domestic law to make international human rights immediately enforceable. Increased legal knowledge and human rights instruction can enable people to assert their rights.

CONCLUSION

The Indian example demonstrates a remarkable constitutionalizing of human rights: rights have been found, developed, and safeguarded by the Constitution, particularly Article 21, rather than merely being granted by statute. The Supreme Court's involvement over the past few decades has transformed Article 21 into a dynamic storehouse of rights, ranging from equality to the environment to education, frequently using international standards as a guide for interpretation. Even before legislative action, this judiciary-driven expansion has successfully brought India's constitutional framework into line with worldwide human rights norms. However, the fulfilment of these rights ultimately rests on their execution and democratic backing. As this analysis has demonstrated, protecting human rights in India now depends on a dynamic interaction between international norms, activism, institutional guardianship, and constitutional legislation. To satisfy the rights of all Indians under Article 21 and beyond, this ecosystem must be strengthened, whether by just legislation, strong human rights organizations, or civic involvement.