
Expansion of Article 21: A Critical Analysis of Parliament's role in the protection of Fundamental Rights

Review Article | Volume 1 | Issue 3 | 2026 | Article Number: 024

Accepted: 28 July 2026 | Published: 10 August 2026 | ISSN: 2979-8582 (Online)



Crossref : <https://doi.org/10.67693/BJCR-TGYVUA43>



Priyambada Palai¹, Rajshree Dutta¹, Suryakant Rout¹

¹Fakir Mohan University, Balasore, Odisha, India

 PP [0009-0006-4833-3631](https://orcid.org/0009-0006-4833-3631), RD [0000-0001-7417-5864](https://orcid.org/0000-0001-7417-5864), SR [0009-0009-0434-1877](https://orcid.org/0009-0009-0434-1877)

Correspondence: Priyambada Palai, ppalai5027@gmail.com

Abstract

One of the most important rights is enshrined in Article 21 of the Indian Constitution which deals mainly with the protection of individual rights and dignity. It applies to both citizens and non-citizens. This paper explores the role of judicial activism in the expansion of the right to life and individual freedom. The analysis shows how the judiciary has expanded Article 21 from a narrowly defined right to a broad guarantee including privacy, education, health, livelihood, dignity and a clean environment. The study uses a qualitative research method and relies on secondary sources, such as constitutional provisions, important Supreme Court judgements, books, and Articles. It also discusses the role of Parliament in the development of these rights through the use of judicial activism, constitutionalism and separation of powers. The findings of this study have concluded that when the legislature was inactive, the judiciary stepped in through judicial activism, which in some extent violated the principle of democracy. However, in order to maintain constitutional equilibrium and to protect democratic principles, the involvement of legislature is essential for the protection of fundamental rights.

Keywords: Judicial Activism, Fundamental Rights, Right To Life, Constitutionalism, Parliament

Introduction

Fundamental Rights constitute the cornerstone of the Indian Constitution, safeguarding the dignity, liberty, equality, and justice of every individual. They represent the democratic values upon which India is founded and protect us from arbitrary state action. These are enshrined in 'Part III of the Constitution' (Articles 12–35), these rights guarantee essential civil and political freedoms that are enforceable through judicial remedies. Among these rights, Article 21 occupies a unique position due to its wide interpretation and transformative role in the protection of human rights.

Article 21 of the Indian Constitution provides that "No person shall be deprived of his life or personal liberty except according to procedure established by law". Initially, the Supreme Court adopted limited interpretation of this provision in 'A.K. Gopalan v. State of Madras (1950)', ruled that "procedure established by law" merely required the existence of a validly enacted law, without examining whether such law was fair, just, or reasonable. This narrow interpretation limited the scope of Article 21 to procedural justice rather than substantive justice.

A constitutional transformation occurred with the landmark judgment in 'Maneka Gandhi v. Union of India (1978)', wherein the Supreme Court held that "any procedure depriving a person of life or personal liberty must be just, fair, and reasonable." The Court further ruled that "Articles 14, 19, and 21 are interconnected, thereby significantly broadening the domain of Article 21 and placing a dynamic interpretation of fundamental rights".

Subsequently, through various rulings, Article 21 has been broadened to include several significant rights. These encompass the right to a livelihood, health care, education, privacy, shelter, legal assistance, a speedy trial, a clean environment, and the right to human dignity ('Olga Tellis v. Bombay Municipal Corporation, 1985'; 'Francis Coralie Mullin v. Administrator, Union Territory of Delhi, 1981'; 'Justice K.S. Puttaswamy v. Union of India, 2017'). Therefore, Article 21 has emerged as one of the most dynamic and influential provisions of the Constitution.

However, the role of judicial activism has been critical in the judicial enlargement of Article 21 as it has enabled the Supreme Court to interpret the provisions of the Constitution in a manner that protects the rights of individuals. Judicial activism has provided a means for the Supreme Court to cope up with changing social dynamics and to hold the government accountable in protecting constitutional safeguards. Constitutional interpretation and PIL have greatly contributed in providing access to justice to the society (Sathe, 2001). However, judicial expansion raises issues related to separation of power between the judiciary, legislature, and the executive.

Judicial interference has continued to be the main source of development of Article 21. This poses certain constitutional questions about the responsibility of institutions (Legislature and Executive) in the matter of protection of fundamental rights. It is true that judicial activism has certainly improved constitutional governance, but it is necessary to maintain a balance between all the organs (Sathe, 2001).

Many studies have already analysed the judicial enlargement of Article 21 along with the concept of judicial activism in constitutional adjudications. But there has not been much analysis of the reason why this judicial interference has increased? Whether due to the lack of involvement of the legislature in developing the rights provided under Article 21 or anything else. The present paper intends to fill this gap by a critical examination of the judicial activity in the genesis of Article 21 and the contribution of the Parliament in the promotion of the right to life and personal liberty under the Article. This study is also concerned about whether the judicial expansion of the article has been a legitimate use of judicial power or just an answer to legislative inefficiency.

Literature Review

Kharat (2025) examines how the courts have interpreted Article 21 of the Indian Constitution and the constitutional space it covers. The study has taken into account the constitutional provisions and the important judgments of the Supreme Court to show the expansion of the right to life and personal liberty. It points out that Article 21 has been extensively expanded through judicial interpretation to include rights such as dignity, livelihood, health, education, privacy, legal aid, shelter and protection from torture in custody. The study finds that Article 21 has emerged as a comprehensive guarantee of human rights through judicial explanation.

Gandhi (2022) examines the expanding scope of Article 21 of the Constitution of India, by using a descriptive approach. The aim of the study is to discuss the interpretation of the right to life and individual liberty over time and how important they are in upholding human dignity. The study relies on constitutional provisions and judicial precedents. The findings show that judicial interpretation has transformed Article 21 into a dynamic and comprehensive fundamental right including right to education, health, privacy, livelihood, and environmental protection.

Jain (2021) discussed the expansion of Article 21 through Supreme Court judgements, which reveal how it has shifted from being a right related to life and personal liberty to being a basket of rights including, right to dignity, livelihood, health, privacy, shelter, and environment. The main purpose of this paper is to study the meaning and interpretation of Article 21. This research will employ a qualitative approach using the Constitutional laws and judgements of the Supreme Court. Judicial activism has greatly expanded the domain of Article 21.

Sathe (2001) examines how judicial activism in India has changed over time. This study focuses on the role of activism to protect the basic rights of people, especially the rights that are mentioned in Article 21. The study tries to understand how the courts in India got more powerful and started taking an active role in law making. The study looks at what the constitution says, what the courts have decided in cases and how courts have shifted their interpretations of the constitution over time to protect the rights of individuals. However, the study mostly talks about what the courts have done and does not say much about what the Parliament has done to help protect these rights. This is a problem because it means we do not know if the courts became more active because the Parliament was not doing its job and what this means for the balance of power between the courts and the Parliament.

Methodology

The present study examines the evolution of Article 21 through judicial activism and to evaluate Parliament's role in law making to protect the rights of people by using a qualitative method with secondary data collected primarily from the Constitution of India, landmark Supreme Court judgments regarding Article 21, books, research articles, newspapers. The research employs analytical and descriptive methods to examine how judicial interpretation has expanded the scope of Article 21 and to assess the role of Parliament. Landmark decisions such as 'A.K. Gopalan v. State of Madras (1950)', 'Maneka Gandhi v. Union of India (1978)', 'Olga Tellis v. Bombay Municipal Corporation (1985)', 'Parmanand Katara v. Union of India (1989)', 'Subhash Kumar v. State of Bihar (1991)', and 'Justice K.S. Puttaswamy v. Union of India (2017)' critically analysed the judicial expansion of fundamental rights under Article 21. Analysis and interpretation of the results are made through relevant theories such as judicial activism, constitutionalism, and separation of power. It critically analyses whether the development of Article 21 is an outcome of legitimate constitutional interpretation or a reaction to lack of legislative intervention by the Parliament.

4. Results and Discussion

4.1 Theoretical Framework of Analysis

The theoretical framework adopted in this study is based on three concepts namely, 'Judicial Activism', 'Doctrine of Separation of Powers' and 'Constitutionalism'. These theoretical concepts offer a useful framework through which one can analyse the broadened interpretation of Article 21 by the judiciary as well as the function of parliament in relation to the protection of fundamental rights.

The term “judicial activism” was first coined in 1947. Originally made in the United States of America. The concept was first mooted in India in the mid-1970s by ‘Justices P.N. Bhagwati’ and ‘V.R. Krishna Iyer’. The idea is that the judiciary also actively defends constitutional values and not just interprets the law especially when the legislature and executive branch are not able to preserve fundamental rights. In the Indian constitutional context, judicial activism has enabled the Supreme Court to broaden the scope of Article 21 through transforming the right to life and personal liberty into a source of several derivative rights, including the rights to livelihood, education, privacy, health, dignity, and a clean environment. The theory suggests that judicial intervention becomes constitutionally justified where legislative or executive inaction threatens constitutional rights.

In 1748, French political philosopher Montesquieu propounded the Doctrine of Separation of Power. The doctrine implies that power should be divided between 3 organs- Legislature, Executive, and Judiciary for maintaining institutional balance. Although the Indian Constitution does not provide a strict separation of powers, it envisages functional independence among these organs. The expansion of Article 21 through judicial interpretation has brought debate regarding whether the judiciary has merely fulfilled its constitutional duty or has entered the legislative domain.

The principle of Constitutionalism, which emphasizes that all organs of the State are bound by constitutional limitations and are obligated to protect fundamental rights. Constitutionalism regards the Constitution as the supreme law and recognizes judicial review as an essential mechanism for preventing arbitrary State action. From this perspective, judicial activism is viewed as a constitutional response to ensure that democratic governance remains consistent with the principles of justice, liberty, equality, and the rule of law.

Therefore, the constitutional theories form the basis for analysis in determining whether the judicial expansion of Article 21 is a constitutional duty fulfilled or is simply the result of legislative negligence.

4.2 Expansion of Article 21 through Judicial Activism

The right to life and personal liberty in Article 21 has been significantly developed by judicial activism into an umbrella right that signifies a wide range of rights. The right to privacy was first recognized by the Supreme Court in the ‘Kharak Singh v. State of Uttar Pradesh (1962) case’ but with some limitations. The Supreme Court in the case of ‘Justice K.S. Puttaswamy v. Union of India’ (2017) held that the right to privacy is an integral part of the right to life and personal liberty. The Court held in ‘Olga Tellis v. Bombay Municipal Corporation (1985)’ that the right to livelihood is an integral part of the right to life. The right to health and emergency medical care was raised in the case of ‘Parmanand Katara v. Union of India’ in 1989. By incorporating the right to education into the Constitution by the Eighty-sixth Amendment, the judicial interpretation of Article 21 has broadened its substantive content. Children between the ages of six and fourteen are required to receive free education by the Amendment Act of 2002 (Article 21A). In ‘Subhash Kumar v. State of Bihar (1991)’, the Supreme Court also established a connection between Article 21 and the right to a healthy environment. These court decisions are a clear indication that the Supreme Court had a big role to play in defining and expanding the application of Article 21.

4.3 Judicial Activism as a Response to Legislative Inaction

The study shows that judicial intervention has frequently occurred where Parliament has failed to enact comprehensive legislation safeguarding emerging dimensions of the right to life and personal liberty. There have been instances where constitutional rights were established not through legislation but through judicial decisions.

This proves that judicial activism has served as a constitutional reaction to legislative failure. The judiciary has used judicial activism not to take away the powers of the legislature, but to bridge the legal gap for the enforcement of fundamental rights. However, dependency on judicial activism to solve peoples' problems which can be solved by the legislature, shows inaction of these organs.

4.4 Parliament's Limited Role in Expanding Article 21

It is clear that although the Parliament has passed laws on human rights, criminal laws, environment, education, and health care, the real expansion of Article 21 has mainly come through the judicial interpretation of the Supreme Court. The Parliament has mainly reacted to the judicial initiatives and not initiated broad constitutional protection on its own.

This shows that the contribution of the Parliament has been passive rather than active. Even though laws are still a very important way to enforce rights, there is much more judicial involvement in the definition of Article 21.

4.5 Constitutional Balance and Separation of Powers

The study concludes that judicial activism has enhanced constitutional governance by protecting vulnerable groups and ensuring governmental accountability. But, this intrusion of the judiciary into areas traditionally associated with legislative policymaking has engendered persistent debates over institutional competence and separation of powers.

The findings imply that judicial activism should not be viewed as judicial overreach or as an unrestrained constitutional power. Instead, it should be understood as a constitutional necessity that is triggered when legislative or executive institutions fail to adequately protect fundamental rights. Parliament should actively legislate in areas where constitutional obligations have been already identified by judicial decisions, for a long-term constitutional balance.

5. Conclusion

Article 21's evolving history reveals the significance of judicial activism in defending and expanding basic rights. The Supreme Court of India has expanded the scope of Article 21 from the rights to life and liberty to a range of rights including the rights to privacy, education, health, dignity, means of subsistence, the environment and legal aid.

The analysis also shows that the parliament has given minimal contribution in the matter of Article 21. Legislative initiatives have been part of the process of implementing the rights but a significant number of constitutional rights have been developed mainly through judicial interpretation and not proactively by legislation. Thus, problems of democracy, the principle of the separation of powers and the increasing use of the legal system are starting to appear. Judicial activism has helped to promote constitutionalism and to protect the liberty of the people, but eventually more legislative action will be needed to protect human rights.

However, the research finds that judicial activism and parliamentary lawmaking do not constitute opposite approaches to constitutionalism rather constitute complementary organs that aim at achieving a common goal that is, the protection of peoples' rights. The judiciary and the Parliament should act in a balanced

way to preserve the democratic ideals, supremacy of the constitution, and protect the right to life and individual liberty.

References

- Anand, A. S. (2000). Judicial Review-Judicial Activism-Need for Caution. *Journal of the Indian Law Institute*, 42(2/4), 149-159.
- Bickel, A. M. (1986). *The least dangerous branch: the Supreme Court at the bar of politics*. Yale University Press.
- Dwivedi, U. C. Beyond Procedure: Analyzing the Transformative Shift from AK Gopalan to Maneka Gandhi in the Interpretation of Article 21 of the Indian Constitution.
- Dworkin, R. (2013). *Taking rights seriously*. A&C Black.
- Ely, J. H. (1981). *Democracy and distrust: A theory of judicial review*. Harvard University Press.
- Gandhi, N. (2022). *Expanding and Evolving the Ambit of Article 21 of the Constitution of India with the Developing Scenario. Part 2 Indian J. Integrated Rsch. L., 2, 1.*
- Jain, R. (2021). Article 21: Understanding The Right to Life and Personal Liberty from Case Laws-Academike Explainer. *Lawctopus*. Retrieved December, 10, 2023.
- Johari, J. C. (2023). *Indian polity*. Lotus Books.
- Kharat, S. (2025). Article 21: Right to Personal Life & Liberty. Available at SSRN 5353556.
- Sathe, S. P. (2001). Judicial activism: the Indian experience. *Washington University Journal of Law & Policy*, 6(1).
- Srivastava, P. K. (2021, March). *PRISONERS RIGHTS UNDER INDIAN CONSTITUTION*.



©2026 by the authors. Submitted for possible open access publication under the terms and conditions of the Creative Commons Attribution (CC BY) license (<https://creativecommons.org/licenses/by-nc-sa/4.0/>).