



HUSSAINARA KHATOON V. HOME SECRETARY, STATE OF BIHAR (1979)

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FACTS OF THE CASE

This case was filed as a PIL by advocate Kapila Hingorani based on newspaper reports of findings of Rustamji (submitted to the government), on behalf of various prisoners on maladministration of prisons in Bihar, including an under-trial prisoner, Hussainara Khatoon. These petitions surface the plight of human conditions and long detentions that were suffered by those who were considered “*innocent until proven guilty*”. Primarily due to activism and initiative of advocates and newspapers, which highlighted the severe conditions of under detainees, including women and children who were awaiting trial for years, to an extent where they had passed the maximum punishment for the offence for which they were accused. There were cases where trials had not even begun, in some cases investigations were yet to be completed, and all this was coupled by the inability of such persons to arrange for the defence or even to afford their bail. This PIL represented the need for the Supreme Court's intervention to address these grievances suffered.

ISSUES HIGHLIGHTED

1. Whether there was a violation of the essential articles, Article 21 and Article 22.
2. Whether the right to a speedy trial is a fundamental right under Article 21.
3. Whether free legal aid be interpreted as being a part of the directive principle of state policy.

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STATUTORY PROVISIONS INVOLVED

Article 21 Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.¹

This article might be only of 2/3 lines, but over the years this article has again and again been reiterated as being the heart & soul of the Indian constitution, because of how it in itself contains various rights and liberties that were at one point unimaginable. Ranging from right to roads, right to silence, right to dignity, right to livelihood, etc., are amongst many rights that have been recognised through this article.

Article 39A Equal Justice and Free Legal Aid: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities.²

This article lays down a duty upon the state to guarantee free Legal Aid and access to all, by the use of suitable legislations or schemes. This article is to be seen as a means of achieving the end that is legal justice, which will be impossible if an affected person has no access to Legal Aid, making all efforts futile. Thus, to more swiftly work towards the goal of equal justice, this article was enacted.

ARGUMENTS FROM THE PETITIONER & RESPONDENT

Petitioner (Represented by Pushpa Kapila Hingorani): The petitioners side presented all the requisite affidavits and evidences that prove the fact that they are where many prisoners in Patna and Muzaffarpur jails that were kept on remand unreasonably, they also satellite upon how the magistrate rather than hearing the parties would pass and order of judicial custody on the request of the police. Due to this maladministration, there were people who at on average, had spent over 6 to 7 years in jail, awaiting their trials. Most of the members who were the victims of this inefficiency came from a humble background, which represented their inability to get bail or a lawyer for their defence. While placing their contentions upon article 21 and

¹ Article 21 of the Indian Constitution

² Article 39A of the Indian Constitution

article 39a, they considered that the right to a speedy trial, which is an efficient part of the right to life, was violated by the authorities.

Respondent (Represented by U. P. Singh): There was submission of affidavits and details of prisoners from the side of the respondent, unable to explain the cause behind the enormous delay in the trials of these Prisoners, which was later on discussed by the Supreme Court heavily in the judgement.

JUDGMENT & DICTUM BEHIND

The Court held that any procedure by which a large number of people are behind bars without their actual trials happening for so long will not be considered as reasonable, just or fair, representing how it would need to be to conform with the requirement of Article 21, quoting the case of Maneka Gandhi.

“Such imprisonment of under-trials is a denial of human rights and withholding of basic freedoms. Speedy trial is the essence of criminal justice, and there can be no doubt that the delay in trial by itself constitutes a denial of Justice. Regardless of whether it is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21. No procedure which does not ensure reasonably quick trial can be regarded as reasonable/ just/ fair, and it would fall foul of article 21.”³

The court propounded that the right to a reasonable, expeditious trial was an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. While representing their concern over the repercussions of a defective system, due to which people are either fleeced by the police, revenue officials or professionals, to an extent where they had to take debts for their release.

Though presumed innocent, they are subjected to psychological and physical deprivations of jail life:

- They are prevented from contributing to the preparation of their defence.
- They lose their job if they have one, and are deprived of an opportunity to work to support ourselves.

³ 1978 AIR 597

The court considered that under article 21, everyone was entitled to the right to a speedy trial, which was the very essence of criminal justice, and any delay of the same would mean denial of justice. While relying upon article 39A, the status that if any accused was unable to secure legal services due to reasons of poverty or impecuniosity, then the state must secure the same.

Law of the Poor, not Law for the Poor: For the poor law is considered as something mysterious, very far away from them and not as a positive or constructive device that it is supposed to be, representing how law has always been inaccessible to the poor, due to which legal system and the trust that the poor used to have upon it has been lost. Reality is that there is a need for providing equal justice in the instructions, and that can be only done by following an activist scheme of providing legal aid.

Constitutional Mandate on State: The court pressed upon the urgency for the state to recognise this mandate and obligation that has been put upon them by the constitution, not only under Article 39 A but also because it is a recognised part of Article 21, they also lay a similar responsibility upon the judiciary, Hindi guardian of fundamental rights.

Activist Approach of Court (in reference with US Supreme Court): The court considered that they had the widest jurisdiction for protection of constitutional rights and while interpreting them, considered that they will adopt after this stick approach to issue directions to the state wherever there is need of taking positive action or to bring a sense of urgency in them. They also referred to the constructive role that the courts in the United States had played throughout for reforms of prisons, to bring a change in the hideous conditions of prisons and prisoners through their decisions.

Directions to the Bihar's Administration: Directed both the government and courts of Bihar to present before the court the particulars of magistrates and courts of sessions in the state with the total number of cases that are pending in each of them, providing a tally of pending cases and the reasons behind the same (if not disposed of for more than 6 months). Laid down certain guidelines that were to be kept in mind by the court to understand the probability of the accused fleeing. Only in such cases was there a need for judicial custody, like the nature of the offence, residence, community, employment, family, among many others.

CONCLUSION

Previous to the coming of this case, the court always had a narrow stance upon cases, which was strictly based on rules & regulations established by law, but they liberated themselves from this rule, especially based on the fact that the case was filed by someone unconnected to the victims, evidences were based on news & press reports. The judiciary took up an activist role, while placing reliance upon the Directive Principle of State Policy in the light of Article 21.

This case introduced principles that have brought the common man and the legal system closer with each other, making both more flexible and less mysterious. The court was finally able to pierce through the rigid boundaries of prison walls and extended the protection of the writ of Habeas Corpus and Article 21 to the undertrial prisoners. Rather than judicial overreach, they brought in a sense of urgency and guidance to the state to perform its due obligations towards the people and citizens.

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