



## **Expanding Horizons of Article 21: Judicial Interpretation of Right to Life and Personal Liberty in India**

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### **ABSTRACT :**

Article 21 of Indian Constitution ensures life and personal liberty from deprivation except in accordance with procedure established by law. This paper studies how Supreme Court of India has developed meaning of above provision in a manner not limited to mere physical existence or immunity from detention. The paper adopts a doctrinal approach, together with transparent content analysis of ten significant Supreme Court judgments made between 1978 and 2022. Every judgment is coded based on primary rights area covered as well as whether it involves main function of restraining state actions or requiring state to act. There is one procedural-liberty judgment, one foundational dignity judgment, three socioeconomic rights judgments and five autonomy judgments in sample. Four judgments express a positive duty while six define either a restraint, recognition or decisional freedom. The analysis shows that scope of Article 21 rights has been extended through two interrelated avenues: procedural fairness and substantive conditions for a life of dignity.

**Keywords:** Article 21; right to life; personal liberty; Supreme Court of India; dignity; empirical legal study.

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### **Introduction**

However, scope of application of text is broad: "No person shall be deprived of his life or personal liberty except according to procedure established by law". It includes fair procedure, means of livelihood, education, medical treatment, gender identity, privacy, end-of-life decisions and reproductive freedom. The issue is not whether all significant social concerns must become independent fundamental rights, but rather how court has related particular claims to liberty, dignity and other rights provided for in Part III and what kind of obligation it creates for state.

In this paper, I want to know: What are types of Article 21 interests reflected in a set of landmark decisions and how ratio of protection from interference and affirmative provision varies within this group of cases? The importance of this issue is due to fact that declaration of a right does not necessarily mean how this right will be fulfilled, especially when issue is health, shelter and education.

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### **Research Design and Methodology**

A total of ten Supreme Court judgments that have often been used as landmarks within a particular phase of Article 21 jurisprudence, fall between 1978 and 2022 and contain a clear statement on Article 21 are selected. It is not a random sample but a qualitative sample of Supreme Court judgments. Case and source trail are presented in Table 1 and References. Judicial statements made by Supreme Court in later judgments were used to validate propositions identified herein.

The codes for purposes of replicability consist of a single principal domain: procedural liberty, foundational dignity, socio-economic conditions or decisional autonomy. The second code identifies whether holding involves a material positive duty, wherein holding explicitly requires a state provision or protection of access or a protection or recognition-based holding. Mixed holdings receive principal duty articulated in holding; this is a weakness in coding rather than an assertion that a holding only has one impact. Frequencies were manually tallied from case matrix and no surveys, interviews or outcomes for litigants were collected.

This selection criterion has been designed to favor decisions which have led to expansion of language of law that can be applied by future courts. Thus, collection reflects doctrinal pluralism, but it is also prone to selection bias as a consequence of choosing well-known and frequently cited decisions. Each judgment in this sample is considered only once, despite there being multiple opinions or several constitutional provisions cited in each case. The date refers to date when decision was delivered by Supreme Court, although a law report might have a different publication date. "Positive" and "protective" refer to main judicial proposition rather than ultimate order in each case.

Coding occurred in three stages. In first stage, Proposition 21 in each decision was extracted from decision itself or from an interpretation of it made in a subsequent Supreme Court decision on same point. Next, this Proposition 21 was coded into whichever domain would provide best explanation of

alleged harm. Finally, in duty code, key question asked whether making effective Proposition 21 required government to provide a service or whether it rather involved requirement that government should not impinge upon a protected sphere of freedom. This coding matrix allows all codings to be examined. There is no need for any statistical test: ten intentionally chosen cases constitute neither a sample nor an estimate of any population parameter.

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### Judicial Development of Article 21

Maneka Gandhi v. Union of India (1978) introduced idea that procedure used in a law that impacts fundamental freedom must itself be reasonable, just and fair, in addition to interpreting Articles 14, 19 and 21 in conjunction. Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981) on other hand interpreted life as being dignified human life, which includes not just basic needs of a human but also those necessary for human expression.

The Court also made connection between Article 21 and conditions of existence. In Olga Tellis v. Bombay Municipal Corporation (1985), livelihood is considered as part and parcel of life, yet it is regulated with certain legal safeguards. In Mohini Jain v. State of Karnataka (1992) and Unni Krishnan, J.P. v. State of Andhra Pradesh (1993), education is tied up with right to life; this research examines Unni Krishnan, while later constitutional amendment introduced Article 21A. In Paschim Banga Khet Mazdoor Samity v. State of West Bengal (1996), failure of a state-owned hospital to provide emergency treatment violates Article 21. These decisions are different from straightforward prohibition of interference by state; they imply concerns about delivery and access.

Another set of cases relate to issues of choice and personhood. In National Legal Services Authority v. Union of India (2014), self-determination of gender was accepted as part of personal liberty and dignity. The case of Justice K.S. Puttaswamy (Retd.) v. Union of India (2017) accepted privacy as a fundamental right under Article 21 and other Part III rights, making it clear that it is not an absolute right. In Common Cause v. Union of India (2018), Court recognised right to die with dignity with regard to passive euthanasia and advance medical directives with appropriate safeguards; it did not provide for a right to active euthanasia. In Navtej Singh Johar v. Union of India (2018), Court struck down criminalisation of consensual same-sex activity of adults by connecting liberty and dignity with equality and expression. In X v. Principal Secretary, Health and Family Welfare Department (2022), reproductive choice and legal abortion were recognised as aspects of autonomy, dignity and right to health.

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### From Procedure to Substantive Liberty

The idea that “procedure established by law” indicates any legally sanctioned procedure as enough to justify deprivation of liberty can arise. But importance of case of Maneka Gandhi lies in its refutation of purely formal approach. Here quality of procedure is judged and Article 21 comes into dialogue with rights of equality and freedom. Thus, fairness becomes a constitutional requirement for exercise of state power in regard to liberty. This does not mean that all administrative difficulties would amount to a violation of Article 21.

The procedural turn will have important consequences on cases that follow in this sample. In cases of livelihood, individual concerned has to be seen as a rights-holder whose reliance on place of his livelihood or residence holds constitutional significance. In medical cases, state cannot make provision of emergency care wholly discretionary where delay may result in loss of life. In privacy cases, there needs to be legal justification and evaluation against constitutional norms of state interference. This consistency is a method of review, but not necessarily same remedy in all areas. Fair hearing, medical attention and private choice need different institutional responses. Article 21 makes sense when there is a matching of harm with duty.

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### Dignity and Material Conditions of Life

Francis Coralie Mullin provides a concrete picture of life through association with human dignity. It would be wrong to interpret right to life in such a way that Article 21 guarantees nothing more than mere biological survival. However, idea of dignity has a wider scope. If used without any further definition, it may become no more than a tag for all policies considered good. In view of socioeconomic provisions, it becomes easier to understand what kind of concept it really is: livelihood covers process of sustenance; education covers ability to grow and join in; emergency services cover process of saving lives.

Olga Tellis demonstrates this reasoning in two respects – its scope and limitations. While Court has accepted that deprivation of livelihood constitutes deprivation of life since it provides means of survival, Court does not make a sweeping declaration of right to occupy public pavement. The strength of decision lies in requirement that state and court take into consideration human consequence of dispossession rather than viewing problem merely as one of property management. This is equally necessary when courts refer to provision of food, shelter or health as a constitutional issue. A convincing Article 21 plea specifies vulnerable group, link between state’s action and threat to dignified life and remedy available to institution concerned.

Education serves as an example of how process of interpreting Constitution relates to constitutional amendment. In Unni Krishnan, education was connected to life and directive principles in era before passage of Article 21A. After addition of Article 21A, there is a clear constitutional provision for free and compulsory education for all children in age group as per Article 21A. It will be wrong to look at previous decision regarding Article 21 as only basis for understanding extent of field of education law today. The case is historically significant insofar as it demonstrates court’s readiness to see social capacity in right to life.

Paschim Banga demonstrates most concrete material obligation among cases here sampled. In this case, court determined that there was a violation of Article 21 due to inability to receive prompt medical care in government hospitals following an injury. This principle links right claim to structure of hospital system organized by state. In this way, recognition is just beginning of fulfillment. The health system needs to realize material obligation in terms of availability and functional pathways, particularly where there is no safe waiting time for patient. Thus, case is not itself an indicator of whether such an obligation was fulfilled.

### Autonomy, Privacy and Bodily Choice

These cases on autonomy rights all revolve around need for control over decisions that are personal or about identity, but they all arise from different legal contexts. NALSA is concerned with gender identity and harm caused due to failure of law and other institutions to recognize individual's self-perception. Puttaswamy is concerned with privacy as a fundamental right that is related to concepts of dignity and autonomy, while explicitly allowing possibility of placing justifiable restrictions on privacy rights. Navtej is about impact of criminal law on consensual intimacy and stigma created by this intrusion.

The case of Common Cause raises a unique issue since decision about death at end of one's life is made under conditions of vulnerability, medical uncertainty and danger of abuse. It is important to stress that Court sanctioned passive euthanasia and advance directives within framework of dignity and autonomy ensured by certain guarantees. Treating above decision as a broad uncontrolled right to terminate one's life would be incorrect. The necessity for procedure strengthens but does not negate idea of autonomy in this case. The decision-maker should have ability to prove preferences or interests of person and understand medical situation, observing necessary guarantees.

X v. Principal Secretary is one example that highlights weakness of dividing rights into negative and positive. Reproductive freedom entails freedom from coercion, but a legal right to a legal abortion does not amount to much if there is no availability of health services and information on abortion. In ruling of this case, state duties with respect to reproductive health have been highlighted along with element of equality. This particular case is categorized under positive duty for same reason, even though autonomy is core of rights here. The case is a warning not to treat privacy, dignity and health as watertight compartments.

### Empirical Findings

Table 1. Coding of ten selected judgments

| Decision                        | Primary domain       | Dominant duty | Article 21 contribution              |
|---------------------------------|----------------------|---------------|--------------------------------------|
| Maneka Gandhi (1978)            | Procedural liberty   | Protective    | Fair, just and reasonable procedure  |
| Francis Coralie Mullin (1981)   | Foundational dignity | Protective    | Life with human dignity              |
| Olga Tellis (1985)              | Socioeconomic        | Positive      | Livelihood and procedural safeguards |
| Unni Krishnan (1993)            | Socioeconomic        | Positive      | Education linked to life             |
| Paschim Banga (1996)            | Socioeconomic        | Positive      | Timely emergency medical care        |
| NALSA (2014)                    | Decisional autonomy  | Protective    | Gender self-determination            |
| Puttaswamy (2017)               | Decisional autonomy  | Protective    | Constitutional privacy               |
| Common Cause (2018)             | Decisional autonomy  | Protective    | End-of-life choice with safeguards   |
| Navtej Singh Johar (2018)       | Decisional autonomy  | Protective    | Consensual adult intimacy            |
| X v. Principal Secretary (2022) | Decisional autonomy  | Positive      | Reproductive healthcare access       |

The distribution is 1 procedural liberty, 1 foundational dignity, 3 socioeconomic and 5 decisional autonomy. The dominant-duty classification produces 4 positive duties and 6 protective or recognition-based decisions. The five autonomy decisions have been made between 2014 and 2022, while three socioeconomic decisions included in this purposive sampling belong to 1985-1996. It should be understood as a trend in landmark decisions, rather than proof that court did not hear any socioeconomic cases since 1996.

The analysis highlights an important distinction in doctrine. While autonomy claims are usually related to recognition and prohibition of coercion, access to institutions may be necessary for practical realization of right. X is positive, as judgment explicitly addresses duty of state to ensure accessibility of reproductive healthcare. In turn, Olga Tellis demonstrates that referring to livelihood as an element of life does not automatically transform evictions into absolute constitutional prohibitions.

### Discussion

The case demonstrates that development of Article 21 has neither followed a linear path nor is an isolated list of implied rights. Maneka Gandhi provides a principle of fairness regarding deprivation of liberty. Francis Coralie Mullin provides dignity as a scale of what life is about. Later cases will

refer to all these concepts as well as to equality, expression and directive principles when assessing various violations. Such approach helps to understand why Article 21 is more than just right to physically exist but needs a certain connection to be explained.

These findings should be also a cautionary tale of not confusing judicial recognition with its implementation in society. Any positive obligations regarding hospitals, schools, contraception have to be measured in terms of budget, administrative capabilities and inequality of access to all of these. The current dataset reflects only what was said in cases; it does not prove whether hospitals provided medical help, whether schools admitted kids, whether there were any remedies for petitioners.

Comparing coded cases leads to following conclusions. First, domain of claim and nature of duty are connected but separate issues. While autonomy cases in this sample tend to be protective, reproductive health case features an actual positive access duty. Second, timing is insufficient to account for difference in focus. This sample has been selected on purpose to include doctrinal milestones and more recent cases have been selected, in part, because they featured autonomy. Third, Court usually justifies an Article 21 decision through multiple constitutional articles. In *Maneka Gandhi* case, liberty is linked to equality and other freedoms. Similarly, *Navtej* concerns more than one right. Coding cases by Article 21 alone would miss an essential point about constitutional interpretation in India. Counting should be seen as a comparative tool, not as evidence of replacement of rights.

The difference between recognition and implementation has practical implications for methodology. The judiciary might decide on a right decisively but hand over work of funding, rule-making, training and supervision to relevant government departments. At same time, a more restrictive judicial decision could lead to significant implementation if relevant government departments have capacity to implement it. In order to measure social impact, one will need data other than reported court decisions: hospitalizations and denials, enrollments and exclusions from schools, provision of reproductive services or treatment of transgender persons in state facilities. These kinds of data would need definition and geographic and time limits as well as prevention of mistaking any changes that happen at all for those caused by a specific court decision. That kind of data is not available here. What is available is a replicable start and a limited result.

Several caveats apply to above analysis. First, case collection omits High Court decisions, interim orders and Article 21 cases under Section 21. Also, these ten cases are not a result of a comprehensive database search. Early decisions are authenticated here by descriptions found in Supreme Court decisions, but which provide only confirmation of proposed propositions without substituting for careful reading of each paragraph of original decision. One code in domain of primary codes represents complex holdings with multiple dimensions. One code in category of duties similarly ignores idea that preventing interference by state sometimes requires use of coercive powers and that substantive rights come with procedural protection. These are some of choices in designing study, which are clearly disclosed to enable replication of classification by another researcher.

It will also aid in determining what a future comparison will need to control for. If in one decade there were numerous cases relating to privacy and in another decade there were numerous cases dealing with hospitals, then it is possible that number of outcomes in Article 21 may not represent an evolution in legal doctrine, but just a pattern in litigation. Size of bench, identity of party seeking remedy, nature of government action challenged, remedy sought and existence of a related case based on Article 14 or 19 could all have an effect on court's reasoning process. Any coding scheme needs to capture those variables before claiming any trends. Also, recognition of a constitutional right and application of right in favor of party seeking remedy should be distinguished. A court decision could state an expansive principle but reject relief due to procedural facts or due to a competing public interest. Failure to do so will lead to exaggerating expansion or underestimating development of doctrine. Transparency is fundamental to empirical legal research: a reader must be able to understand which observations have led to a particular conclusion, which judgments could have been categorized otherwise and which new facts would be necessary to determine whether promise of a doctrine really affected external reality.

## Conclusion and Suggestions

Article 21 develops through fair procedure, dignified conditions and respect for personal autonomy in these ten leading cases. The latter set of more recent cases focus on autonomy, but positive duty cases continue to form an essential element of any definition of a meaningful life. For each case, Court needs to specify particular interest under Article 21, connection to other clauses of Constitution and implementer of remedy.

The empirical utility of such an exercise resides in ability to track number cited to each case through an identified coding decision. The constitutional value in doing so is illustration of need to consider all three elements.

Two useful conclusions arise from this discussion. First, when courts resolve claims under Article 21, they can increase their decision-making process' amenability to review by articulating protected interest, evidence of deprivation, complementary constitutional provisions and precise actor that bears responsibility for remedy. If a remedy involves ongoing provision of public services, judgment should also articulate a compliance mechanism that will avoid transforming court into an administrative agency. Second, researchers should report criteria and coding process along with their results. A broader study might determine a specific period of time and examine all decisions of Supreme Court during that period, which included a substantive discussion of Article 21. A portion of those cases could then be independently coded to check for inter-coder reliability. Such an approach would provide greater grounds to conclude about shifts in Court's doctrine than a purposive sample, which was chosen here. In any case, at this stage one may draw less ambitious but important conclusion – decisions analyzed here prove that Article 21 is a structured source of procedural rights and obligations, as well as personal autonomy.

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