

## CASE ANALYSIS: HUSSAINARA KHATOON & ORS. v. HOME SECRETARY, STATE OF BIHAR AIR 1979 SC 1369

Legal Aid Cell @ DNLU November 17, 2021 Uncategorized

### ABSTRACT

India is a deeply stratified society with divisions based on caste, economic capacity, opportunity, religion, gender, and age. However, all of us are equal before the law and have equal protection of the law. Our constitution envisages substantive equality and not just formal equality. Any legal system needs to be responsive to the prevailing social and economic context in order to earn credibility, legitimacy, and the respect of its people. The provision of legal aid is one such mechanism to ensure that all have equal access to justice.

It's also true that crime doesn't just target those who can afford to fight back. Everyone has a right to be heard, even under the rule of natural justice. The right to equal justice and free legal aid is discussed in Article 39A of the Indian Constitution, 1949, which was included by the forty-second amendment. It provides that all the citizens of India have a right to seek justice if their right has been infringed and if they don't have the resources to fight for the rights, the state shall provide free legal aid to them.

This article mainly focuses on the following objectives:

- Analyzing the Background and the Issues of the Case.
- Expanding the scope of Legal Aid under Article 39A.
- Concluding by implying the significance of the Case in paving way for the future.

### INTRODUCTION

"The poor in their contact with the legal system has always been on the wrong side of the law. They have always come across law for the poor rather than the law of the poor."

The story begins in 1977, when the National Police Commission launched a three-year examination into the issues affecting the Indian Criminal Justice System, such as the outnumbering of unconvicted prisoners or a person on trial for an unproven offense.

Advocate Pushpa Kapila Hingorani was one of the article's readers, and she filed a case before the Supreme Court of India as a Public Interest Litigation. Advocate Pushpa Kapila Hingorani is known as the "Mother of Public Interest Litigation in India" because this was the first reported case of PIL in India. She then applied for a writ of habeas corpus.

The goal of habeas corpus is to prevent illegal incarceration by requiring a person in custody to prove that the custody is legal. Amicus curiae has access to it.

### FACTS

- The writ petition had been filed in order for the release of under-trial inmates in the state of Bihar to be heard by the Court. Bihar was ordered to file a new chart displaying a year-by-year breakdown of the under-trial detainees, after breaking them into two main categories: minor offenses and big offences that were not carried out.

The current case concerned the rights of under-trial detainees who filed habeas corpus petitions and were later released.

- It depicted a deplorable state of justice administration in the state of Bihar.
- A vast number of people, including women and children, were detained and had been awaiting trial for many years.

#### ISSUES

- Should the right to a prompt trial be included in Article 21?
- Is the Directive Principles of State Policies Art 39A clause relating to free legal assistance to the lower parts of society justiciable or legally enforceable?

### JUDGEMENT

- The court deemed protective custody to be a blatant breach of Article 21 of the Indian Constitution, which deals with an individual's life and liberty, and ordered that they be released immediately, given access to basic living circumstances, and sent to rescue homes.

- The Court ordered that the under-trial detainees whose names and addresses were included in Mrs Hingorani's list be released because their continued detention was deemed unconstitutional.

- The court cited Maneka Gandhi v. Union of India, which held that any method that keeps a considerable portion of the people in prison for an extended period of time without a fair trial cannot be deemed "reasonable, fair, and just." Human rights and basic liberties are considered to include expedited trials and freedom from imprisonment. The right to a timely trial is a fundamental and basic freedom, according to the case.

- The outmoded unsatisfactory bail system, which is based on the idea that the prospect of monetary loss is the absolute deterrent against the accused fleeing from the court, is one of the reasons for the delayed judicial system and the excessive number of pre-

trial detentions.

- The court also ordered that if the police investigation takes more than two years and the charge sheet is not filed within three months, the state must drop the case like in the case of Nimeon Sangma v. Home Secretary, Government of Meghalaya. It ordered the government to establish emergency shelters and welfare homes for persons who have nowhere to go.

## SCOPE OF LEGAL AID

- Various Committees recognized legal aid as a fundamental right that the state must protect in order to promote equal access to justice. For e.g.- The Juridicare Committee was established in 1977 with the goal of establishing a uniform legal service programme in all states. This culminated in the government of India appointing the Committee for Implementing Legal Aid Schemes (CILAS) in 1980.
- Legal assistance was conceived as a means of easing the rigours of the criminal justice system and ensuring that everyone has equal access to justice through prompt and effective legal representation.
- The committees stated that “preventive and strategic legal assistance is required to promote social justice in our socio-economic context, “highlighting the links between legal aid and poverty issues in our society.”
- Law and institutional reform should be included in legal aid; concerns of law and poverty must be addressed.

## RIGHT TO LEGAL AID

- Legal aid is a crucial aspect in ensuring that prisoners’ basic human rights are not violated. Article 39A of the Indian Constitution mentions this right as well. Section 304 of the Cr.P.C., which allows for legal aid to the accused in other cases, has partially implemented this provision.
- In the face of Articles 21 and 39A of the Constitution, courts cannot remain comatose. If, for example, a prisoner has been condemned to incarceration but is unable to exercise his constitutional and statutory right of appeal due to poverty, the Supreme Court may, in such situations, invoke Article 142 read with Articles 21 and 39A of the Constitution.
- This obligation of the state is not limited to the stage of trial, but also includes the stages when the prisoner is first brought before the magistrate or when he is detained. One of the most important aspects of a reasonable, free, and just method for trying any case against the accused is to ensure that that individual has access to Free Legal Aid.
- The Indian constitution’s preamble aspires to provide social, economic, and political fairness to the Indian people. Article 38(1) of the constitution states that the state shall promote the welfare of the people by securing and protecting the social order, which includes justice, and Article 39-A of the constitution states that the state shall, in particular, provide free legal aid, through appropriate legislation or schemes, to ensure that no citizen is denied the opportunity to secure justice.
- It was determined in Sheela Barse vs. State of Maharashtra that providing legal help to a poor accused who has been arrested and placed in peril of his life or personal liberty is a constitutional imperative dictated not only by article 39-A, but also by articles 21 and 14 of the constitution.
- In Sukhdas vs. Union Territory of Arunachal Pradesh , it was also established that if an accused is not informed of his right and thus remains unrepresented by counsel, his trial is vitiated by constitutional infirmity, and any conviction obtained as a result of such trial is liable to be overturned. Similarly, article 14 mentions equality before the law. The courts are required to give legal aid under Section 304 of the CrPC.

## CONCLUSION

“Without equal access to the law, the system not only robs the poor of their only protection, but it places the most powerful and cruel weapon ever conceived in the hands of their oppressors,” Reginald Heber Smith said in his book “Justice and the Poor.”

In order to establish a successful legal aid movement in India, the government must take the necessary efforts to raise public awareness and educate citizens about their basic constitutional rights. The government’s sole goal or mission should be to give “fair justice to all.” The Legal Services Authority Act must be properly implemented by addressing the major problem or issue of a lack of legal education and awareness.

People will make proper use of free legal aid programs, etc. if they are informed and aware of their rights. As a result of all of this, vulnerable people’s rights are being exploited and denied. The legal aid services should be properly managed and monitored.

The case of Hussainara Khatoon & Others (I) v. Home Secretary, State of Bihar had a significant impact on the Indian legal system. Within four months of submitting the case for the first time, it resulted in the release of 400,00 undertrial convicts out of a total of 1,200,000 undertrials. Internationally, the case was significant. Long-detailed reports were broadcast by the media, radio stations, and television networks, which contributed to the investigation and assisted in the investigation and data collection.

The Law Commission Report expressed worry over the speed of trials. The case raised awareness about the atrocities perpetrated on undertrials, as well as the potential for rights violations and wrongful imprisonment. It was the first time the Apex Court was open to the poorest of the poor. It raised public awareness of the issue of prisoner rights.

This case also sparked judicial activism in a number of previously unnoticed situations. The Hussainara Khatoon case established the principles of expeditious trial, and it had two offshoots, as it established the development and investigative nature of PILs, as well as the Supreme Court’s remedial powers.

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