

KHATRI VS STATE OF BIHAR

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INTRODUCTION

At a time when about 70% of the population of a country is below the poverty line and probably more than that legally illiterate, delivering justice to one and all becomes a tough challenge to the judiciary of the largest democracy in the world. Legal aid and legal representation are the key aspects in fighting injustice lawfully by one who has been sinned, and one's incapability to represent himself in the judiciary of the country due to impoverished living conditions and financial constraints is an event not seldom in a country like India. The provision of free legal aid contained in the article 39A¹, inserted by the 42nd amendment² introduced in the Indian constitution is one of applaudable acclaim, but the inclusion of such a provision has come off and by what one might say, the expense and learnings of despicable injustices which have been committed in the past, such as one in the present case³ where a bunch of accused were left permanently visually impaired While they were in custody in the hands of the police and represented at the trial without any legal counsel.

FACTS OF THE CASE

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During the period 1979 to 1980, there were reported incidents of pouring acid into the eyes of a total of 33 under-trial prisoners by the police in Bhagalpur, Bihar. This was reportedly the worst case of custodial torture done by the police and came to be known as one of the darkest periods of Independent Indian history. This case is also known by the name the Bhagalpur Blindings case. While the under trial prisoners were blinded by the police and presented before the magistrate, he failed to enquire about the wounds suffered by the accused either deliberately or negligently, also the district and sessions court judge failed to visit the alleged Bhagalpur jail more than once a year to inspect the conditions in the jail. Later the blinded prisoners were admitted to Rajendra Prasad ophthalmic Institute, New Delhi, but their vision was so severely impaired that it was impossible to repair it either by surgery or any medical treatment.

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¹ Constitution of India, 1950 art 39A

² The Constitution (Forty Second Amendment) Act, 1976

³ Khatri vs. State of Bihar, (1981) 1 SCC 627

Several writ petitions were filed before the Supreme Court and the court decided to hear all the petitions together by clubbing them and hear them before a single bench in Khatri and others versus the State of Bihar and others.

ISSUES OF THE CASE

1. Whether the state was liable to pay compensation to blinded prisoners for violation of the fundamental right under article 21 of the Constitution.
2. whether the state failed to provide legal representation to the accused.
3. Whether the magistrate Failed to discharge his duty of offering free legal aid to the accused.

ANALYSIS OF THE COURT

The court began its discourse by showing its disappointment over the fact that legal representation was neither provided nor offered by the judicial magistrate to the accused on the sole ground that they did not ask for it, in the case of Hussainara Khatoon vs. Home secretary⁴ the court declared that the right to free legal services is a fundamental right of a person accused of an offense which may result in a conviction and therefore in such cases if the accused cannot afford legal aid you to reasons of indigence, poverty and destitution state is liable to provide it at its own cost. The decision of the court, in this case, is clear law declared by binding precedent under article 141⁵ of the Constitution of India. And the court shows its grumpiness over the fact that most states in the country have not taken note of this decision or made any effort in the said direction. It is said that, though the State may have its financial constraints and its priorities in expenditure, the state on this behalf cannot claim it as an excuse to escape from its responsibility, to embolden this it refers to an orbiter dicta by the U.S. District Court for the Southern District of New York in Rhem v. Malcolm⁶, "The law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty"

It quotes Justice Black mum in Jackson v. Bishop⁷, "Humane considerations and constitutional requirements are not in this day to be measured by dollar considerations."

⁴ Hussainara Khatoon vs. Home secretary, (1980) 1 SCC 98

⁵ Constitution of India, 1950 art 141

⁶ Rhem v. Malcolm MANU/FESC/0364/1975

⁷ Jackson v. Bishop MANU/FEVT/0056/1968

The court points out that the constitutional obligation to provide free legal aid to an accused does not only apply when the trial is commenced but also when the remand orders are passed and from time to time when the accused is presented before the court. It takes recourse to the fact that about 70% of the people living in rural areas are illiterate and even more than that number are legally uneducated and unaware of the rights and entitlements under the law which makes up for the additional burden on the state and the judiciary to take care that such people are served justice. The legal aid movement is referred and it is said that it would be a mockery of the legal system with the practice of rights left to the sole efforts of an uneducated populace and legal aid would end up as being a mere paper promise. The court directs the shifting of prisoners to the Blind relief association of Delhi after their discharge from the hospital, as it may not be feasible to send them back to jail where their safety might be in question. It also finds that some of the accused had not been presented before the magistrate within 24 hours of arrest, something which is a violation of the legal rights of every person under article 22⁸ and sections 56 and 57 of CRPC 1973.⁹ Also, it is shocking that the state continues to detain the business without remand of orders which is a violation of personal liberty provided in article 21¹⁰.

It reprimands the police department for such a basic violation of the rules of arrest and detention and warns it about repeating such a bare mistake. On the question of whether the responsibility of the blinding of the prisoners on the state of Bihar the court observes that, as the police officers are servants of the state of Bihar, it is liable. The court opined verbatim, “The court found the previous constitutional importance in the issue of liability of the state and compensation, as to be able to explore a new dimension of the right to live in Boston liberty in the light of the dynamic constitutional jurisprudence which we are involving in Supreme Court.” The court also found it dismal to realize that there was no inspection carried out by the district and sessions court at any time during the year 1980 of the Bhagalpur jail which is a violation of rules given by the apex court and directed the High Court to look into the matter closely and ensure that the judicial officers follow the rules.

⁸ Constitution of India, 1950 art 22

⁹ Criminal Procedure Code, 1973 s 56, 57

¹⁰ Constitution of India, 1950 art 21

THE DECISION OF THE COURT

The court declared that it is a constitutional mandate of the state to provide free legal aid to the accused at all stages of trial if an accused suffers from poverty or destitution, to meet ends of justice, and to reason, its failure to do the same on a financial constraint or administrative inability is a frivolous argument. The court directed the third magistrate and in general, all courts in the country that it is the duty of the judicial magistrate to apprise the accused about his right to free legal aid in times of need the cost of which will be paid by the state. The court restricted itself from taking any strict action against the non-produce meant of accused within 24 hours before the judicial magistrate and asked the state police to be vigilant about the same in the future. The court also held the state liable for the despicable act of the police violating the light of the life of the prisoners as the police are directly employed by the state and also means of the state and therefore asked the state to provide compensation to the accused.

CONCLUSION

The judgment of the court In the present this is a highly applaudable one where the court has given due regard to principles of natural justice and has given a decision which is an empowering one for the poor and neglected while at the same time bringing the guilty to book. The judgment has been authored by justice P.N Bhagwati, who was a pioneer of judicial activism and one of the most notable jurists to have held the office of the honorable Supreme Court. This case is an instance where the state police, the very people who are paid and employed for the sole purpose of maintenance of peace and harmony and maintaining the safety of its citizens, brutally and shamefully use their powers to do absolute injustice to the undertrials which is an example of abominable behavior. This decision however provides a strong president and hopefully a strong deterrent to the happening of such instances in the future and it will stay relevant much as it is now. The judgment once again provides strong backing for the provision of free legal aid one that had been already unambiguously declared by the court in the case of Hussainara Khatoon, to bring the accessibility of justice to the ones who cannot afford it.