
DIFFERENT FACETS OF ARTICLE 21: A CONSTITUTIONAL AND JURISPRUDENTIAL ANALYSIS

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ABSTRACT

This research paper investigates the persistent inadequacy of air pollution regulatory frameworks despite the constitutional entrenchment of environmental rights, exposing the State's systemic factual defaults and procedural lapses in safeguarding public health. Employing doctrinal analysis of derivative rights under Article 21 alongside a comparative analysis of corporate liability frameworks, the study evaluates the efficacy of current statutory mechanisms. The analysis demonstrates that the Indian judiciary has progressively transformed Article 21 from a mere procedural safeguard into a substantive guarantee of due process, expressly recognizing the right to a clean environment as an inalienable fundamental right.

However, this paper identifies a critical 'enforcement gap' wherein profound judicial declarations of environmental rights are systematically undermined by the executive's failure to implement them. Consequently, the paper establishes the urgent necessity for strengthened corporate environmental liability and robust enforcement machinery to bridge the chasm between constitutional promises and lived realities.

Keywords: Article 21, Right to Clean Environment, Polluter Pays Principle, Precautionary Principle, Enforcement Gap, Corporate Environmental Liability, Substantive Due Process, Derivative Rights.

Introduction

Background and Context

The contemporary landscape of India's environmental governance is characterized by a severe crisis of air and water pollution, exposing a systemic failure by the State to safeguard public health and ecological integrity. Empirical data consistently demonstrates that urban and industrial regions suffer from hazardous levels of particulate matter and toxic effluents, directly threatening the well-being of millions of citizens. This environmental degradation is not merely an inevitable consequence of rapid industrialization, but a direct result of the State's persistent factual defaults and procedural lapses in enforcing statutory pollution controls. The unchecked proliferation of hazardous emissions establishes a factual context where the fundamental prerequisites for human survival are routinely compromised by administrative lethargy.

In response to such state apathy, the Indian judiciary has proactively expanded the horizons of Article 21, transforming it from a mere procedural safeguard into a robust reservoir of substantive due process. This doctrinal pivot was definitively established when the Supreme Court mandated that any procedure depriving personal liberty must be tested against the integrated scheme of fundamental rights. Building upon this foundation, the judiciary explicitly recognized the right to a clean environment as an indispensable derivative right under Article 21, integrating international environmental norms such as the Precautionary Principle and the Polluter Pays Principle into domestic jurisprudence to combat regulatory inertia.

Statement of the Problem

Despite these unequivocal judicial declarations, the distance between constitutional protection of a pollution-free environment and ground-level air quality remains the central puzzle of India's environmental governance. The primary deficiency is the profound enforcement gap, characterized by the State's apathy in implementing court-mandated environmental standards. The State's failure to operationalize statutory frameworks effectively reduces the fundamental right to fresh air to a mere paper promise, exposing vulnerable populations to systemic and preventable risks.

The critical 'enforcement gap' does not arise from the absence of judicial recognition of environmental rights it arises from the structural and administrative inefficiency that prevents

the fructification of these constitutional guarantees into tangible ecological protection.

Research Objectives and Structure

To address this enforcement deficit, this paper adopts a comprehensive three-part analytical structure aimed at holding the State accountable to constitutional mandates:

- Part I traces the jurisprudential evolution of Article 21, detailing its transformation from a restrictive procedural clause to an expansive guarantee of substantive socio-economic rights.
- Part II critically examines the specific procedural safeguards and derivative rights recognized by the judiciary, juxtaposing these legal standards against the State's documented factual defaults in environmental and criminal justice administration.
- Part III conducts a comparative constitutional analysis to propose actionable regulatory reforms, aiming to bridge the chasm between judicial activism and executive implementation.

Ultimately, the objective of this study is to provide a rigorous legal framework that compels the strict enforcement of Article 21, ensuring that the right to a dignified and healthy life is fully realized in practice.

The Legal Framework: Different Facets of Article 21

Statutory Framework

Constitutional Text and Legislative Architecture

Article 21 of the Constitution of India, 1950, provides: "No person shall be deprived of his life or personal liberty except according to procedure established by law." This foundational guarantee applies universally to every person within Indian territory, irrespective of citizenship, thereby extending its protective ambit to foreigners, stateless individuals, and refugees. The universality of this guarantee distinguishes it from several other fundamental rights under Part III, which are confined to citizens alone.

Article 21 operates in conjunction with Article 14, which guarantees equality before law, and

Article 19, which protects enumerated freedoms including speech, movement, and profession. The Constituent Assembly chose "procedure established by law" over the American formulation of "due process of law," drawing from the Japanese Constitution of 1947 as a deliberate measure to prevent the judiciary from invalidating social welfare legislation on grounds of substantive unreasonableness. This textual choice, however, did not foreclose the subsequent judicial importation of substantive fairness requirements into Article 21's procedural framework.

Operationalizing Statutes

Several statutes operationalize the guarantees implicit in Article 21. Key legislative instruments include:

- The Code of Criminal Procedure, 1973 prescribes the procedural framework for arrest, detention, bail, and trial; Section 304 mandates legal aid in sessions trials.
- The Legal Services Authorities Act, 1987 institutionalized access to justice for the poor through NALSA and State Legal Services Authorities.
- The Medical Termination of Pregnancy (Amendment) Act, 2021 operationalizes reproductive autonomy by extending the permissible gestational limit.
- The Information Technology Act, 2000 provides the primary statutory framework for cybersecurity and digital privacy.
- The Constitution (Eighty-Sixth Amendment) Act, 2002 inserted Article 21A, conferring upon children aged six to fourteen a fundamental right to free and compulsory education.
- The Right of Children to Free and Compulsory Education Act, 2009 mandates that twenty-five percent of seats in unaided private schools be reserved for children from weaker sections.

Institutional Gaps

Legal Aid System

Despite the elaborate statutory architecture, the institutional machinery for enforcing Article

21 rights suffers from pervasive structural deficiencies. The most acute gap is the chronic underresourcing of the legal aid system. While the Legal Services Authorities Act, 1987 mandates free legal assistance, the quality and effectiveness of such assistance remains deeply uneven across states and districts. The Supreme Court has recognized that the right to legal aid must be substantively effective, not merely formally available.

Appointing an amicus and proceeding to hear the matter on the very same day, without affording sufficient time for preparation or consultation, renders the safeguard of effective legal representation an empty formality and undermines the very essence of the right to fair trial enshrined under Article 21.

Prison System and Undertrial Detention

The prison system represents a second critical site of institutional failure. National Crime Records Bureau data consistently reveals that approximately seventy-six percent of India's prison population consists of undertrial detainees, a significant proportion held for periods exceeding the maximum sentence prescribed for their alleged offences. This systemic over-detention directly violates the right to personal liberty and the right to a speedy trial under Article 21.

India has not ratified the United Nations Convention Against Torture, and the Prevention of Torture Bill, 2010 has remained pending without enactment, leaving a significant legislative vacuum in the protection of detainees' rights under Article 21.

Human Rights Commissions

The National Human Rights Commission and State Human Rights Commissions, established under the Protection of Human Rights Act, 1993, suffer from structural limitations that curtail their effectiveness. These commissions lack the power to investigate complaints against the armed forces, their recommendations are not binding upon the government, and their financial and administrative independence is compromised by their dependence on state resources. Advisory Boards under preventive detention laws similarly lack genuine judicial independence, creating the appearance of oversight without delivering its substance.

Environmental Enforcement Bodies

The enforcement of environmental rights under Article 21 reveals a further dimension of

institutional inadequacy. While the Supreme Court has recognized the right to a clean environment, the Central Pollution Control Board and State Pollution Control Boards are chronically under-staffed, underfunded, and susceptible to regulatory capture by industrial interests. This structural phenomenon wherein the constitutional promise of a pollution-free environment remains unrealized for the most vulnerable communities constitutes what this paper identifies as the 'enforcement gap.'

Gaps in the Legal Framework

Absence of a Codified Due Process Statute

The legal framework governing Article 21 is characterized by several identifiable gaps. The first and most fundamental is the absence of a codified due process statute. The requirement that procedure established by law must be "fair, just, and reasonable" was judicially imported through *Maneka Gandhi v. Union of India* but has never been given statutory expression in the form of a comprehensive Due Process Act. The consequence is that the content of procedural fairness remains entirely dependent upon judicial elaboration on a case-by-case basis, producing inconsistency and leaving citizens without a clear statement of their procedural entitlements.

Preventive Detention Laws

The second gap concerns preventive detention law. The National Security Act, 1980 and the Unlawful Activities (Prevention) Act permit detention for up to one year without trial, on the basis of the subjective satisfaction of the detaining authority. The Advisory Board mechanism provides only a simulacrum of judicial review, as its recommendations are not binding and proceedings lack the transparency and adversarial character of court proceedings.

Statutory restrictions cannot be applied so as to render the guarantee of personal liberty illusory. Where the trial is not likely to commence or conclude within a reasonable period, constitutional courts retain the jurisdiction to grant bail notwithstanding statutory restraints.

This formulation provides a constitutional bridge for relief in cases of unconscionable delay but does not address the structural deficiency of the preventive detention framework itself.

Data Protection and Digital Privacy

The third gap relates to the absence of a comprehensive data protection statute. The Supreme Court's nine-judge bench in Puttaswamy recognized informational privacy as a facet of the right to life and mandated that any state interference with privacy must satisfy the three-fold test of legality, legitimate aim, and proportionality. However, the Digital Personal Data Protection Act, 2023 while a partial response contains significant gaps, particularly regarding exemptions for state agencies on grounds of national security.

Right to Die with Dignity

The fourth gap concerns the right to die with dignity. The Supreme Court's recognition of passive euthanasia and Advance Directives in Common Cause has not been followed by enabling legislation making these rights practically accessible. The procedural requirements mandated by the Court are so cumbersome as to render the right largely symbolic in practice. The absence of a statutory framework for end-of-life care including standardized Advance Directive forms, training of healthcare professionals, and a registry for living wills constitutes a significant legislative gap.

The withdrawal or withholding of medical treatment merely allows the natural path of life to run its inevitable course and therefore cannot be termed as the extinguishment of life or an unnatural termination of life.

Reproductive Rights

The fifth gap concerns reproductive rights. While the MTP (Amendment) Act, 2021 extended the gestational limit in certain categories, it retains mandatory medical consent requirements that compromise decisional autonomy and excludes transgender and non-binary individuals from its protective ambit. Judicial correction of statutory lacunae as in *X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi* (2022), clarifying that unmarried women are entitled to access safe abortion on par with married women does not substitute for comprehensive legislative reform.

Liability of Corporations: Indian and International Trends

Indian Legal Framework and Judicial Trends

The question of corporate liability for violations of Article 21 rights has evolved significantly

through judicial intervention in the absence of a comprehensive statutory framework. The foundational principle was established in the context of environmental harm: the right to live includes the right to enjoyment of pollution-free water and air, and if anything endangers that quality of life in derogation of laws, a citizen has the right to invoke Article 32 for removing pollution detrimental to life.

The Absolute Liability Doctrine

The doctrine of absolute liability, developed in *M.C. Mehta v. Union of India* (Oleum Gas Leak Case, 1987), represents the most significant Indian contribution to corporate environmental liability. Departing from the English rule of strict liability in *Rylands v. Fletcher*, the Court held that an enterprise engaged in a hazardous or inherently dangerous activity owes an absolute and nondelegable duty to ensure that no harm results. This liability admits of no exceptions including the act of a stranger, *vis major*, or the consent of the plaintiff and its quantum is directly proportional to the magnitude and capacity of the enterprise.

Medical Emergency and Horizontal Application

The right to immediate medical aid as a derivative of Article 21 imposes obligations not only upon the state but also upon private hospitals. Article 21 casts an obligation on the state to preserve life, and procedural laws that interfere with this obligation cannot be sustained. This ruling effectively extended the constitutional obligation to preserve life to private medical actors, creating a form of horizontal application of Article 21 rights.

Constitutional Tort and Sovereign Immunity

The right to compensation for state-caused violations of Article 21 was firmly established in the context of custodial deaths and illegal detention. The Supreme Court held that the state has strict liability in public law to protect the right to life of those in its custody, and that sovereign immunity is not a defense against a constitutional remedy. This constitutional tort doctrine has been extended by analogy to situations where private actors exercise quasi-state functions in domains affecting fundamental rights.

Digital Rights and Surveillance

In the domain of digital rights, the Pegasus surveillance case established that unauthorized

surveillance by state or external agencies constitutes a direct violation of Article 21, and that the state cannot invoke national security as a blanket shield to avoid judicial review. More recently, the nexus between property rights and the livelihood dimension of Article 21 was reinforced: where deprivation of property leads to deprivation of life or livelihood, Article 21 springs into action, and any deprivation without just compensation amounts to an infringement of the rights guaranteed thereunder.

International Legal Framework and Judicial Trends

A comparative analysis of corporate liability for violations of the right to life across jurisdictions reveals both convergences and significant divergences from the Indian model. The following table presents a structured comparison across four jurisdictions:

Parameter	India	United States	South Africa	EU / ECHR
Constitutional Basis	Article 21 (judicially expanded to include dignity, livelihood, health, environment, privacy)	Fifth and Fourteenth Amendments (Due Process Clause); negative liberty framework	Sections 10, 11, 12, 14, 26, 27 of the Bill of Rights; explicit socioeconomic rights	ECHR Articles 2, 5, 6, 8; EU Charter; positive obligations doctrine
Standard of Liability	Absolute liability (hazardous enterprises); constitutional tort; public law compensation	Negligence (tort law); Alien Tort Statute; limited constitutional tort	Constitutional damages; progressive realization; 'reasonable measures' test	Positive obligation to protect life (Article 2 ECHR); proportionality test
Horizontal Application	Indirect through PIL; private hospitals bound by emergency care duty	Generally no direct horizontal application; state action doctrine limits liability	Section 8(2) expressly provides horizontal application to private actors	Indirect horizontal effect through positive obligations; states must regulate private actors
Environmental Liability	Absolute liability (M.C. Mehta); Polluter Pays Principle; Precautionary Principle	CERCLA; strict liability for hazardous waste; EPA regulatory framework	National Environmental Management Act; constitutional right to environment (Section 24)	EU Environmental Liability Directive; ECHR Article 8 applied to environmental harm

Digital Privacy	Puttaswamy three-fold test; Digital Personal Data Protection Act, 2023	Sectoral laws (HIPAA, COPPA); no comprehensive federal statute	Protection of Personal Information Act (POPIA); Information Regulator	GDPR; comprehensive data subject rights; significant corporate fines
Enforcement Mechanism	PIL; NHRC; constitutional tort compensation; contempt jurisdiction	Class actions; EPA/FTC; criminal prosecution of corporate officers	Constitutional Court; SA Human Rights Commission; mandatory reporting	European Court of Human Rights; national data protection authorities; EU Commission

Comparative Analysis: Key Observations

The comparative analysis reveals that India's model of corporate liability for Article 21 violations is distinctive in its reliance upon judicial creativity rather than statutory codification. The absolute liability doctrine represents a more stringent standard than the US negligence-based tort framework and is comparable in severity to the EU's strict liability regime for environmental harm. However, the absence of a comprehensive statutory framework analogous to CERCLA or the EU Environmental Liability Directive means that enforcement depends entirely upon the willingness and capacity of affected individuals and civil society organizations to initiate litigation.

The South African model is particularly instructive because it achieves through explicit constitutional text what India achieves through judicial interpretation. Section 8(2) of the South African Constitution expressly provides that the Bill of Rights binds natural and juristic persons, enabling direct horizontal application of rights against private corporations. The Constitutional Court's decision in *Minister of Health v. Treatment Action Campaign* demonstrated the efficacy of this framework. The European Convention on Human Rights framework similarly imposes positive obligations upon member states to protect the right to life against interference by private actors, creating a form of indirect corporate liability mediated through state responsibility.

Remedies and Recommendations

Legislative Reforms

The foregoing analysis converges upon a set of multi-pronged recommendations necessary to

bridge the enforcement gap and give substantive effect to the constitutional guarantees of Article 21. In the legislative domain, the most urgent reform is the enactment of a comprehensive Due Process and Fair Procedure Act that codifies the "fair, just, and reasonable" standard into a statutory framework applicable to all laws and administrative actions affecting personal liberty. Such legislation should specify minimum procedural requirements including the right to notice, the right to be heard, the right to reasons, and the right to judicial review before any deprivation of life or liberty can be effected.

Simultaneously, preventive detention laws require fundamental reform to incorporate: periodic mandatory judicial review; transparency in grounds of detention; specified maximum detention periods; and replacement of the Advisory Board mechanism with genuine judicial oversight. The right to a speedy trial demands legislative reinforcement through time-bound trial completion norms and dedicated fast-track courts for undertrial detainees incarcerated beyond the maximum sentence for the alleged offence.

Reproductive rights require expression through a comprehensive Reproductive Rights Act that removes mandatory medical consent requirements, extends coverage to transgender and non-binary individuals, and simplifies the certification process for terminations beyond twenty-four weeks. The right to die with dignity requires enabling legislation establishing a national registry for Advance Directives, standardizing procedural requirements, and mandating training of healthcare professionals in palliative care. In the domain of digital rights, the enactment of a robust Data Protection Law consistent with the Puttaswamy proportionality framework is imperative, with an independent Data Protection Authority, meaningful data subject rights, and elimination of broad national security exemptions.

Institutional Reforms

In the institutional domain, the NHRC and SHRCs require structural reform to enhance their independence, expand their jurisdiction to include complaints against the armed forces, and confer binding force upon their recommendations. The legal aid system requires substantial investment in the quality and training of legal aid counsel and the establishment of legal aid clinics within prisons and detention centres.

The custodial protection framework requires the immediate enactment of a Prevention of Torture Act, the establishment of independent police complaints authorities in every state, and

mandatory statutory codification of the D.K. Basu guidelines.

'Custodial torture' is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward.

Policy Reforms

In the policy domain, the recommendations converge upon the establishment of National Article 21 Oversight Committees within every ministry, the mandatory embedding of Human Rights Impact Assessments in all legislative and executive proposals affecting personal liberty, and the implementation of public awareness campaigns to enhance legal literacy regarding Article 21 rights.

The alignment of India's domestic framework with international human rights norms particularly the ICCPR and ICESCR requires ratification of the UN Convention Against Torture and adoption of the Optional Protocol to the ICCPR. The right to livelihood demands policy attention to urban housing, displacement, and rehabilitation: the deprivation of livelihood is tantamount to the deprivation of life, imposing upon the state an affirmative obligation to provide alternative accommodation before effecting evictions. The right to human dignity requires that every legislative, executive, and judicial action be tested against the standard that the right to life includes the right to live with human dignity, encompassing adequate nutrition, clothing, shelter, and the facilities for reading, writing, and expressing oneself in diverse forms.

Conclusion

The evolution of Article 21 has built a strong constitutional basis for environmental protection, but its impact is weakened by a major enforcement gap. While the judiciary has recognized the right to a clean environment and adopted international environmental principles, legislative and executive failures continue to undermine effective implementation. Judicial intervention alone cannot permanently protect environmental rights without statutory support.

Comparative constitutional models, such as South Africa's rights-based approach, show that constitutional guarantees require clear state obligations and structured enforcement. In India,

environmental governance still depends heavily on judicial activism rather than comprehensive legislative action, creating inconsistent accountability.

To close this gap, India needs legislative codification of environmental rights through measures such as a Right to Clean Air Act, stronger incorporation of the Polluter Pays and Precautionary Principles, and enhanced corporate liability. Institutional reforms are also essential to ensure executive compliance with judicial directives.

Ultimately, meaningful environmental justice demands a shift from a development-at-all-costs approach to a rights-based governance model. The judiciary has expanded Article 21, but the rights to clean air and water must now be codified, funded, and enforced through coordinated legislative and executive action so constitutional promises reach all citizens, especially the most vulnerable.

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