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THE EXPANDING HORIZON OF ARTICLE 21: CONSTITUTIONAL TRANSFORMATION OR JUDICIAL OVERREACH?

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Abstract:

Article 21 of the Constitution of India has evolved from an innocuous provision guaranteeing life and personal liberty to a catch all entry entrenching various substantive rights. Since *Maneka Gandhi v Union of India*, the interpretation of Article 21 has been expanded to encompass dignity, privacy, livelihood, health, education, environment and individual autonomy. While the expansion of rights under Article 21 reflects the adaptability and dynamism of the Constitution, it provokes questions of judicial activism, separation of power and judicial overreach. This research traces the evolutionary trajectory of Article 21 through various judicial pronouncements and evaluates through selected Supreme Court decisions, if the expansion of Article 21 represents a legitimate constitutional transformation or judicial law-making. A discussion around emerging issues concerning digital privacy and technology autonomy is also undertaken. The study suggests a Constitutional Nexus Test to assess the boundaries of judicial expansion while ensuring the transformative jurisprudence of Article 21.

Introduction:

Article 21 of the Constitution provides that “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*”² In its original interpretation, the provision was understood narrowly: once a deprivation was authorised by a validly enacted law, the Court generally did not examine whether the procedure itself was fair or reasonable. This approach changed decisively in *Maneka Gandhi v Union of India*,³ where the Supreme Court held that the procedure contemplated under Article 21 must be fair, just and reasonable, read in conjunction with Articles 14 and 19.⁴ This transformed Article 21 from a procedural safeguard into a substantive constitutional guarantee. Subsequently, judicial interpretation expanded its scope to

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² Constitution of India 1950, art 21.

³ *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

⁴ Ibid.

encompass rights relating to human dignity, livelihood, health, privacy, shelter and a clean environment, among others.⁵

This expansion creates a constitutional tension. The transformation argument views the Constitution as a living document capable of responding to evolving social realities, enabling courts to protect vulnerable groups and secure dignity and substantive justice. Conversely, the overreach argument cautions that unelected courts may exceed their adjudicatory role and effectively undertake judicial legislation. Excessive expansion of Article 21 may therefore raise concerns regarding separation of powers, particularly when judicial directions enter areas traditionally belonging to legislative or executive policy-making.

Research question:

Where should the constitutional boundary lie between legitimate judicial interpretation and impermissible judicial law-making under Article 21?

The constitutional boundary under Article 21 should lie where judicial interpretation gives effect to constitutional text, values and established precedent without creating an entirely new policy regime. The Supreme Court is justified in expanding Article 21 when necessary to protect life, liberty and dignity in light of changing social conditions. *Maneka Gandhi v Union of India* established that the procedure affecting personal liberty must be fair, just and reasonable, providing a constitutional basis for such development.⁶ However, judicial creativity becomes problematic when courts move beyond interpretation and effectively assume the legislative or executive function by prescribing detailed policies, creating institutional mechanisms, or determining socio-economic priorities without sufficient constitutional grounding. The principle of separation of powers therefore requires courts to enforce constitutional rights while leaving policy choices primarily to democratically accountable institutions.⁷ The appropriate boundary is consequently rights protection without judicial substitution of legislative judgment.

Objective of the study:

The present study aims to critically examine the evolution, expansion and constitutional limits of Article 21 of the Constitution of India. The objectives are:

- To trace the historical and doctrinal evolution of Article 21 jurisprudence, particularly following *Maneka Gandhi v Union of India*.
- To examine the progressive judicial interpretation of “life” and “personal liberty” and the emergence of derivative rights.
- To analyse the role of judicial activism in developing rights relating to dignity, privacy, livelihood, health and environmental protection.

⁵ *Francis Coralie Mullin v Administrator, Union Territory of Delhi* (1981) 1 SCC 608; *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1. The Supreme Court recognises dignity, privacy, health and other interests as facets of Article 21

⁶ *Maneka Gandhi v Union of India* (1978) 1 SCC 248, 280–81.

⁷ *Divisional Manager, Aravali Golf Club v Chander Hass* (2008) 1 SCC 683, 689–90.

- To identify instances where expansive Article 21 adjudication may arguably constitute judicial legislation or policy-making.
- To examine the interplay between Article 21, constitutional morality, human dignity and substantive justice.
- To critically determine whether the expansion represents constitutional transformation or judicial overreach.
- To propose principled constitutional limits that preserve judicial protection of fundamental rights while respecting separation of powers and institutional competence.

Article 21 and the evolution of *Menaka Gandhi v. Uoi*:

Article 21 provides that no person shall be deprived of life or personal liberty except according to the “procedure established by law.”⁸ Unlike the American expression “due process of law,” the phrase was deliberately adopted to avoid giving courts an unrestricted power to review the substantive fairness of legislation. The Constituent Assembly debates reveal concerns regarding judicial overreach and the balance between individual liberty and legislative authority.⁹

In *A.K. Gopalan v State of Madras*, the Supreme Court initially adopted a formal and compartmentalised approach to fundamental rights, holding that Article 21 was satisfied where deprivation occurred through a procedure validly enacted by law.¹⁰ However, *R.C. Cooper v Union of India* weakened this compartmentalisation by recognising the interrelationship between fundamental rights.¹¹ This doctrinal movement culminated in *Maneka Gandhi v Union of India*, where the Court transformed Article 21 by holding that the procedure affecting life or personal liberty must be fair, just, reasonable and non-arbitrary, and must satisfy Articles 14 and 19.¹² Thus, Article 21 evolved from a narrow procedural safeguard into a dynamic source of substantive constitutional protection.

Expansion of article 21:

The Supreme Court’s interpretation of Article 21 has progressively transformed “life” from mere physical existence into a guarantee of dignified, meaningful and autonomous existence. In *Francis Coralie Mullin v Administrator, Union Territory of Delhi*, the Court held that the right to life includes the right to live with human dignity and encompasses basic conditions necessary for meaningful existence.¹³

The recognition of privacy in *K.S. Puttaswamy v Union of India* represents a further expansion. The nine-judge Bench affirmed privacy as a fundamental right rooted in Article 21 and other freedoms, encompassing autonomy, bodily integrity, decisional freedom and informational

⁸ Constitution of India 1950, art 21.

⁹ Constituent Assembly Debates, Vol VII, 6 December 1948.

¹⁰ *A.K. Gopalan v State of Madras* AIR 1950 SC 27.

¹¹ *R.C. Cooper v Union of India* (1970) 1 SCC 248.

¹² *Maneka Gandhi v. union of India* (1978) 1 SCC 248.

¹³ *Francis Coralie Mullin v Administrator, Union Territory of Delhi* (1981) 1 SCC 608.

privacy.¹⁴ Similarly, Mohini Jain and Unni Krishnan recognised education as integral to Article 21, contributing to the subsequent constitutional insertion of Article 21A.¹⁵ This demonstrates how judicial interpretation can stimulate formal constitutional development.

Article 21 has also generated positive obligations concerning health and emergency medical care. In *Parmanand Katara and Paschim Banga Khet Mazdoor Samity*, the Court emphasised the State's obligation to protect life through timely medical treatment.¹⁶ The right to a clean environment has likewise been developed through *Subhash Kumar and the M.C. Mehta* cases, linking environmental protection with meaningful life.¹⁷ In *Olga Tellis*, livelihood was recognised as closely connected with the right to life because deprivation of livelihood may deprive a person of the means of living.¹⁸

Procedural fairness has similarly expanded through speedy trial and prisoners' rights. *Hussainara Khatoon* recognised speedy trial as an essential component of Article 21, while *Sunil Batra and D.K. Basu* affirmed that incarceration does not extinguish constitutional protection against cruel or arbitrary treatment.¹⁹

Finally, end-of-life jurisprudence illustrates Article 21's deepest tension. *Gian Kaur, Aruna Shanbaug and Common Cause* progressively addressed dignity, autonomy and passive euthanasia.²⁰ These decisions demonstrate both the transformative capacity of Article 21 and the continuing question of whether judicially derived rights can extend beyond interpretation into constitutional law-making.

Concept of human dignity and article 21:

Human dignity has emerged as a central constitutional principle through which Article 21 has been progressively expanded. In *Francis Coralie Mullin v Administrator, Union Territory of Delhi*, the Supreme Court held that the right to life extends beyond physical existence to include the basic conditions necessary for a dignified human existence.²¹ This understanding established the conceptual link between life, dignity and liberty, enabling Article 21 to protect interests beyond its literal text.

The jurisprudence subsequently developed from dignity towards autonomy, privacy and decisional freedom. In *NALSA v Union of India*, the Court recognised dignity and individual autonomy in affirming the constitutional rights of transgender persons.²² *K.S. Puttaswamy v Union*

¹⁴ *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

¹⁵ *Mohini Jain v State of Karnataka* (1992) 3 SCC 666; *Unni Krishnan, JP v State of Andhra Pradesh* (1993) 1 SCC 645; Constitution of India 1950, art 21A.

¹⁶ *Parmanand Katara v Union of India* (1989) 4 SCC 286; *Paschim Banga Khet Mazdoor Samity v State of West Bengal* (1996) 4 SCC 37.

¹⁷ *Subhash Kumar v State of Bihar* (1991) 1 SCC 598; *MC Mehta v Union of India* (1987) 4 SCC 463.

¹⁸ *Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545.

¹⁹ *Hussainara Khatoon (I) v Home Secretary, State of Bihar* (1980) 1 SCC 81; *Sunil Batra v Delhi Administration* (1978) 4 SCC 494; *D.K. Basu v State of West Bengal* (1997) 1 SCC 416.

²⁰ *Gian Kaur v State of Punjab* (1996) 2 SCC 648; *Aruna Ramachandra Shanbaug v Union of India* (2011) 4 SCC 454; *Common Cause (A Regd Society) v Union of India* (2018) 5 SCC 1.

²¹ *Francis Coralie Mullin v Administrator, Union Territory of Delhi* (1981) 1 SCC 608.

²² *National Legal Services Authority v Union of India* (2014) 5 SCC 438.

of India further located privacy within dignity and autonomy, protecting an individual's ability to make fundamental personal choices.²³ In *Navtej Singh Johar v Union of India*, dignity and autonomy supported the protection of sexual orientation,²⁴ while *Joseph Shine v Union of India* reinforced dignity as a constitutional value connected with individual choice and freedom.²⁵

The critical difficulty, however, is definitional boundaries. Dignity provides a powerful constitutional basis for protecting vulnerable individuals, but its open-ended character may permit courts to derive increasingly expansive rights. The challenge is therefore to employ dignity as a principled constitutional standard, rather than an unrestricted judicial tool for constitutional law-making.

Judicial activism and article 21:

Judicial activism refers to a dynamic approach to constitutional adjudication in which courts interpret constitutional provisions in response to changing social conditions, protect fundamental rights, and, where necessary, address constitutional or legislative gaps.²⁶ Article 21 became a principal vehicle for this approach because its language—particularly “life” and “personal liberty”—is broad and capable of accommodating evolving understandings of freedom and dignity. The growth of Public Interest Litigation (PIL) further enabled courts to address rights violations affecting disadvantaged groups who could not readily access constitutional remedies.²⁷

Article 21 activism has produced significant constitutional benefits. Judicial intervention has protected vulnerable communities, expanded access to justice, strengthened human dignity, and responded to institutional failures in areas such as custodial violence, environmental protection, healthcare and access to justice.²⁸ It has also enabled constitutional doctrine to respond to technological and social developments, most notably through the recognition of privacy and informational autonomy.²⁹

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²⁴ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

²⁵ *Joseph Shine v Union of India* (2019) 3 SCC 39.

²⁶ S P Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (OUP 2002).

²⁷ *People's Union for Democratic Rights v Union of India* (1982) 3 SCC 235; *Bandhua Mukti Morcha v Union of India* (1984) 3 SCC 161.

²⁸ *D.K. Basu v State of West Bengal* (1997) 1 SCC 416; *Paschim Banga Khet Mazdoor Samity v State of West Bengal* (1996) 4 SCC 37.

²⁹ *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

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Transformation or overreach:

A focused examination of representative cases demonstrates that Article 21 jurisprudence cannot be characterised simply as either judicial activism or judicial overreach. It exists on a continuum between constitutional transformation and institutional intervention.

Maneka Gandhi v Union of India represents transformative interpretation. By requiring procedures affecting personal liberty to be fair, just and reasonable, the Court substantially altered the understanding of Article 21.³² The critical question is whether this amounted to judicially importing substantive due process into a Constitution that deliberately used “procedure established by law.”

In *Olga Tellis v Bombay Municipal Corporation*, the Court recognised livelihood as intimately connected with life.³³ Although socially transformative, this raises questions about how far derivative socio-economic rights can be judicially inferred.

K.S. Puttaswamy v Union of India illustrates constitutional evolution through privacy, autonomy and dignity.³⁴ Similarly, *Navtej Singh Johar v Union of India* employed dignity, autonomy and constitutional morality to protect individual liberty against majoritarian morality.³⁵

Environmental cases, particularly the *M.C. Mehta* line, demonstrate both the protective potential and institutional risks of Article 21 activism, especially where courts prescribe detailed regulatory measures.³⁶ Finally, judicial guidelines in areas lacking legislative frameworks may be justified as temporary constitutional gap-filling, but detailed and continuing policy directions raise stronger separation-of-powers concerns.³⁷

Article 21 in the digital era:

³⁰ Constitution of India 1950, arts 50, 121, 122, 211 and 212; *Asif Hameed v State of Jammu and Kashmir* 1989 Supp (2) SCC 364.

³¹ Alexander M Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (2nd edn, Yale University Press 1986).

³² *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

³³ *Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545.

³⁴ *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

³⁵ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

³⁶ *MC Mehta v Union of India* (1987) 4 SCC 463; *Vellore Citizens' Welfare Forum v Union of India* (1996) 5 SCC 647.

³⁷ *Vishaka v State of Rajasthan* (1997) 6 SCC 241; *Divisional Manager, Aravali Golf Club v Chander Hass* (2008) 1 SCC 683.

The technological transformation of society has created new dimensions of life, liberty, privacy and autonomy, requiring Article 21 jurisprudence to confront forms of interference that were largely inconceivable when the Constitution was framed. The recognition of privacy in *Justice KS Puttaswamy (Retd) v Union of India* provides the principal constitutional foundation for addressing informational privacy, including the collection, processing and profiling of personal data, as well as concerns surrounding State surveillance.³⁸

The emergence of artificial intelligence and algorithmic decision-making raises further questions. Opaque automated decisions, algorithmic discrimination and intrusive AI-enabled surveillance may affect personal autonomy and liberty, potentially requiring constitutional safeguards of transparency, legality, proportionality and accountability. These issues can be situated within the broader concepts of bodily, informational and decisional autonomy developed through Article 21 jurisprudence.³⁹

Digital access presents a more difficult question. In an increasingly digitised society, exclusion from essential digital infrastructure may affect education, employment, communication and access to public services. However, existing Article 21 doctrine should not be overstated: a comprehensive constitutional right to digital access has not been unequivocally established by the Supreme Court.⁴⁰ Its recognition therefore remains a compelling normative possibility for future constitutional development rather than settled doctrine.

Judicial restraints and constitutional limits:

Judicial restraint provides the necessary counterbalance to expansive Article 21 jurisprudence. It preserves separation of powers, democratic legitimacy and institutional competence, while promoting predictability and fidelity to constitutional text.⁴¹ Courts must distinguish between enforcing constitutional limitations and substituting judicial preferences for legislative or executive choices.

A fundamental question is whether expansive judicial interpretation can effectively alter constitutional meaning without following the formal amendment procedure under Article 368.⁴² While constitutional interpretation must remain responsive to changing social realities, an interpretation that substantially rewrites constitutional arrangements may raise concerns about the judiciary assuming the constituent function reserved for the constitutional amendment process.

Accordingly, courts could adopt self-imposed limits when developing Article 21. These should include textual grounding, doctrinal consistency, precedential coherence, institutional

³⁸ *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1; *K.S. Puttaswamy (Aadhaar) v Union of India* (2019) 1 SCC 1.

³⁹ *Ibid.*

⁴⁰ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637 (recognising the importance of freedom of speech and expression and trade through the Internet, while declining to declare access to the Internet itself a fundamental right).

⁴¹ *Divisional Manager, Aravali Golf Club v Chander Hass* (2008) 1 SCC 683.

⁴² Constitution of India 1950, art 368.

competence, necessity and proportionality, together with minimal judicial intervention.⁴³ Such principles would not prevent constitutional evolution; rather, they would ensure that judicial creativity remains connected to constitutional authority. The objective should be transformative interpretation without constitutional substitution.

Comparative perspectives:

A comparative examination of the United States and Japan provides useful constitutional mirrors for assessing the legitimate limits of Article 21. In the United States, the Fourteenth Amendment's Due Process Clause has been interpreted to protect certain unenumerated liberty interests through substantive due process, including aspects of personal autonomy, bodily integrity and decisional privacy.⁴⁴ Cases such as *Griswold v Connecticut* and *Lawrence v Texas* demonstrate the judiciary's evolving understanding of constitutional liberty, while *Washington v Glucksberg* illustrates the Court's insistence on careful historical and doctrinal limits.⁴⁵

Japan presents a different model. Article 13 declares that all people shall be respected as individuals and guarantees life, liberty and the pursuit of happiness subject to public welfare.⁴⁶ Japanese jurisprudence has used this provision to develop protections relating to privacy and personality, while generally reflecting greater judicial restraint.

India occupies an intermediate and increasingly expansive position. Article 21, particularly after *Maneka Gandhi* and *Puttaswamy*, has developed from procedural protection into a source of dignity, autonomy and unenumerated rights.⁴⁷ The comparison therefore raises the central question: how can India reconcile evolving rights with constitutional text, democratic legitimacy and institutional restraint? The American experience demonstrates both transformative liberty protection and counter-majoritarian concerns, while Japan illustrates the importance of restraint and institutional competence. India can draw from both approaches to develop Article 21 without permitting constitutional interpretation to become judicial legislation.

Country towards balanced doctrine:

The expansion of Article 21 demonstrates that neither unrestricted judicial activism nor rigid judicial restraint provides a satisfactory constitutional approach. A more principled middle position is required—one that permits constitutional evolution while preserving institutional boundaries. This study proposes the “*Constitutional Nexus Test*” as a framework for determining whether the judicial recognition of a new Article 21 right constitutes legitimate interpretation or impermissible judicial law-making.

⁴³ *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1 (proportionality); *Asif Hameed v State of Jammu and Kashmir* 1989 Supp (2) SCC 364 (institutional boundaries).

⁴⁴ US Constitution amend XIV, 1.

⁴⁵ *Griswold v Connecticut*, 381 US 479 (1965); *Lawrence v Texas*, 539 US 558 (2003); *Washington v Glucksberg*, 521 US 702 (1997).

⁴⁶ Constitution of Japan 1946, art 13.

⁴⁷ *Maneka Gandhi v Union of India* (1978) 1 SCC 248; *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

First, *Textual Nexus*: the claimed right must have a genuine and demonstrable connection with “life” or “personal liberty” under Article 21.⁴⁸ This prevents purely policy-based claims from being constitutionalised without textual foundation.

Second, *Rights Nexus*: the proposed right should advance established constitutional values such as dignity, autonomy, equality, liberty or fraternity.⁴⁹ This ensures that Article 21’s flexibility remains anchored in the broader constitutional structure.

Third, *Precedential Nexus*: the right should represent a coherent development of existing Article 21 jurisprudence rather than an abrupt departure from established doctrine. Maneka Gandhi, Francis Coralie Mullin and Puttaswamy demonstrate how constitutional rights can evolve incrementally through precedent.⁵⁰

Fourth, *Necessity*: judicial recognition should be necessary to remedy a genuine constitutional rights violation or protect a right inadequately secured through existing legal mechanisms. Courts should avoid intervention merely because an alternative policy appears preferable.⁵¹

Fifth, *Institutional Restraint*: courts should determine constitutional legality and minimum rights-protective standards, rather than designing elaborate administrative schemes, allocating resources or making technical policy choices better suited to elected institutions.⁵²

Sixth, *Proportionality*: even where intervention is justified, the remedy should extend no further than necessary to secure the constitutional right.⁵³

The Test therefore establishes a continuum rather than an artificial binary between activism and restraint. A proposed Article 21 right satisfying all six nexuses would possess strong constitutional legitimacy; failure, particularly at the levels of textual foundation, necessity or institutional competence, would indicate a greater risk of judicial overreach. The framework seeks to preserve Article 21 as a living guarantee while ensuring that constitutional transformation does not become constitutional substitution. “Although Article 21 requires flexible and evolutionary interpretation to remain responsive to changing social realities, such interpretation must operate within constitutionally defined institutional boundaries. The judiciary may develop the content of life and personal liberty where a sufficient constitutional nexus exists, but should refrain from assuming the legislative or executive functions. The proposed Constitutional Nexus Test seeks to facilitate this balance by permitting judicial innovation while requiring textual grounding, constitutional coherence, necessity, institutional restraint and proportionality.”

Conclusion:

⁴⁸ Constitution of India 1950, art 21.

⁴⁹ *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

⁵⁰ *Maneka Gandhi v Union of India* (1978) 1 SCC 248; *Francis Coralie Mullin v Administrator, Union Territory of Delhi* (1981) 1 SCC 608; *Justice KS Puttaswamy* (n 2).

⁵¹ *Asif Hameed v State of Jammu and Kashmir* 1989 Supp (2) SCC 364.

⁵² *Divisional Manager, Aravali Golf Club v Chander Hass* (2008) 1 SCC 683.

⁵³ *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353; *Justice KS Puttaswamy* (n 2).

The evolution of Article 21 cannot be characterised simply as either judicial activism or judicial overreach. It represents a significant process of constitutional transformation, through which the Supreme Court has interpreted “life” and “personal liberty” in light of the Constitution’s enduring commitments to dignity, autonomy, equality and substantive justice. From *Maneka Gandhi* to *Puttaswamy*, the Court has demonstrated that constitutional rights must remain capable of responding to changing social and technological realities.¹

However, constitutional transformation cannot become a substitute for constitutional governance. Article 21 does not confer an unlimited mandate upon the judiciary to create rights or determine policy according to judicial preference. Expansion becomes judicial overreach when courts move beyond identifying and enforcing constitutional limitations and assume primary responsibility for legislative choices, administrative design or complex policy allocation without adequate constitutional foundation.²

The Constitutional Nexus Test proposed in this study offers a principled middle path. New Article 21 claims should possess textual, constitutional and precedential foundations, satisfy necessity and proportionality, and respect institutional competence. Accordingly, the legitimate boundary is not between activism and restraint, but between constitutionally grounded interpretation and institutional substitution. Article 21 should evolve—but its evolution must remain constitutionally disciplined.

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