

ARTICLE 21 AS A LIVING GUARANTEE: SEVENTY-FIVE YEARS OF JUDICIAL INTERPRETATION

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ABSTRACT

Article 21 of the Constitution of India has undergone a remarkable transformation over the past seventy-five years. Originally conceived as a narrowly framed procedural safeguard, it has evolved through judicial interpretation into the central constitutional guarantee of life and personal liberty. This paper examines that evolution from 1950 to 2025, tracing how the Supreme Court progressively expanded the meaning of Article 21 in response to changing social realities, governance challenges and abuses of state power. Employing a doctrinal and analytical methodology, the study examines the role of Article 21 in regulating state power in matters of arrest, detention, bail, delay in trial and capital punishment through the requirement of fair, just and reasonable procedure, and traces its extension into dignity, socio-economic entitlement, environmental protection, privacy and digital access, while critically assessing the consistency and limits of judicial interpretation. The paper argues that Article 21 has emerged as the constitutional safeguard of last resort for the ordinary individual, even as its expansion raises important questions of doctrinal coherence and institutional balance, and it concludes that the provision's continued legitimacy depends less on further expansion than on the consistent, disciplined application of the principles it has already established.

KEYWORDS: Article 21; Judicial Interpretation; Life and Personal Liberty; Procedural Fairness; State Power.

1. INTRODUCTION

Article 21 of the Constitution occupies a position unlike any other fundamental right.¹ Though framed in brief and restrained language, it has gradually emerged as the most relied-upon constitutional guarantee for the protection of life and personal liberty.² For the ordinary individual, Article 21 is not an abstract promise; it becomes relevant at the moment of arrest, detention, delay in trial, denial of bail, custodial abuse, lack of medical care, loss of shelter, environmental harm, or exclusion from basic systems of governance.³ In this sense, Article 21 functions as the Constitution in action.⁴

Article 21 was, originally, interpreted narrowly. The Supreme Court treated procedure established by law as a matter of formal legality, satisfied once a prescribed procedure existed, leaving questions of fairness and reasonableness largely to legislative judgment.⁵ This approach reflected early judicial restraint

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¹ India Const. art. 21.

² Francis Coralie Mullin v. Delhi Admin., (1981) 1 S.C.C. 608 (India).

³ Hussainara Khatoon v. State of Bihar, (1980) 1 S.C.C. 81 (India).

⁴ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 134-36 (Oxford Univ. Press 1966).

⁵ A.K. Gopalan v. State of Madras, A.I.R. 1950 S.C. 27 (India).

and deference to the political branches, but it proved inadequate to address the realities of state power and its impact on personal liberty. The transformative moment arrived with *Maneka Gandhi v. Union of India*, which reoriented Article 21 towards fairness, justice and reasonableness and integrated it with Articles 14 and 19.⁶ From that point, Article 21 became the principal site through which the Court examined the legitimacy of state action.

Over the following decades, the Supreme Court expanded Article 21 to include protection against arbitrary arrest, prolonged incarceration, custodial violence, denial of legal aid, and unreasonable delay in criminal proceedings.⁷ It recognised that life under Article 21 is not confined to physical survival but includes dignity, autonomy, health, shelter, reputation and access to justice,⁸ and, more recently, has engaged with contemporary challenges including digital exclusion, environmental degradation, climate vulnerability and the constitutional limits of capital punishment.⁹ Through these decisions, Article 21 has come to represent the core of India's constitutional criminal process.

This expansion carries important institutional consequences. The Supreme Court's role in shaping Article 21 has repeatedly required it to move beyond interpretation into normative development,¹⁰ and while this has strengthened the protection of liberty, it has also generated concerns regarding doctrinal consistency, clarity and judicial overreach.¹¹ This paper examines the evolution of Article 21 over seventy-five years, focusing on how judicial interpretation has transformed its meaning and function within the constitutional framework.

1.1 Research Questions and Objectives

This study is organised around four questions.

- How has Article 21 evolved from a narrowly framed procedural guarantee into the central constitutional protection for life and personal liberty between 1950 and 2025?
- What interpretive methods has the Supreme Court employed to expand the scope of Article 21, particularly regarding fair, just and reasonable procedure and proportionality in state action?
- How has Article 21 shaped India's constitutional criminal process, particularly in matters of arrest, detention, bail and speedy trial?

⁶ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India).

⁷ *Sunil Batra v. Delhi Admin.*, (1978) 4 S.C.C. 494 (India).

⁸ *Olga Tellis v. Bombay Mun. Corp.*, (1985) 3 S.C.C. 545 (India).

⁹ *M.K. Ranjitsinh v. Union of India*, (2024) 2 S.C.C. ____ (India).

¹⁰ S.P. Sathe, *Judicial Activism in India* 112-14 (Oxford Univ. Press 2002).

¹¹ H.M. Seervai, *Constitutional Law of India* 1125-27 (4th ed. 1996).

- Does the Supreme Court's expansive interpretation of Article 21 reflect principled constitutional development or judicial overreach?

Correspondingly, the study aims to trace the constitutional evolution of Article 21 from its original procedural understanding to its contemporary role as the central guarantee of life and personal liberty; to examine the interpretive methods the Court has adopted in expanding its scope; to analyse its role in shaping India's constitutional criminal process; and to critically assess whether that expansive interpretation represents principled constitutional development or amounts to judicial overreach. The study proceeds on the hypothesis that Article 21 has evolved, through sustained judicial interpretation, into the central constitutional guarantee of life and personal liberty in India.

1.2 Research Methodology

This paper adopts a doctrinal and analytical research methodology, drawing on constitutional provisions, Supreme Court judgments and relevant academic literature, including books and journal articles. The analysis traces judicial interpretation of Article 21 across successive doctrinal phases, with emphasis on how its meaning and scope have evolved over time.

2. CONSTITUTIONAL ORIGINS AND THE MANEKA GANDHI TURN

2.1 Article 21 in the Constituent Assembly

Article 21 was drafted with caution. The framers were acutely aware of colonial abuses carried out under the guise of law, yet they deliberately avoided incorporating an explicit due process clause.¹² Instead, they chose the phrase procedure established by law, signalling a preference for legislative supremacy over judicial scrutiny in matters affecting life and personal liberty.¹³ The Constituent Assembly debates reveal a concern that importing substantive due process might allow courts to substitute their own views for those of elected legislatures. Article 21 was, therefore, not conceived as an open-ended guarantee but as a restrained protection against unlawful deprivation, a design choice reflecting the political realities of a newly independent state in which stability, governance and institutional balance were prioritised over judicial intervention.¹⁴

2.2 Early Judicial Restraint, 1950-1977

In its early years, the Supreme Court adhered closely to this restrained design. It treated Article 21 as a negative guarantee, satisfied once a law prescribing a

¹² B.N. Rau, *India's Constitution in the Making* 178-80 (Orient Longmans 1960).

¹³ Constituent Assembly Debates, Vol. VII, 840-42 (Dec. 6, 1948).

¹⁴ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 134-38 (Oxford Univ. Press 1966).

procedure existed, irrespective of that procedure's fairness or reasonableness.¹⁵ Judicial review was limited, and questions of arbitrariness or proportionality were largely excluded from Article 21 analysis. This period was marked by deference to executive and legislative authority, particularly in matters of preventive detention and internal security,¹⁶ and the Court confined itself to examining whether a prescribed procedure had been followed rather than evaluating its substance. The consequence was a constitutional gap: Article 21 existed as a textual safeguard but lacked the normative strength to respond to abuse of power.¹⁷

2.3 The Maneka Gandhi Turn: Integration of Articles 14, 19 and 21

The decision in *Maneka Gandhi v. Union of India*¹⁸ marked a decisive break from this stance. It rejected the proposition that Article 21 could be satisfied by the mere existence of a legislatively enacted procedure, holding instead that any procedure depriving a person of life or personal liberty must withstand scrutiny under Articles 14 and 19.¹⁹ This integration transformed Article 21 from an isolated guarantee into part of a constitutional continuum governing state action, introducing equality, reasonableness and freedom into the assessment of personal liberty. Procedure ceased to be a neutral formality and became a constitutional requirement subject to standards of non-arbitrariness and fairness, altering the relationship between the individual and the state by placing substantive limits on legislative and executive power.²⁰

2.4 Fair, Just and Reasonable Procedure as Constitutional Doctrine

Post-*Maneka Gandhi* jurisprudence firmly established that procedure established by law must be fair, just and reasonable.²¹ This formulation did not import American due process wholesale, but it achieved a comparable effect through constitutional interpretation, holding that a law affecting liberty could not be arbitrary, oppressive or disproportionate even where validly enacted.²² This doctrinal shift redefined the Court's role, expanding judicial review under Article 21 from checking legality to evaluating the quality of state action, and it enabled the Court to examine arrest, detention, investigation and trial processes with considerably greater intensity.²³ Over time, this principle became the

¹⁵ A.K. Gopalan v. State of Madras, A.I.R. 1950 S.C. 27, 33-35 (India).

¹⁶ ADM, Jabalpur v. Shivkant Shukla, A.I.R. 1976 S.C. 1207, 1230-32 (India).

¹⁷ Granville Austin, Working a Democratic Constitution: The Indian Experience 49-50 (Oxford Univ. Press 1999).

¹⁸ Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248 (India).

¹⁹ Id. at 284-85.

²⁰ Granville Austin, Working a Democratic Constitution: The Indian Experience 271-73 (Oxford Univ. Press 1999).

²¹ Maneka Gandhi, (1978) 1 S.C.C. at 281.

²² H.M. Seervai, Constitutional Law of India 1132-33 (4th ed. 1996).

²³ Hussainara Khatoon v. State of Bihar, (1980) 1 S.C.C. 81, 88-89 (India).

foundation for recognising rights to legal aid, speedy trial, protection against custodial abuse and safeguards against arbitrary deprivation of liberty, marking both the constitutional empowerment of Article 21 and the beginning of enduring debate over the proper scope of judicial interpretation.

3. ARTICLE 21, DIGNITY AND THE CRIMINAL PROCESS

3.1 Custodial Justice and Protection from State Violence

Following the doctrinal shift *Maneka Gandhi* initiated, the Supreme Court confronted the realities of state violence exercised through arrest, detention and incarceration. Article 21 was no longer confined to courtroom procedure; it extended into police stations, prisons and lock-ups, the spaces where liberty is most vulnerable, on the recognition that physical custody places the individual in a position of complete dependence on the state, making constitutional protection most urgent.²⁴ Judicial scrutiny of custodial practice revealed patterns of abuse that formal legality could not justify, and the Court treated torture, handcuffing, bar fetters and inhuman prison conditions as a direct attack on life and dignity, prohibiting not only unlawful deprivation of liberty but cruelty during lawful detention as well.²⁵ This marked a shift from liberty conceived as freedom from restraint to liberty conceived as humane treatment under restraint: state power was no longer absolute once custody was assumed but became subject to continuous constitutional supervision under Article 21.

3.2 Speedy Trial and Legal Aid

The expansion of Article 21 into procedural justice further transformed criminal adjudication. The Supreme Court recognised that delay in investigation or trial effectively punishes the accused without conviction, and treated prolonged detention, particularly of undertrials, as a denial of life and personal liberty rather than a mere administrative lapse.²⁶ The Court similarly acknowledged that access to justice is illusory without legal representation, reading legal aid into Article 21 as a necessary condition for a fair process, particularly for indigent and marginalised accused persons, shifting emphasis from formal opportunity to meaningful participation in the justice system.²⁷ Speedy trial and legal aid were framed not as policy choices but as constitutional obligations,²⁸ reinforcing that fairness in criminal process requires timely and effective justice rather than mere compliance with rules. Uneven enforcement of these principles in subsequent years, however, has exposed the limits of judicial declaration when unmatched by institutional reform.

²⁴ Prem Shankar Shukla v. Delhi Admin., (1980) 3 S.C.C. 526, 532-34 (India).

²⁵ D.K. Basu v. State of W.B., (1997) 1 S.C.C. 416, 435-36 (India).

²⁶ Hussainara Khatoon v. State of Bihar, (1980) 1 S.C.C. 81, 88-90 (India).

²⁷ M.H. Hoskot v. State of Maharashtra, (1978) 3 S.C.C. 544, 548-49 (India).

²⁸ Anita Kushwaha v. Pushap Sudan, (2016) 8 S.C.C. 509, 529-31 (India).

3.3 The Doctrinal Significance of Custodial Jurisprudence

The custodial jurisprudence traced above did more than extend Article 21's geographic reach into police stations and prisons; it established a structural principle that continues to inform the Court's approach to state power more broadly, namely that constitutional protection intensifies, rather than recedes, at precisely the moments when an individual is most completely within the state's control. This principle inverts an older assumption, traceable to the Court's early deference in matters of preventive detention, that lawful custody effectively suspended the ordinary operation of constitutional scrutiny for its duration. By treating custody as the occasion for heightened rather than diminished constitutional attention, the Court's dignity jurisprudence under Article 21 supplied the doctrinal foundation later decisions on compensation, discussed in Section 5 below, and on bail, discussed in Section 7, would build upon directly.

4. SOCIO-ECONOMIC RIGHTS AND THE ENVIRONMENT

4.1 Livelihood, Shelter and Education

The expansion of Article 21 during the mid-1980s and 1990s marked a decisive move from negative liberty toward the conditions necessary for a dignified life. In *Olga Tellis v. Bombay Municipal Corporation*, the Court recognised that the right to livelihood forms an integral part of the right to life, since deprivation of livelihood would render life itself impossible; while the Court ultimately permitted eviction subject to safeguards, the decision established that economic survival is constitutionally relevant under Article 21.²⁹ The right to shelter was similarly conceptualised as more than protection from the elements: in *Shantistar Builders v. N.K. Totame*, the Court held that life under Article 21 includes the right to reasonable accommodation permitting physical and mental growth,³⁰ a principle reinforced in *Chameli Singh v. State of Uttar Pradesh*, which linked shelter to security, privacy and dignity.³¹ Education entered Article 21 jurisprudence on comparable reasoning: in *Unni Krishnan J.P. v. State of Andhra Pradesh*, the Court held that the right to education flows from the right to life, recognising education as essential for the meaningful exercise of liberty, a foundation later given explicit constitutional recognition through Article 21A.³²

4.2 Health and Public Welfare

Health was recognised as a core component of Article 21 on the premise that preservation of life cannot be subject to procedural or financial barriers. In

²⁹ *Olga Tellis v. Bombay Mun. Corp.*, (1985) 3 S.C.C. 545, 572-73 (India).

³⁰ *Shantistar Builders v. N.K. Totame*, (1990) 1 S.C.C. 520, 527-28 (India).

³¹ *Chameli Singh v. State of Uttar Pradesh*, (1996) 2 S.C.C. 549, 554-56 (India).

³² *Unni Krishnan J.P. v. State of Andhra Pradesh*, (1993) 1 S.C.C. 645, 673-75 (India); see also India Const. art. 21A.

Parmanand Katara v. Union of India, the Court held that every doctor, whether at a government or private hospital, bears a professional obligation to provide immediate medical aid to save life, treating denial of emergency treatment as a direct violation of Article 21.³³ This principle extended to occupational and public health in *Consumer Education and Research Centre v. Union of India*, which linked the right to health with humane working conditions,³⁴ and in *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, where the failure of state hospitals to provide timely treatment was held to violate Article 21, reinforcing state accountability in public health administration.³⁵

4.3 Environment and Collective Life

The Supreme Court's environmental jurisprudence under Article 21 reflects recognition that life cannot be meaningfully protected amid ecological degradation. In *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*, the Court treated environmental harm caused by unregulated mining as a direct threat to health and life, departing from a view of environmental protection as a matter of policy alone.³⁶ This approach was consolidated in *Subhash Kumar v. State of Bihar*, which held expressly that the right to life includes the right to enjoyment of pollution-free water and air,³⁷ and clarified further in *Virender Gaur v. State of Haryana*, linking public health, sanitation and ecological balance to constitutional liberty.³⁸ In *Vellore Citizens' Welfare Forum v. Union of India*, the Court adopted the doctrines of sustainable development, the precautionary principle and the polluter pays principle as integral to environmental governance under Article 21, notwithstanding their absence from the constitutional text.³⁹

Recent jurisprudence extends this reasoning to global and long-term risk. In *M.K. Ranjitsinh v. Union of India*, the Court recognised that adverse effects of climate change implicate the right to life and equality, particularly for vulnerable populations, acknowledging that climate-induced harm affects access to food, water, health and habitation and thereby strikes at the core of Article 21.⁴⁰ This recognition signals that Article 21 is no longer confined to immediate physical threats but extends to systemic risk undermining the conditions of survival, connecting environmental protection, intergenerational

³³ *Parmanand Katara v. Union of India*, (1989) 4 S.C.C. 286, 292-93 (India).

³⁴ *Consumer Educ. & Research Ctr. v. Union of India*, (1995) 3 S.C.C. 42, 68-70 (India).

³⁵ *Paschim Banga Khet Mazdoor Samity v. State of W.B.*, (1996) 4 S.C.C. 37, 45-47 (India).

³⁶ *Rural Litig. & Entitlement Kendra v. State of Uttar Pradesh*, 1985 Supp. S.C.C. 79, 87-88 (India).

³⁷ *Subhash Kumar v. State of Bihar*, (1991) 1 S.C.C. 598, 605 (India).

³⁸ *Virender Gaur v. State of Haryana*, (1995) 2 S.C.C. 577, 583-85 (India).

³⁹ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 S.C.C. 647, 658-59 (India).

⁴⁰ *M.K. Ranjitsinh v. Union of India*, (2024) 2 S.C.C. ___, 24-27 (India).

equity and human dignity.⁴¹ At the same time, this jurisprudence places the Court in a domain traditionally occupied by executive planning and legislative action, and the challenge ahead lies in ensuring that Article 21 continues to protect collective life without collapsing the distinction between constitutional adjudication and environmental governance.

5. PROCEDURAL JUSTICE AND STATE ACCOUNTABILITY

5.1 Fair Investigation and Fair Trial

As Article 21's guarantee of fair procedure consolidated, the Supreme Court increasingly applied it to the quality of criminal investigation and trial, recognising that an unfair investigation can irreversibly prejudice the accused and render the trial itself meaningless. In *Zahira Habibullah Sheikh v. State of Gujarat*, the Court held that a fair trial is a fundamental facet of Article 21, emphasising that justice cannot be achieved where witnesses are intimidated or the process compromised.⁴² The scope of Article 21 was extended to the conduct of investigation itself: in *Nirmal Singh Kahlon v. State of Punjab*, the Court held that a tainted or biased investigation violates the right to life and personal liberty,⁴³ and in *Babubhai v. State of Gujarat*, the Court observed that investigation must be free, fair and transparent, and that arbitrariness at this stage offends Article 21.⁴⁴ These decisions reflect a shift from treating investigation as an executive function immune from scrutiny to treating it as a constitutional process subject to judicial oversight, a principle the Court extended to legal representation in *Mohd. Hussain v. State*, where denial of effective legal assistance was held to vitiate the trial and violate Article 21.⁴⁵

5.2 Compensation for Illegal Detention and Abuse of Power

Article 21 jurisprudence has also developed a public law remedy for violations of personal liberty. In *Nilabati Behera v. State of Odisha*, the Court held that custodial death resulting from state action warrants monetary compensation as a constitutional remedy independent of private law claims, treating compensation as a means of enforcing accountability rather than a substitute for criminal prosecution.⁴⁶ This approach was reinforced in *D.K. Basu v. State of West Bengal*, which laid down detailed guidelines governing arrest and detention and recognised compensation as an appropriate response to custodial abuse, justified not as a policy measure but as a constitutional requirement flowing from Article

⁴¹ Shylashri Shankar, *Environment, Rights and the Indian Supreme Court*, 36 J. Env'tl. L. 201, 214-16 (2024).

⁴² *Zahira Habibullah Sheikh v. State of Gujarat*, (2004) 4 S.C.C. 158, 172-76 (India).

⁴³ *Nirmal Singh Kahlon v. State of Punjab*, (2009) 1 S.C.C. 441, 452-54 (India).

⁴⁴ *Babubhai v. State of Gujarat*, (2010) 12 S.C.C. 254, 263-65 (India).

⁴⁵ *Mohd. Hussain v. State*, (2012) 9 S.C.C. 408, 419-21 (India).

⁴⁶ *Nilabati Behera v. State of Orissa*, (1993) 2 S.C.C. 746, 762-64 (India).

21,⁴⁷ and in *Rudul Sah v. State of Bihar*, where prolonged illegal detention after acquittal was held to violate Article 21, warranting immediate compensation.⁴⁸ Through these decisions, Article 21 became a tool for corrective justice, reflecting judicial recognition that procedural violations often cause irreversible harm and that traditional remedies are inadequate to address such injury.

6. AUTONOMY, PRIVACY AND PERSONHOOD

6.1 Bodily Integrity and Reproductive Autonomy

The evolution of Article 21 into a guarantee of personal autonomy marked a further deepening of its substantive content, on the recognition that control over one's body and personal choices lies at the core of liberty. In *Suchita Srivastava v. Chandigarh Administration*, the Court held that reproductive choice forms an integral part of personal liberty under Article 21, emphasising that bodily autonomy is inseparable from dignity and cannot be overridden by paternalistic state assumptions, even where welfare considerations are invoked.⁴⁹ The Court reinforced this understanding in *Selvi v. State of Karnataka*, holding that involuntary administration of narco-analysis, polygraph and brain-mapping tests violates personal liberty, treating non-consensual bodily intrusion as an affront to autonomy, privacy and mental integrity.⁵⁰

6.2 Privacy, Identity and Constitutional Morality

The recognition of privacy as a fundamental right in *Justice K.S. Puttaswamy v. Union of India* represents one of the most significant developments in Article 21 jurisprudence. The Court held that privacy is intrinsic to life and personal liberty, grounding it in dignity, autonomy and identity, and treating it not as a narrow right against surveillance but as a condition necessary for self-development and freedom of choice.⁵¹ This understanding of personhood influenced subsequent decisions on identity and intimate choice. In *Navtej Singh Johar v. Union of India*, the Court invoked Article 21 to protect sexual orientation as an aspect of dignity and autonomy, rejecting societal morality as justification for criminalisation,⁵² and in *Joseph Shine v. Union of India*, the Court struck down the offence of adultery on the ground that it violated dignity and equality by treating women as property.⁵³ The Court also articulated constitutional morality as a guiding interpretive principle, departing from

⁴⁷ D.K. Basu v. State of W.B., (1997) 1 S.C.C. 416, 435-37 (India).

⁴⁸ Rudul Sah v. State of Bihar, (1983) 4 S.C.C. 141, 147-48 (India).

⁴⁹ Suchita Srivastava v. Chandigarh Admin., (2009) 9 S.C.C. 1, 16-18 (India).

⁵⁰ Selvi v. State of Karnataka, (2010) 7 S.C.C. 263, 309-15 (India).

⁵¹ Justice K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1, 298-303 (India).

⁵² Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1, 90-96 (India).

⁵³ Joseph Shine v. Union of India, (2019) 3 S.C.C. 39, 71-73 (India).

deference to popular morality and placing individual dignity above majoritarian values.⁵⁴

This jurisprudence has strengthened protection for marginalised identities, but it has also expanded the normative role of the judiciary. Reliance on moral reasoning alongside constitutional text raises legitimate questions about the boundaries of judicial interpretation, particularly where societal consensus remains genuinely contested, a tension this paper returns to in its concluding assessment.

The trajectory from *Suchita Srivastava* and *Selvi* through *Puttaswamy* to *Navtej Singh Johar* and *Joseph Shine* reflects a coherent doctrinal arc rather than a series of unconnected developments. Each decision extends the same underlying proposition, that Article 21 protects the individual's capacity for self-authored identity and choice, into a progressively wider set of contexts: bodily integrity against unwanted medical or investigative intrusion, informational and decisional privacy generally, and finally the specific intimate choices, sexual orientation and marital fidelity among them, that earlier jurisprudence had left to majoritarian social judgment. Read together, these decisions establish personhood, rather than mere physical survival, as the object Article 21 ultimately protects, a conceptual shift with consequences extending well beyond the specific fact patterns each case presented.

7. BAIL, IMPRISONMENT AND CONTEMPORARY DIMENSIONS

7.1 Bail as a Constitutional Rule

The relationship between Article 21 and bail jurisprudence has become one of the most contested areas of Indian constitutional law. The Supreme Court has repeatedly affirmed that personal liberty cannot be treated as a collateral casualty of criminal procedure.⁵⁵ In *Gudikanti Narasimhulu v. Public Prosecutor*, the Court described bail decisions as requiring a balance between the interests of justice and the fundamental value of liberty, treating bail not as a matter of discretion alone but as a constitutional concern rooted in Article 21.⁵⁶ This position was reaffirmed in *Hussainara Khatoon*, which exposed the scale of undertrial incarceration and treated prolonged detention without trial as a direct violation of Article 21, recognising that denial of bail coupled with systemic delay effectively amounts to punishment without conviction.⁵⁷ More recent jurisprudence has reiterated that bail is the rule and jail the exception: in *Union of India v. K.A. Najeeb*, the Court held that constitutional courts may

⁵⁴ Shylashri Shankar, *Courts, Morality and Constitutional Transformation in India*, 42 L. & Soc. Inquiry 112, 118-20 (2017).

⁵⁵ M.P. Jain, *Indian Constitutional Law* 1240-42 (8th ed. 2018).

⁵⁶ *Gudikanti Narasimhulu v. Pub. Prosecutor*, (1978) 1 S.C.C. 240, 242-43 (India).

⁵⁷ *Hussainara Khatoon v. State of Bihar*, (1980) 1 S.C.C. 81, 88-90 (India).

grant bail even under stringent statutory regimes where prolonged incarceration violates Article 21,⁵⁸ and in *Satender Kumar Antil v. CBI*, the Court issued guidelines emphasising that arrest and detention should not be used mechanically and that liberty must be preserved absent compelling justification for restraint.⁵⁹

7.2 Delay, Undertrial Incarceration and Equality

Delay has emerged as one of the most serious threats to liberty under Article 21. The Court has acknowledged that prolonged incarceration, particularly of undertrials, undermines the presumption of innocence and erodes the legitimacy of the criminal process.⁶⁰ In *Supreme Court Legal Aid Committee v. Union of India*, prolonged detention under special statutes was held to violate Article 21 even where the law imposed strict conditions on bail,⁶¹ and the Court has since linked delay to equality concerns, treating prolonged custody without meaningful progress in trial as relevant to bail⁶² and holding that indefinite imprisonment without timely trial offends the right to life and personal liberty regardless of the seriousness of the underlying allegations.⁶³ This jurisprudence has not, however, been applied uniformly; divergent outcomes in similar factual situations have raised concerns about arbitrariness and inconsistency, and the tension between statutory restriction and constitutional liberty continues to test the coherence of Article 21 jurisprudence in this domain.

7.3 Digital Access, Disability and Inclusion

Article 21 jurisprudence has also engaged with the realities of digital governance and its impact on personal liberty, recognising that exclusion from essential digital systems can effectively deny access to basic rights and services.⁶⁴ The Court has held that access to digital identification and e-verification mechanisms must be made inclusive, particularly for persons with disabilities, treating digital exclusion not as a technical inconvenience but as a substantive barrier to the enjoyment of life and liberty.⁶⁵ This reasoning reflects a broader recognition that state action increasingly operates through digital infrastructure, and that inaccessible or discriminatory systems can produce new forms of deprivation,⁶⁶ though the Court has been careful to focus on the impact

⁵⁸ *Union of India v. K.A. Najeeb*, (2021) 3 S.C.C. 713, 723-25 (India).

⁵⁹ *Satender Kumar Antil v. CBI*, (2022) 10 S.C.C. 51, 73-76 (India).

⁶⁰ S.P. Sathe, *Judicial Activism in India* 134-36 (Oxford Univ. Press 2002).

⁶¹ *Supreme Court Legal Aid Comm. v. Union of India*, (1994) 6 S.C.C. 731, 742-44 (India).

⁶² *Manish Sisodia v. Directorate of Enforcement*, (2023) 9 S.C.C. 338, 351-53 (India).

⁶³ *Mohd. Muslim v. State (NCT of Delhi)*, (2023) 10 S.C.C. 1, 15-18 (India).

⁶⁴ Shylashri Shankar, *Digital Governance and Constitutional Rights in India*, 47 *Econ. & Pol. Wkly.* 38, 40-42 (2024).

⁶⁵ *Amar Jain v. Union of India*, (2024) 6 S.C.C. ___, 18-22 (India).

⁶⁶ Gautam Bhatia, *Technology, Exclusion and the Constitution*, 9 *Indian L. Rev.* 1, 7-9 (2025).

of digital systems on human dignity and autonomy rather than to constitutionalise technology as such.

7.4 Capital Punishment, Delay and Curative Jurisdiction

The most recent phase of Article 21 jurisprudence has revisited the constitutional limits of capital punishment. In *Shatrughan Chauhan v. Union of India*, the Court held that unexplained delay in execution violates Article 21,⁶⁷ a principle recent decisions have continued to apply. In *Surendra Koli v. State of Uttar Pradesh*, arising from the Nithari killings, the Supreme Court's curative bench held that allowing a conviction to stand on an evidentiary foundation the Court had itself, in twelve companion prosecutions arising from the same facts, already rejected as involuntary or inadmissible offends both Article 21 and Article 14, since arbitrary disparity in outcomes on an identical evidentiary record is inimical to equality before the law, and it accordingly allowed the curative petition.⁶⁸ The decision underscores that Article 21's insistence on fair, just and reasonable procedure is at its most exacting where capital punishment, and consequently an irreversible loss of life, is at stake, and that the curative jurisdiction exists precisely to prevent such anomalies from hardening into precedent.⁶⁹ Rather than expanding capital punishment jurisprudence, the Court has used Article 21 to narrow its application, reinforcing that life under Article 21 cannot be compromised by procedural shortcuts where irreversible punishment is at stake.

The bail jurisprudence surveyed here also illustrates a recurring institutional pattern in Article 21 doctrine: principle announced at the level of the Supreme Court frequently fails to translate uniformly into practice at the level of trial and sessions courts, where the volume of bail applications and the absence of comparable doctrinal scrutiny can produce results at odds with the liberty-protective standard the Court has articulated. *Satender Kumar Antil's* issuance of specific procedural guidelines, rather than a further restatement of general principle, reflects the Court's own recognition of this implementation gap, and it signals an emerging preference within Article 21 jurisprudence for concrete institutional mechanisms over declaratory pronouncement, a preference this paper's concluding assessment suggests should extend to other domains of Article 21 doctrine as well.

⁶⁷ *Shatrughan Chauhan v. Union of India*, (2014) 3 S.C.C. 1, 58-61 (India).

⁶⁸ *Surendra Koli v. State of Uttar Pradesh*, 2025 INSC 1308 (India).

⁶⁹ Abhinav Sekhri, *Death Penalty, Delay and Article 21*, 12 NUJS L. Rev. 145, 152-55 (2024).

8. JUDICIAL INTERPRETATION, LIMITS AND THE WAY FORWARD

The evolution of Article 21 traced in this paper demonstrates the Supreme Court's sustained effort to respond to the realities of state power and individual vulnerability. Through interpretation, it has transformed a formally worded provision into the central constitutional guarantee of life and personal liberty. This transformation has not been linear or uniform; it has occurred through incremental, case-based reasoning, frequently triggered by concrete injustice rather than abstract doctrinal theory. Article 21 jurisprudence, in this sense, reflects a pragmatic constitutionalism, shaped as much by lived experience as by interpretive method.

At its best, the Court's interpretation of Article 21 has functioned as a corrective to executive excess and legislative inertia. Judicial insistence on fair, just and reasonable procedure has strengthened protection against arbitrary arrest, prolonged incarceration, custodial violence and delayed justice, and the expansion of Article 21 into bail, legal aid, dignity, health, environment and privacy has ensured that liberty is not reduced to formal abstraction. For the ordinary individual, these interpretations have supplied constitutional language with which to challenge everyday exercises of state power.

At the same time, the breadth of Article 21 has produced genuine tension. The absence of clearly articulated limiting principles has, at times, produced uneven application, with similar factual situations yielding different outcomes, particularly in bail and detention cases, weakening the predictability that gives a constitutional safeguard its practical force. Concerns regarding judicial overreach cannot be dismissed lightly either: by reading substantive content into Article 21 across such diverse domains, the Supreme Court has occasionally assumed a role closer to policy supervision than constitutional adjudication. Such intervention may be justified where a genuine rights vacuum or systemic institutional failure exists, but its routine use risks diluting the democratic accountability ordinary policymaking is meant to supply.

The way forward lies in consolidation rather than further expansion. Article 21 jurisprudence would benefit from clearer standards governing proportionality, delay, incarceration and state obligation; consistent application of already-established principles is more urgently needed than recognition of new facets of the right. Judicial emphasis should remain concentrated on safeguarding liberty where state action is coercive, irreversible or structurally unfair, particularly within the criminal justice system, where the consequences of inconsistency fall most heavily on those least able to absorb them.

At seventy-five years, Article 21 stands as both an achievement and a responsibility. Its strength lies in its demonstrated capacity to adapt to new

forms of state power and new categories of harm, but its continued legitimacy depends on restraint in how that adaptive capacity is exercised. The future of Article 21 will be defined not by how much further it can be made to absorb, but by how coherently and consistently it protects the life and liberty of the individuals who continue to rely on it.

A further difficulty concerns the relationship between Article 21's socio-economic and dignitarian expansion, traced in Sections 3 and 4, and its criminal process jurisprudence, traced in Sections 5 and 7. The former has proceeded largely through declaratory relief, articulating positive state obligations without correspondingly detailed enforcement mechanisms, while the latter has developed more concrete remedial doctrine, compensation, bail guidelines, curative review, precisely because courts confront individual litigants whose liberty is presently and tangibly at stake. This asymmetry suggests that Article 21's greatest institutional strength lies in constraining specific, identifiable exercises of coercive state power, and that its more diffuse socio-economic and environmental applications, however doctrinally sound, will continue to depend on legislative and executive follow-through that judicial declaration alone cannot supply.