
HUSSAINARA KHATOON & OTHERS (I) V. HOME SECRETARY, STATE OF BIHAR

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¹Date of Judgement: 4 May 1979

Equivalent citations: 1979 AIR 1819, 1979 SCR (3)1276

Bench: PN Bhagwati, O. Chinappa Reddy (J)

Petitioners- Hussainara Khatoon and Ors.

Respondent - The State of Bihar, Patna

The subject of a case: Constitution of India, 1950

- **²Article 21 - Right to Life and liberty** which ensures the right of speedy trial, although the speedy trial is not specifically mentioned in an ambit of fundamental rights of Art. 21 but is covered under broad sweep of Art.21 of the Indian Constitution. A speedy trial means an expeditious trial and is an integral part of Art. 21 of the Constitution of India.

Art. 21 states that no person has to be deprived of its life and liberty except described by the due procedure of law. If a person is deprived of liberty in due procedure which is not reasonable, fair, or just violates Art. 21 of the Constitution of India.

- **Article 39 A - Right of legal aid to poor and destitute people for the right of justice.** Art.14 and Art.22(1) of the Indian Constitution make it obligatory for the State to ensure equality before the law and to ensure propagate justice to all parts of society.

¹ Main.sci.gov.in. 2021. *Home / SUPREME COURT OF INDIA*. [online] Available at: <<https://main.sci.gov.in>> [Accessed June 2021].

² Indiankanoon.org. 2021. *Hussainara Khatoon & Ors vs Home Secretary, State Of Bihar, ... on 9 March, 1979*. [online] Available at: <<https://indiankanoon.org/doc/1373215/>> [Accessed 17 June 2021].

ABSTRACT

It is aptly said by William Gladstone that **Justice delayed is Justice denied.** Before the Hussainara Khatoon case, there was no light on the condition of prisoners and brutal violation of their rights and liberties. Every person is entitled to Art. 21 related to the right to life and liberties, this includes granting them full opportunity to prove their innocence. With the case of Hussainara Khatoon, awareness of free legal aid for poorer sections of society and the antiquated and unsatisfactory bail system is impossible to fulfill for poor sections. It reflects and records a slow and antiquated legal system that prevents a person to access its basic freedom and liberties. It also highlights the need of vigilance among citizens regarding socio-legal issues as *Vigilantibus Non Dormientibus Jura Subveniunt*. This paper summarises the case Hussainara Khatoon & Others (I) v. Home Secretary, State of Bihar, and highlights its major attributes and its significance in legal history.

Introduction

Hussainara Khatoon & Others (I) v. The Home Secretary, State of Bihar was filed under Art. 32 of Indian Constitution under writ petition of *habeas corpus* which means *you may have the body*. Habeas Corpus means that any accused has the right to have a free and fair trial and is required to be presented to the Magistrate within 24 hrs of their arrest. But the law seems to work in distinct ways in a pragmatic world. The case highlights the malfunctioning prison system and rusted judicial system.

Background of the case

³The story of Hussainara Khatoon & Others (I) v. Home Secretary, State of Bihar follows back from PIL development in India in 1979. The case of Hussainara Khatoon & Others (I) v. Home Secretary, State of Bihar is also called an ‘undertrial case.’ The case is related to the accessibility of justice and outcasts key features of Public Interest Litigation.

The story traces back to 1977, the National Police Commission initiated three- year investigation on the factors affecting Indian Criminal Justice System including the outnumbered

³ Clarkcunningham.org. 2003. *LIBERTY, EQUALITY AND SOCIAL JUSTICE: STRUGGLES FOR A NEW SOCIAL ORDER*. [online] Available at: <<http://www.clarkcunningham.org/PDF/RootsOfPIL.pdf>> [Accessed June 2021]

unconvicted prisoners or a person under trial for the unconfirmed crime. RF Rustomji published the article in the Indian Express reflecting the horrendous condition of the Indian Criminal system. Rustomji also presented several case studies of an accused, which indicated that their under-trial period is longer than the maximum punishment charged.

The case filed under habeas corpus writ by Adv. Kapila Hingorani, who was also one of the first women lawyers to be heard in the Supreme Court, on the behalf of the nineteen undertrials on the facts provided by Rustomji in the articles.

Hussainara Khatton was the first petitioner, fled with her family from Bangladesh around 1975. Hussainara was arrested and held in 'protective custody' for four years. Although the Indian Government had issued the directives related to the fact that all who were arrested under the Foreigners Act, refugees from Bangladesh should be released on bond.

Later, Kapila Hingorani filed a writ of habeas corpus. Habeas corpus is a 'great writ' that was guaranteed in Magna Carta by King John in 1215.

The purpose of habeas corpus is to prevent unlawful incarceration by ordering a person with custody to prove the lawfulness of custody. It can be accessed by amicus curiae. It relies upon the theory that unlawful incarceration of a person would not be able to access their right or seek relief by themselves. However, it was asserted and pointed out that habeas corpus cannot be filed without Power of attorney or an affidavit or typically from the next friend or amicus curiae of the prisoner.

But contrary to the fact, Kapila Hingorani did not attempt to contact any relatives of the prisoners mentioned in Rustomji's article rather she filed the habeas corpus petition herself to be clear she filed the case as a highly legal-spirited citizen rather than lawyers retained by prisoners.

Facts

⁴⁵The writ petition of habeas corpus was filed under Article 32 of the Indian Constitution before the Supreme court for the release of 17 undertrial prisoners. The case reflected the

⁴ Kapoor, A., 2020. *Hussainara Khattoon & Ors. vs. Home Secretary, State of Bihar - Law Times Journal*. [online] Law Times Journal. Available at: <<https://lawtimesjournal.in/hussainara-khattoon-ors-vs-home-secretary-state-of-bihar/>> [Accessed June 2021].

⁵ Shankardass, R.D., 2000. *Punishment and the prison: Indian and international perspectives*. New Delhi: Sage Publications.

gullible state of the State's Criminal Justice system. A large number of women, minors were behind the bars because of minor and trivial crimes that would award them incarceration of several months but awaiting justice for several years or, with major crimes exceeding their period of Maximum time of sentence or some of them were unaware of their reasoning behind the arrest and did not remember for how many years they have been in prison. The state of Bihar was also directed to file amended chard which records year-wise breakup of undertrial prisoners redirecting them into two categories - Minor crimes and others with serious non - bailable offenses but no action was taken by the State government. This reflects a brutal violation of human rights and fundamental values. This was the first reported case in PIL(Public Interest Litigation)in India. Kapila Hingorani was called as *Mother of Public Interest Litigation of India*.

The petition argued that prisoners with trivial and petty crimes were languishing for offenses in jail for five to ten years without any fair, reasonable trial. The appellant argued with an instance of Reena Kumari who was charged in 1976 with awareness of the fact, the reason behind her arrest, and the basis of the arrest. Her jail ticket recorded the time she was taken to court was on 24-11-1978,4-12-1978 and 8-12-1978 but each court had no time to see her.

Considering these issues, Kapila Hingorani filed the petition on 11 January 1979. The petition was not regular in case not only because it lacked power of attorney, but because it was based on an article by Rustomji, not an affidavit, there was no client. The Registrar's office objected due to irregularities in filing the writ petition but due to Kapila Hingorani's insistence the case was presented before Bench of three- judges P N Bhagwati, R S Pathak, and A D Koshal. The preliminary hearing was set on 5 Feb 1979 by the three-judge bench and issued notice to the State of Bihar to take action. The State did not appear on the preliminary hearing of 5 Feb 1979 this invited bold step by the court of ordering release of all undertrial prisoners mentioned in Rustomji's article of Indian Express on non-monetary bond or any personal sureties. The court proceeded and decided to proceed based on allegations reported in Rustomji's article dated 8th and 9th January 1979 and stated that all allegations incorporated in the writ petition are valid and accountable as the information on the cutting of the newspaper is most disturbing and stirring the conscience of legal spirited citizen or any socially active judge or lawyer.

Looking at the intensity of the matter, the court dramatically expanded the scope of litigation and directed to furnish all the data-related undertrials confined over 18 months. The State

appeared in the next hearing which was on 19 February 1979 but did not question the irregularity of petition either the questionable grounds of the case with the reliance on the article and did argue the factual allegation raised by the Rustomji in his article rather focussed on propagating systematic steps taken by the government of Bihar in mitigating the undisputed problem of excessive pre-trial detention. In the third hearing, the court found that there are several prisoners including women and minors who are not held for any charges but under 'protective custody because they are homeless, refugees, and witnesses to crimes, or some of them are victims of crime. The court found that protective custody is a clear violation of Art. 21 of the Indian Constitution related to the life and liberty of an individual and ordered to release them immediately and provide them access to basic living conditions and transfer them to rescue homes.

On 5 March 1979, Justice DA Bhagwati and Justice PN Bhagwati, and Justice Kaushal expanded to the new territory of right to legal aid, Art. 39A related to the right to legal aid was added in 1976 and declared it as a constitutional right.

Issues

The major issues of the Hussainara Khatoon case were related to the rights of undertrials or the right of free legal aid and the ambit of Art 32 of the Indian Constitution. It majorly stressed Art 21, the right to life and liberty, and Art. 39A of the Indian Constitution, right of free legal aid to downtrodden sections of society.

- Would the Court entertain the petition under Article 32 of the Constitution, subscribing to the view that such detention, being illegal because of the provisions of the Criminal Procedure Code, constitutes a violation of the constitutional guarantees or would the Court decline to interfere in the matter, citing procedural technicalities?
- Can the right of a speedy trial be covered in the ambit of Art 21 of the Indian Constitution?
- Can the Directive Principles of State Policies Art 39A provision related to free legal aid to poorer sections of society be justiciable or enforced by law?

Judgment

⁶The judgment pronounced in *Hussainara Khatoon v State of Bihar* has opened the new scope of PIL and explored the undisputable problem of outnumbered undertrials. The case of *Hussainara Khatoon v State of Bihar* outcast the shocking revelation of the state affairs regarding the administration of justice in the state of Bihar. An alarmingly high number of men, women, and children are behind bars, some are for trivial petty crimes, if even prove guilty would have maximum imprisonment of several months or hardly a year or two but these specimens are behind bars aloof from their freedom, liberty for several years without even being their trial started. It is a shame on the legal system which restricts the public's rights and becomes an obstacle to their liberty rather than providing them liberty. It is high time to stir our conscience and to realize the fact there are a large number of men, women, and children waiting for justice, for the law is a tool of injustice and they are helpless victims of the cold and callous nature of the legal and judicial system

The court mentioned the judgment of **Maneka Gandhi v. Union of India(1978)** which stated that any procedure which keeps a large number of its population behind the bars without a fair trial for a long time cannot be called "*reasonable, fair and just*". Maneka Gandhi's case referred to expeditious trial and freedom from imprisonment are presumed as part of human rights and basic liberties. The case cited that the right to a speedy trial is a fundamental and basic freedom.

One of the reasons behind the slow justice system and the high number of pre-trial detention in the antiquated unsatisfactory bail system, which is rusted with the assumption that the risk of monetary loss is the absolute deterrent against the accused fleeing from justice. After the amendment of the Criminal procedure code, we blindly follow the antiquated system. Where an accused is released on his personal bond, it requires monetary obligation and to pay a sum of money and if one fails to present at trial. The Indian bail system is not for the poor or destitute section, it is only for the upper and non -poor sections of the society. It is realistically impossible for poor people to pay unexpectedly high that often it becomes hard for poor people to satisfy police and Magistrate with their solvency and in case of sureties, it is impossible to find a solvent person to stand as sureties.

⁶ Main.sci.gov.in. 2021. *Home | SUPREME COURT OF INDIA*. [online] Available at: <<https://main.sci.gov.in>> [Accessed June 2021].

To work on the action the **Gujarat government appointed The Legal Aid Campaign**⁷ under Justice PN Bhagwati which explicitly mentioned that looking up to the enlightened bail system in the US like the **Manhattan Bail project and DC bail project** has proved that without granting monetary bail one can assure their presence at trial. The Gujarat Committee recorded that the practice of fixing the amount of bail without considering factors like length of their residence, social reputation, criminal history, financial records, employment status, and probable chances of fleeing from the trial, is harsh and oppressive for the poor section of society

In respect to this court held and laid down the positive obligation on every Magistrate in the country to inform the accused before making the further the remand or judicial custody and that they are entitled to bail and ensure accused a lawyer at state expense to enable them to pay for bail.

The court directed for compliance with provisions of Code of Criminal Procedure Section **167(5) and Section 468 which ordered to release all undertrial prisoners whose charge-sheet is not filed under limitation period and Section 468(2) orders release for all undertrials or accused who have surpassed their maximum punishment.**

The court ordered the release of all undertrials of bailable offenses who have completed more than the maximum punishment that they were accused of. The court also directed that if the police investigation is delayed by two years and that if the charge sheet is not submitted within 3 months, then the state had to withdraw the case(*Nimeon Sangma v. Home Secretary, Government of Meghalaya*). It directed the government to set up rescue shelters and welfare homes for people who have nowhere to be cared for.

Significance of the case⁸

The Hussainara Khaton & Others (I) v. Home Secretary, State of Bihar left a major imprint on the Indian Judicial system. It led to the release of 400,00 undertrial prisoners out of 1,20,000 undertrials within four months of filing the case for the first time. The case had its importance

⁷ Main.sci.gov.in. 2021. *Home* / SUPREME COURT OF INDIA. [online] Available at: <<https://main.sci.gov.in>> [Accessed June 2021].

⁸ Shankardass, R.D., 2000. *Punishment and the prison: Indian and international perspectives*. New Delhi: Sage Publications.

nationally and internationally. The media reports, radios, and television networks telecasted long-detailed reports and aided in the investigation and collection of data.

The Law Commission report raised the concern for speedy trials. The case brought to light the subject of atrocities faced by undertrials and projected infringement of rights and violative imprisonment. It was the first time the Apex Court was accessible to the most impoverished. IT created awareness about the concept of prisoners' rights. The Hussainara Khatoon case gave birth to judicial activism in most ignored cases. Hussainara Khatoon case established fundamentals of speedy trial and there were two offshoots of these cases as it laid down development and investigative nature of PIL and remedial powers of Supreme Court under Art.32. In the case of *Anil Yadav v. the State of Bihar and Rudul Sah v. the State of Bihar*, it was held that the case '*shocked humankind*' and held that people involved in '*barbaric acts*' also ordered for a speedy trial. The question was first raised in Anil Yadav's case but was left unanswered and was further discussed in *Rudul Sah v. The State of Bihar*. The court held that some palliative public offices perform barbaric actions under name of public interest and safety under the protection of the State as their shield.

Though the court passed the landmark judgment its implementation was the major development, Adv. Kapila Hingorani filed Criminal Miscellaneous Application No.6136/1981 in Hussainara Khatoon's case, asking the Court to order for an affidavit by the State of Bihar to re-collect through all the orders made in a different phase of the case.

The court agreed and stated that it is not enough to give directions, there's a need to check on its implementation so it does not remain only paper directions.

The case of Hussainar Khatoon played a vital role in perceiving the essence of PIL as a **non-adversarial remedial** jurisprudence that direct Supreme courts and High Courts under Art.32 and 226 of the Indian Constitution to protect the public's fundamental rights acting pro bono

Conclusion

The case of Hussainar Khatoon was a start to spread vigilance and be socially motivated. The problem of undertrial remains unsolved and unimproved. Still not aware of their right it has to be understood that *Vigilantibus non-dormientibus jura subveniunt*. Another thing is that it is high time that the Legislature understands that monetary loss is not the only deterrent from fleeing from justice. It's high time to renovate our antiquated bail system. The law needs to

widen its scope and the Hussainara case played a crucial role in exemplifying the ambit of PIL and made law a tool to resolve social issues and propagate justice. It made boost judicial activism and expanded the role of the Supreme Court in eradicating corruption, terrorism, and criminalization of politics

Endnotes

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