

Case Analysis on

**HUSSAINARA KHATOON & ORS V. HOME SECRETARY STATE
OF BIHAR**

~ WRIT PETITION NO. 57 OF 1979 ~

By

[REDACTED]

For

[REDACTED]

[REDACTED]

Submitted to

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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LIST OF ABBREVIATIONS

<i>Art.</i>	<i>Article</i>
<i>S.C.</i>	<i>Supreme Court</i>
<i>S.C.C.</i>	<i>Supreme Court Cases</i>
<i>U.S.</i>	<i>United States</i>
<i>F. Supp.</i>	<i>Federal Supplement</i>
<i>F. Supp. 2d</i>	<i>Federal Supplement</i>
<i>A.I.R.</i>	<i>All India Reporter</i>
<i>ed.</i>	<i>Edition</i>
<i>Hon'ble</i>	<i>Honourable</i>
<i>P.I.L.</i>	<i>Public Interest Litigation</i>

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CASE ANALYSIS

HEAD NOTES

Art. 21 – procedure established by law should be ‘reasonable fair and just’ – Art. 39 – free legal services to the poor and the needy is an ‘inalienable element’ of any ‘reasonable fair and just’ procedure – securing justice to person suffering from economic or other disabilities – prisoner who is to seek his liberation through the court’s process should have legal services available to him – on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer – is a mandate of equal justice implicit in Art. 14.

Art. 21 – Right to speedy trial to the accused by pleading financial or administrative inability – court must enforce fundamental right of speedy trial of the accused as a ‘sentinel on the qui-vive’ - powers of the Court in protection of the constitutional rights are of the ‘widest amplitude’ – an activist approach is to be adopted – it is necessary that the court should have the requisite information bearing on the problem.

ABSTRACT

In the instant case a petition for a writ of habeas corpus was filed by a number of under-trial prisoners awaiting their trial. The Hon’ble Supreme Court held that “right to speedy trial” is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Art. 21 of the Indian Constitution. It stated that Speedy trial is the essence of criminal justice system. In United States speedy trial is one of the constitutionally guaranteed right under the Sixth Amendment. Bhagwati, J. held that although, unlike American Constitution speedy trial is not

specifically enumerated as fundamental right, it is implicit in the broad sweep and content of Art. 21 as interpreted in **Maneka Gandhi's Case**¹.

It further held that no procedure which does not ensure a reasonable quick trial can be regarded as 'reasonable, fair and just'. For this reason Court ordered the State of Bihar to release these prisoners on their personal bonds. The Court further held in its decision that it is the Constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation, to have free legal services provided to him by the State and the State is under constitutional duty to provide a lawyer to such person if the needs of justice so require. If free legal services are not provided the trial itself may be vitiated as contravening Art. 21 of the Indian Constitution.²

PRIMARY DETAILS

Forum / Court	Hon'ble Supreme Court of India
Jurisdiction	Original Jurisdiction under Art. 32 of the Indian Constitution
Equivalent Citations	1979 A.I.R. 1369, 1979 S.C.R (3) 532, 1980 S.C.C. (1) 98
Presiding Members of the Bench	Hon'ble Justice P.N. Bhagwati Hon'ble Justice D.A. Desai
Bench Type	Division Bench – Social Bench
Provisions Concerned	Art. 21, 32, 14 & 39 A of the Constitution of India
Date of Pronouncement of Judgement	March 9, 1979
Counsel on behalf of Petitioner	Advocate K. Hingorani
Counsel on behalf of Respondent	Advocate. U. P. Singh
Maxims / Foreign Phrases used	<u>Senital on the Qui Vive</u> : means 'Watchful guardian'
Author	
Institution's Name of Author	

¹ Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597.

² J.N. PANDEY, CONSTITUTIONAL LAW OF INDIA 481 (Central Law Agency, 2020).

BRIEF FACTS OF THE CASE***Parties to the suit***

The parties involved in the case were namely:

a) *Petitioners*

- i. Hussainara Khatoon (Prisoner) on behalf of all the under trial prisoners through Advocate K. Hongari.

b) *Respondents*

- i. Home Secretary of State of Bihar, Patna through Advocate U.P. Singh.

Factual Background

- a) A news article published in the Indian Express in the year 1979 divulged the conditions of under trial prisoners in Bihar Jail. It also detailed about some of the prisoners who were detained for a term longer than the maximum imprisonment period provided for the conviction.
- b) Subsequently, a Public Interest Litigation was filed by the Counsel on the behalf of Respondent wherein he Hon'ble Court reviewed the lists of under-trial prisoners placed on record on behalf of the State of Bihar who have been detained in jail for periods longer than the maximum term for which they could have been sentenced on conviction.
- c) There were several under-trial prisoners who were charged with offences which are bailable but were still in jail presumably because no application for bail has been made on their behalf as being too poor they are unable to furnish bail applications within the reasonable period of time.

Procedural Background

- a) A Writ Petition was filed by Advocate Pushpa Kapil Hingorani on behalf of the Petitioners before the Hon'ble Supreme Court claiming that several under trial prisoners are arbitrarily detained more than the maximum imprisonment period provided for the conviction of the respective offences.
- b) The Writ petition sought relief from the Hon'ble Court praying for issuance of a writ in the nature of *habeas corpus* ordering the State Government to release these under-trial prisoners on bail against a personal bond.

ISSUES RAISED***Questions of Law***

1. *Whether the Right to speedy trial protected under Art. 21 of the Indian Constitution? AND whether the Under Trial prisoners entitled with the Right to Speedy Trial?*
2. *Whether the Right to Free Legal Aid guaranteed under Art. 39A is enforceable?*

ARGUMENTS ADVANCED***Petitioners***

- a. The Counsels for the Petitioner argued that several under trial prisoners in the Central Jail were detained for a period more than the period of imprisonment provided as punishment for conviction in the Statutes.
- b. The Counsels questioned the delay in trials of the prisoners and sought response from the State Government. The argued on unreasonable and arbitrary detention of the prisoners who were poor and indigent and were devoid of economic capacity to avail services of lawyers. The Counsels sought directions from the Court for a speedy fair trial, and immediate release of under trial prisoners which were unreasonably deprived of their personal liberty guaranteed under Art. 21.

Respondent

- c. The Counsels for respondents contended that all the women under-trial prisoners were under '*protective custody*' which was also affirmed by the State in a counter affidavit placed on record stating that necessary steps for transferring women under "*protective custody*" in jails to the institutions run by the welfare department have been taken and directions to that effect are issued by the Government.
- d. The Counsels also contended that the Petitioners Nos. 10, 11, 12, 13, 15, 16 and 18 who were previously confined in the Muzaffarpur Central Jail prior to their release were regularly produced before the Court "*as and when required by the courts*". This averment was wholly unsatisfactory in convincing the bench. Also, the Court was not informed as to what were the dates on which these under-trial prisoners were remanded from time to time by the Magistrates.
- e. The Counsels averted that the delay in trials in almost 10% cases was owing to delay in expert's opinion.

JUDGEMENT***Ratio Decidendi******a. Right to Speedy Trial Guaranteed under Art. 21***

- i. Upon examining the incumbent situation the Court was dismayed the callousness of the legal and judicial system which led to enormous misery and suffering to the under trial prisoners by totally unjustified deprivation of their personal liberty. The Court held the State Government and State Judiciary jointly liable for such continued incarceration of these under-trial prisoners for years as they were aware of these prisoners awaiting their trial. There were numerous under-trial prisoners that had been in jail for more than half the maximum term of imprisonment for which they could be sentenced, if convicted. There was no reason why these under trial prisoners were allowed to continue to languish in jail, merely because the State is not in a position to try them within a reasonable period of time. On this the Court remarked that;

“It is, therefore, absolutely essential that persons accused of offences should be speedily tried, so that in cases where bail, in proper exercise of diS.C.retion, is refused, the accused persons have not to remain in jail longer than is absolutely necessary.”

- ii. Speedy trial is an essential ingredient of ‘reasonable, fair and just’ procedure guaranteed by Art. 21 and it is the constitutional obligation of the State to devise such a procedure so as to ensure speedy trial to the accused. The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial. Countering the defence of financial impossibility of the State, the Court emphasised on the decision of the Court in ***Rhem v. Malclm***³

“The law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty”.

The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is therefore under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State.

³ Rhem v. Malelm, 377 F. Supp. 995.

- iii. It is also the constitutional obligation of the Supreme Court as the guardian of the fundamental rights of the people, as a '*sentinel on the qui vive*', to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional judges and other measures calculated to ensure speedy trial.

b. Right to Free Legal Aid is a Constitutional Right under Art. 14, 21, 39A

- i. The Court remarked that,

"It is not uncommon to find that under-trial prisoners who are produced before the Magistrates are unaware of their right to obtain release on bail and on account of their poverty".

Poor prisoners are generally devoid of economic capacity to engage a lawyer to furnish bail applications on their behalf. Sometimes they are unable to get bail owing to dearth of monetary sureties which effectively shuts out for them any possibility of release from pre-trial detention. The Court thus emphasised on the need for a comprehensive dynamic legal service programme to provide free legal services to them, to protect poor and indigent against injustice and to secure to them their constitutional and statutory rights. While recommending the Central and State Government on introducing a dynamic legal service programme for poor and indigent, the Court established that;

"...[Free legal aid to poor] is not only a mandate of equal justice implicit in Art. 14 and right to life and liberty conferred by Art. 21, but also the compulsion of the constitutional directive embodied in Art. 39A."

- ii. The Court reiterated its views in **Maneka Gandhi v. Union of India**⁴ that
"when Art. 21 provides that no person shall be deprived of his life or liberty except in accordance with the procedure established by law, it is not enough that there should be some semblance of procedure provided by law, but the procedure under which a person may be deprived of his life or liberty should be 'reasonable, fair and just'."

⁴ Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248.

Now, a procedure which does not make available legal services to an accused person who is too poor to afford a lawyer and who would, therefore, have to go through the trial without legal assistance, cannot possibly be regarded as ‘*reasonable fair and just*’. It is a quintessential of ‘*reasonable, fair and just*’ procedure to a prisoner who is to seek his liberation through the court’s process that he should have legal services available to him.

The Court also pointed out the authority established in *M. H. Hoskot v. State of Maharashtra*⁵ that;

“Judicial justice, with procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise; and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side.”.

Free legal services to the poor and the needy are thus an essential element of any ‘*reasonable, fair and just*’ procedure.

- iii. The Hon’ble Court also referred to Art. 39A of the Indian Constitution which reads as follows:

“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 S.C.hemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

Art. 39A also emphasises that free legal service is an inalienable element of ‘*reasonable, fair and just*’ procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal services is, therefore, clearly an essential ingredient of ‘*reasonable, fair and just*’ procedure for a person accused of an offence and it must be held implicit in the Fundamental Right guaranteed under Art. 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused

⁵ M.H. Hoskot v. State of Maharashtra, (1978) 3 S.C.C. 544.

person if the circumstances of the case and the needs of justice so required, provided of course the accused person does not object to the provision of such lawyer.

Obitur Dictum

- a. *“The poor in their contact with the legal system have always been on the wrong side of the law. They have always come across “law for the poor” rather than “law of the poor”. The law is regarded by them as something mysterious and forbidding-always taking something away from them and not as a positive and constructive social device for changing the socio economic order and improving their life conditions by conferring rights and benefits on them. The result is that the legal system has lost its credibility for the weaker sections of the community. It is, therefore, necessary to inject equal justice into legality and that can be done only by a dynamic and activist S.C.heme of legal services.”*
- b. *“The powers of this Court in protection of the Constitutional rights are of the widest amplitude and we do not see why this Court should not adopt a similar activist approach and issue to the State directions which may involve taking of positive action with a view to securing enforcement of the fundamental right to speedy trial. But in order to enable the Court to diS.C.harge this constitutional obligation, it is necessary that the Court should have the requisite information bearing on the problem.”*

Order and Directions

- a. The Hon’ble Court directed that these under-trial prisoners whose names and particulars are given in the list filed by Mrs. Hingorani (*Counsel on behalf of Petitioners*) should be released forthwith as continuance of their detention is clearly illegal and in violation of their fundamental right enshrined under Art. 21 of the Indian Constitution.
- b. The Hon’ble Court directed the Government of India and all the State Governments to introduce a dynamic and comprehensive legal service programme with a view to reaching justice to the common man.
- c. The Hon’ble Court also directed the State Government to provide a lawyer to all the under trial prisoners charged with bailable offences at its own cost for the purpose of making an application for bail, provided that no objection is raised to such lawyer on behalf of such under trial prisoners.
- d. The Hon’ble Court directed the State of Bihar to furnish a list of the number of cases pending in all the Court of Sessions and Court of Magistrates in the State of Bihar as on

- 31st December, 1978 within three weeks of pronouncement of judgement giving year wise breakup of such pending cases and also elucidating the cause of such pendency.
- e. The Hon'ble Apex Court asked the Hon'ble High Court of Patna to furnish the above particulars pertaining to itself within three weeks from the date of pronouncement of judgement.
 - f. The Hon'ble Court also directed the State of Bihar to furnish particulars as to the number of cases where F.I.R(s) have been lodged and the cases are pending investigation for more than six months by the police in each sub-division of the State as on 31st December, 1978 within three weeks from the date of pronouncement of judgement elucidating the reasons for such delay.
 - g. The Hon'ble Court also issued notice to the Supreme Court Bar Association to appear and make its submissions on the issue arising in the writ petition since they are of great importance.

COMMENTARY

Hussaina Kahtoon Judgement is another milestone in making India a successful democracy. It widened the ambit of Article 21 of the Indian Constitution. It is one of the most discussed cases when it comes to the fundamental rights of the prisoners including the *Right to Speedy Trial* and the *Right to Free Legal Aid*. Where speedy trial is recognised as a basic human right by the American Federation and European Convention⁶, Indian Judicial System was devoid of such guaranteed right unless the role of Hon'ble Supreme Court came into play while deciding on this case. The judicial bench comprising of *Hon'ble Justice P.N. Bhagwati* and *Hon'ble Justice D.A. Desai* expressed their opinion on the incarcerations borne by the under trial prisoners owing to maladministration of Indian Legal and Judicial System. The Courts direction for release of the under trial prisoners on a personal bond was indeed a great leap in the history of natural justice. It is therefore said that the Hon'ble Apex Court is the guardian of all the citizens. Thanks to the constitution makers for granting an unstinted power to the Hon'ble Court under Art. 32 to exercise its original jurisdiction in the matters of violation of fundamental rights.

Not only this but it the first P.I.L. to be filed in the Hon'ble Apex Court, Advocate Pushpa Kapila Hingorani regarded as the '*Mother of Public Interest Litigations*'. It made people aware on a quick remedy to enforce their fundamental rights which is through Public Interest

⁶ Article 3 of European Convention on Human Rights.

Litigations but as per the guidelines of the Supreme Court and numerous precedents established by it a PIL is maintainable before the Hon'ble Supreme Court only if it is concerned with a larger group of people, the fundamental rights enshrined in part III of the Indian Constitution are abridged, derogated or infringed by State or its authorities. The Supreme Court entails a responsibility on itself of being a "*sentinel on the qui vive*" which means "*the watchful guardian*". The Hon'ble Court also remarked that its powers under Art. 32, which is also referred to as "*soul of constitution*", are of the "*widest amplitude*". This can therefore be inferred that if someone's fundamental rights are prone to threat, the person can rightfully knock the doors of the Supreme Court and can enforce his or her rights. This judgement also sets an epitome for enforcement of Directive Principles of State Policy.

REFERENCES

Sources Referred

- a. J.N. PANDEY, CONSTITUTIONAL LAW OF INDIA (Central Law Agency, 2020)
- b. PROFESSOR S.R. BHANSALI, THE CONSTITUTION OF INDIA (Universal Publications, 2015)

Important Cases Referred by the Court

- a. *Maneka Gandhi v. Union of India*, [1978] 1 S.C.C. 248
- b. *M.H. Hoskot v. State of Maharashtra*, [1978] 3 S.C.C. 544
- c. *Gideon v. Wainwright*, 372 US 335 : 9 L. ed. at 799
- d. *John Richard Argersinger v. Raymond Hamlin*, 407 U.S. 25: 35 L. ed. 2d 530 at 535-36;
- e. *Rhem v. Malclm*, 377 F. Supp. 995
- f. *Jackson v. Bishop*, 404 F. Supp. 2d. 571
- g. *Holl v. Sarver*, 309 F. Supp. 362
- h. *Jones v. Wittenberg*, 330 F. Supp. 707
- i. *Newman v. Alabama*, 349 F. Supp. 278
- j. *Gates v. Collier*, 349 F. Suppl. 881