


**DE JURE NEXUS LAW JOURNAL**

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1<sup>st</sup> Year, BBA LL.B.**HUSSAINARA KHATOON & ORS. VS. HOME SECRETARY, STATE OF BIHAR (1979)****Introduction**

Hussainara Khatoon & ors vs. State of Bihar<sup>1</sup> is one of the most important cases with regards to the ‘Rights of Prisoners’<sup>2</sup> in India. The Government of India established the National Police Commission in 1977. One of the commission’s members, R.F Rustomjee, analysed a report connected to a commission subject, for which he visited Bihar’s jails. While visiting the jails, he saw that there were numerous undertrial convicts whose trials had not yet begun in Muzaffarpur and Patna. Prisoners convicted of petty offences were also imprisoned for terms that exceeded the maximum punishable incarceration length. Later that month, in January 1979, he published the identical report in two sections in the Indian Express newspaper.

Kapila Hingorani, an advocate of the Supreme Court, read the report in the Indian Express and decided to take some measures on the prisoners’ situation. She filed a Public Interest Litigation (PIL)<sup>3</sup> in the Supreme Court for the voiceless and underprivileged prisoners who were kept in jail for a prolonged period of time. This was the first time the Court allowed such a case to proceed without any personal locus standi on Mrs. Hingorani’s part, cementing Public Interest Litigations as a permanent fixture in Indian law. PILs have become the voice of the disadvantaged and those who have been wronged by the system. Thus, Kapila Hingorani is also regarded as the “Mother of Public Interest Litigation”.

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<sup>1</sup> 1979 AIR 1369, 1979 SCR (3) 532

<sup>2</sup> Sharma V.N. (2018, October 20). Prisoners’ rights in India. Times of India.  
<https://timesofindia.indiatimes.com/blogs/lawtics/prisoners-rights-in-india/>

<sup>3</sup> Introduction to Public Interest Litigation.  
[https://web.archive.org/web/20131005010030/http://www.karmayog.org/pil/pil\\_10720.htm](https://web.archive.org/web/20131005010030/http://www.karmayog.org/pil/pil_10720.htm)

**The two main articles that were emphasized in the instant case are :**

**1) Article 21 of the Constitution of India, 1950.**

Article 21 states that, “*no person shall be deprived of his life or personal liberty except according to procedures established by law*”. According to our Constitution, the defence of our liberty is the obligation of our legislation. The Supreme Court and the High Courts are the Constitution's guardians, and it is their obligation to preserve and ensure citizens' fundamental rights. These Article 21 rights have been believed to be the heart of the Constitution, the most organic and progressive provision in our living constitution, and the foundation of our laws. According to Bhagwati, J., Article 21 “*embodies a constitutional value of supreme importance in a democratic society.*” Iyer, J., has characterized Article 21 as “*the procedural magna carta protective of life and liberty*”.

The right to life is vital to our basic existence; without it, we cannot survive as humans. It encompasses all areas of life that contribute to a man's existence being meaningful, complete, and worthwhile. It is the only Article in the Constitution that has been given the broadest meaning conceivable by the courts. So many rights have found refuge, growth, and nourishment under the protection of Article 21. Thus, the underlying concept of the right to life is the bare essentials, minimum and basic requirements that are required and inescapable for a person. In *Maneka Gandhi v. Union of India*, the Supreme Court gave a new dimension to Article 21 and held that the right to live is not merely a physical right but includes within its ambit the right to live with human dignity as well.

**2) Article 39A of the Constitution of India, 1950.**

Article 39A states that, “*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 by reason of economic or other disabilities*”. This Article emphasises that free legal services are an inalienable component of a "reasonable, fair, and just" system, because without them, a person with economic or other limitations would be deprived of the opportunity to get justice. It includes protections for persons who cannot afford legal representation or access to the court system. It ensures that people who are not financially secure have equal access to the justice system by offering legal and professional assistance for free or at a reduced rate. Justice P.N. Bhagwati, speaking through the Legal Aid Committee in 1971, had observed, “*Legal Aid means providing an arrangement in the society so that the mission of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement. The poor and illiterate should be able to approach the courts, and their ignorance and poverty should not be an impediment in the way of their obtaining justice from the courts. Legal aid should be available to the poor and illiterate, who don't have access to courts. One need not be a litigant to seek aid by means of legal aid.*”

Providing Legal Services includes:

- Providing services of lawyers in a legal proceeding;
- Payment of court fee, process fees and all other charges payable or incurred in connection with any legal proceedings;
- Obtaining and supply of certified copies of orders and other documents in legal proceedings;
- Preparation of appeal, the paper book including printing and translation of documents in legal proceedings.

Persons eligible for getting free legal aid:

As per Section 12 of the Legal Service Authorities Act, 1987, every person who has to file or defend a case shall be entitled to legal services if that person is a woman or a child; a member of SC/ST; an industrial workman; a victim of a mass disaster, violence, flood, drought, earthquake, industrial disaster; a disabled person; a person in custody; or a victim of human trafficking.<sup>4</sup>

### **Background**

In 1979, an article about the detention of under-trial prisoners in the Bihar jail appeared in the newspaper Indian Express. Few of these under-trial detainees had been imprisoned for an extended period of time, in fact, for a period longer than their actual sentence of incarceration imposed by the courts.

Advocate Pushpa Kapila Hingorani was one of the article's readers and filed a case before the Supreme Court of India as a Public Interest Litigation. This was the first reported case of public interest litigation in India, and Advocate Pushpa Kapila Hingorani is known as the "Mother of Public Interest Litigation in India."

### **Facts**

A writ petition for habeas corpus was brought before the Court under Story 32, seeking the release of 17 under-trial inmates whose identities were disclosed in a newspaper article in the state of Bihar. Bihar was ordered to file a new table displaying the year-by-year breakdown of under-trial detainees, after categorising them into two main categories: those charged with minor offences and those charged with severe offences.

### **Issue**

- If the right to speedy trial be considered a part of Article 21?
- Can the provision of free legal aid be enforced by the law?

### **Arguments**

According to the counter-affidavit submitted to the Court, several under-trial convicts who were imprisoned in the Patna Central Jail, Muzaffarpur Central Jail, and Ranchi Central Jail prior to their release were periodically produced before the Magistrates and remanded to judicial custody as needed.

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<sup>4</sup>UnlawkindIndia, AVAILABLE AT: [https://unlawkindia.com/articles-based-on-criminal-law/hussainara-khaton-ors-vs-state-of-bihar?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=hussainara-khaton-ors-vs-state-of-bihar#\\_ftn1](https://unlawkindia.com/articles-based-on-criminal-law/hussainara-khaton-ors-vs-state-of-bihar?utm_source=rss&utm_medium=rss&utm_campaign=hussainara-khaton-ors-vs-state-of-bihar#_ftn1)(last visited Feb26, 2022)

The Court, however, considered these assertions unacceptable since they failed to comply with the direction to present the dates on which these under-trial detainees were detained. Furthermore, to excuse the pending cases, it has been claimed that in nearly 10% of the instances, the investigation is stalled due to a delay in receiving expert opinions.

### **Judgement**

The Court ordered that these under-trial detainees whose names and numbers appeared on Mrs. Hingorani's list be released because further detention of those people was deemed illegal and violated their fundamental right under Article 21 of the Constitution because they had been in prison for a period longer than the maximum term for which they should have been indicted. The court observed, *“What faith can these lost souls have in the judicial system which denies them a bare trial for so many years and keeps them behind bars, not because they are guilty, but because they are too poor to afford bail and the courts have no time to try them”*.

The Court further agreed that on the following remand dates, when undertrial inmates accused of bailable offences are brought before the Magistrates, the State Government should appoint a lawyer at its own expense to file a bail application, therefore limiting custody and allowing for a speedy trial.

The State Government and High Court were obliged to give information on the location of the courts of magistrates and courts of sessions in Bihar, as well as the total number of cases outstanding in each court as of December 31, 1978.

They were also required to explain why the resolution of cases that had been outstanding for more than six months was not practicable.

### **Analysis**

Speedy trial is a constitutionally guaranteed right in the United States.

Article 3 of the European Convention on Human Rights also provides that a person arrested or detained shall be entitled to a trial within a reasonable period. Therefore, the court believed that *“Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes a denial of justice.”*

As a result, under Article 21 of the constitution, the right to a speedy trial was recognised as a basic right of the prisoner. The possibility of some of them being acquitted of the charges against them despite having spent a significant amount of time in prison for offences they were later discovered not to have committed is a terrible violation of their freedom.

The court was also of the opinion that the then-existing bail system in India was prejudiced against the poor, who could not always afford a counsel to represent them, and recommended

a severe change. A system that denies the poor legal representation cannot be deemed just or fair.<sup>5</sup>

According to the court, while providing bails on personal bonds, the roots of the accused in the community was to be considered which would prevent him from fleeing, which includes:

- The length of his residence in the community,
- His employment status, history and his financial condition,
- His family and his relationships,
- His reputation, character and mental condition,
- His record of convictions and record of appearance at court proceedings,
- The identity of responsible members of the community who would vouch for his reliability,
- The nature of the offence charged and probability of conviction,
- Any other factor indicating the ties of the accused to the community or bearing on the risk of willful failure to appear.

### **Conclusion**

The fact that around 40,000 under-trial convicts were released as a result of this decision demonstrates the significance of this case. The case inspired a number of socially committed citizens and lawyers to speak up for the impoverished and use the broad scope of Public Interest Litigation to obtain justice. Mrs. Hingorani's PIL proved to be a major standard-bearer for the prisoners in Bihar's jails, resulting in the release of detainees who had been imprisoned for more than one-half of their maximum sentence. Since then, the system has taken Public Interest Litigation (PIL) seriously, and Articles 21 and 39A have received increased attention. After the case of Hussainara Khaton & ors vs State of Bihar, free legal aid is provided to every person who is financially unstable, thus guaranteeing the fundamental rights of citizens.

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<sup>5</sup> Legal Bites, AVAILABLE AT: <https://www.legalbites.in/case-analysis-hussainara-khaton-1979> (last visited Feb26, 2022)