THE EXPANDING AMBIT OF ARTICLE 21

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ABSTRACT

Article 21 of the Constitution of India is one of the shortest provisions in the document and, by judicial interpretation, one of the longest in its reach. In seventy-odd years, it has moved from a narrow guarantee against arbitrary physical restraint to the textual home of dignity, livelihood, health, education, privacy and a healthy environment, and most recently a right against the adverse effects of climate change. This paper does not question the moral worth of that journey. It asks what the journey has cost, and whether the Supreme Court's continuing creation of rights has outpaced the remedial and institutional machinery needed to make them real. Using Roscoe Pound's distinction between "law in books" and "law in action", the paper traces the interpretive history of Article 21, examines the structural effect of importing non- justiciable Directive Principles of State Policy into enforceable Fundamental Rights, and studies the pattern in which rights are announced while relief is deferred, diluted or denied. It argues that the result is a condition best described as *declaratory constitutionalism,* and that the remedy lies not in halting the expansion but in building enforceable remedial standards, a codified law of state liability, and structured judicial supervision of compliance.

Keywords: Article 21; Right to life; Declaratory Constitutionalism; Constitutional tort; Law in Books and Law in Action; Enforcement deficit.

RESEARCH QUESTION

Does the continuous judicial expansion of the ambit of Article 21 lead to an enforcement deficit, thereby reducing fundamental rights to declaratory rhetoric rather than practically actionable guarantees?

INTRODUCTION

Eighteen Words

Article 21 is often called the crown jewel of the world's largest written constitution[1]. Its wording is borrowed from the Fifth and Fourteenth Amendments of the United States Constitution, which forbid deprivation of "life, liberty, or property, without due process of law"[2], and some wording is borrowed from Article 31 of the 1947 Constitution of Japan, which speaks of deprivation of life or liberty "except according to procedure established by law"[3]. The Framers of the Indian Constitution chose the Japanese formulation over the American one. Dr. B. R. Ambedkar chaired the Drafting Committee, and B. N. Rau served as Constitutional Adviser. B. N. Rau's consultations with Justice Felix Frankfurter persuaded the Framers that open-ended judicial review of legislation on due process grounds would let courts overturn the social welfare legislation the new Parliament was expected to pass[4]. The text was meant to defer to the legislature.

It did not remain so. Over the following decades, the Supreme Court transformed Article 21 from a guarantee that a law must exist before liberty is taken into a source of substantive rights. That expansion is widely and rightly celebrated. It is also the subject of this paper's question: "When expansion is so vast, should attention not turn equally to implementation? Has the Declaration of rights come to matter more than their implementation?

A Warning from Fali S. Nariman

The question is not new; a version of it was put with characteristic clarity by Fali S. Nariman in his autobiography, *Before Memory Fades*[5]. Writing about the protection of human rights,

[1] India Const. art. 21.
[2] U.S. Const. amends. V, XIV, § 1.
[3] Nihonkoku Kenpō [Kenpō] [Constitution], art. 31 (Japan).
[4] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 101–03 (Oxford Univ. Press 1966).
[5] Fali S. Nariman, *Before Memory Fades: An Autobiography* (Hay House India 2010).

Nariman begins from the observation that a written constitution which safeguards the rights of citizens means little if the safeguards do not translate into practice; in his words, they are "just words"[6]. To illustrate how readily the learned and the powerful confuse writing with achieving, he recalls the story of the historical Edward Gibbon, who presented the second volume, *The Decline and Fall of the Roman Empire,* to the Duke of Gloucester, brother of George III. The

Duke, who had received the first volume warmly, greeted the next, weighty tone with a weary jibe at authors who are forever scribbling. Nariman turns the anecdote on academics and politicians alike; both are fond of producing documents, and the world has produced plenty on human rights.

Nariman then applies the point to the United Nations. The UN, he observes, is rich in instruments on human rights, namely declarations, conventions, treaties and resolutions, but its member states are significantly short on performance. The universalisation of human rights may have been achieved, but only on paper; effective implementation is lacking, and there is much truth in this criticism. Sovereign nation-states often obstruct the quest for universalisation. What governments claim, in India and across the world, and what they practise within the state, hardly ever coincide. The most important factor in implementation is not documentation but the spirit of the people.

Nariman wrote of the international order, but his diagnosis fits the domestic one with little alteration. Article 21 is a municipal instrument of human rights, produced not by a treaty conference but by a constitutional court, and it is vulnerable to the same disease: abundant declaration, thin performance. This paper takes his observation as its governing intuition and tests it doctrinally against the Indian record.

The Framework: "Law in Books" And "Law in Action"

The analytical framework is Roscoe Pound's distinction between "Law in Books" and "Law in Action"[7]. Pound argued that law must be judged not only by what its texts and judgments say but by what they achieve in practice. Applied to Article 21, "Law in Books" is an expanding body of rights recognised by the Supreme Court. "Law in Action" is the relief actually available to the person whose right has been violated. The distance between the two is the enforcement

[6] *Id.*
[7] Roscoe Pound, *Law in Books and Law in Action*, 44 Am. L. Rev. 12 (1910).

deficit, and the paper's central claim is that this distance has grown with each new right declared.

Plan on Paper

Chapter 2 recovers the historical background and the drafting choice that shaped Article 21. Chapter 3 traces its judicial interpretation. Chapter 4 studies implementation critically, through the "Right Declared, Relief Denied" cases and institutional data. Chapter 5 sets out findings.

Chapter 6 concludes. Chapter 7 offers suggestions.

HISTORICAL BACKDROP

Colonial Detention and the Need for Rights

The rights of the individual under the East India Company and the Crown were precarious. Bengal Regulation III of 1818 allowed detention of a person by executive order, without charge or trial[8]. The Defence of India Act, 1915 and the Rowlatt Act of 1919 extended similar powers in response to wartime and revolutionary conditions.[9] Arthur Keith's constitutional history records how habitually these executive and how little the courts could do to check them.[10][11] For the nationalist leadership, this was the lived reality of liberty under colonial rule, and it was the experience that made an entrenched, judicially enforceable bill of rights a central demand long before 1950.

The Constituent Assembly and "Procedure Established by Law"

The draft provision that became Article 21 was debated in the Constituent Assembly in December 1948.[11] An earlier draft used the American expression "due process of law". The Drafting Committee replaced it with "procedure established by law", and the choice was defended as a matter of institutional design. Dr. B. R. Ambedkar acknowledged that the issue was a real dilemma, because it concerned whether the legislature or judiciary should have the last word on the substance of laws affecting life and liberty. B.N. Rau's discussions with

[8] Bengal State Prisoners Regulation, Regulation III of 1818 (India).
[9] Defence of India Act, No. IV of 1915 (India); Anarchical and Revolutionary Crimes Act (Rowlatt Act), No. XI of 1919 (India).
[10] A. Berriedale Keith, *A Constitutional History of India, 1600–1935* (Methuen & Co. 1936).
[11] Constituent Assembly Debates (Dec. 6, 1948) (debate on draft Article 15, now Article 21).

Frankfurter, as Alva recounts them, reinforced the case for the narrower phrase on the ground that substantive due process would give judges a veto over social legislation.[12] The Assembly adopted the narrower phrase, and Article 22 was added to regulate arrest and preventive detention.[13]

Two features of the constitutional design matter for what follows. First, Part IV, which contains the Directive Principles of State Policy, was made expressly non-justiciable under Article 37[14]. The social and economic goals of the Constitution were meant to guide governments and legislatures, not to be enforced through writs. Second, the Framers gave the Supreme Court a direct and powerful remedial jurisdiction in Article 32, which Ambedkar described as the very heart and soul of the Constitution.[15] The design therefore contemplated a sharp division of labour: socio-economic aspiration was left to political institutions and fundamental rights were left to the courts. The later history of Article 21 is largely the history of the erosion of that division.

Early Reception

The early judiciary took the Framers at their word. As the next chapter explains, *A. K. Gopalan* (1950) read "procedure established by law" to mean any procedure laid down by a validly enacted statute.[16] The text, as originally understood, protected executive action unauthorised by law and did little more.

JUDICIAL INTERPRETATION OF ARTICLE 21

Phase One: Textual Isolation (1950-1969)

In *A. K. Gopalan v. State of Madras*, the Court upheld the Preventive Detention Act, 1950 and held that "procedure established by law" meant procedure prescribed by validly enacted law, without any requirement that it be fair or reasonable.[16] The Court also treated the fundamental rights as separate silos, so that a law authorising detention was tested under Article 21 and 22 alone and not under Article 19. Fazl Ali J., dissenting, argued that "procedure" necessarily

[12] Rohan J. Alva, Liberty After Freedom: A History of Article 21, Due Process and The Constitution of India (2022).
[13] India Const. art. 22.
[14] India Const. art. 37.
[15] India Const. art. 32; 7 Constituent Assembly Debates 953 (Dec. 9, 1948) (B. R. Ambedkar).
[16] A.K. Gopalan v. State of Madras, 1950 SCC 228.
[16] *A.K. Gopalan*, 1950 SCC 228.

implied basic notions of natural justice. In *Kharak Singh v. State of Uttar Pradesh*, the majority declined to find a general right to privacy under Article 21, although Subba Rao J., in a separate opinion, took the broader view that personal liberty meant more than freedom from bodily restraint.[17]

The isolation of rights began to break down in *R. C. Cooper v. Union of India* (1970), where the Court held that the effect of a law on a right, and not merely its object, determines which rights are engaged.[18] This was the doctrinal crack through which later developments followed.

The Emergency and *ADM Jabalpur* Case (1975-1977)

The darkest episode in the history of Article 21 is *ADM Jabalpur v. Shivakant Shukla*.[19] By a majority of 4:1, the Court held that during the Emergency, a person had no standing to seek Habeas Corpus to challenge detention, because the right under Article 21 stood suspended with the presidential order under Article 359.[20] Justice Khanna dissented and held that the rule of law and the right to life and liberty could not be extinguished by an executive order. The decision exposed the cost of a right regime that depended on textual positivism. Prashant Bhushan's account shows how the experience shaped the Court's subsequent resolve.[21] *ADM Jabalpur* was eventually overruled in the *Puttaswamy* case.[23]

Phase Two: Procedural Due Process and The Golden Triangle (1978)

In *Maneka Gandhi v. Union of India*, the impounding of a passport led the Court to hold that the "procedure" required by Article 21 must be right, just and fair and not arbitrary, fanciful or oppressive and that any law depriving a person of liberty must also satisfy Articles 14 and 19.[22] The three provisions became the "Golden Triangle". In substance, *Maneka Gandhi* imported into Article 21 the content of due process that the Framers had set aside. A provision designed to defer to the legislature has become a ground for reviewing it.

[17] *Kharak Singh v. State of U.P.*, 1962 SCC OnLine SC 10.
[18] *Rustom Cowasjee Cooper v. Union of India*, (1970) 2 SCC 298.
[19] *ADM, Jabalpur v. Shivakant Shukla*, (1976) 2 SCC 521.
[20] India Const. art. 359.
[21] Prashant Bhushan, *The Case That Shook India* (Vikas Publ'g House 1978).
[23] *K.S. Puttaswamy (Privacy-9J.) v. Union of India*, (2017) 10 SCC 1.
[22] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

Phase Three: Proliferation of Substantive Rights (1978 onwards)

After *Maneka Gandhi*, the Court read an ever longer list of rights into Article 21, many of them drawn directly from the Directive Principles of State Policy. The three phases are summarised in Figure 1 and the principal rights in Figure 2.

Figure 1: Three phases in the interpretation of Article 21.

Phase		Period	Leading Cases	Reading of Article 21
I.	Textual Isolation	1950-1969	A.K.Gopalan, Kharak Singh	Any validly enacted procedure suffices; rights are silos.
II.	Procedural Fairness	1970-1978	R.C.Cooper, Maneka Gandhi	Procedure must be just, fair and reasonable; Articles 14,19,21 read together.
III.	Substantive Proliferation	1978 onwards	Francis Coralie, Olga Tellis, Subhash Kumar, Puttaswamy, Ranjitsinh	Unenumerated rights of dignity, livelihood, environment, privacy and more.

Figure 2: Principal rights in Article 21 and their doctrinal source.

Rights	Leading Authority	Link to Part IV or other source
Speedy trial and free legal aid	Hussainara Khatoon (1980)[23]	Article 39A
Dignity; protection from cruel treatment	Francis Coralie Mullin (1981)[24]	Articles 39(e)-(f), 41, 42
Compensation for violation	Rudul Sah (1983); Nilabati Behera (1993)[25]	Judicially evolved remedy under Article 32
Livelihood	Olga Tellis (1985)[26]	Article 39(a), 41

[23] *Hussainara Khatoon (1) v. State of Bihar*, (1980) 1 SCC 81.
[24] *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.
[25] *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141; *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746.
[26] *Olga Tellis v. Bombay Municipal Corpn.*, (1985) 3 SCC 545.

Health and emergency medical care	Paschim Banga Khet Mazdoor Samity (1996)[27]	Article 41, 47
Education	Mohini Jain (1992); Unni Krishnan (1993)[28]	Article 45 (now Article 21A)
Clean air and water, Healthy environment	Subhash Kumar (1991); M.C. Mehta[29]	Article 48A, 47
Freedom from sexual harassment at work	Vishaka (1997)[30]	Article 14, 15, 21; international conventions
Privacy and informational self-determination	Puttaswamy (2017)[31]	Dignity; autonomy
Autonomy in intimate relations	Navtej Singh Johar (2018)[32]	Dignity; autonomy
Protection against adverse effects of climate change	M.K. Ranjitsinh (2024)[35]	Article 48A, 51A(g) read with Article 14 and 21

Importing Part IV into Part III

The proliferation in Figure 2 rests on a theory of constitutional harmony. In *State of Madras v. Champakam Dorairajan* (1951), the Court has said that the Directive Principles of State Policy must run subordinate to the Fundamental Rights.[33] That view shifted, first through *Kesavananda Bharti*[34], and decisively in *Minerva Mills*, where the Court held that the Constitution is founded on the balance between Parts III and IV and that giving absolute primacy to either would disturb its basic structure.[38] The Court then used this idea to treat the Directive Principles of State Policy as an interpretive aid to Article 21, so that the content of "Life" could be enriched by the aspirational promises of Part IV. *Unni Krishnan*, for instance,

[27] *Paschim Banga Khet Mazdoor Samity v. State of W.B.*, (1996) 4 SCC 37.
[28] *Mohini Jain (Miss) v. State of Karnataka*, (1992) 3 SCC 666; *Unni Krishnan, J.P. v. State of A.P.*, (1993) 1 SCC 645.
[29] *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598; *M.C. Mehta v. Union of India (Shriram-Oleum Gas)*, (1987) 1 SCC 395.
[30] *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.
[31] *Puttaswamy*, (2017) 10 SCC 1.
[32] *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.
[35] *M.K. Ranjitsinh v. Union of India*, (2024) 19 SCC 139.
[33] *State of Madras v. Champakam Dorairajan*, 1951 SCC 351.
[34] *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.
[38] *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.

derived the right to education up to the age of fourteen from Article 21 read with Article 45, which later led to Article 21A through the Eighty-sixth Constitutional Amendment[35] and ultimately to the RTE Act.[36]

This technique has real virtues. It allows the Constitution to respond to human need and makes the fundamental rights meaningful for the poor, to whom civil liberty means little without food, shelter and care. Its structural cost, however, is the subject of this paper. A civil liberty is typically satisfied when the state refrains from acting; the Court can enforce it by quashing an order or releasing a detainee. A socio-economic entitlement is satisfied only when the state acts, by building, staffing, funding and regulating. The Court can order, but it cannot build. Importing Part IV into Part III therefore changes the kind of obligation that the fundamental rights impose, from a negative duty the Court can police to a positive duty the Court can only declare.

The Contemporary Frontier

The nine-judge bench in *K. S. Puttaswamy v. Union of India* (2017) held that privacy is a fundamental right, as an aspect of dignity and liberty under Article 21, overruled *ADM Jabalpur* and the contrary holdings in *Kharak Singh* and earlier cases.[41] *Navtej Singh Johar* (2018) read in autonomy and dignity in matters of intimate association.[37] In *M. K. Ranjitsinh v. Union of India* (2024), arising from litigation to protect the Great Indian Bustard from collision with overhead power lines, the Court recognised a right against the adverse effects of climate change as part of the rights to life and equality under Article 21 and 14.[38] Each decision is a considerable achievement of constitutional imagination. Each also raises the implementation question to which the next chapter turns.

CRITICAL STUDY OF IMPLEMENTATION

The Analytical Lens

A right becomes real through a chain: declaration by the court, a defined duty-bearer, an

[35] *Unni Krishnan*, (1993) 1 SCC 645; India Const. art. 21A (inserted by The Constitution (Eighty-sixth Amendment) Act, 2002, § 2 (India)).
[36] Right of Children to Free and Compulsory Education Act, No. 35 of 2009 (India).
[41] *Puttaswamy*, (2017) 10 SCC 1.
[37] *Navtej Singh Johar*, (2018) 10 SCC 1.
[38] *M.K. Ranjitsinh*, (2024) 19 SCC 139.

allocation of resources, an executing institution, a mechanism of monitoring and a consequence for default. The "Right Declared, Relief Denied" problem arises when the chain is broken at any link after the first. Figure 3 maps the points at which this tends to happen in Article 21 litigation.

Figure 3: The path from judicial declaration to delivered relief, and where it breaks.

Link in the chain	What is required	Typical point of failure
1. Declaration	A reasoned recognition of the right.	Rarely fails; this is where the Court is strongest.
2. Duty-bearer	A named authority bound to act.	Orders addressed to "The State" generally, without a responsible officer.
3. Resources	Budgetary allocation.	Courts cannot appropriate funds; the executive controls expenditure.
4. Executing institution	Capacity to deliver.	Absent or under-staffed bodies (housing boards, health systems, prosecution and legal aid)
5. Monitoring	Time-bound, reviewable compliance.	Open-ended orders with no benchmarks, or continuing mandamus that stretches the Court's resources.
6. Consequence	Compensation, contempt, accountability.	Ad hoc damages; no statutory scheme of state liability.

Right Declared, Relief Denied: Olga Tellis and M. K. Ranjitsinh

***Olga Tellis v. Bombay Municipal Corporation* (1985).** Pavement and slum dwellers in Bombay challenged threatened eviction. C. J. Chandrachud held that the right to life includes the right to livelihood, because deprivation of the means of livelihood would deprive a person

of life itself.[39] This was a landmark recognition of a socio-economic right under Article 21. Yet the Court also held that a person has no right to encroach on a public pavement, and that eviction was permissible if carried out by a just and fair procedure. The petitioners' relief was limited to modest procedural and transitional protections, including deferral of demolition during the monsoon and a direction for alternative accommodation for certain categories of residents. The right to livelihood entered the law books, but the law in action was an eviction conducted with proper notice. This is the paradox in its purest form.

***M.K. Ranjitsinh v. Union of India* (2024).** The case began as a conservation petition on behalf of the critically endangered Great Indian Bustard, whose population has been depleted in part by collisions with overhead power transmission lines. An earlier order had directed that lines in the bird's priority habitat be placed underground. In 2024, the Court recognised a right against the adverse effects of climate change as part of Articles 14 and 21.[40] At the same time, it modified the earlier blanket direction, recognising the technical and financial difficulties of undergrounding and the country's renewable-energy commitments, and constituted an expert committee to chart a way forward. The Court's reasoning is defensible, and is indeed a model of cautious engagement with polycentric facts. But the example shows that the newest Article 21 right is, at birth, a right whose content is to be settled by negotiation with developmental imperatives. A right in this form can guide policy, but it cannot yet protect a litigant or a species in a predictable way.

Liberty Itself: Speedy Trial and The Undertrial Population

The enforcement gap is not confined to the newer socio-economic rights; it afflicts the oldest core of Article 21. In *Hussainara Khaatoon* (1980), newspaper reports revealed that large numbers of undertrial prisoners in Bihar had been in jail for longer than the maximum sentence they could have received. The Court held that speedy trial is an integral part of Article 21 and ordered the release of many such prisoners.[41] Later case law has reaffirmed and elaborated the right, including *Re-Inhuman Conditions in 1382 Prisons* (2016) on prison overcrowding[42] and *Satender Kumar Antil v. CBI* (2022), which laid down guidelines on bail and urged legislative reform.[43] The legislature has since responded in part. Section 479 of the Bharatiya Nagarik

[39] *Olga Tellis,* (1985) 3 SCC 545.
[40] *M.K. Ranjitsinh*, (2024) 19 SCC 139.
[41] *Hussainara Khatoon (1)*, (1980) 1 SCC 81.
[42] *Inhuman Conditions in 1382 Prisons, In re*, (2016) 3 SCC 700.
[43] *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51.

Suraksha Sanhita (2023), in force from 1 July 2024, requires an undertrial who has served onehalf of the maximum sentence for the offences (one-third in the case of a first-time offender) to be released on bail, with exceptions for offences punishable with death or life imprisonment.[44] Even this was slow to reach those it was meant for. On 23 August, the Supreme Court, in the *Inhuman Conditions* proceedings, held that the provision applies to undertrials whose cases were registered before the BNSS came into force, and its orders of October and November 2024 became exercises in chasing compliance: it directed District Undertrial Review Committees and jail superintendents to identify eligible prisoners, recorded that only 19 of the 36 States and Union Territories had reported by late October, and on 19 November named Uttar Pradesh, Bihar, Tripura and Goa among those that had still not responded.[45]

The latest statistics show the position easing but not changing in kind. Prison Statistics India 2023 reports 5,30,333 prisoners, 7.5% fewer than the 5,73,220 of the year before; undertrials were about 73.5% of the total, against 75.8% in 2022, and occupancy fell from 131.4% to 120.8%.[46] Nearly three in four prisoners are still awaiting trial, and the system still holds roughly a fifth more people than it was built for. These figures predate section 479, so any effect of the BNSS and of the Court's order will first appear in the 2024 edition. The Indian Justice Report 2025 shows how thin the machinery is through which section 479 must work.[47] Undertrial review depends on legal aid, yet national legal-aid spending was only Rs. 6.46 per person a year; the number of paralegal volunteers fell by 38% between 2019 and 2024; prisons averaged 775 inmates per doctor against a Model Prison Manual benchmark of 300, and 43% of sanctioned prison medical officer posts were vacant. More than four decades after *Hussainara Khatoon*, the right to speedy trial is among the established guarantees in Indian law and one of the most routinely unrealised.

The Ad Hoc Law of Constitutional Torts

The Court's most important innovation in remedies is the award of compensation as a public law remedy for violation of fundamental rights. In *Rudul Sah v. State of Bihar* (1983), a man acquitted in 1968 remained in jail for 14 years more, and the Court awarded interim

[44] Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 479 (India).
[45] *Inhuman Conditions in 1382 Prisons, In re*, W.P. (C) No. 406 of 2013 (India Aug. 23, 2024) (order); *id.* (Oct.–Nov. 2024 orders).
[46] Nat'l Crime Records Bureau, Ministry of Home Affairs, *Prison Statistics India 2023* (2025).
[47] Tata Trusts et al., *India Justice Report 2025* (2025).

compensation of Rs. 30,000 against the State, a sum small even by standards of the day.[48] *Bhim Singh v. State of Jammu & Kashmir* (1985) awarded compensation for unlawful detention of a legislator.[49] In *Nilabati Behera v. State of Orissa* (1993), a young man died in police custody, and the Court awarded compensation to his mother, holding that the remedy in public law is distinct from and additional to private law damages and that the State's immunity in tort is no answer.[50] *D.K. Basu v. State of West Bengal* (1997) laid down detailed safeguards for arrest and detention and reiterated the compensatory remedy.[51] In *Chairman, Railway Board v. Chandrima Das* (2000), compensation was extended to a foreign national who was the victim of a rape on railway premises, which illustrates the universality of Article 21's protection.[52]

These are principled decisions, and they have given Indian law a doctrine of state liability for fundamental-right violations. Yet it remains a doctrine of cases and not of code. The quantum is unpredictable; no statute defines who pays or how, and the victim must reach the High Court or the Supreme Court, which is a prohibitive journey for the marginalised section. The absence of a statutory framework means that each compensation order is, in effect, a fresh act of judicial invention.

Recent developments show that the gap remains open. In *Kattavellai and Devakar v. State of Tamil Nadu* (July 2025), acquitting a man who had spent years on death row, the Supreme Court said that a law providing compensation for wrongful incarceration is needed, observed that the task belongs to Parliament and noted that Law Commission Report No. 277 had treated wrongful prosecution in the narrow sense of malicious or bad faith prosecution and had not directly addressed wrongful incarceration.[53][54] In October 2025, another bench issued notice on petitions by three men acquitted in death penalty cases, one of them after twelve years in custody, six of them on death row, who seek compensation for the years lost and asked the Attorney General or the Solicitor General to assist.[60] Three years earlier, in 2022, the Court had declined a public interest petition seeking compensation guidelines for wrongly prosecuted, saying that the prayers lay in the realm of legislation.[55] The Court that has awarded

[48] *Rudul Sah*, (1983) 4 SCC 141.
[49] *Bhim Singh v. State of J & K*, (1985) 4 SCC 677.
[50] *Nilabati Behera*, (1993) 2 SCC 746.
[51] *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416.
[52] *Chairman, Railway Board v. Chandrima Das*, (2000) 2 SCC 465.
[53] *Kattavellai @ Devakar v. State of T.N.*, 2025 SCC OnLine SC 1439.
[54] Law Comm'n of India, Report No. 277: *Wrongful Prosecution (Miscarriage of Justice): Legal Remedies* (2018).
[60] *Ramkirat Munilal Goud v. State of Maharashtra*, [2025] 6 S.C.R. 513 (India).
[55] *Ashwini Kumar Upadhyay v. Union of India*, (2023) 14 SCC 611.

compensation case by case since *Rudul Sah* is therefore now saying, in terms, that the field needs a statute; so far as the available reports show, none has been enacted.

Socio-economic Rights and Continuing Mandamus

In *Paschim Banga Khet Mazdoor Samity* (1996), a man who had fallen from a train was refused treatment at several hospitals for lack of beds. The Court held that failure to provide timely medical treatment to a person in need violates Article 21, awarded compensation and directed the State to improve emergency medical facilities.[56] In environmental matters, from *Subhash Kumar* (1991) onward, the Court has fashioned the right to a pollution-free environment and has supervised its enforcement through continuing mandamus, appointing expert committees and issuing detailed, evolving directions.[57] *M.C. MEHTA (Oleum Gas Leak)* (1987) developed the principle of absolute liability for hazardous industry.[58]

The Institutional and Fiscal Limits of Adjudication

Lon Fuller argued that adjudication is suited to disputes in which two parties present proofs and arguments and ill-suited to what he called polycentric problems, in which a change in one place alters everything else.[59] Housing policy, hospital budgets and energy transition are paradigmatically polycentric. Abram Chayes, writing about public law litigation in the United States, described how remedial decrees in such cases must be negotiated, monitored and adjusted, with the judge becoming a manager of an ongoing process.[60] The Indian Court has performed this managerial role without the formal remedial architecture, such as masters, monitoring units and benchmarks, that it presupposes.

The comparative record is instructive. In *Government of the Republic of South Africa v. Grootboom* (2000), the Constitutional Court held that the State's housing programme failed to make provision for people in desperate need and was constitutionally unreasonable.[61] The order was celebrated as a landmark, yet the applicant, Irene Grootboom, is widely reported to have died in 2008 still waiting for adequate housing of her own.[62] Declaration of a right and delivery

[56] *Paschim Banga Khet Mazdoor Samity*, (1996) 4 SCC 37.
[57] *Subhash Kumar*, (1991) 1 SCC 598.
[58] *M.C. Mehta (Shriram-Oleum Gas)*, (1987) 1 SCC 395.
[59] Lon L. Fuller, *The Forms and Limits of Adjudication*, 92 Harv. L. Rev. 353 (1978).
[60] Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 Harv. L. Rev. 1281 (1976).
[61] Gov't of the Republic of S. Afr. v. Grootboom, 2001 (1) SA 46 (CC) (S. Afr.), 2000 SCC OnLine ZACC 20.
[62] Pearlie Joubert, *Grootboom Dies Homeless and Penniless*, Mail & Guardian (Aug. 8, 2008)

of the relief are, as that case shows, different achievements. The Indian experience is not unique, but India's courts have expanded the content of rights far faster than they have designed their remedy.

The Counter Argument: Declaration as Catalyst

The paper would be one-sided if it ignored the instances in which judicial declaration has produced real institutional change. *Vishaka v. State of Rajasthan* (1997) laid down guidelines on sexual harassment at the workplace in the absence of legislation, and Parliament later enacted the POSH Act in 2013.[63] The recognition of education as a right led to Article 21A and the RTE Act, 2009.[64] *Puttaswamy* was followed by the Digital Personal Data Protection Act, 2023.[71] In each case, the declaration set the agenda, and legislation followed, though gaps in enforcement of each statute suggest that even this route does not close the deficit by itself. The correct inference is not that a declaration is followed by a statute that allocates duties, funds and remedies, and least where it stands alone.

FINDINGS

The Study yields the following findings:-

- **First, the interpretive expansion of Article 21 is genuine and in itself defensible.** The Court's movement from Gopalan to Maneka Gandhi repaired a failure of constitutional design that ADM Jabalpur had made visible. The addition of dignity, livelihood, privacy and environmental protection responded to real constitutional need.

- **Second, the expansion has changed the character of the obligation.** By importing DPSP in Article 21, the Court converted what the Framers had assigned to politics into claims on adjudication. The resulting rights are positive entitlements that depend on executive action, budgets and administrative capacity, none of which the Court controls.

- **Third, the "right declared, relief denied" paradox is systematic and not an accident of particular cases.** Olga Tellis and Ranjitsinh show that the Court frequently

[63] *Vishaka*, (1997) 6 SCC 241; Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013 (India).
[64] India Const. art. 21A; Right of Children to Free and Compulsory Education Act, No. 35 of 2009 (India).
[71] *Puttaswamy*, (2017) 10 SCC 1; Digital Personal Data Protection Act, No. 22 of 2023 (India).

reconciles a newly declared right with competing public interests by diluting the immediate relief. The same pattern appears in the undertrial data, where a right as old as Hussainara Khatoon remains unrealised for a large proportion of prisoners: in the most recent official count, for 2023, nearly three in four prisoners (73.5%) were awaiting trial.

- **Fourth, the law of remedies is ad hoc.** There is no statutory scheme for constitutional torts or state liability. The Law Commission's call for a compensation framework for wrongful prosecution remains unfulfilled, and in 2025 the Supreme Court itself said that Parliament must legislate on compensation for wrongful incarceration. Compensation depends on judicial discretion, produces inconsistent sums, and is out of reach of the poor.

- **Fifth, the Court lacks the remedial machinery for the positive rights it created.** Continuing mandamus is a stopgap. It relies on the Court's attention, which is finite, and on the executive's cooperation, which is not guaranteed.

- **Six, declaration is valuable but conditional.** The experience of *Vishaka,* Article 21A and *Puttaswamy* show that declaration is most effective where it prompts legislation that allocates duties and funds.

Nariman's insight revisited

These findings return the argument to the observation with which it began. Nariman's remark that instruments and declarations, however numerous, do not by themselves constitute performance is borne out by the Article 21 record.[65] The deficit is not, at bottom, a failure of doctrine; the doctrine of Article 21 is rich. It is a failure of performance, in the sense in which Nariman uses the word of the United Nations: a surplus of documentation and a shortage of delivery. And his conclusion that the decisive factor lies in the spirit of the people, not in documentation, points to an uncomfortable truth for a court-centred account of rights. Judicial pronouncements cannot, by themselves, create the administrative culture, the political will and the public vigilance on which the realisation of rights depends. The most that courts can do is to shape the institutions and incentives through which that culture is built, and that is what the

[65] Nariman, *supra* note 5.

suggestions in Chapter 7 attempt.

Answer to the Research Question

The research question is answered substantially in the affirmative. Continuous expansion of Article 21 without remedial architecture widens the distance between law in books and law in action, and the resulting condition, "declaratory constitutionalism", is observable in the cases studied. The qualification is that expansion is not matched by remedial design, converting it into a legitimacy problem for the Court.

CONCLUSION

Article 21 is the most consequential provision of the Indian Constitution, and the Supreme Court's reading of it is among the great achievements of modern constitutional adjudication. It gave substance to the promise of liberty at a moment when the Constitution seemed to have failed its citizens, and it extended that promise from the prisoner to the pavement dweller, from the child denied schooling to the individual with data to protect, and now to the species at risk.

The argument of this paper is that the achievement is incomplete. A right is the sum of a declaration and a remedy. India has been generous with the first and sparing with the second. Where the Court has declared rights without specifying duty bearers, benchmarks, budgets and consequences, relief has been deferred, diluted or denied, and the rights have become what this paper calls declaratory. The cost is borne first by the litigant who wins the principle and loses the relief, and then by the Court itself, whose authority depends on its judgements being obeyed.

None of this suggests that the expansion should be reversed or halted. The better course is to change the emphasis of judicial energy. Fali S. Nariman's warning that rights remain "just words" until they are performed should be read as a programme for the next phase of Article 21 jurisprudence. Having built the doctrine of rights, the Court and the legislature must now build the doctrine and the institutions of remedies.

SUGGESTIONS

Figure 4: Proposed Remedial Architecture

Tier	Measure	Purpose
Legistative	A statute on state liability for violations of fundamental rights, with a schedule of compensation and a time-bound claims procedure.	Replace ad hoc damages with predictable and accessible relief.
Judicial	Remedy conscious adjudication: specify duty bearer, timeline and benchmarks in every Article 21 order.	Convert declaration into an actionable command.
Supervisory	Time-limited monitoring through court-appointed commissioners or expert bodies, with periodic reports and sunset review.	Make continuing mandamus sustainable.
Executive	Dedicated budget lines and nodal officers for each judicially recognised entitlement.	Link rights to resources and to a named person.
Access	Strengthened legal aid, State Human Rights Commissions and Under-Trial Review Committees.	Make remedies reachable for the marginalised communities without a trip to the Supreme Court.
Transparancy	Public compliance data and annual reporting to the legislature.	Create the vigilance that Nariman locates in the spirit of the people.

1. **Codify state liability and constitutional tort.** Parliament should enact a statute on compensation for violation of fundamental rights by state agencies. It should define the grounds of liability, provide a graded schedule of compensation, and set up a tribunal or summary procedure accessible at district level. The Law Commission's Report No. 277 has already recommended a statutory scheme for victims of wrongful prosecution; its proposals offer a working model, although, as the Supreme Court noted in *Kattavellai* (2025), the Report did not directly address wrongful incarceration, which a new statute should also cover. A statute would end the dependence of relief on the accident of a petition reaching a constitutional court.

2. **Adopt a remedy-first discipline in new Article 21 claims.** Before recognising a new facet of Article 21, the Court should ask what relief the right will yield, who will provide it and by when. Where the content of a right cannot yet be specified, the Court may declare the principle and direct the executive and legislature to frame a scheme within

a stated period, with the matter listed for review. *Vishaka* is the model: a declaration with interim guidelines, followed by legislation.

3. **Replace open-ended continuing mandamus with structured supervision.** Orders should include measurable benchmarks and dates for compliance, a named responsible officer, periodic status reports, and a defined point of review. Independent commissioners or expert committees, as the Court used in *Ranjitsinh*, can carry the monitoring load, and the Court's role can be confined to hearing reports and enforcing default. Comparative experience, including the structural orders of the Colombian Constitutional Court in the displaced persons case (Decision T-025 of 2004), suggests that supervision works best when benchmarks are explicit.

4. **Tie positive rights to budgets and named officers.** A positive right that the Court recognises should be matched by a requirement that the responsible department report on the budgetary allocation made for it. This does not compel the Court to appropriate funds; it simply makes the absence of funds visible and obliges the executive to explain it.

5. **Strengthen the first line institutions of liberty.** The undertrial crisis will not be resolved in the Supreme Court. It requires functioning legal aid at the first remand hearing, an effective Under Trial Review Committee, and faithful application of section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 and of the bail principles stated in *Satender Kumar Antil*. The Indian Justice Report 2025 figures on legal-aid spending, paralegal volunteers and prison staffing show that these institutions are underresourced, and they should be funded before further rights are announced. Likewise, State Human Rights Commissions should be given adequate staff and real powers so that custodial violations are addressed close to where they occur.

6. **Treat transparency as a remedy.** Publication of compliance data, such as prison statistics, hospital emergency capacity and the implementation status of court-ordered schemes, allows he public, the press and the legislature to hold the executive accountable. If the decisive factor in implementation is, as Nariman suggests, the spirit of the people, then informing that spirit is a legitimate and necessary constitutional objective.

7. **Match restraint to capacity.** Where the Court cannot specify a feasible remedy, it should say so and frame the right as a principle to guide the legislature, in place of announcing an entitlement it knows cannot be delivered. A smaller right that is delivered is worth more than a larger right that is not.

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