COMPILATION OF SELECTED CASES ON ARTICLE 39A

PREPARED BY TEAM PROBONO INDIA

MARCH 2021

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"The Court has to innovate new methods and strategies to provide access to justice to large masses of people who are denied basic human rights, to whom freedom and liberty have no meaning."

- Justice P N Bhagwati

March 2021

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Disclaimer

Team ProBono India has made all efforts to summarize the cases from original cases retrieved from AIR, SCC, Manupatra and other leadings databases. For some cases, team has tried to summarize cases from the available sources as they could not find original ones.

टाटा सामाजिक विज्ञान संस्थान
Tata Institute of Social Sciences

MESSAGE

The Constitution of India is founded on the principles of equality and access to justice. The Article 14 of the Constitution ensures that every person is treated equally before the law and this article confers equal protection of law to all individuals irrespective of their religion, sex, race, caste or place of birth', among others. Similarly, Article 22(1) of Indian Constitution ensures that right to be defended by a legal practitioner of his or her choice. It is an obligation of the legal profession to ensure that justice is accessible to all, regardless of their economic status. India being a welfare state, this obligation rests not only on the legal professionals and judiciary but also the Government. From the enactment of Legal Services Authority Act, 1987 to recent innovations such as mobile legal services, Tele Law service, Nyaya Bandhu scheme the government has been putting its heart and soul to fulfill the constitutional pledge of 'equal justice to one and all' in its letter and spirit. However, there is a long way to go. The Legal Services Authority Act, 1987 needs to be implemented in its true spirit, deficiencies in the legal services need to be recognized and a conscious effort has to be made to improve them and measures must be taken to provide legal education in its simplistic form at the grass-roots level. To achieve the goal of "Sabka Sath, Sabka Vikas and Sabka Nyay" government, judiciary, legal professionals, law firms, non-governmental organizations and civil society members all have to work in tandem and make justice to all a reality.

Despite constitutional and statutory provisions a large section of people mostly the poor and people from vulnerable and marginalised sections of society remain deprived of access to justice in absence of quality legal aid/ services. The Supreme Court in catena of cases interpreted Article 21 alongwith Article 39A that Right to Free Legal Services is an essential ingredient of *'reasonable, fair and just'*procedure for a person accused of an offence.

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,2013 r*ecognised* that legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law and that it is a foundation for the enjoyment of other rights, including the right to a fair trial, as a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process and these can be applied by Member States. Similarly, access to justice is now acknowledged and recognised as a sustainable development parameter under Sustainable Development Goal 16 " Peace, Justice and Institutions" which is committed to access to justice for all and to build effective, accountable and inclusive institutions at all levels and government of India is perusing to achieve the same by the year 2030.

India Justice Report 2020 : Ranking States on Police, Judiciary, Prisons and Legal Aid' published by Tata Trusts, New Delhi, India (2021) has observed that there is a need to increase the availability of justice services—access to and infrastructure in courts, police stations, legal aid clinics in rural areas so as to reduce the present disparity in accessing justice that exists between rural and urban populations. This includes prioritizing the availability of trained lawyers and paralegals across poorly served areas.

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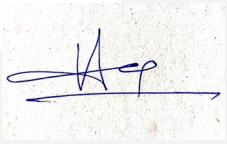
पूरक पत्र
Continuation Sheet

The legal aid in India is grappling with challenges as Indian public justice system is based on Adversarial litigation underlying court procedures, availing lawyer's services including their fees, filing *vakaltnama* via lawyer and payment of court fees etc. This entire process is not litigant friendly. It is apt to quote Reginald Heber Smith, pioneer of legal aid movement in USA who wrote in his book Justice and the Poor that "*Without equal access to the law, the system not only robs the poor of their only protection, but it places in the hands of their oppressors the most powerful and ruthless weapon ever invented.*"

In view of the above context, **Dr. Kalpeshkumar Gupta** and team **ProBono India** are striving hard by creating such case compilations to make aware all the fraternities of legal field regarding the same. They are really worthy of appreciation. I commend the team Pro Bono India for publishing a compilation of landmark or trailblazer court directions on the concept of legal aid. The book lays significance on the legal aid awareness programmes with all the precise summaries of landmark cases related to the concept. I am confident that this volume would a source of legal provisions regarding legal aid and access to justice for better and informed understanding for law students, budding lawyers and law researchers and teachers.

One of the salient aspect of the case compilation is that cases are analysed here in a very succinct and effective manner as each of the case not only includes facts of case, issues but also arguments from both parties, the judgment entailing the ratio decided in, obiter dicta following comments and related important cases as referred. This detailed presentation of cases would greatly enrich the legal acumen of students and practitioners. It is pertinent to note that the cases are both landmark and contemporary as recent cases from last five years from 2015 till 2020 are discussed in the light of contemporary debate on access to justice

This book is a well-researched and documented contribution to legal academia and for the civil society organisations engage in access to justice. This would particularly enrich/inspire and motivate the young law students to take up issues of access to justice and this would equally serve as ready judicial reckoner for legal practitioners. I recommend this book for library and chambers of both law students and professional and everyone who would be interested in understanding access to justice and legal aid through court / judicial process.



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FOREWORD

Article 39A of the Constitution of India has a special significance for reminding our republic, especially the associates of law, to do whatever is required to be done, to ensure equal access to justice for all. The promises of equality, that the Preamble to the Constitution documents, cannot be realized and be meaningful without the efforts that Article 39A envisages. In part, these promises are placed in Article 14 of the Constitution that requires the State to not deny to any person equality before the law and the equal protection of the laws. The framework of the democratic republic, that we have, cannot be kept alive and saved from being falling asunder, if these promises are not effectively fulfilled.

An understanding of the ideals of democracy, rule of law, and human rights and human dignity would bind us to the promises of equality and equal access to justice, in our pursuit of law as a subject and as an instrument of justice. When it comes to equality before law and its equal protection for all, an exalted and desired goal for law and its mechanisms would be to ensure that the weakest and the poorest are on par with the strongest and the wealthiest in their pursuit for justice. Nothing short of this ideal would satisfy the principles and values of democracy and the promises that 'we the people' made to 'we the people' in our republic.

Article 39A needs to be understood as a constitutional prescription of minimum requirements and ways to achieve equal access to justice. Provision of free legal aid is one such important requirement. Additionally, the Article requires the State to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The provision of free legal aid has to be appreciated and secured in this background. Practitioners of law and everyone concerned about equal access to justice must consider the framework of various fundamental promises of equality in effecting the provisions of Article 39A. They also need to work on various disabilities or barriers that deny people the opportunities to seek and secure justice. Legal service providers and legal systems should completely own these barriers for equal access to justice to become a reality.

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This compilation of various judicial decisions in India that helped in the development of the legal regime for legal aid and access to justice is an important initiative. I appreciate the vision and efforts of **Dr. Kalpeshkumar L. Gupta, Founder, ProBono India,** and his entire team for coming up with this **Compilation of Selected Cases on Article 39A** even as the pandemic of COVID-19 is throwing new challenges for human endeavours. I understand that the readers will benefit from the information collated and presented in the compilation and will make their contribution in developing and strengthening the practical regime of access to justice for all. It is hoped that this compilation will help the readers in analysing the development of Article 39A while they engage in thinking critically the reality of the promises. These engagements, hopefully, will result in making Article 39A more meaningful, real, and lively for the common people.

(**Ajay Kr. Pandey**)
March 21, 2021

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PREFACE

"It is the spirit and not the form of law that keeps justice alive."

-- Earl Warren, Chief Justice of the United States.

As the quote says, it is "not the form of law that keeps justice alive". Justice is the one thing we all want. Such a broad term, justice can mean different things to different people, in different situations. While one person may want justice served for the person who threatens the safety of innocent people, another may want justice for social issues, past or present. Whatever the injustice we might be working towards remedying, we must remember the words. It is with the spirit and an optimistic view that the law can help us work towards keeping justice alive.

The compilation is based on the ideology and various individuals came together to help showcase the importance of passion and patience. **Dr. Kalpeshkumar L Gupta (Founder, ProBono India)** the pioneer in the field of the law came up with the idea of this compilation and with the help of various enthusiastic volunteers, this project has been successfully compiled. The process of coming together, learning, and then sharing knowledge is what helps knowledge grow in the true sense, and this project forwards this form of learning. It was Dr. Kalpeshkumar L. Gupta who proposed the idea of developing and launching a series of **Case Compilation under the ProBono India's** banner.

The case compilation has been titled as "**Compilation of Selected Cases on Article 39A".** The topic was chosen as it is one of the prominent tools with the judiciary in India to address the various social concerns in India. Free Legal Aid (Article 39A of the Constitution) is providing assistance to the people who are unable to afford legal representation and access to the court system. It guarantees to provide equal access to the justice system to persons who are not in financially sound condition, by providing legal and professional assistance free of cost or at lower fees. Strengthening the Pro Bono Culture and making the Legal Professionals in India more accessible and feasible to public will help in making a positive impact on the Legal Aid System in India. The existing legal framework should be enriched with better facilities, trained lawyers, adoption of alternative ways to make people legally literate and focusing more on the areas which are least introduced to the free legal aid services. For the sustainable growth of the Legal Aid Services, the legal professionals with a positive attitude should be given exposure to the diversification of the laws and the extraordinary situations.

In the words of Justice P.N. Bhagwati, "*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."*

The compilation is the result of hard work and determination of 19 students pursuing law in different institutes situated at different corners of the India. This is the compilation of 25 landmark cases. The enthusiasm and compassion of these students under the guidance of the pioneer Dr. Kalpeshkumar L Gupta kept the project alive and developing while it was in the process of development. Sir kept us motivated and determinate through the period of the compilation of this project.

The project began with me being appointed as a student coordinator of this exemplary compilation of ProBono India Case Compilation series which was indeed a pleasure and a learning experience for me. It was a sheer pleasure for me to work and share this project with the like-minded and talented group of people. Here's an introduction to my beloved team:

1. **Abhishek Jain** *(Lloyd Law College, Greater Noida)*
2. **Anshika Juneja** *(Amity Law School Delhi, GGSIPU)*
3. **Arushi Anand** *(Vivekananda Institute of Professional Studies, Delhi)*
4. **Deboshmita Chakraborty** *(South Calcutta Law College, Kolkata)*
5. **Himanshu M. Mendhe** *(RTMNU's Dr. BACL, main branch, Nagpur)*
6. **Harsh Khanchandani** *(Symbiosis Law School, Pune)*
7. **Jaydeep Findoria** *(Parul Institute of Law, Parul University, Vadodara)*
8. **Mahima Sharma** *(Symbiosis Law School, Pune)*
9. **Mansi Gupta** *(RTMNU's Dr. BACL, main branch, Nagpur)*
10. **Pooja Lakshmi** *(Bennett University, Noida)*
11. **Prashant Kachhawa** *(National University of Study and Research in Law, Ranchi)*
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15. **Sonalika Nigam** *(Parul Institute of Law, Parul University, Vadodara)*
16. **Snigdha Agarwal** *(IMS Law College, Noida)*
17. **Tejasva Pratap Singh** *(Amity University, Lucknow)*
18. **Tuhupiya Kar** *(Department of Law, University of Calcutta)*

A journey of about two months ended on February 28, 2020, as we concluded our compilation and the hustle came to an end. The project was completed through the learning of each individual in the compilation didn't which was a key learning from the initiative. The idea that Dr. Kalpeshkumar wanted all of us to understand that *"Whether tales are told by the light of a campfire or by the glow of a screen, the prime decision for the teller has always been what to reveal and what to withhold. Whether in alone or with images, the narrator should be clear about what is to be shown and what is to be hidden."*

This Compilation gave me big opportunity. My mother was the most strength to me for this work and her teachings, learnings and devotion that made me do this Case Compilation.

Meanwhile, working on this I lost my mother (Aai) Mrs. Madhuri M. Mendhe, Social Worker & Psychotherapist. But, still it was her words to me that, work with devotion and your best potential by grounding to your roots which gave me strength and devotion to work and complete this Case Compilation on Article 39A. Thank you Aai for your constant motivation, love and vertebral support.

Also, Dr. Kalpeshkumar Gupta Sir for always guiding, understanding and giving new opportunities to all team members at ProBono India.

With the idea of teamwork, it was the importance of working with minimal resources, and achieving the most is what he wanted to teach us. I am thankful to the team and Dr. Kalpeshkumar for the never-ending support and hard work.

We hope our effort inspires great creations!

On behalf of the Team ProBono India,

Rudrakshi M. Mendhe

(Coordinator)

ABBREVIATION

AIR	All India Reporter
CJI	Chief Justice of India
CPC	Civil Procedure Code
Crl	Criminal
Cr.LJ	Criminal Law Journal
CrPC	Criminal Procedure Code
DPSP	Directive Principles of State Policy
HC	High Court
HON'BLE	Honourable
IPC	Indian Penal Code
ICT	Information and Communication Technology
J.	Justice
J&K	Jammu and Kashmir
LSA	Legal Services Authorities Act
NALSA	National Legal Services Authorities
NGO	Non Governmental Organization
NO.	Number
ORS	Others
PIL	Public Interest Litigation
PM	Prime Minister
POCSO	Protection of Children from Sexual Offences Act
RBI	Reserve Bank of India
SARFAESI	Securitizations and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
SC	Supreme Court
SC	Scheduled Cast
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
SCLSC	Supreme Court Legal Services Committee
SLSA	State Legal Services Authority

SLP	Special Leave Petition
SSP	Senior Superintendent of Police
ST	Scheduled Tribe
UOI	Union of India
UDHR	Universal Declaration of Human Rights
V.	Versus
WP	Writ Petition
YRS.	Years

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CASE NO. 1

AKHIL BANDHU SAHA

V.

THE STATE OF WEST BENGAL & OTHERS

(AIR 2020 SC 232)

ENSURING LEGAL AID SERVICES DEFINED UNDER THE LEGAL SERVICES AUTHORITIES ACT, 1987 AND INTERPRETING THE CONSTITUTION OF INDIA AND OTHER STATUTES.

ABSTRACT

The following Case Summary of the *Akhil Bandhu Saha v. The State of West Bengal & Others* also known as Akhil Bandhua Case.This case was brought before the High Court Judicature of Calcutta in 2011 by the petitioner. This writ petition is on crux that, whether 'legal service', as defined in Section 2(1)(c) of the LSA Act, would include, in an appropriate case. Also, the interpretation of the clauses and definitions in an Act or Statutes. Further the Legal aspects as to SARFAESI Act, Indian Constitution and Legal Services Authorities are seen in this appropriate case. The given Akhil Bandhua Case opens up the minds and beautiful quoting of Chinnappa Reddy J. in relation to interpreting the Constitution of India and other Statutes.

1. PRIMARY DETAILS OF THE CASE:

Case No.	:	Writ Petition No. 34 (W) of 2011
Jurisdiction	:	High Court of Calcutta
Case Filed On	:	2011
Case Decided On	:	January 22, 2014
Judges	:	Justice Dipankar Datta
Legal Provisions Involved	:	Constitution of India, 1950 SARFAESI Act, 2002

		Legal Services Authorities Act, 1987
Case Summary Prepared By	:	Rudrakshi M Mendhe RTMNU's Dr. BACL, Nagpur

2. BRIEF FACTS OF THE CASE

The petitioner invoked the writ jurisdiction of this Court feeling aggrieved by measures taken by the Branch Manager, State Bank of India, Ektiasal Branch, respondent no. 8, in terms of provisions contained in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter the SARFAESI Act). The writ petition was dismissed on September 24, 2004, reserving the liberty of the petitioner to apply before the tribunal under Section 17 of the SARFAESI Act. However, the bank was directed to release the household articles of the petitioner. Several contempt proceedings followed thereafter initiated by the petitioner, but the same were disposed of without granting effective relief to him.

A second round of litigation started with the presentation of a further writ petition. That was dismissed on July 4, 2008 on the ground that the earlier writ petition had been dismissed with liberty to the petitioner to approach the tribunal. The writ appeal preferred against such order was also dismissed on September 25, 2008, granting liberty to the petitioner to seek remedy in accordance with law.

A further writ petition, the third in the series, was presented by the petitioner with a prayer to release movable and immovable assets not hypothecated and mortgaged to the bank, to allow the petitioner to operate his locker and to give appropriate accounts of loan amount upon adjustment of matured value of fixed deposits and for other relief. The writ petition was held to be barred by principles of *res judicata* by a learned judge of this Court, vide judgment and order dated April 17, 2012. A writ appeal filed against the said judgment and order, however, succeeded. By its order dated April 18, 2013, an Hon'ble Division Bench set aside the order impugned and directed holding of an inquiry by an officer not less than the rank of Deputy General Manager of the Reserve Bank of India (hereafter the RBI). It was observed that in the event the report was favourable to the petitioner, the appropriate authority of the RBI must take appropriate steps.

An Order dated January 22, 2014 that prima facie the petitioner did not have a legal right to maintain the writ petition on the basis of the pleadings therein. However, the problem faced

by the petitioner was viewed as extremely serious in view of his claim of lack of financial resources and considering the Legal Services Authorities Act, 1987 (hereafter the LSA Act), which had been brought into existence with avowed objects but without any express provision for providing financial assistance to a litigant on account of his travel and accommodation for working out his remedy in an outstation court or for raising defence in proceedings in such outstation Court, where he is arrayed as a respondent, It was further of view that Section 2(1)(c) of the LSA Act defining 'legal service' would require proper interpretation. Having regard thereto, while requesting Mr. Kalyan Kumar Bandyopadhyay, learned senior advocate to assist the Court as *amicus curiae*, the National Legal Services Authority (hereafter the NALSA), the Supreme Court Legal Services Committee (hereafter the SCLSC), the West Bengal State Legal Services Authority (hereafter the SLSA), the Calcutta High Court Legal Services Committee (hereafter the CHCLSC), and the State Bank of India were directed to be impleaded as additional respondents. Subsequently notice was also directed to be served on the Union of India.

3. ISSUES INVOLVED IN THE CASE

I. Whether 'legal service', as defined in Section 2(1)(c) of the LSA Act, would include, in an appropriate case, the obligation of the legal services authorities, which are the creatures of such Act?

II. Whether it is the Constitution that is expounded or the constitutional validity of a statute that is considered, a cardinal rule is to look to the Preamble to the Constitution as the guiding, light and to the Directive Principles of State Policy as the Book of Interpretation?

4. ARGUMENTS OF THE PARTIES

- **On behalf of the Petitioner**

1. Litigant on behalf of the Petitioner echoed the submissions of on behalf of the State and added that the definition of 'legal service' in Section 2(1)(c) of the LSA Act is not exhaustive and the legislature being aware of the danger of limiting the width of the words ‘legal service’, intentionally used the words ‘includes’ and ‘any service’ so as to make it flexible to meet the requirements of a given situation which may not have been foreseen.

2. The decisions in *C.I.T., Andhra Pradesh v. M/s Taj Mahal Hotel Secunderabad, (1971) 3 SCC 550,* and *Regional Director, Employees' State Insurance Corporation v. High Land Coffee Works, (1991) 3 SCC 617,* were relied on by him to trace the meaning of the word 'include' in a definition clause.
3. Further, according to him, a restrictive or narrow interpretation of the word 'any' would offend the spirit of the requirement of enlargement, which an inclusive definition affords. Regard being had to the dictionary meaning of 'service' i.e. the act of helping or doing work for another or for the community and further in view of the meaning of the word 'conduct' in the sense it has been used in Section 2(1)(c), 'legal service' as contemplated in the LSA Act, he argued, is not restricted to drafting a plaint/written statement or arguing a case before a Court or an authority but may include something in the nature of managing the case as a whole on behalf of the legal aid seeker.
4. Referring to Article 39A of the Constitution, which ordains that free legal aid may be provided by (i) legislation, (ii) schemes, or (iii) in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, it was submitted that the phrase 'in any other way' puts an end to all kinds of restrictive interpretations while considering the desirability of providing free legal aid.
5. This submission was sought to be buttressed by him by referring to the decisions of the Supreme Court in *State of Maharashtra v. Manubhai Pragaji Vashi, (1995) 5 SCC 730,* and *Manoharan v. Sivarajan (C. A. No. 10581 of 2013)* (unreported). Reference was also made to Rule 4(i) of the West Bengal State Legal Services Authority Rules, 1994 (hereafter the SLSA Rules), which enables the Member-Secretary of the SLSA to process proposals for financial assistance and issue utilization certificate thereof, and it was urged that the processing of proposals for financial assistance ought to be read with the very object of providing 'legal services' as visualized by the LSA Act, or else correct interpretation of a beneficent legislation would be thwarted. Finally, it was submitted that the promise of the People of India setting forth the goal of our political society as enshrined in the preamble to the Constitution must not be trampled by reason of any incorrect reading of the LSA Act.

- **On Behalf of the State**

1. At the outset, Mr. Sengupta made it clear that submissions would be confined only to the aspect for which the Calcutta High Court Legal Services Committee (CHCLSC) has been called upon to express its views, since the CHCLSC is not concerned with the merits of the claim raised by the petitioner in the writ petition. Mr. Sengupta and the other learned advocates for the relevant legal services authorities contended in unison that 'legal services' contemplated in the LSA Act and the rules/regulations framed thereunder would not cover grant of any financial aid, for whatever purpose, to a litigant who is otherwise entitled to legal services.
2. It was argued by him that the LSA Act was enacted for constitution of legal services authorities 'to provide free and competent legal services', meaning that the object is to provide competent 'legal services', which would be free, and 'competent' does not by any stretch of imagination be comprehended to include travel fare and accommodation charge that a litigant may have to shoulder; what the institutions under the LSA Act are obliged in terms of the statutory mandate is to render service relatable to the conduct of a case and it, therefore, follows that such institutions are under no obligation to bear expenses towards travel fare and accommodation charge of a litigant.
3. An argument has been advanced by him that if travel fare and accommodation charge are construed to be included in 'legal service' as defined in the LSA Act, a daily wage earner might claim that he ought to be paid his wages for the period he is compelled to stay away from work while he prepares his advocate, engaged by the authority/committee under the LSA Act, to conduct his case, and in the process uphold the Constitutional ideals and values relating to social justice.
4. In further support of the contention that 'legal service' does not include bearing expenses for travel and accommodation, provisions contained in Regulation 17 of the SCLSC Regulations and Regulation 44 of the West Bengal State Legal Services Authority Regulations, 1998 (hereafter the SLSA Regulations) have been referred to by Mr. Sengupta, Ms. Bhattacharya, learned advocate for the SLSA and Mr. Malhotra, learned advocate for the NALSA.
5. The argument of Mr. Banerjee ought to be dealt with first. It is no doubt true that whether 'legal service', as defined in Section 2(1)(c) of the LSA Act, would include, in an appropriate case, the obligation of the legal services authorities,

which are the creatures of such Act, to bear the expenses of a needy, poor and indigent person's access to the situs of the Court premises far away from his residence and accommodation at such place for a purpose intrinsically connected with conducting of his case, to ensure equal opportunities for securing justice, is not a question that is directly in issue but has incidentally cropped up for a debate in course of consideration of this writ petition.

6. Substantial arguments have been advanced by the parties as well as by the learned amicus curiae, as noted above. The SCLSC, in terms of Regulation 5 of the SCLSC Regulations, is obliged to administer and implement the legal services programme insofar as it relates to the Supreme Court of India. It has not entered appearance. It shall be assumed that had it been represented, it would have spoken in the same voice as the other learned advocates representing the legal services authorities. A fortiorari, it follows that even if an application had been made by the petitioner before the SCLSC for grant of 'legal services' coupled with a request to bear the minimum fare for travel and accommodation charge for having access to the legal service advocate, who might be engaged to represent the petitioner on he being found entitled to 'legal services', the latter part of his prayer would most certainly be rejected.

7. The Court cannot in the circumstances shut its eyes and refuse to express its views after hearing the parties at substantial length, merely because the petitioner never approached the SCLSC and consequently, the occasion for it to reject his prayer did not arise. It would amount to slaying the slain, if at this stage of the proceedings the petitioner were forced to complete a ritual in law by knocking the doors of the SCLSC for having a formal order of rejection and thereafter to approach the Court once again, despite his dwindling resources, for an order to set it aside. Since rejection can reasonably be anticipated, there is no question of closing the discussion with the observation that the question is purely academic and need not be considered.

8. On the contrary, the issue as to what is the width of the words 'legal services' from the angle learned advocates for the parties have addressed the Court, calls for a decision since such issue does not appear to have engaged the attention of any Court in India before. It is the duty of the judiciary to interpret the law within the limits set down by the Constitution. The Court acts as an intermediary between the people and the other organs of the State to ensure that the latter operates within

the parameters delineated by the Constitution. It would, therefore, be my solemn duty to express my views, for whatever it is worth.

5. LEGAL ASPECTS INVOLVED IN THE CASE

1. Constitution of India
   - Article 226 – empowers the high courts to issue, to any person or authority, including the government (in appropriate cases), directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, certiorari or any of them.
   - Article 39 A – of the Constitution of India provides for free legal aid to the poor and weaker sections of the society and ensures justice for all.
2. SARFAESI Act, 2002
   - Section 17 – Right to Appeal
3. Legal Services Authorities Act, 1987
   - Section 2 (1) (c) – "legal service" includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter.

6. JUDGEMENT IN BRIEF

The writ petitioner has taken out the instant application under Article 226 of the Constitution of India primarily praying for a writ of mandamus upon the District Legal Services Authority under the Legal Services Authorities Act, 1987 for rendering him legal assistance under the Act in respect of the complaint and/or litigation instituted by him in the District of Jalpaiguri.

The Coram have heard the learned lawyer appearing for the petitioner who submits that in spite of the fact that his client has been advanced such relief under the Legal Services Authorities Act, 1987 before this Court, he has been denied same relief by the District Legal Services Authority under the Legal Services Authority Act, 1987 in respect of litigations pending at Jalpaiguri.

The learned counsel for the State submits that there is no failure on the part of the appropriate authority in extending the legal assistance to the petitioner under the said Act. He, however, clarifies that in the event the petitioner is entitled to such assistance, the authority would

promptly provide such assistance under the aforesaid Act. Having considered the submissions of the parties, I feel that the instant writ petition may be disposed of without calling upon the respondents to file affidavits.

It appears that the writ petitioner has been provided legal assistance under the Legal Services Authorities Act, 1987 in prosecuting his litigation before this Court.

The provisions of the Legal Services Authorities Act, 1987 have been enacted in order to provide legal assistance to litigant who falls under the categories as provided under the aforesaid Act. Therefore, direct the Chairman of the District Legal Services Authority, Jalpaiguri to consider the prayer of the writ petitioner and provide him with legal assistance under the said Act, in the event, he is entitled to such relief.

With the aforesaid direction, the writ petition is disposed of. As the respondents have not been called upon to file any affidavit the allegations contained in this writ petition shall not be deemed to have been admitted by them.

In the case of *Mohd. Ajmal Amir Kasab* the Supreme Court noticing Article 39A of the Constitution and Sections 12 and 13 of the LSA, observed that the programme of legal aid has assumed the proportions of a national movement and proceeded to hold that it is too late in the day to contend that the right to be defended by a legal practitioner comes into force only on commencement of trial, as provided under Section 304 of the Cr.P.C.

It is axiomatic that the LSA Act, being conceived in the interest of the poor and the needy, is a beneficent legislation.

Bearing in mind the foundational rule of statutory interpretation that the statute under consideration ought not to be read in a manner inconsistent with the provisions of the Constitution, which is the fountain head of all legislations.

In the light of the above, It directed, endeavour to trace the width of the words ‘legal services’, which is the crux of the LSA Act.

What is 'legal services' referred to in the preamble of the LSA Act and the other provisions noticed above where it has been used contextually throughout? The statutory definition of 'legal service', to be found in Section 2(1)(c), reads thus:

'2(1)(c) ‘legal service’ includes the rendering of any service in the conduct of any case or other legal proceeding before any Court or other authority or Tribunal and the giving of advice on any legal matter.'

It is important to note that the definition of ‘legal service’ in Section 2(1)(c) is an inclusive definition, and any service to be rendered in the conduct of any case or legal proceeding is comprehended by it. The two words appearing one after the other, i.e. 'any' and 'service' bear great potential and are of utmost significance in understanding what ‘legal service’ actually comprehends.

'Any' in the context it has been used in clause (c) of Section 2(1) of the LSA Act, it is clear, indicates that it has been used in a wide sense extending from one to all and admits of no exception.

7. COMMENTARY

Before initiating., According to me., for examining the provisions of the LSA Act, the principles laid down by the Constitution Bench in Atam Prakash (supra) through the speaking voice of Hon’ble O. Chinappa Reddy, J. in relation to interpretation of the Constitution and other statutes, cited by the learned amicus curiae, may be noticed that,

“Whether it is the Constitution that is expounded or the constitutional validity of a statute that is considered, a cardinal rule is to look to the Preamble to the Constitution as the guiding, light and to the Directive Principles of State Policy as the Book of Interpretation. The Preamble embodies and expresses the hopes and aspirations of the people. The Directive Principles set out proximate goals. When we go about the task of examining statutes against the Constitution, it is through these glasses that we must look, 'distant vision' or 'near vision'. Whatever article of the Constitution it is that we seek to interpret, whatever statute it is whose constitutional validity is sought to be questioned, we must strive to give such an interpretation as will promote the march and progress towards a Socialistic Democratic State. For example, when we consider the question whether a statute offends Article 14 of the Constitution, we must also consider whether a classification that the legislature may have made is consistent with the socialist goals set out in the Preamble and the Directive Principles enumerated in Part IV of the Constitution. A classification which is not in tune with the Constitution is per se unreasonable and cannot be permitted.’’

"It may be worthwhile to restate and explain at this stage certain well-known principles of interpretation of statutes: Words are but mere vehicles of thought. They are meant to express or convey one's thoughts. Generally, a person's words and thoughts are coincidental. No problem arises then, but, not infrequently, they are not. It is common experience with most men, that occasionally there are no adequate words to express some of their thoughts. Words which very nearly express the thoughts may be found but not words which will express precisely. There is then a great fumbling for words. Long-winded explanations and, in conversation, even gestures are resorted to.

Words are meant to serve and not to govern and we are not to add the tyranny of words to the other tyrannies of the world."

Article 39A, envisioning a cherished goal, cannot thus be read divorced from the preamble to the Constitution, whereby the People of India promised equality of opportunity and justice, - social, political and economic, to themselves, as well as Article 14 of the Constitution that guarantees equality and frowns upon invidious discrimination. It is axiomatic that the LSA Act, being conceived in the interest of the poor and the needy, is a beneficent legislation.

Bearing in mind the foundational rule of statutory interpretation that the statute under consideration ought not to be read in a manner inconsistent with the provisions of the Constitution, which is the fountain head of all legislations.

Drawing inspiration from the decision in *Manubhai Pragaji Vashi* cited by Petitioner's behalf hold that providing assistance to a litigant in distress either due to economic or other disabilities is the State's duty viewed in the light of not only

Article 39A read with Article 21 of the Constitution but also Article 14 thereof and such duty has to be discharged by enacting legislation or framing scheme or in any other reasonable and legitimate way.

8. IMPORTANT CASES REFERRED

- *Andhra Pradesh v. M/s Taj Mahal Hotel Secunderabad, (1971) 3 SCC 550.*
- *Employees' State Insurance Corporation v. High Land Coffee Works, (1991) 3 SCC 617*
- *State of Maharashtra v. Manubhai Pragaji Vashi, (19995) 5 SCC 730*
- *Manoharan v. Sivarajan, (C.A. No. 10581 of 2013) (unreported)*
- *Mohd. Ajmal Amir Kasab v. State of Maharashtra, (2012) 9 SCC 1*

CASE NO. 2

KHATRI AND OTHERS

V.

STATE OF BIHAR AND OTHERS

(1981) 1 SCC 627

ENSURING A FREE AND FAIR TRIAL.

ABSTRACT

The following is a Case Summary of the *Khatri and others v. State of Bihar (1980)*, also commonly known as the "*Bhagalpur Blinding's Case*". This case was brought before the Apex Court of India in 1981 by Kapila Hingorani appearing on behalf of the petitioner against the State of Bihar. In this case, prisoners under police custody were blinded thus depriving them of their life and personal liberty. Furthermore, they were not provided with legal aid by the state thus, not ensuring a free and fair trial. The case was brought before the Supreme Court of India by the petitioners through their Constitutional right envisaged under Article 32 of the Constitution of India. It was a pertinent case in the implementation of Article 39-A of the Constitution of India inserted through The Constitution (Forty-Second Amendment) Act, 1976. Article 39-A of the Constitution states that the state must make legislation, policy or program to provide free legal aid to poor for filing a suit or defending oneself. However, the police personnel of state of Bihar denied the undertrial prisoners their right to legal aid and also blinded them thus taking away their Right to Life and Personal Liberty envisaged in the Indian Constitution under Article 21. The lack of legal aid to undertrial prisoners was also a violation of the Apex Courts judgement in the case of *Hussainara Khatoon (IV) v. Home Secretary, State of Bihar (1980) 1 SCC 98.* The Supreme Court, in this case, held that the state cannot deny its constitutional responsibility to provide legal aid at all stages of the proceedings.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition No. 5670 of 1980
Jurisdiction	:	Supreme Court of India

Case Filed On	:	1980
Case Decided On	:	December 19, 1980
Judges	:	Justice P.N. Bhagwati, Justice A. P. Sen
Legal Provisions Involved	:	Constitution of India- Article 21, 32 Code of Criminal Procedure, 1973- Section 57,167
Case Summary Prepared By	:	Rishi Raj Symbiosis Law School, Noida

2. BRIEF FACTS OF THE CASE

The case was brought before the Supreme Court of India under the provisions of Article 32 of the Constitution of India by Advocate Kapila Hingorani. Miss Kapila Hingorani and Miss Rekha Tiwari were Advocates for petitioner. Mr K.G. Bhagat and D. Goburdhun were Advocates on behalf of the respondents, State of Bihar. The petitioner brought before the apex court that the police had blinded certain undertrial prisoners when they were in the custody of the police, and their right to life and personal liberty was deprived by the state. Furthermore, the state did not provide any legal aid to the undertrial prisoners at any stage of the trial. The prisoners did not have any knowledge of their legal and constitutional rights and could not afford advocate due to their poor socio-economic status. The state was under the compulsion of providing free legal aid to undertrial prisoners under the mandate of Article 39-A and the precedent set by the case of *Hussainara Khatoon (IV) v. Home Secretary, State of Bihar*. However, the State of Bihar was delinquent in its constitutional duty. The court observed that the State of Bihar did not perform its duty. It furthermore held that the state cannot be ditch its duty in providing free legal aid to by pleading financial or administrative inability.

3. ISSUES INVOLVED IN THE CASE

I. Is state duty-bound under Article 21 to provide free legal aid to accused of poor socio-economic background?

II. Accused has to be present before a judicial magistrate within 24 hours of arrest under Section 57 of the Code of Criminal Procedure, 1973. Is it directory or mandatory?

III. What relief court can give to someone who has suffered deprivation of right under Article 21?

IV. Why should the court not be prepared to devise new remedies to grant relief to a person who is deprived of his/her fundamental right?

4. ARGUMENTS OF THE PARTIES

- **Petitioner**
  - The advocates on behalf of petitioners contended that the prisoners who were blinded and under treatment at Rajendra Prasad Ophthalmic Institute, New Delhi must be provided with a shelter in Delhi itself as it is not safe for them to travel back to Bhagalpur while the case is still under investigation.
  - The petitioner contended that prisoners were blinded by police officers who government servants acting on behalf of the state and this was thus a violation of Article 21.
  - The liability to compensate the person deprived of personal life and liberty lies in state.
- **Defendant**
  - The defendant contended that it was not yet established that prisoners were blinded by Police and investigation was still in progress.
  - Even if blinding was done by police and there was a violation of right under Article 21 the state could not be held liable to pay compensation.
  - The advocate on the behalf of the state contended that state was bound to provide free legal aid to the prisoners however, the state might find it difficult to provide legal aid due to financial constraints.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The legal aspects in this case involved are as follows-

- Article 21- Right to life and Personal Liberty
- Article 32- This article of the Indian Constitution gives the right to individuals to move to the Supreme Court to seek justice when they feel that their right has been unduly deprived.

- Section 57 of Code of Criminal Procedure, 1973- It requires the person arrested of crime to produce before a judicial magistrate within 24 hours of arrest.
- Section 167 of Code of Criminal Procedure, 1973- It allows that a person may be held in the custody of the police for 15 days on the orders of a magistrate.

6. JUDGEMENT IN BRIEF

- The records submitted by the state in the court clearly show that the various judicial magistrates who dealt with the blinded prisoners at various stages of the trial did not have any legal representation. The magistrate did not enquire the prisoners of their legal representation or whether they wanted legal representation at the cost of the state.
- The right to free legal aid is an essential ingredient for ensuring a fair and free trial. The state cannot avoid this obligation by pleading financial or administrative inability.
- The constitutional obligation of the state to provide free legal aid to the accused does not arise only at the trial stage but also when the accused is presented before the magistrate for the first time.
- The person accused of a crime must be presented before a magistrate within 24 hours of arrest and this must be followed scrupulously.
- The Magistrate or the Sessions judge must inform him of his right as this right may be illusory to the accused.
- The accused must be presented before a judicial magistrate within 24 hours of arrest. This is the constitutional requirement that should be followed scrupulously.

7. COMMENTARY

This case has earned the tag of a ‘landmark judgement’ as it presented the path for legal aid in India. This case first of all clearly shows that the police officers who were serving under the Government committed a gross violation of human rights by blinding the undertrial prisoners. This heinous act of police brutality was also a violation of the prisoners right under Article 21. Furthermore, the state failed its constitutional duty to provide them with legal aid at the cost of the state. I opine that providing legal-aid to accused who are not financially stable is a duty as our constitution and jurisprudence behind the constitution mandates equality for all citizens socially as well as before the law. Furthermore, even the accused as

the right to gain legal awareness regarding his constitutional and legal rights which are only possible if there is a presence of lawyer or advocate on behalf of the accused. The lawyer or legal-aid must be present when the accused is presented before the magistrate the 1st time and further on all stages of the trial. He must be informed of his rights regarding remand, bail and circumstances of his/her arrest. It is also the duty of the judicial magistrate to enquire whether the accused has legal representation and if he/she does not have legal representation due to socio-economic reasons, he/she may avail one at the cost of the state. It is also important that accused must be presented before the magistrate within 24 hours of the arrest as it is a constitutional mandate under Article 22 and also under provisions of the Code of Criminal Procedure, 1973. The delay in presentation of accused before the magistrate within 24 hours could lead to human rights violation like in the present case or result in the accused's unawareness of his/her constitutional rights. This judgement by the Supreme Court is the victory of the basic structure and jurisprudence of the Indian Constitution and the Right to Life of an individual.

8. IMPORTANT CASES REFERRED

- *Hussainara Khatoon (IV) v. Home Secretary, State of Bihar (1980) 1 SCC 98*
- *Khatri and others (III) v. State of Bihar and others (1981) 1 SCC 635*
- *Khatri and others (IV) v. State of Bihar and others (1981) 2 SCC 493*
- *Jackson v. Bishop 404 F Supp 2d 571*
- *Rhem v. Malcolm 377 F Supp 995*

CASE NO. 3

MADHAV HAYAWADANRAO HOSKAT

V.

STATE OF MAHARASHTRA

AIR 1978 SCC 1548

RIGHT TO LEGAL AID.

ABSTRACT

Legal Assistance means providing free legal services to the poor and the weakest sections of the society that cannot afford to resort to taking the defence of lawyer to carry out a case or any legal procedure in the Court of Justice, any judicial authority or before any Court of Law. Article 39A of the Constitution of India states that the State shall ensure that the operation of the legal system promotes justice based on equal opportunities and, in particular, will provide free legal assistance, through appropriate legislation or plans or any other way, to ensure that opportunities to guarantee justice are not denied to any citizen for reasons of economic or other disability. Articles 14 and 22 (1) of the Constitution also oblige the State to guarantee equality before law and a legal system that promotes justice on the basis of equal opportunities for all. The Preamble of the Indian Constitution aims to guarantee the people of India justice: socio-economic and political. Article 38(1) declares that the State shall promote the well-being of people by ensuring and protecting the social order, including justice. Article 21 clearly states that everyone has the same right to life and liberty, except in accordance with the procedure established by law. The State will ensure that the operation of the legal system promotes justice, on the basis of equal opportunities and, in particular, will provide free legal assistance, through appropriate legislation or plans or in any other way, to guarantee that no citizen is denied justice for economic or other disabilities.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Special Leave Petition (Criminal) No. 408 of 1978
Jurisdiction	:	Supreme Court of India
Case Decided On	:	August 17, 1978

Judges	:	Justice V.R. Krishna Iyer, Justice D. A. Desai, Justice O. Chinnappa Reddy
Legal Provisions Involved	:	Constitution of India- Article 14, 21, 22(1), 38(1), 39A.
Case Summary Prepared By	:	Himanshu Mahesh Mendhe RTMNU's Dr. BACL, Nagpur.

2. BRIEF FACTS OF THE CASE

In brief, the petitioner, a young reader of university claims to hold Ph.D. degree, was alleged to commit offence of forgery and counterfeit the degree certificates of the university. The clever shopkeeper where an order to prepare an embossing seal was placed by the petitioner gave pre-emptive information to the police. The sessions court held petitioner guilty under S. 417, 467, 468, 471 and 511 of IPC but sentenced him with simple imprisonment for this grave offence on the ground of his fine and career background. Later, High Court dismissed the appeal of the petitioner against the conviction and allowed the appeal of the state to enhance the sentence. The petition filed for special leave to appeal after four years whereby he already undergone his full term of imprisonment; against this heavy sentence. The apex court was not impressed with the merits of the case as more disturbed over the explanation offered for the delay of four years in filing special leave petition.

3. ISSUES INVOLVED IN THE CASE

I. Whether right to free legal aid to prisoners are guaranteed under Article 21 of the Constitution?

4. ARGUMENTS OF THE PARTIES

Contentions of the Petitioner

1. On December 10, 1973 the petitioner had applied under Section 363(2) and Section 387 of Cr.PC for a copy of the judgment through the jail authorities. The copy was received by the jail authorities from the High Court but was never delivered to him. As a result, the petitioner lost his right to appeal by special leave. To this, the petitioner was forced to come up with a condonation petition after obtaining another certified copy from the High Court.

2. The petitioner denies that this copy has been delivered to him and there is nothing in the register that bears his signature as a sign of receipt of the copy of the judgment of the High Court.

Contentions of the Respondents

1. The Prison Superintendent contended that a clerk of his office did deliver it to the prisoner but took it back to enclose it with a mercy petition to the Governor for the remission of sentence.

5. JUDGMENT IN BRIEF

1. The Apex Court surprised to have this petition after four years of the judgment of the High Court whereby the petitioner had already undergone his full term of imprisonment. To begin with it was contented by the petitioner that the High Court made delayed in providing the free copy of its judgment. Further, he disclosed that the copy was not duly served by the prison officials and there is nothing in record that bears his signature which acknowledges its receipt. Although, prison officials denied such allegation saying that free copy was served to the petitioner but took it back of the purpose of enclosing it with a mercy petition for remission of sentence. Thus, the prisoners are situationally at the mercy of the prison 'brass' but their right to appeal remains under peril in absence of any statutory provision to provide free legal aid.

2. The Court has relied upon the decision in *Maneka Gandhi v. Union of India [(1978) 1 SCR 621]* case which explains that the personal liberty cannot be cut out or cut down without fair legal procedure. If prisoner sentenced to imprisonment is unable to exercise his statutory right of appeal, then there is implicit in the Constitution under Article 142 read with Articles 21 and 39A, power to assign counsel for such imprisoned person for doing complete justice. This is a necessary incident of the right of appeal conferred under S. 363 and allowed by Article 136 of the Constitution. In the present case, the legal counsel was provided by the court but the petitioner preferred to argue himself. The court upholds his right to counsel under Article 21 in directional sense.

3. Practically, it a duty of the state government to provide remuneration to the assigned counsel as fixed by the court and cannot denial such right on the ground of financial difficulty. Of course, the court has to observed the situation from all angles, circumstances and gravity of the sentence, whether it is necessary for the end of justice to make available legal aid in a particular case.

4. This petition was closed with series of directions to the States to issue instructions to its officials and the jail authorities to promptly make available to prisoners free copies of judgments, inform them of their right to avail of legal aid and provide them with effective assistance in applying for and obtaining legal aid for pursuing cases before court.

Ratio Decidendi

- Freedom is what freedom does. Article 21 of the Constitution guarantees personal liberty. 'Procedure established by law' are words of deep meaning and procedure means 'fair and reasonable procedure'.
- The procedure under Article 21 means a fair procedure. A first appeal from the Sessions Court to the High Court, as provided in the Criminal Procedure Code, manifests this value upheld in Article 21.
- Article 19 cumulatively read with Article 21 as in the case of *Maneka Gandhi*, laid down that personal liberty cannot be cut out without fair legal procedures.
- A copy of the judgment should be provided to the prisoner in time to file an appeal. Also, the provision of free legal services is available to a prisoner who is indigent or otherwise disabled from securing legal assistance, where the ends of justice call for such service. And, these are the responsibilities of the State under Article 21.
- If a prisoner sentenced to prison is practically unable to exercise his constitutional and statutory right of appeal, including special permission to appear for lack of legal assistance, it is implied in the Court, according to Article 142, 194 read with Articles 21 and 39A, of the power of the Constitution to assign a lawyer for the prisoner individual "for doing full justice." And this is also allowed by Article 136 of the Constitution.
- The accused is entitled to a lawyer, not in the permissive sense of Article 22 (1) and its broader scope but the peremptory sense of Article 21 confined to prison situations.

- When the prisoner seeks to file an appeal or review, the prison administration will make all facilities available for the exercise of that right.
- The Court cannot deviate from the special license requested under Article 136 so that the endless prosecution for the justice of every defeated litigator, civil and criminal, floods it into dysfunction.

Obiter Dicta

- The Appellant was beyond economic compulsions of making a living by criminal means. It is, therefore, surprising that the Public Prosecutor should have, on behalf of the State, consented to a light sentence of conviction for the grave charges.
- The administration should view sternly white-collar offenders and should not abet them by agreeing to a token of punishment. In the present case, the trial court has confused between the correctional approach to prison treatment and nominal punishment in serious social offenses.
- Since the Supreme Court is the last court of justice, every party in person seeks from the Court extra solicitude.
- The social defense is the criminological basis of punishment. In the present case, the trial judge has confused between the correctional approach to prison treatment and nominal punishment on the verge of decriminalizing serious social crimes.

6. COMMENTARY

Thus, it has been held that right to free legal aid is an essential ingredient of reasonable, fair and just procedure guaranteed under Article 21 for an accused sentenced to imprisonment and courts will always furnish a free copy of the judgment when sentencing an accused and jail officials will assist prisoner in exercising his right to appeal or revision.

7. IMPORTANT CASES REFERRED

- *Maneka Gandhi v. Union of India (1978) AIR 597, (1978) SCR (2) 621*

CASE NO. 4

SUK DAS

V.

UNION TERRITORY OF ARUNACHAL PRADESH

((1986) 2 SCC 401)

FUNDAMENTAL RIGHT TO LEGAL AID TO THE INDIGENT PERSONS IN THE CRIMINAL JUSTICE SYSTEM.

ABSTRACT

The following is a case summary of not so popular but a peculiarly vital case of *Suk Das v. Union Territory of Arunachal Pradesh (1986) 2 SCC 401*. The vitality of which lies in the fact that it is a reflection of the dynamic role played by the Apex Court in the organic growth of the fundamental right to legal aid of the indigent persons in the criminal justice system.

In this case, the appellant was charged for threatening his assistant engineer for cancelling his transfer orders. The appellant did not find any legal representation because of his indigence. There was no cross examination conducted. The Apex Court thereby took the cognizance of absence of legal representation while setting aside the conviction against the appellant. It further stated that providing free legal assistance at the state cost is a fundamental right of a person who is accused of an offence which may involve jeopardy of his personal life and liberty which is implicit in the requirement of reasonable fair and just procedure prescribed by Article 21 of the Indian Constitution. The statement of the apex court which became the limelight was that if the right to free legal assistance is not respected then it would indeed be a mockery of free Legal aid and if it were left to a poor, ignorant person to ask for a free Legal aid then it would mainly become a paper promise and its purpose would fail which will lead to the infringement of his fundamental rights into toto. Further the present case has carried the dictum of *Khatri (II)* a step further. Therefore, unfolding of this judgement is certainly going to table various lessons in the way of legal development and hence it is pertinent to gain an insight into the bits and parcels of this judgment.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Criminal Appeal No. 725 of 1985
Jurisdiction	:	Supreme Court of India
Case Filed On	:	1985
Case Decided On	:	March 10, 1986
Judges	:	Justice P.N. Bhagwati, C.J., Justice D.P. Madon, Justice G.L. Oza
Legal Provisions Involved:	:	Article 21 of Constitution of India Section 506 read with Section 34 of Indian Penal Code, 1860
Case Summary Prepared By	:	Anshika Juneja Amity Law School, Delhi

2. BRIEF FACTS OF THE CASE

The appellant and five other accused were charged in the court of the Additional Deputy Commissioner, Diabang Valley, Anini, Arunachal Pradesh for an offence under Section 506 read with Section 34 of the Indian Penal Code on the allegation that the appellant and the other five accused threatened Shri H S Kohli Assistant Engineer, Central Public Works Department, Anini with a view to compel him to cancel the transfer orders of the accused which had been passed by him. The case was tried as a warrant case and at trial 8 witnesses on behalf of the prosecution were examined. The appellant was not represented by any lawyer since he was admittedly unable to afford legal representation on account of his poverty and the result was that he could not cross examine the witnesses of the prosecution. The appellant wished to examine seven witnesses in defence but out of them two could not be examined since they were staying far away and moreover, in the opinion of the court, they were not material witnesses. The remaining five witnesses were examined by the appellant without any legal assistance. The result was that at the end of the trial four of the accused were acquitted but the appellant and another accused convicted of the offence under section 506 of the Indian Penal Code and they were sentenced to undergo simple imprisonment for a period of 2 years.

After which the appellant preferred an appeal before the Guwahati High Court. There were several contention searches in support of the appeal. Out of which the most significant and pertinent is that the appellant was not provided free Legal aid for his defence and the trial was therefore vitiated. This self-same contention was also advanced by the High Court in the appeal preferred by the appellant and but the High Court took the view that though it was undoubtedly the right of the appellant to be provided the appellant did not make any request to the learned Additional Deputy Commissioner praying for and since no application for legal aid was made by him it could not be said in the facts and circumstances of the case that failure to provide legal assistance vitiated the trial. The High Court in the circumstances confirm the conviction of the appellant but in view of the fact that he was already in jail for a period of nearly 8 months, the High Court held that the ends of justice would be met if the sentence on the appellant was reduced to that already undergone by him. The opponent was accordingly ordered to be set at liberty forthwith but since the order of conviction passed against him was sustained by the High Court preferred and appeal with the special leave obtained from the honourable Supreme Court of India.

3. ISSUES INVOLVED IN THE CASE

I. Whether the Right to Free Legal aid as a Fundamental Right is conditional upon application for free legal assistance?
II. Can the trial lawfully proceed without adequate legal representation being awarded to the accused?

4. ARGUMENTS OF THE PARTIES

Petitioner

- Right to free legal services is clearly and essential ingredient of reasonable fair and just procedure for a person accused of an offence and it must be held to be implicit in the guarantee of Article 21.
- Free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in Article 21.
- Indian people residing in rural areas are illiterate and a not aware of their innate legal rights conferred upon them by law. Even literate people are not knowledgeable of

their rights. This absence of legal awareness makes them on approachable to a lawyer for consultation.

- If the conviction against him is set aside then he must be restored to his service which was crashed on account of his conviction by the learner and Additional Deputy Commissioner along with the full payment of back wages

Respondent

- Applicant himself did not make any application for free legal services on legal representation by a lawyer. Therefore, he cannot seek the vitiation of the trial on the account of non-access to free legal aid.
- Applicant solely themselves waived their right to free legal aid.

5. LEGAL ASPECTS INVOLVED IN THE CASE

This case sets an example as to how the Supreme Court has played a proactive role in making our Constitution a living one, removing the arena for stagnancy and rigidity. As far the case is concerned it involved Section 506 and Section 34 of Indian Penal Code along with Article 21. But as highlighted by Justice P. N. Bhagwati, C.J. the facts giving rise to the appeal are not material because the question posted for our consideration is a pure question of law. And pure question of law herein is associated with Article 21 only.

6. JUDGMENT IN BRIEF

1. Free legal assistance at the State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in the requirements of reasonable, fair and just procedure prescribed by Article 21 of Constitution of India.
2. The exercise of this fundamental right is not conditional upon the accused applying for free legal aid and hence cannot be denied if the accused failed to apply for it. Illiteracy, poverty and ignorance of rights and entitlements under the law abounds leading to deception, exploration and deprivation of rights and benefits under the law. It would be a mockery of the legal aid programme if it were to be left to the poor, ignorant and illiterate accused to ask for legal services.
3. The Magistrate and the Sessions judge is legally bound to inform the accused of their legal aid rights conferred upon him by the law.

4. The appellant was adjudged to be entitled for his lost job without the back wages.

7. COMMENTARY

Over the period of time, Supreme Court has emerged as a prominent figure behind the development of a wide canopy of fundamental rights distinguished from Salmond's Pigeon hole theory. This case is the best epitome of the same. In my opinion, the essence of this case lies in the Supreme Court taking charge of enlarging the availability of the fundamental right to free legal aid. The medium adopted for achieving its objective is the Magistrate and the Sessions judge who have been made legally bound by an obligation of informing the accused about his right and to inquire about his wish of legal representation at the State's cost, unless he refuses to take the benefit of the same. Further, the Apex Court in the light of representation by an advocate being an essential ingredient of a fair trial held that absence of an advocate vitiated the criminal trial if the case of an accused is could not be properly represented. Simultaneous to this it was also observed that if the accused represents his case properly without the assistance of an advocate the absence of advocate from trial does not vitiate the trial. Therefore, it can be very well patently concluded that the Hon'ble Court has taken both the sides of the same coin simultaneously with full diligence.

In my opinion, this is one of the most comprehensive judgments which sets a path, leads an example and provides executory direction as well to ensure a sustainable availability of the Right to Free Legal Aid at the end of each and every accused in a trial. This is a holistic judgment rendered by the Supreme Court of India declaring a practice of law by their judgment. This Apex Court judgment has been and shall be considered a successful win for the endeavours of India in the field of providing free legal aid to the accused persons in the criminal justice regime.

8. IMPORTANT CASES REFERRED

- *Hussainara Khatoon (IV) v. Home Secretary (1980) 1 SCC 98.*
- *M.H. Haskot v. State of Maharashtra (1978) 3 SCC 544.*
- *Khatri (II) v. State of Bihar (1981) 1 SCC 627.*

CASE NO. 5

HUSSAINARA KHATOON & ORS.

V.

HOME SECRETARY, STATE OF BIHAR, PATNA

(AIR 1979 SC 1369)

FREE LEGAL SERVICES TO THE UNDER PRIVILEGED AND SPEEDY TRIALS OF UNDER-TRIAL PRISONERS.

ABSTRACT

The present case is a landmark judgment on the speedy trial of cases that came to be recognized as a fundamental right of every accused person. It is a facet of the rightful administration of justice. The Constitutional obligation upon State to undertake the protection of rights of individuals under Article 21 is inclusive of the duty to ensure there is a speedy trial of cases. It also ensures the right to access free legal services to the poor as an essential part of Article 21 of the Constitution.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition No. 57 of 1979
Jurisdiction	:	Supreme Court of India
Case Decided On	:	March 9, 1979
Judges	:	Justice P N Bhagwati, Justice D A Desai
Legal Provisions Involved	:	Constitution of India- Article 14, 21, 39A
Case Summary Prepared By	:	Himanshu Mahesh Mendhe. RTMNU's Dr. BACL, Nagpur.

2. BRIEF FACTS OF THE CASE

1. This case had been brought up before the Hon'ble Supreme Court under its original jurisdiction by a Writ Petition. The petition was for the issue of a Writ of Habeas Corpus where the petitioners stated that a large number of men and women including

children were in jails for years awaiting trial in courts of law and that the offences, even if proved, would not warrant punishment for more than a few months. Although sufficient opportunity was given, the State did not appear before the Court.

2. Government of Bihar was directed to release the under-trial prisoners in cases where the investigation had been continuing for more than six months without satisfying the Magistrate that for special reasons and in the interest of justice the investigation beyond the period of six months is necessary under S. 167(5) of Cr.P.C. The State of Bihar was also required to submit a year-wise breakup of all the under-trial prisoners into two broad categories, that of Major Offences and Minor Offences. In the present hearing three counter-affidavits had been filed by the respondents, which gave a report of the under-trial victims in Central Jail, Patna and Muzaffarpur and by the Assistant Inspector General of prisons.

3. ISSUES INVOLVED IN THE CASE

I. Whether the pre-trial detention of the accused for long years waiting for their trials was a violation of their Fundamental Right of Protection of Life and Personal Liberty under Article 21 of the Constitution?

II. Whether the right of the under-trial prisoners to be accessible to free legal services guaranteed to them under Article 39-A was being infringed due to their unawareness of their rights?

4. ARGUMENTS OF THE PARTIES

1. It has been averred in the counter-affidavit to the direction of the Court that many under-trial prisoners, petitioners herein, confined in the Patna Central Jail, the Muzaffarpur Central Jail and the Ranchi Central Jail, prior to their release have been regularly produced before the Magistrates numerous times and have been remanded again and again to judicial custody by them. However, the Court found this averment unsatisfactory as it does not comply with the direction of producing the dates on which these under-trial prisoners were remanded.
2. Moreover, to justify the pendency of cases, it has been contended that in 10% of the cases, the investigation is held up due to delay in receipt of opinions from

experts. This reason was unacceptable to the Court as the State can always employ more experts and establish more laboratories.

5. JUDGMENT IN BRIEF

1. Free legal service, as mandate under Article 39-A is an inalienable element of 'reasonable, just and fair' procedure, without which a person suffering from economic or other disabilities shall suffer from unequal opportunity to secure justice.
2. Right to free legal service is thus a fundamental right of every accused who cannot engage a lawyer owing to reasons like poverty or indigence and the State is under a mandate to provide for a lawyer, provide the accused does not object to the provision of such a lawyer.
3. The State is under a Constitutional mandate to provide speedy trials and cannot avoid this obligation by pleading financial or administrative inability and the Supreme Court being the guardian of the fundamental rights of the people may issue directions to the States for enforcing the fundamental right of speedy trial of the prisoners. These directions may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, appointment of additional judges and other measures calculated to ensure speedy trial.
4. Since the previous directions by the Court to the State did not seem to have been complied with and also have been unsatisfactorily explained, the Court also directed that:
5. Upon next production of the under-trials before Magistrates or the Sessions Court on the remand dates, the state shall provide them with a lawyer at its own cost making an application for bail and opposing remand.
6. The State Government and the High Court was asked to submit a report on the total number of cases pending in each court as on December 31,1978 along with an year-wise breakup of the cases and an explanation as to why such cases could not be disposed which had been pending for more than six months.
7. The location and total number of Courts of Magistrates and Sessions Courts in the state of Bihar was also required to be provided by the State Government and the High Court of Bihar.

6. COMMENTARY

“If ever a time shall come when in this city only the rich can enjoy law as a doubtful luxury, when the poor who need it, most cannot have it, when only a golden key will unlock the door to the courtroom, the seeds of revolution will be sown, the fire-brand of revolution will be lighted and put into the hands of men and they will almost be justified in the revolution which will follow."

We would strongly recommend to the Government of India and the State Governments that it is high time that a comprehensive legal service program is introduced in the country. That is not only a mandate of equal justice implicit in Article 14 and the right to life and liberty conferred by Article 21, but also the compulsion of the constitutional directive embodied in Article 39A.

The right of one charged with a crime to counsel may not be deemed fundamental and essential to fair trials in some countries but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with a crime has to face his accusers without a lawyer to assist him. Both Powell and Gideon involved felonies. But their rationale has relevance to any criminal trial, where an accused is deprived of his liberty.

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. Our judicature, moulded by Anglo-American models and our judicial process, engineered by kindred legal technology, compel the collaboration of lawyer-power for steering the wheels of equal justice under the law". Free legal services to the poor and the needy are an essential element of any 'reasonable, fair and just procedure. It is not necessary to quote authoritative pronouncements by judges and jurists in support of the view that without the service of a lawyer an accused person would be denied the 'reasonable, fair and just procedure.

7. IMPORTANT CASES REFERRED

- *Maneka Gandhi v. Union of India, 1978 AIR 597.*

- *M. H. Hoskot v. State of Maharashtra, 1978 AIR 1548.*
- *Rhem v. Malcolm, 377 F. Supp. 995 (S.D.N.Y. 1974).*

CASE NO. 6

CENTRE FOR LEGAL RESEARCH AND ANOTHER

V.

STATE OF KERALA

(AIR 1986 SC 1322)

GOVERNMENT AND LEGAL AID.

ABSTRACT

Article 39A of the Indian Constitution embodies a directive principle of state policy that has an obligation to set up a comprehensive and effective legal aid program to ensure legal system operations and justice based on equality. To bring up an effective legal aid program, it must involve public participation. Despite the social commitment, if legal aid operation remains confined in the Administration's hands, no legal aid program can reach people. The legal aid program is not a charity but a social entitlement of the people. This case analysis discusses the need for the government body in the working of a legal aid program.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition No. 463 of 1986
Jurisdiction	:	Supreme Court of India
Case Filed On	:	1986
Case Decided On	:	May 2, 1986
Judges	:	Justice P.N. Bhagwati, C.J., Justice M.M. Dutt, Justice V. Khalid
Legal Provisions Involved	:	Constitution of India, Article 39-A, Article 21, Article 36 to Article 51 Criminal Procedure Code 1973 Section 304 Civil Procedure Code, 1908 Order 33 rules 9A and 18
Case Summary Prepared By	:	Pooja Lakshmi, Bennett University, Greater Noida

2. BRIEF FACTS OF THE CASE

The Centre of Legal Research filed a PIL before the Supreme Court of India questioning 'whether the voluntary organization of social action groups engaged in the programs related to legal aid require a public participation or involvement,' i.e., the Public Interest Litigation was filed by the Centre of Legal Research as the organization needs public support for its success. Basically, the question was, should the government involvement in the matters of legal aid programs be legally required. It also states that it is the state government's responsibility to bring up effective and comprehensive legal aid with the help of article 39A, which embodies Directive Principles of State Policy to bring up equality.

Despite the sense of social commitment that animates many offices in the administration, if legal aid program operation remains confined in the administration's hands, no legal aid program can succeed in reaching the people. The officers are necessary for any legal aid program to be successful. The court remarked that citizens must be involved in the legal aid program because it is not charity or any kind of bounty. It is a social entitlement of the people to help those in need of legal assistance. They should be regarded as participants through voluntary organizations than mere beneficiaries of the legal aid program. The legal assistance cannot be seen just as beneficiaries as what the legal aid programs provide is not a charity just giving financial help. Voluntary organizations must be considered and should act as a participant always.

The Voluntary Organizations work amongst vulnerable and deprived sections of the community as the foundation or 'Grass root level' by knowing the difficulties and problems faced by the people who have less access to legal aid and are considered as the neglected sections of India. Many people are forbidden from the right because of the education standard they persist (that is less than the normal standard education – least knowledge they acquired) or how they live. So, these organizations were built to help these people who are considered a neglected part of India's community, promote them in society, increase their value, and solve their problems. The voluntary organizations know the needs of these neglected underprivileged peoples, and they also take note of the source of exploitation to prevent the same from happening in the future. They act as the heartbeat of the people who are considered backward and know the people's pulse, and always try their best to bring justice to the people who suffer. They know the measures that are necessary for these people and take the required actions at the right time to put an end to the exploitation and injustice that are

faced by the vulnerable community of India. They excel in distributing justice to socially vulnerable people. Their main motto is to save the underprivileged from exploitation, bring justice, and give them the courage to fight for their rights.

The Supreme Court believed that these voluntary organizations and social action groups require the state's encouragement and support to operate legal aid programs to make the social justice system accessible for those who cannot stand up for themselves. Considering the socio-economic conditions prevailing in the country, the people cannot remain confined to the traditional or litigation-oriented legal aid program but need to adopt a more dynamic posture known as the aid scheme or state legal aid and advice board. However, the code made clear that the government or the state legal aid and advice board will not control or supervise voluntary organizations or social action groups. The government also remarked that the social action groups should work more brilliantly and be involved in matters without government involvement, i.e., it should not work under government control or work under the government. On these grounds, the case was dismissed in the apex court.

3. ISSUES INVOLVED IN THE CASE

I. Whether the voluntary organizations or the social action groups engaged in the legal aid program should be supported by the state government?
II. If required so, to the what extent should the State Government support the voluntary organisation?
III. What will be the conditions which are to be fulfilled and if needed, to what extend is the involvement required from government side?

4. ARGUMENTS OF THE PARTIES

To make the legal aid program successful, public participation is required in activities. Under article 39A, the State Government is obliged to set up effective and comprehensive legal aid programs to ensure the legal aid program's operations are to promote the justice of equality. The legal aid program in a country should not be considered as a charity as they are the social entitlement of the people to help them in need of a legal aid program. The people who are part of the vulnerable community should not be deprived of the opportunity to access legal aid programs. The vulnerable citizens of a country should not be looked down on or just considered as mere beneficiaries of the legal aid program. Their participation is equally

important in the success of a legal aid program and the development of our country's legal infrastructure. The voluntary organizations and the social action groups play a major role in securing people's participation and bringing up involvement in legal aid programs by working at the grassroots level to help people be aware of the challenges and acquire justice. They are well aware of the procedure that will help end the exploitation faced by the underprivileged and neglected sections of society. The State Government has an obligation to encourage voluntary organizations and social action groups to participate and assist the government in legal aid programs across the country under article 39A.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- **Article 39A** – Free legal aid to the poor and weak underprivileged sections of the society. This article ensures that no one is deprived of justice. The state government is obliged to ensure citizens' equality before the law, and it had the responsibility to ensure that no individual is deprived of justice. It is also covered under article 14 and Article 22(1) of the Constitution of India. In 1987, the parliament enacted the Legal Services Authority Act. This act came to effect in 1995, where the main objective was to establish and create a uniform network that will help provide free Legal Aid Services to society's necessary sections. To Supervise the implementation of the Legal Aid programs and to lay down policies and principal for doing an effective Legal Aid service, a board named as National Legal Service Authority (NALSA) was established under the LSA, 1987.
- 42nd amendment of the Constitution of India inserted with article 39A and other three articles - under Article 36 - 51, Directive Principles of State Policy are mentioned in India's Constitution. A comprehensive economic, social, and political program for the modernization and welfare of the state was constituted under this principle. These principles are a mixture of different subjects that cherish and hold the life of a nation.
- The combination between the directive principle of State Policy and fundamental rights - the constitution aims to bring a combination of DPSP and fundamental rights to fulfil the purpose of DPSPs to fix socio-economic goals. In the Governance of a country, Directive principles of state policies are equally important compared to the country's fundamental rights. The constituent assembly aims to promote justice.
- Section 304 of the Code of Criminal Procedure 1973 - provides Legal Aid to the accused at the expense of the state. This law states that the accused, under all

circumstances and in all cases, has the right to access the assistance of a Council, i.e., the accused has the right to access legal aid. In the sessions court, the accused can enable pleading at the state's expense to bring defence for the accused. This is to ensure the recognition of the Trinity of "equality, justice, and liberty."

6. JUDGEMENT IN BRIEF

1. The Hon'ble Apex Court view was supported and highlighted as it cannot be expected from the government to support every social group and voluntary organization located under its territory. There is a possibility of abuse of the encouragement by the government if the state encourages every organization. So, to avoid this abuse, there must be clear guidelines as to which organization should be supported, and these guidelines should include eligibility criteria and the type of organization that should be entitled to support from the government. One of the major problems in implementing the law designed to protect the community's weaker and vulnerable sections effectively is people's attitude to promote these vulnerable communities that are becoming rare. The Legal Aid scheme of the country has proven to be ineffective in many parts of the country because of many reasons like lack of awareness, free service is not equal to quality, not enough lawyers associated with legal service authority, lawyers are generally not interested in providing the free legal assistance, and this question the idea of full delivery of Social Justice to people.
2. To implement a successful scheme, the government requires people to be aware of the scheme and what the scheme consists of. As to make general people aware of the scheme government need representatives. Most of the time, the general public in rural India is completely unaware of its current legal system. For the perfect implementation, citizens should be educated about the legal system, schools and local NGOs should focus on spreading awareness among the vulnerable sections of the society about the legal system. Free legal aid, which is made available, lacks the quality up to the requirement, and it cannot be compared with the quality given to the legal aid paid. This makes people refrain from going for Free Legal Aid as the quality of Legal Aid is biased. The lack of qualified lawyers is also a drawback to the establishment of Free Legal Aid as the qualified lawyers are not interested in registering with the Legal Service Authorities, which hurdles the development of the country's Legal Aid program. This question is the faithfulness of a lawyer who

represents the client as the major reason they are paid from public funds, and this makes the remuneration given to the lawyer way less than what it should be given. Even some lawyers compelled the client to pay additional fees, also if the client is innocent. Most of the lawyers are in the system to earn money by presenting the client, and there are only a very few qualified advocates who believe in following the path of serving society and providing free Legal Aid to the public as a whole.

3. Under Article 39-A of the Constitution of India, the government is bound to provide equality between the people and promote the programs and have to make sure that the official system promotes the origin of the equality. The state government can offer voluntary organizations and social action groups assistance by lending encouragement and support to the voluntary organizations in operating the Legal Aid programs and themes related to the Legal Aid camps and Lok Adalat, etc.
4. Reasonably expeditious (speedy trial) trials are an integral part of the fundamental right of life and liberty, constituted under Article 21. The element of the reasonable and fair procedure is compiled with proper free legal service as a guarantee by the article. Legal Aid is basically a justice system that provides equality in action, and Legal Aid programs are a method to deliver justice in the social system. If the legal aid quality is absent, it is controversial to the violation of Article 21. If the accused person does not have the means to access Legal Aid, the government is bound to provide Free Legal Aid and Legal Advice. India's Constitution obliged the State to provide Free Legal Aid to the accused, and every individual of a society is entitled to this right. Another right is given to the individual by India's Constitution as the rule of law, the basic structure of the Constitution where every individual is guaranteed justice. In the absence of Legal Aid, the trial is a destruction to the system's validity and purity.

7. COMMENTARY

The principle of democracy consists of the principle of the rule of law. The rule of law must be upheld and provided for the peaceful and prosperous living of a society. Equality before the law and providing Legal Aid cannot be avoided as this is a crucial part of the law to administrate Justice. The 14th Law Commission report suggested that equality before the law cannot be exchanged without providing Legal Aid under the rule of law. Some of the suggestions to improve the Free Legal Aid are that the Advocates who are qualified and wish

to volunteer in providing free legal assistance should be allotted with the appropriate respect, and there should not be any age limit. There should be a criterion that prohibits the Advocate from receiving an additional fee from the client. Law students of the country should be permitted to assist and study from Advocates who volunteered for Legal Aid service as this will promote the mindset of the young generation. There must be an awareness program to focus on the village people so that the people from SC/ST categories are free to access free Legal Aid service, and the rural people become the intermediary between the authority and people in villages. Another most important rule to be followed is that legal awareness programs should be conducted on a time-to-time basis, and every Law School should have its own Legal Aid Clinic that can help facilitate between the needy and the authorities.

For the Successful implementation of Legal Aid Services to the needy people, legal awareness plays a major role in providing free Legal Aid Services and Schemes that have been implemented. To be aware of the right that is conferred upon them by law and to bring up equality, Legal Aid Programs and Schemes should be implemented successfully by the State. For upholding the law, the state needs to bring equality between the rich and poor sections of the society, and justice should read everyone under any circumstance.

8. IMPORTANT CASES REFERRED

- *Ajmal Kasab v. State of Maharashtra [(2012) 9 SCC 1]*
- *Hussainara Khatoon v. Home Secretary, State of Bihar [(1980) 1 SCC 98]*
- *Indira Gandhi v. Raj Naraian [AIR 1977 SC 69]*
- *Kara Aphasia v. the State of Bihar*
- *Khatri v. State of Bihar II [(1981) 1 SCC 635]*
- *M. H. Hoskot v. State of Maharashtra [1978 AIR 1548, 1979 SCR (1) 192]*
- *Sheela Barse v. Union of India [(1986) 3 SCC 596]*
- *State of Haryana v. Darshana Devi [AIR 1972 SC 855]*
- *Sukh Das v. Union Territory of Arunachal Pradesh [1986 AIR 991, 1986 SCR (1) 590]*

CASE NO. 7

RAJOO ALIAS RAMAKANT

V.

STATE OF MADHYA PRADESH

((2012) 8 SCC 553)

VIOLATION OF FUNDAMENTAL RIGHT AND ARTICLE 39A.

ABSTRACT

The following is a case summary of the infamous *Rajoo Alias Ramakant v. State of Madhya Pradesh (2012).* This case brought before the Apex Court of India in 2012 by Tara Chandra Sharma, Uma Datta and Ms. Neelam Sharma appearing on behalf of the petitioner against the violation of fundamental rights and Article 39A of the Directive Principle of State Policy (DPSP). The petitioner appealed against conviction and sentence. The conviction and sentence was made irrespective of crime committed under section 376 of the IPC by seven accused sentenced for 10 years of rigorous imprisonment. Six out of seven accused has their legal representative to present their side and represent the accused. Rajoo, one of the accused, was unaware of his rights; he wasn't allotted any legal representative to represent him. Later, when he realized about his rights and privileges, he claimed for the same. The petitioner moved to appeal for violation of his Fundamental Rights under Article 21 of the Indian Constitution and deprived of privileges provided under Article 39A of DPSP. The petitioner claiming for his rights moved to the High Court. The negligence made on behalf of the learned magistrate, the court or the accused will discuss under this case. The obligation, rights and entitlement will follow up regarding the violation of rights of accused to provide legal representative at State's cost.

1. PRIMARY DETAILS OF THE CASE:

Case No.	:	Criminal Appeal No. 140 of 2008
Jurisdiction	:	Supreme Court of India

Case Filed On	:	2008
Case Decided On	:	August 9, 2012
Judges	:	Justice A. K. Patnaik, Justice Madan B. Lokur
Legal Provisions Involved	:	Constitution of India – Article 21 and 39-A Legal Services Authorities Act, 1987 – Section 12, 13 Indian Penal Code, 1860 – Section 376
Case Summary Prepared By	:	Tejasva Pratap Singh Amity Law School, Lucknow

2. BRIEF FACTS OF THE CASE

This case brought before the Supreme Court of India in the form of a Criminal Appeal under Article 21 of the Constitution of India. On December 6, 1998, in an offence of gang rape 7 persons including Rajoo alleged to have gang-rape, the trial court convicted all of them for the offence of gang rape under section 376 of Indian Penal Code, 1860 and fine of Rs. 500 in default thereof they were required to undergo rigorous imprisonment for a further period of 3 months. Appeals filed by the entire convicted person before the High Court. The High Court dismissed and sentenced for commission of gang rape without inquiring whether they require any legal assistance.

By its judgement an order dates September 5, 2006, the High Court set aside the conviction in respect of 5 of the convicts but upheld the conviction in respect of Rajoo and Vijay. In this Case, Vijay has accepted and favored the judgement of the High Court but Rajoo has appeal against its conviction and sentence. Further, Rajoo presented by the learned counsel, focused through the material on record and made his submission before the court. The appeal was made in respected of violation of Article 21 of the Constitution of India, in deprive of privileges under Article 39A of the Constitution.

This case long drawn case and thus has gone through many steps and phases, the timeline has been such:

- On December 6, 1998: 7 persons convicted, charged for gang-rape under section 376 of Indian Penal Code. The trial court convicted and sentenced each of them for 10 years of rigorous imprisonment and fine of Rs. 500.

- On September 5, 2006: the High Court set aside the conviction in respect of 5 of the convicts but upheld the conviction in respect of Rajoo and Vijay.
- The rest of convicts, Rajoo and Vijay conviction upheld.
- Vijay has accepted the judgement of High Court but Rajoo appealed against his conviction and sentence.
- The appeal was made in respective of violation of Article 21 of the Constitution and deprived of the privileges of Article 39A of the Constitution.
- Article 39A, by the 42nd amendment of the Constitution, Article 39A inserted. This article provides Free Legal Aid by suitable legislation or schemes or in any other manner, to ensure that opportunities for securing justice are not deny to any citizens because of economic or other disability.
- There is a requirement of Law, Legislation not met in that case, and the absence of the accused person being provided with legal representation at State's cost.
- It was held that it will lead to violation of the fundamental rights of the accused under Article 21 of the Constitution

3. ISSUES INVOLVED IN THE CASE

I. Whether the Rajoo, entitled as a matter of right for legal representation in the High Court?

II. Whether the issue of providing free legal services or free legal aid or free legal representation should come up for consideration before this court?

4. ARGUMENTS OF THE PARTIES

Petitioner

- Article 39A of the Indian Constitution is an alienable element of "Reasonable fair and Just Procedure" for a person accused of an offence. In this case, Rajoo was alienated from his basic rights of free legal service and suffered violation of his fundamental rights under Article 21.
- It is noted that this is courts of constitutional right of every accused person who is unable to engage legal representative on account of reason such as Poverty, Indigence or Incommunicado. In this case, the State is under a mandate to provide a legal

representative to an accused person in circumstances of the case and need of the justice if required.

- It was the obligation of the judicial magistrate before whom the accused were produced to inform them of their entitlement to their legal representative at State's cost.

Defendant

- Accused person at the stage of proceeding trial as well as appellant should be aware about claim for a legal representative.
- Accused along with other 5 convicts could have knowledge about hiring a legal representative to present his side of opinion or statement.
- The consciousness of violation of his basic fundamental right under Article 21 of the Indian Constitution accomplished beyond reasonable time.

5. LEGAL ASPECTS INVOLVED IN THE CASE

In this case, it was held that the whole matter is on the main issue of Article 21 and Article 39A of The Constitution of India. The main case, which was filed, is on the criminal appeal on the conviction of gang-rape provided under Section 376 in the Indian Penal Code, 1860. The main thing that this case went this forward just because, the trial court did not appoint any legal representative for them and give them the judgement based upon the bench discretion. There is also a violation of Section of 12 & 13 of Legal Services Authorities Act, which provides that to provide free legal services to the person who can't afford the same and can prove their side to get equal justice.

6. JUDGEMENT IN BRIEF

1. Pending the enactment of the Legal Services Authorities Act, the issue of providing free legal services or free legal aid or free legal representation (all terms being understood as synonymous) came up for consideration before this Court.
2. Among the first few decisions in this regard is *Hussainara Khatoon (IV) v. Home Secretary, State of Bihar, (1980) 1 SCC 98*. In that case, reference was made to Article 39A of the Constitution and it was held that free legal service is an inalienable

element of "reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 [of the Constitution]."

3. It was noted that this is "a constitutional right of every accused person who is unable to engage a lawyer and secure free legal services on account of reasons such as poverty, indigence or incommunicado situation." It was held that 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, subject of course to the accused person not objecting to the providing of a lawyer.
4. The essence of this decision was followed in *Khatri (II) v. State of Bihar, (1981) 1 SCC 627*. In that case, it noted that the Judicial Magistrate did not provide legal representation to the accused persons because they did not ask for it. This found to be unacceptable.
5. This Court went further and held that it was the obligation of the Judicial Magistrate before whom the accused were produced to inform them of their entitlement to legal representation at State cost.
6. It observed that the right to free legal services would be illusory unless the Magistrate or the Sessions Judge before whom the accused produced informs him of this right.
7. In *Suk Das v. Union Territory of Arunachal Pradesh, (1986) 2 SCC 401*, reiterated the requirement of providing free and adequate legal representation to an indigent person and a person accused of an offence. In case, it reiterated, that an accused need not ask for legal assistance — the Court dealing with the case is obliged to inform him or her of the entitlement to free legal aid. This Court observed that it was now "settled law that free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21 [of the Constitution]".
8. Since the requirements of law were not met in that case, and in the absence of the accused person being provided with legal representation at State cost, it was held that there was a violation of the fundamental right of the accused under Article 21 of the Constitution.
9. It was observed that there "may be cases involving offences such as economic offences or offences against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal services need not be provided by the State cost.

10. The Court has taken a rather pro-active role in the matter of providing free legal assistance to persons accused of an offence or convicted of an offence.
11. A slightly different issue had recently arisen in *Clark v. Registrar of the Manukau District Court, (2012) NZCA 193.* The issue before the Court of Appeal in New Zealand was whether legally aided defendants in criminal proceedings are entitled to choose or prefer the Counsel assigned to represent them. The discussion in that case centered round the New Zealand Bill of Rights Act, 1990 and the issue answered in the negative.
12. However, in the course of discussion, the Court observed that the right of a fair trial guaranteed by the Bill of Rights Act and it is an absolute right. A fundamental feature of a fair trial is a right to legal representation under the Bill of Rights Act.
13. It was noted that the Supreme Court agreed with the High Court of Australia in *Dietrich v. R, 1992 HCA 57* that, other than in exceptional circumstances, "an accused who conducts his or her own defence to a serious charge, without having declined or failed to exercise the right to legal representation, would not have had a fair trial." A conviction obtained in such circumstances would be quash unless the prosecution is able to satisfy the Appellate Court that the trial was actually fair.
14. Under the circumstances, we are of the opinion that neither the Constitution nor the Legal Services Authorities Act makes any distinction between a trial and an appeal for the purposes of providing free legal aid to an accused or a person in custody.
15. The view that the High Court was under an obligation to enquire from Rajoo whether he required legal assistance and if he did, it should have provided to him at State expense.
16. However, since the record of the case does not indicate any such endeavor have been made by the High Court, this case ought to be re-heard by the High Court after providing Rajoo an opportunity of obtaining legal representation.
17. The court dispose of this appeal by setting aside the judgment and order dated September 5, 2006 passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 3 of 1991 and remit the case records back to the High Court for a fresh hearing.
18. Appeal disposed off.

7. COMMENTARY

This case is more of rights, privileges and its claim. The case which has already been decided in 1998, accused convicted and sentenced for 10 years of imprisonment for the crime committed under section 376 i.e., Gang rape. The case proceeds for appeal in 2006, where one of the accused Rajoo, who realized of his rights and privileges to claim for legal representative on his behalf, never provided. The accused, in 2006, filed appeal about his violation of fundamental rights under article 21 of the Constitution and deprived of his privileges mentioned for every citizen under article 39A.

There are number of cases taken as reference along with certain international cases. The cases clearly specify that settled law that free legal assistance at State's cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21 of the Indian Constitution.

The Court also held that it was the obligation of the Judicial Magistrate before whom the accused were produced to inform them of their entitlement to legal representation at State cost. It noted "a constitutional right of every accused person who is unable to engage a lawyer and secure Free Legal Services because of reasons such as poverty, indigence or incommunicado situation. 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, subject of course to the accused person not objecting to the providing of a lawyer.

8. IMPORTANT CASES REFERRED

- *Hussainara Khatoon (IV) v. Home Secretary, State of Bihar, (1980) 1 SCC 98.*
- *Khatri(II) v. State of Bihar, (1981) 1 SCC 627.*
- *SukDasv. Union Territory of Arunachal Pradesh, (1986) 2 SCC 401.*
- *Clark v. Registrar of the Manukau District Court, (2012) NZCA 193.*
- *Condon v. R, (2006) NZSC 62.*
- *Dietrich v. R, 1992 HCA 57.*

CASE NO. 8

PRATAP CHANDRA KAKATI

V.

STATE OF ASSAM

((1983) 1 GLR 80)

DENIAL OF LEGAL AID OR ASSISTANCE UNDER ARTICLE 39A.

ABSTRACT

The following Case Summary of the *Pratap Chandra Kakati v. State of Assam (1982)* is the liberal interpretation of Article 21 in *Maneka Gandhi's* case and 'Equal Justice' in Article 14 has driven the eye of highest court to the subject of legal aid. In the present case, the charge against petitioner Achyut was under Section 325 and under Section 323 of IPC against Pratap. Of course, at the close of the trial both the petitioners have been convicted under Section 323 and sentenced to a fine of Rs. 50/- each, in default to S. I. for 7 days. The petitioners in this case have made a grievance that they were denied legal assistance not only from the date of very first production but during the course of the trial also.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Criminal Revision No. 132 of 1981
Jurisdiction	:	Gauhati High Court
Case Filed On	:	1981
Case Decided On	:	February 23, 1982
Judges	:	Justice A.K. Goel, Justice A.C. Upadhyay
Legal Provisions Involved	:	Constitution of India, 1950 Legal Services Authorities Act, 1987
Case Summary Prepared By	:	Rudrakshi M Mendhe. RTMNU's Dr. BACL, Nagpur

2. BRIEF FACTS OF THE CASE

Article 39A is inserted by 42nd Amendment Act, 1976, in our Constitution. The liberal interpretation of Article 21 in Maneka Gandhi's case and 'Equal Justice' in article 14 has driven the eye of highest court to the subject of legal aid.

In the present case, *Pratap Chandrakakati v. State of Assam***,** the charge against petitioner Achyut was under Section 325, and under Section 323 of Indian Penal Code against Pratap. Of course, at the close of the trial both the petitioners have been convicted under Section 323 and sentenced to a fine of Rs. 50/- each, in default to S. I. for 7 days. The petitioners in this case have made a grievance that they were denied legal assistance not only from the date of very first production but during the course of the trial also.

3. ISSUES INVOLVED IN THE CASE

I. Whether legal aid had been asked for or not, but whether the denial of the same for any reason whatsoever has rendered the trial *non est* in the eye of law?

4. ARGUMENTS OF THE PARTIES

- The Petitioner in this case has made a grievance that they were denied legal assistance not only from the date of very first production but during the course of the trial also. It has been averred that they had verbally prayed the learned trial court to give them legal assistance as they were too poor to engage a lawyer, but the same was refused by stating that legal service could be provided in serious cases only, by which trial court might have meant cases triable by a court of session.

- Though there is nothing on record to show if the petitioners had asked for legal aid, that is not material in view of *Khatri (1981 Cri LJ 470) (SC)*, because as stated therein (Para 5):

> *it would make a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal services. Legal Aid would become merely a paper promise and it would fail in its purpose. The Magistrate or the Sessions Judge before whom an accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a*

lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State.

- The question therefore is not whether legal aid had been asked for or not, but whether the denial of the same for any reason whatsoever has rendered the trial *non est* in the eye of law. From what has been stated above it is clear that free legal service is not to be made available in all cases - it would much depend on the circumstances of the case. In *Hoskot*, sufferance of "public justice" was said to be the criterion, as per *Hussainara* "the ends of Justice" is the guiding star, and *Khatri* spoke of "social justice" in this regard. Thus, every case which ends with imposition of small fine cannot be held to be hit by, Article 21 because of the denial of free legal service. If each and every trial were to be held bad for want of legal service, each and every detention in judicial custody would be so. But it is doubtful if a person could approach the High Court for Writ of Habeas Corpus on the ground that he has been kept in detention without providing legal aid. Such a detention cannot also perhaps be regarded as wrongful confinement and a suit for damages against the authorities may not He. Of course, a flagrant violation of this requirement in some cases may lead the court to take a different view.

5. LEGAL ASPECTS INVOLVED IN THE CASE

1. Constitution of India, 1950
    - Article 39 A – of the Constitution of India provides for free legal aid to the poor and weaker sections of the society and ensures justice for all.
    - Article 21 – of the Constitution of India provides for right to life and liberty.
2. Code of Criminal Procedure, 1973
    - Section 304

6. JUDGEMENT IN BRIEF

It was proclaimed in no uncertain terms by Bhagwati, J. in the landmark decision in *Maneka Gandhi*, that every procedure would not satisfy the call of Article 21. The same has to be "right and just and fair and not arbitrary, fanciful and oppressive". *Hoskot* , saw for the first time a clarion call in this regard, which was of course in the wake of *Maneka Gandhi*. Article 39A, which reads: 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 by reason of economic or other disabilities. was regarded as an interpretative tool for Article 21 in *Hoskot*. A partial statutory implementation of the mandate has found expression in Section 304 of the new Code of Criminal Procedure which has enjoined providing of legal aid "in a trial before the court, of session". In *Hoskot* it was however held that in other situations as well courts cannot be inert in the fact of Articles 21 and 39A. Let it be said at this stage to the credit of this State that though the old Cr.PC, had not, contained any provision for legal aid, Rule 19 of the Assam Law Department Manual did speak of providing legal aid, of course, only where the accused was committed for trial of a charge of murder. Even so. it was a lead given by this State in this regard. This Court however had not remained contented in seeing that legal aid is provided in a murder case only where it is specifically provided for. A Bench speaking through Goswami, C. J. as he then was, the *State v. Aji Peyang, Assam LR (1970) Assam 90*, had stated that: We cannot countenance the situation of seeing under our jurisdiction trial of a person facing the extreme penalty of law without the aid of Counsel when he is unable to engage one.

The country was to see bolder pronouncement from Bhagwati, J. In one of the *Hussainara case*, the court observed that:

> ….when Article 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'. 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 arid just'. It is an essential ingredient 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". After referring to Article 39A. Bhagwati. J. further observed (para 7);

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 person if the circumstances of the case and the needs of justice so required, provided of course....

In another Hussainara case Bhagwati. J., took a step further and reminded that it was 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. He said, let it not be forgotten that if law is not only to speak justice but also deliver justice, legal aid is an absolute imperative. Legal aid was described as nothing else but equal justice in action. It was then observed that if free legal services are not provided to such an accused, the trial itself may run the risk of being vitiated as contravening Article 21.

The petitioners in this case have made a grievance that they were denied legal assistance not only from the date of very first production but during the course of the trial also. It has been averred that they had verbally prayed the learned trial court to give them legal assistance as they were too poor to engage a lawyer, but the same was refused by stating that legal service could be provided in serious cases only, by which the trial court might have meant cases triable by a court of session. In the present case, the charge against petitioner Achyut was under Section 325, and under Section 323 against Pratap. Of course, at the close of the trial both the petitioners have been convicted under Section 323 and sentenced to a fine of Rs. 50/- each, in default to S. I. for 7 days. This matter which is otherwise run-of-'the mill type, has been examined by a Division Bench because the question of free legal aid was involved. We would therefore confine ourselves to this aspect only.

Shri Sarma appearing for the petitioners took us through the aforesaid case law and submitted that as Section 325 I.P.C. is punishable with imprisonment for 7 years and fine, it was incumbent on the part of the trial Court to have provided the petitioners with legal aid for want of which the trial has stood vitiated.

Though there is nothing on record to show if the petitioners had asked for legal aid, that is not material in view of *Khatri (1981 Cri LJ 470) (SC)*, because as stated therein (Para 5):

it would make a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal services. Legal aid would become merely a paper promise and it would fail in its purpose. The Magistrate or the Sessions Judge before whom an accused

appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State.

The question therefore is not whether legal aid had been asked for or not, but whether the denial of the same for any reason whatsoever has rendered the trial *non est* in the eye of law. From what has been stated above it is clear that free legal service is not to be made available in all cases - it would much depend on the circumstances of the case. In Hoskot, sufferance of "public justice" was said to be the criterion, as per Hussainara "the ends of Justice" is the guiding star, and Khatri spoke of "social justice" in this regard. Thus, every case which ends with imposition of small fine cannot be held to be hit by, Article 21 because of the denial of free legal service. If each and every trial were to be held bad for want of legal service, each and every detention in judicial custody would be so. But it is doubtful if a person could approach the High Court for Writ of Habeas Corpus on the ground that he has been kept in detention without providing legal aid. Such a detention cannot also perhaps be regarded as wrongful confinement and a suit for damages against the authorities may not He. Of course, a flagrant violation of this requirement in some cases may lead the court to take a different view.

In the case at hand though one of the petitioners was charged under Section 325. the ultimate conviction of both is under Section 323 with a fine of Rs. 50/- as sentence. The facts are rather simple and speak of assault on two persons. Only 2 witnesses were examined in the case. We have noted that petitioner Achyut has been acquitted of the charge under Section 325 because of lack of medical evidence. But a perusal of the records shows that Tunu Begum (one of the injured) had been medically examined and even the X-ray had revealed a fracture. In such a case, to set aside the present conviction and to remit the case for fresh trial would really put the petitioners in greater jeopardy, which we have regarded neither advisable, nor in the interest of justice, inasmuch as an indigent person seeking for justice because of denial of legal services cannot be put on a more perilous course. By relying on *State of U.P. v. Kapil Das*, it is however submitted by Shri Sarma that even while setting aside the conviction, we may not remand the matter. In that case remand was refused because the respondent was kept under suspension for 20 years. Of course, in *Chajoo Ram v. Radhey Shyam* lapse of 10 years in a case of perjury, and in *Machander v. State of Hyderabad* delay of over 4-1/2 years in a murder case had acted as repellent in this regard. This shows that no

rigidity is to operate. In the case at hand, the occurrence is of April 20, 1979 and the date of conviction is April 30, 1981. Not much time has thus passed. Moreover, the fact that Achyut was acquitted under Section 325 because of non-examination of the doctor whereas an injury report showing grievous hurt is on record is a factor which really calls for remand, as a person who makes a grievance of injustice to him during the course of trial must face the same wholeheartedly and be prepared to receive his due sentence for the acts really committed by him. He cannot have the best of both the worlds, obliteration of his guilt due to violation of procedural safeguard, and escape from further proceeding with full safeguard. So, if we would have set aside the conviction because of non-providing of legal aid. it would have been difficult for us on the facts of the case not to remand the case for fresh trial.

Because of all the above, we would hold that the present is not a case in which conviction should be set aside for denial of legal aid. Let the matter be placed before a learned single Judge to consider other points raised in the revision.

7. COMMENTARY

In such a case, to set aside the present conviction and to remit the case for fresh trial would really put the petitioners in greater jeopardy, which we have regarded neither advisable, nor in the interest of justice, in as much as an indigent person seeking for justice because of denial of legal services cannot be put on a more perilous course.

In, *Khatri v. State of Bihar*, the court lamented that despite the law having been declared as far back as March 9, 1979 that the right to free legal service is clearly an essential ingredient of reasonable, fair and just procedure, most of state in the country had not taken of that.

When plea of financial constraints was mentioned on behalf of the State of Bihar, Justice Bhagwati could not countenance it and observed that a state could not avoid its constitutional obligation to provide free legal service to the poor by pleading financial or administration inability. If the offence charged against the accused is such that on conviction it would result in a sentence of imprisonment and is of such a nature that the circumstance of the case and the end of social justice require that he should be given free legal representation

Free Legal Service is enshrined in Constitution and also in the Code of Criminal Procedure means justice requires that he should be given free legal representation.

Free Legal Service is enshrined in Constitution and also in the Code of Criminal Procedure means anything to a needy person it should begin from the moment when a poor and a needy person is apprehended by the police.

Legal Aid has been held to be fundamental rights under Article 21 of the Constitution available to all prisoners and enforceable by the courts. The State is under duty to provide lawyer to a poor person and it must pay to the lawyer his fee as fixed by the court mentioned in *M.H. Hoskot v. State of Maharashtra* and *Hussainara Khatoon v. Home Secretary, State of Bihar*

In *State of Maharashtra v. Manubai Pragaji Vashi*, the Supreme Court has held that Article 21 read with Art. 39A casts a duty on the State to afford grants-in-aid to recognized private law colleges, similar to other faculties, which qualify for receipt of the grant. The aforesaid duty cast on the state cannot be whittled down in any manner, either by pleading paucity of funds or otherwise.

In such a case, to set aside the present conviction and to remit the case for fresh trial would really put the petitioners in greater jeopardy, which we have regarded neither advisable, nor in the interest of justice, in as much as an indigent person seeking for justice because of denial of legal services cannot be put on a more perilous course.

8. IMPORTANT CASES REFERRED

- *Maneka Gandhi v. Union of India (1978 AIR 597)*
- *Khatri & Ors. Etc. v. State of Bihar (1981 AIR 1068)*
- *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar, Patna .(1979 AIR 1819)*
- *The State v. Aji Peyang, Assam (Assam Law Reporter 1970, Assam 90)*
- *State of Maharashtra v. Manubhai Pragaji Vashi (1996 AIR 1)*

CASE NO. 9

STATE OF MAHARASHTRA

V.

MANUBHAI PRAGAJI VASHI AND ORS.

(1995) 5 SCC 730

THE CONTENT OF ARTICLE 21 TO BE READ WITH ARTICLE 39A.

ABSTRACT

The following is a case summary of the case, *State of Maharashtra v. Manubhai Pragaji Vashi and Others (1995)*. This is the first case ever on the occasion of which, the content of Article 21 to be read with Article 39-A arose for consideration in the Apex Court. This case was brought before the Apex Court of India in 1988 by learned counsel A.S. Bhasme appearing on behalf of the appellant, the State of Maharashtra against M.P. Vashi, a practising advocate and member of the Bar Council of India.

The Appellant invoked the appellate jurisdiction of the Supreme Court under Article 136 of the Constitution of India. This appeal was made in consideration of the impugned judgment of the Bombay High Court ordering the State to extend the benefit of grants-in-aid to government-recognized private law colleges.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	C.A. No.-007373-007374 - 1995
Jurisdiction	:	Supreme Court of India
Case Filed On	:	1988
Case Decided On	:	August 16, 1995
Judges	:	Justice Kuldip Singh, Justice K.S. Paripoornan
Legal Provisions Involved	:	Constitution of India – Article 14, 21, 39-A, 136, 226 (Part III & IV). Bar Council of India Rules, 1975 – Part IV.
Case Summary Prepared By	:	Tuhupiya Kar Department of Law, University of Calcutta, Kolkata

2. BRIEF FACTS OF THE CASE

This case was first brought within the purview of the High Court in 1987 by Manubhai Pragaji Vashi and Other Petitioners (the Universities of Bombay, various universities in the State of Maharashtra, various law colleges affiliated to the Bombay University and the Universities of Pune, Marathwada, Nagpur and Kolhapur, the Bar Council of Maharashtra and the Bar Council of India).

The Petitioners in *M. P. Vashi v. State of Maharashtra* by way of PIL (Public Interest Litigation) had filed Writ Petition No. 2303 of 1987 in High Court of Bombay which was the main petition. The prayer therein was to direct the Government of Maharashtra to extend the grants-in-aid scheme to the non-government law colleges as was afforded to professional private colleges facilitating in Arts, Science, Commerce, Engineering and Medicine in the State retrospectively from 1982.

After the filing of Writ Petition No. 2303 of 1987, the petitioners had further addressed a letter to the High Court within which intact they had raised certain other grievances of the retired employees of Law College, Pune. The High Court which after considering certain aspects of the said letter had *Suo Motu* treated it as Writ Petition No. 4816 of 1987. The prayer therein was that the benefit of pension-cum-gratuity scheme

It was with respect to these two Writ Petitions (No. 2303 & No. 4816 of 1987) that a Division Bench of the High Court of Bombay, consisting of Lentin and Agarwal, JJ, passed a judgement on the matter on August 19, 1888. It was held that withholding of facility of grants-in-aid to non-government law colleges was consequent discrimination between such law colleges and the other non-government professional colleges with faculties viz., Arts, Science, Commerce, Engineering and Medicine to whom Grants-in-aid was being given.

Case Facts

The case, *State of Maharashtra v. Manubhai Pragaji Vashi and Ors., 1995* is a case that had the prospect of deciding the future of various law colleges, their faculty of teachers, and thousands of students who were going to pass out of those colleges with a legal degree in their hand that would be their ultimate pass to carrying out legal practice in the world and thereby who would represent a vivant tableau of justice holders and case history makers.

This case brought forth several issues to be questioned at the renowned platform of the Apex Court but all those questions led to one prime concern of the Supreme Court Bench of Judges and that was the future of the quality of legal education in India.

This case was first brought before the Supreme Court of India in the form of Civil Appeals No. 7373 & 7374 by the State of Maharashtra, the Appellant. For which the party had filed SLPs (Special Leave Petitions) against the common judgement and order of the High Court of the Judicature of Bombay dated on August 19, 1988.

The appellants in their arguments stressed on the following two main aspects:

i) First, the High Court was in error of assumption in assuming that private professional colleges of other faculties except law colleges were given grants-in-aid which led the court to decide that it was a sheer act of discrimination against the private law colleges of the State of Maharashtra.

ii) Second, that the decision regarding giving off financial aid rests solely upon the State Government and also whether it holds the financial capacity to give the benefit of grants-in-aid to anyone or all private professional colleges, which also happens to be their policy decisions. The State also contends that it had admitted sanction a sundry of non-government professional colleges only on the condition that they would not demand to be financially aided by the Government in the time to come.

However, these claims were eventually wronged by the counsel for the respondents on the statement that they had presented sufficient evidence to prove that the law colleges were singled out from the benefit of grants-in-aid on a discriminatory basis as compared to the rest of the private government recognized colleges and that the decision held by the Bombay High Court is completely justified and were not based on any erroneous assumptions. The respondents also brought to the concern of this Court that the High Court had failed to properly assail some of the main and highlighted facts of this case in front of the Respondents.

The procedural timeline of this case is as follows:

A Division Bench of Supreme Court on :

- **December 9, 1988**

- Ordered the issue of notice in the Special Leave Petitions (SLPs), returnable on January 31, 1989.
- Directed the State of Maharashtra to consider implementing the final judgement of the High Court within 4 weeks from date i.e., January 31, 1989.
- Ordered that the Colleges considered eligible for grants-in-aid shall be paid so within 2 weeks thereafter i.e., March 14, 1989.
- Ordered that the copies of the grants-in-aid scheme shall be supplied to appearing respondents within 4 weeks from date i.e., January 31, 1989.

❖ **February 14, 1989**

- Passed an interim order to list the part-heard concerned case for final disposal on March 28, 1989.
- Ordered a stay on the operation of the judgement of the High Court and on hearing of the application of contempt filed by the respondents in High Court till the aforementioned date, i.e., March 28, 1989.
- Ordered for additional affidavits, if any, within the meantime.

❖ **October 23, 1990**

- Ordered the State of Maharashtra to present the guidelines before the court on the basis of which sanction to be duly recognized by the State Government and to function had been granted.
- Ordered the State to present sufficient evidence that such sanction to colleges was granted by the State and accepted by the private law colleges only on the condition that such colleges provided with sanction would not await or demand grant from the Government.
- Asked undertakings by the colleges to be filed, if any, in its original form or copy with an affidavit by a responsible officer.
- Demanded all these documents be filed along with advance copies of the affidavits filed to the counsel of the opposite party within 5 weeks from the date, i.e., October 23, 1990.
- Also gave liberty to the counsel of the opposite party or the respondents' counsel to file affidavits in counter within the time period of the same 5 weeks aforementioned.

it was noticed that neither of the two opposing parts associated with this case had complied with the aforesaid directions and orders of the Court.

❖ **August 30, 1991**

- Ordered Shri M.P. Vashi to file documents in support of his contention that the Government of Maharashtra had already put some amount that was allocated for the law colleges in the budget for the Maharashtra State Assembly for the year 1988 and onwards.

3. ISSUES INVOLVED IN THE CASE

I. Whether the High Court was in error of assumption that private professional colleges except law colleges were being given the benefit of grants-in-aid?
II. Whether it was discriminatory of the State government in not extending grants-in-aid to law colleges?
III. Whether it is the policy decision of the Government to extend the benefit of grants-in-aid scheme to all or any private professional colleges?
IV. Whether the State had discharged the burden of proof cast on it when the case was being heard at the High Court?

4. ARGUMENTS OF THE PARTIES

Petitioner

- Argued that the High Court had held its decision on the basis of an erroneous factual assumption that private professional colleges such as Engineering Colleges, Medical Colleges, etc. Other than Law Colleges were given the sole benefit of grant-in-aid. Therefore, the contention of the party that this factual assumption had led the High Court to conclude that the state was merely acting in a discriminatory manner.
- Argued that it is the sole decision of the Government to take financial decisions owing to its policies in the education sector and other financial commitments and constraints. Thereby, it is also the government's concern if it's financially possible or not for it to extend the grants-in-aid scheme to any or all private professional colleges.
- Argued that various non-government professional colleges were given recognition only on the condition that the colleges would not seek or demand the grants-in-aid to be made applicable to them anytime, whatsoever.
- Argued that owing to the score of the above arguments the decision of the High Court is not justifiable.

Defendant

- Argued that their plea at the High Court that professional colleges except law colleges were given grants-in-aid was proved before the High Court with sufficient evidence for the High Court to have held a decision in their favour.
- Argued that the charge of discrimination was to be substantiated with sufficient evidence by the government of the State of Maharashtra which stands to be unproven.
- Argued that paucity of funds can be no reason for selecting any one field of education for hostile discriminatory treatment.
- Whether gradual closure of law colleges one by one is going to affect quality legal education and in turn deprive the general public of legal aid and assistance in a populated country like India.

5. LEGAL ASPECTS INVOLVED IN THE CASE

In this case, we find that the wheels of justice were run on motion both at the level of the High Court and the Supreme Court of India. This is the first case in which Article 21 and Article 39A of the Constitution of India were taken into consideration to be read together. Article 21 to be read with Article 39A casts a duty on State to extend grants-in-aid to recognised private law colleges as was being made affordable to other colleges which were in qualification for the receipt of the grant. The Court ruled that paucity of funds can be no excuse for the hostile discrimination between colleges belonging to different professional fields.

The Court highlights the salient features of quality legal education which would further satisfy the purpose of Article 39A of that of securing an efficient legal system in place so that citizens in a country like India are not denied justice due to any economic or social constraints of life.

6. JUDGEMENT IN BRIEF

1. Directed the Government of the State of Maharashtra to extend the grants-in-aid scheme to all government-recognised private law colleges; on the same criteria as, such grants are given to other colleges with other faculties viz. Arts, Science, Commerce, Engineering and Medicine from the Academic Year 1995;

2. The grants-in-aid scheme shall be implemented by the aforementioned authority within 3 months from the passing of this judgement.
3. It is the forthwith responsibility of the said Authority to recognise such colleges which have closed down or about to close down due to lack of financial aid as they existed in the Academic Year 1985-86 for the purpose of extending the grants-in-aid scheme to such colleges as from the Academic Year 1995-96.
4. The Court ordered the Government to implement the pension-cum-gratuity scheme in favour of the staff of non-government law colleges with effect from April 1, 1995.
5. Notice with respect to the above effect shall be served on such staff either individually or by public notice within the time period of 3 months from the Government's declaration to implement grants-in-aid scheme to non-government law colleges.
6. Court suggested that the Government sanction grants-in-aid to colleges on the basis of the following guidelines alone to avoid discrimination of any kind:
    i) Private law colleges should be duly and properly recognised by the Government or other competent authorities, including the Bar Council of India.
    ii) The Colleges should be in conformity to the standards laid down by appropriate authorities.
    iii) The Colleges should be in affiliation to an established University.
7. Court further instructed the Government to make sure that the aided educational institutions shall abide by all the rules and regulations of the aforesaid authorities for any kind of recognition or affiliation.
8. The Government must also ensure that rules and regulations in the matters of recruitment of teachers, staff, their conditions of service, syllabus, the standard of teaching and discipline are also being followed and sustained by the government-aided private institutions.
9. The Court in this context mandates the Bar Council of India Rules, Part IV, standards of legal education and recognition of degrees in law or admission as Advocates as the principle guiding factor.
10. The Government of Maharashtra shall in concurrence with the University concerned, the Bar Council of India, the Bar Council of Maharashtra and other competent bodies or persons, as the case may be, take all necessary steps so that excellence in education is achieved.

11. Court ordered that Government hence with, must ensure that quality legal education is being maintained.
12. There shall be no order as to costs in these appeals.

7. COMMENTARY

This case is entirely centred around the aspects involved in the establishment of quality legal education. It was a case that highlighted the need for private law colleges to be maintained with the help of State funds as the students could not be made to suffer for seeking legal education from private law colleges due to high college fees. The case also brought forth the despair and difficulties faced by the teachers and in-staff of such private law colleges, working on year after year on low income playing an important role in crafting the future of would-be lawyers.

The essence of this can be traced in the decision of the Supreme Court of India ordering the State of Maharashtra to extend the grants-in-aid scheme to all private law colleges of the State as well as that the pension-cum-gratuity scheme shall be extended to the teaching faculty and staff of such colleges as was afforded to private colleges with faculties in Arts, Science, Commerce Engineering and Medicine. This is a landmark case as it was in this case that Article 21 and Article 39A were for the first time ever considered to be read in effect together.

The decision of the Supreme Court rightly served the wheels of justice. the Author herself being a Law Student is in full conformity with this decision as every law student will serve as the eyes of the posterity of this generation advocates and judges.

8. IMPORTANT CASES REFERRED

- *State of H.P. v. Umed Ram Sharma [(1986) 2 SCC 68 : AIR 1986 SC 847].*
- *Chandra Bhavan Boarding and Lodging v. State of Mysore [(1969) 3 SCC 84 : Air 1970 SC 2042]*
- *Unni Krishnan, J.P. v. State of A.P. [(1993) 1 SCC 645]*
- *M.H. Hoskot v. State of Maharashtra [(1978) 3 SCC 544 : 1978 SCC (Cn) 468]*
- *Budhan Choudhry v. State of Bihar [AIR 1995 SC 191 : (1995) 1 SCR 1045]*

CASE NO. 10

MANOHARAN

V.

SIVARAJAN & ORS.

((2014) 4 SCC 163))

WAVING OF COURT FEES TO THE DEPRIVED CLASS VIS-À-VIS ARTICLE 39A

ABSTRACT

The following is a Case Summary of the landmark case *Manoharan v. Sivarajan & Ors (2014).* In the following case one of the appellants approached Defendant No. 1, a moneylender, for a loan in exchange of execution of a sale deed. It was decided between the parties that Respondent No. 1 will return the property in favor of the appellant. The appellant paid on loan repayment to which respondent did not commit. After which a suit was filed in which the courts awarded injunction in respect of the appellant. The appellant paid 1/10th of the court fee i.e. that being Rs. 2880 of filing the suit. Further the Court of the Neyyattinkara Sub-Judge, took up the application regarding extension of time filed by the appellant for paying the remaining court fee. However, it was rejected and the learned sub-judge closed the file. The appellant then filed Regular First Appeal No. 678 of 2011 along with an application for condonation of delay. The HC denied the motion for condonation of delay based on the delay in filing the appeal. This case highlights how strengthening the culture of Pro Bono and making legal practitioners in India more widely available and feasible would help to have a positive effect on India's legal aid system.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal Number 10581 of 2013 (Arising out of SLP(C) NO. 23918 of 2012)
Jurisdiction	:	Supreme Court of India
Case Filed On	:	2007

Case Decided On	:	November 25, 2013
Judges	:	Justice Sudhansu Jyoti Mukhopadhaya, Justice V. Gopala Gowda
Legal Provisions Involved	:	Civil Procedural Code 1908- S. 149 and Or. 7 Rr. 11(b)&(c) Limitation Act, 1963, Section 5 Constitution of India, Article 39A
Case Summary Prepared By	:	Harsh Khanchandani Symbiosis Law School, Pune

2. BRIEF FACTS OF THE CASE

The appellant approached Defendant No. 1, a moneylender, for a loan of Rs 2,20,000. Respondent No. 1 agreed to grant him the loan in exchange of execution of a sale deed for 3 cents of land in Resurvey No. 111/13-1 in Block No. 12 of Maranalloor Village by the appellant in his favour. It was decided between the parties that Respondent No. 1 will return the property in favor of the appellant on loan repayment. Accordingly, the appellant executed a Sale Deed No. 575 of 2001 at the Ooruttambalam Sub-Registrar 's office. Respondent No. 1 executed a reconveyance deed agreement in favour of the appellant in respect of the aforementioned property on the same day.

Mr Basanth R, the learned Senior Counsel, appearing on behalf of the appellant asserted that the appellant contacted Respondent No. 1 a number of times with money for reconveyancing the property in favour of the appellant as agreed upon between them but Respondent No. 1 avoided from doing so. It is also the case of the appellant that Respondent No. 1, sold the property to Respondents No. 2 and No. 3 without the knowledge of the appellant instead of issuing a deed of reconveyance. The appellant sent out a legal notice to respondent No. 1 requesting him to appear before the office of the Sub-Registrar for the execution of the reconveyance deed in relation to the property plaint schedule to which Respondent No. 1 did not commit. The appellant then filed a lawsuit being OS No. 141 of 2007 before the Court of the Neyyattinkara, Sub-Judge for, demanding mandatory injunction, for proclamation of the sale deed executed by Respondent No. 1 in favour of Respondents No. 2 and No. 3 as void and null and for implementation of reconveyance deed in his favour and also for decisive reliefs. The suit was valued at Rs 3,03,967 and the court fee amounted at Rs 28,797. The

appellant paid 1/10th of the court fee i.e. that being Rs 2880 of filing the suit. The Court of the Neyyattinkara Sub-Judge, awarded injunction in respect of the appellant restraining the respondents from carrying out new construction activities which included the parts of the plaint schedule property until further orders.

Further the Court of the Neyyattinkara Sub-Judge, took up the application regarding extension of time filed by the appellant for paying the remaining court fee. However, it was rejected and the learned sub-judge closed the file. The appellant then filed Regular First Appeal No. 678 of 2011 along with an application for condonation of delay. The HC denied the motion for condonation of delay based on the delay in filing the appeal which was not explained by the appellant and subsequently, dismissed the regular first appeal filed by the appellant.

3. ISSUES INVOLVED IN THE CASE

I. Whether the learned Sub-Judge was justified in rejecting the suit for non-payment of court fee?
II. Was the appellant entitled to condonation of delay for non-payment of court fee by the learned Sub-Judge?
III. Whether the High Court was right in rejecting the application for condonation of delay filed by the appellant against the decision of the learned Sub-Judge who rejected the suit of the appellant for non-payment of court fee?

4. ARGUMENTS OF THE PARTIES

Petitioner/Appellant

- Argued rejection of the suit based on non- payment of the court fee by the sub-judge baseless and non-justified. No opportunity was given by the learned sub-Judge for payment of court fee by the appellant which he was unable to pay due to financial constraints.
- Argued that the case should be decided on merit rather than focussing on technical detention of case for explaining delay.

Defendant/Respondent

- Argued the appeal made by the appellant to be based on frivolous and wrong grounds and the decision of the lower court to be binding.

5. LEGAL ASPECTS INVOLVED IN THE CASE

A number of crucial legal provisions are in involved in the case. The case majorly focuses upon

- Civil Procedural Code 1908- S. 149 and Or. 7 Rr. 11(b)&(c)
- Limitation Act, 1963. Section 5
- Constitution of India. Article 39A

It highlights the salient principle that article 39A of the Indian Constitution lays down in order to expand its scope in order to provide equal access to the justice system to persons who are not in financially sound condition, by providing legal and professional assistance free of cost or at lower fees.

6. JUDGEMENT IN BRIEF

1. The court while addressing this issue referred to Section 149 of the Code of Civil Procedure which prescribes a discretionary power that empowers the Court to permit a party to settle for the shortcoming of court fees payable on applications, appeals, plaint, review of judgment etc. This section also empowers the Court to validate insufficiency of stamp duties etc. retrospectively. It was noted that it is a common practice for the Court to provide the party with an opportunity to pay court fees within a specified time on failure of which the Court dismisses the appeal. In the present case, the appellant filed an application for an extension of time to remit the balance court fee which the learned sub-judge rejected. The court considered appellant's contention of not paying the appropriate amount of court fee due to financial difficulties and noted it to be courts' usual practice to use this discretion in favour of the litigating parties, unless there are manifest reasons for mala fide. Concealment of material facts when applying for an extension of the date for payment of court fees can be a cause for dismissal. However, in the present case the learned sub-judge did not give the appellant any opportunity to pay court fees which he was unable to pay

because of financial constraints. The decision of the learned Sub Judge was therefore held wrong and was set aside accordingly.

2. To address this issue the court relied on *State of Bihar & Ors. v. Kameshwar Prasad Singh & Anr*. which states that the courts have been given the power to condone the delay in approaching the Court in order to enable them to do substantial justice to the parties by disposing of the cases on merit. The Supreme Court took note of the courts in *Collector, Land Acquisition, Anantnag v. Mst. Katiji (1987)ILLJ 500 SC* which held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub serves the ends of justice. In the case at hand, it is apparent from the reported facts that the defendant was unable to pay court fees due to financial hardship on account of which his claim was dismissed. This clearly provided for sufficient explanation.

   Courts in this case noted that the appellant had moved to court asserting his substantive right over his property. Faced with the situation such as this, the appellant did not deserve the Court's dismissal of the original suit for failure to pay court fee. In the light of the directive principle laid down in Article 39A of the Indian Constitution, he deserved more compassionate attention from the Court of Sub judge. Further the court decided that Article 39A of the Indian Constitution provides for a holistic approach in the delivery of justice to the litigant parties. It includes not only providing free legal aid through the appointment of litigants' counsel, but also ensuring that litigating parties are not denied justice due to financial difficulties. Consequently, in the light of the legal theory laid down by this Court, the appellant warranted waiver of court fees so that he could appeal his argument on merit concerning his right to substance. Hence the Supreme Court decided to set aside the decision of Sub-Judge which resulting into rejection of the above suit.

3. For answering the third issue the court referred to the case of *Muneesh Devi v. U.P. Power Corporation Ltd. and Ors.* based on which it observed the decision of the high court unsustainable in law in view of the below reasons.
   - The appellant has stated categorically that on May 24, 2011 he went to the office of his Advocate at Neyyattinkara to inquire about the status of the suit.
   - His advocate informed him that on August 11, 2008 the learned sub judge dismissed the lawsuit for failing to pay the balance court fee.

- The Advocate claimed that he had told the appellant of the same via a postal card, but the appellant claimed that he had not obtained the same and that he was under the impression that the learned sub-judge should accept his request for an extension of time to pay the court fee.
- He further alleged that he had asked for the approved copy of the Sub-Judge 's decision the same day.

Accordingly, the court condoned the delay in filling an appeal in the High court.

4. Supreme Court in view of the reasons stated while answering issues 1,2,3 allowed the condonation for the delay and decided to set aside the judgement passed by the high court and trial court. The court decided to remand the case back to the trail court for the payment of the remaining court fee within a period of 8 weeks. The court further clarified that if the appellant is unable to provide for the court fees, he may approach the jurisdictional DLSA and he is to be facilitated by securing equal justice as provided under Article 39A of the Constitution of India read with the provision of Section 12(h) of the Legal Services Authorities Act read with Regulation of Kerala State.

7. COMMENTARY

Article 39A encourages justice based on equal opportunity through imperative duty imposed on the state. The primary aim of legal aid is distributive justice, elimination of illiteracy, structural and social discrimination and effective implementation of welfare benefits. As stated by Justice P.N. Bhagwati in the Report of the Legal Aid Committee, Government of Gujarat, "*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."*

On the same lines the above judgement is only of the most comprehensive and leading judgement which sets a path for successful implementation of Article 39A of the Indian Constitution. This article has been relied upon for supporting right to legal aid and various legal aid programs. This is a holistic decision passed by the Supreme Court in order to

expand the scope of Article 39A by waiving the court fees in order to promote justice through legal aid if he/she is incapable of paying it.

8. IMPORTANT CASES REFERRED

- *State of Bihar & Ors. v. Kameshwar Prasad Singh & Anr, [2000] Insc 272 (27 April 2000)*
- *Special Tehsildar, Land Acquisition, Kerala v. K.V. Ayisumma, AIR 1996 SC 2750.*
- *N. Balakrishnan v. M. Krishnamurthy, 2008(228) ELT 162(SC)*
- *State of Maharashtra v. Manubhai Pragaji Vashi and Others, 1 1995 SCC (5) 730*
- *Muneesh Devi v. U.P. Power Corporation Ltd. and Ors., 2013 (9) SCALE 640*

CASE NO. 11

SHEELA BARSE

V.

STATE OF MAHARASHTRA

(AIR 1983 SC 378)

LEGAL AID GUIDELINES CASE

ABSTRACT

The following is the case summary of infamous case of *Sheela Barse v. State of Maharashtra (1982)*. This case was brought before Supreme Court of India by Salman Khurshid appearing on behalf of petitioner against the State of Maharashtra. The petitioner's letter to the Supreme Court complaining of custodial violence to women prisoners while confined in the police lock-ups in the city of Mumbai, was treated as a Writ Petition under Article 32. The Court in this case issued various directions to the State of Maharashtra conferring protection to women prisoners in police lock ups. This case shows if a prisoner sentenced to imprisonment, is for all intents and purposes unfit to practice his protected and statutory right of bid, for need of help, there is verifiable in the court under Article 142 read with Article 21 and 39A of the Constitution .Where the detainee is incapacitated from connecting with a legal counsellor, on sensible grounds, for example, poverty or incommunicado circumstance, the court should, if the conditions of the case, the gravity of the sentence, and the finishes of equity so required, assign a skilled and competent counsel with insight for the detainees resistance. This case saw the appearance of many learned Advocate and Senior Advocate and intrusive Report of Ms. A R Desai about the problems faced by women prisoners, helped the court in forming guidelines referred to various concerned authorities for providing legal assistance to the prisoners.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition (Criminal) No. 1053-1054 of 1982
Jurisdiction	:	Supreme Court of India

Case Filed On	:	1982
Case Decided On	:	February 15, 1983
Judges	:	Justice Ranganath Misra, C.J., Justice M.M. Dutt, Justice P N Bhagwati, Justice Amarendra Nath., Justice R S Sen
Legal Provisions Involved	:	Constitution of India, Article 32, 21, 39A Criminal Procedure Code, 1973, Section 41 and 54
Case Summary Prepared By	:	Mahima Sharma Symbiosis Law School, Pune

2. BRIEF FACTS OF THE CASE

This case was brought before the Supreme Court of India in the form of a writ petition under Article 32 of the Constitution of India, which was based on a letter addressed by petitioner, Sheela Barse, a journalist.

The petitioner brought to light the severe complaint of custodial violence to women prisoners whilst confined in the police lock up in the city of Bombay. Petitioner stated that she had taken interview of 15 women as a result of which 10 percent of women complained of having been assaulted by the police, specifically two women prisoners, Devamma and Poona Paeen, which is in direct violation of fundamental rights guaranteed to prisoners like any other person under Article 20, 21, 22, 32 and 226 of the Constitution. Besides these constitutional rights, they enjoy certain other legal rights under the Indian Penal Code, Criminal Procedure Code and the Indian Evidence Act.

The Supreme Court treated the application of petitioner as writ petition and took the view that we are not concerned here directly with the conditions prevailing in the Bombay Central Jail or other jails in the State of Maharashtra because the primary question which is raised in the letter of the petitioner relates to the safety and security of women prisoners in police lock up and their protection against torture and ill-treatment. The Court directed a Social Worker (Dr. A. R. Desai) to interview the prisoners without the presence of anyone else and submit a report about the treatment of the prisoners in jail. According to the report, there were no adequate arrangements of providing legal assistance to the prisoners and two of the prisoners were defrauded by the lawyer named Mohan Ajwani who took the jewellery and all the belongings of the prisoners on the plea of payment of fees. The supreme in lieu of matter of

poor prisoners, emphasized the issue which is in regard to the need to provide legal assistance not only to women prisoners but to all prisoners lodged in the jails in the State of Maharashtra. Hence the court issued several guidelines to be followed in the prisons of concerned state immediately.

This case has gone through following phases –

- Between May 11 & 17, 1982, petitioner interviewed fifteen women prisoners in the Bombay Central Jail with the permission of the Inspector General of Prisons, though the permission was revoked later by the authorities as they objected that she started recording tapes even after she was advised to keep, only notes of the interview.
- In July 1982, the petitioner wrote a letter to Supreme Court informing about how the women prisoners are being treated in the prison of Bombay.
- The Supreme Court treated the application of petitioner as writ petition and issued notice to the State of Maharashtra, Inspector General of Prisons, Maharashtra, Superintendent, Bombay Central Jail and the Inspector General of Police, Maharashtra calling upon them to show cause why the writ petition should not be allowed.
- The Supreme Court also directed that in the meanwhile Dr. A. R. Desai, Director of College of Social Work, Nirmala Niketan, Bombay will visit the Bombay Central Jail and interview women prisoners lodged there including Devamma and Pushpa Paeen without anyone else being present at the time of interview and ascertain whether they had been subjected to any torture or ill-treatment and submit a report to this Court on or before August 30, 1982.
- The report of Dr. A. R. Desai, Director, was subsequently submitted under the given deadline, which confirmed the poor condition of women prisoners and lack of legal Assistance.
- As there was no Affidavit filed by the respondent on the returnable date about the concerned question raised by petitioner, The Supreme Court on February 15, 1983, disposed the petition by giving mandatory guidelines to be followed in all the prisons of the state of Maharashtra.

3. ISSUES INVOLVED IN THE CASE

I. Are the Rights of the Petitioner violated under Article 19 and Article 21?

II. Do the living conditions of the prisoners' come under the ambit of Article 21?

III. Whether the rules made by the Maharashtra Jail Authorities are properly followed?

IV. Do the prisoners have specific Fundamental Rights under The Indian Constitution?

V. Does every journalist have the right to collect the information and to interview the prisoners?

4. ARGUMENTS OF THE PARTIES

Plaintiff

- The petitioner argued that Articles 19(1)(a) and 21 of the Indian Constitution guarantee the right to access information pertaining to any statute or legislation. Petitioner also mentioned the case of *S. P Gupta v. Union of India*, it was observed that each individual has the right to know what rules are made by the government for the country. Right to know the information about the administration of our country is the main feature of any democratic country.
- The Press is the only means of communication by which society is made aware of the laws of our country. As a journalist, she has the right to obtain information; it is the moral obligation of the media to focus on providing reliable information on prison custody and any other legislation to human society.
- The petitioner further argued that the prisoners' living conditions are covered under Article 21, and that the State should offer legal aid to all inmates, because they have the basic right to live with dignity.
- In all conditions, the power of the police for using force is restricted by the relevant laws of the nation. Like all other civilians, the police (along with the government) are subject to the rule of law and the rule of law means both the rulers and the ruled is been restricted.
- The petitioner also mentioned the case of *Francis Coralie Mulin v. Administration, Union Territory of Delhi & Ors*, in which the court held that any prisoner is not deprived of his fundamental rights until and unless it is in contravention of the Constitution.

Defendant

- In the affidavit, the defendant claimed that the petitioner was not recruited by any accountable newspaper. According to the Maharashtra Prison Manual, inmates are not permitted to give interviews to any journalist except research scholars who visit the prison for their postgraduate studies.
- Respondent also points out that there was no such inalienable right of the journalist to gather information from the inmates. The permission granted to the petitioner was at the option of the inspector, but she breached the limits of the manual. The papers written by the petitioner in the newspaper were often defamatory in nature.
- There are strict regulations described in the manual, which must be followed by the visitor while entering the prison. This Manual was mandated by the Government of the State of Maharashtra. The respondent also referred to the case of *Prabhu Dutt v. Union of India*, in which court held that under Rule 549 (4) of Manual for the Superintendence and Management of Jails, every prisoner who is under the sentence of death are allowed to be interviewed by only the legal officials, relatives and friends. Any journalist is not referred under this clause and they are allowed to interview prisoners only for essential reasons which should be recorded in writing.
- Respondent Stated that there is no such case of ill-treatment from the law enforcement agency in the prison instead the limited force is used when prisoners do not behave accordingly and every prisoner has always been provided the legal assistance whenever they needed to but there are certain conditions when even the legal assistance is not allowed to prisoners like when the situation relate to, entirely or partly, slander, malicious indictment, contempt of court and certain other conditions.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Many crucial Constitutional Law provisions are the legal aspects involved in this case. This case sets an example to how the matters of safety and security of prisoners shall be dealt with – this case highlights the Articles 20, 21, 22, 32, 39A and 226 of the Constitution of India – these are the most important Fundamental Rights and Directive Principles of State Policy embedded in the Indian Constitution for dealing with the Rights of prisoners in India

The case also highlights the sections of Indian Penal Code, Criminal Procedure Code and the Indian Evidence Act and various Police and Prison Acts and manuals which also carry certain

rules and regulations against custodial torture. The human rights conscious Indian Supreme Court in this case has not only acknowledged these rights but also given the guidelines and process of safety and security of prisoners by giving new and liberal interpretation.

This case cites some other landmark cases (mentioned ahead) to prove that the Rights of Accused are internationally accepted as Customary Law and all International as well as Customary Law that is not inconsistent with the domestic law is equivalent to being applicable to the domestic jurisdiction.

6. JUDGEMENT IN BRIEF

1. In the present case, the Court held that it is important to provide legal assistance to poor and indigent who are being arrested as it is not only covered by Article 39A but also by Article 14 and 21 of Indian Constitution. The court directed a social worker to make a report about the conditions of prisoners in jail. After this, the court issued the notice to the Inspector of Jail to form legal aid organizations at High Court and District levels.
2. The Supreme court also referred to the case of *Sunil Batra v. Delhi Administration*, the court observed that under Article 14, 19 and 21 of the Indian Constitution, condemned prisoners are also entitled to live like other human beings with dignity. Restrictions can be put on them but according to the needs of every prisoner. To illustrate, like if the Jail authority ties the hands and feet's of the prisoners and then beats them then this is clear violation of the Part III of the Constitution.
3. The court directed some guidelines to Inspector General of Maharashtra Jail about the prisoners under which a notice should be issued to all the Superintendents of Maharashtra**,** these guidelines were as follows:
   i. Send a list of all the prisoners with names of offences committed by them and there should be different sections of male and female prisoners.
   ii. All the Inspectors should put the notice at required places in jail, on which the names of the lawyers which are appointed by the District Legal Aid Committee will be mentioned so that the prisoners get to know from whom they can take advice.
   iii. They should allow the prisoners to meet any lawyer appointed by the legal committee regarding any matter.

iv. To provide facility to lawyers and advocates who enter jail for taking interviews.

v. The State Board of Maharashtra should appoint some prominent lawyers to visit the jail and ascertain the prisoners regarding their rights. They also directed the authorities to pay Rs. 25 to every lawyer per visit including travelling expenses.

4. Other Directions given by the court related to arrangement and facilities which should be available to the Prisoners:

i. In a particular locality, where only female suspects are kept, they should be guarded only by the female guards. When the interrogation or investigation is conducted of a female suspect, it should be carried in the presence of female police only.

ii. Like in the City of Bombay, a lady civil judge should make visits randomly on any day and ascertain whether all the facilities and the assistance are provided to the prisoners or not.

iii. When any person is arrested, the grounds for the arrest should be told to the arrested person immediately and his/her family and relatives should be informed about the arrest as soon as possible.

7. COMMENTARY

Some of the most crucial Constitutional Law provisions are the central legal aspects involved in this case and the precedent set by this case makes it earn its 'landmark legal assistance case' label. In my opinion, the essence of this case lies in the Supreme Court taking the charge to define a manner to deal with the cases where safety and provision of legal aid is concerned, by instilling life by giving mandatory Rights to Accused in Constitution as well as making justice available by way of ensuring readily access to the Court via Article 32 or 226 (Writ Petitions) as well as embedding the rights to accused through other statutory provisions of Indian Penal Code and Criminal Procedure Code and also by amending various prison manuals from time to time.

In my view, this is one of the most detailed decisions that sets out the pathway, leads by example and offers administrative guidelines as well as follow-up to ensure the effective execution of the provision of legal aid services. This is a systematic judgment of the Supreme Court of India, which declares its judgment on the practice of law. This judgment of the Supreme Court is and has been to be regarded as win for the Justice system of India.

8. IMPORTANT CASES REFERRED

- *Francis Coralie Mulin v. Administration, Union Territory of Delhi & Ors [A.I.R (1981)746, SCR (2) 516].*
- *Prabhu Dutt v. Union of India, 1982 SCC 1, [A.I.R. 1982 SC 6].*
- *S.P Gupta v. Union of India, [1982 (2) SCR 365].*
- *Sunil Batra v. Delhi Administration, [1980 AIR 1579].*

CASE NO. 12

ANITA KUSHWAHA

V.

PUSHAP SUDAN

((2016) 8 SCC 509)

ARTICLE 39A IS A FACET OF THE RIGHT GUARANTEED UNDER ARTICLE 14 AND 21 OF THE CONSTITUTION OF INDIA.

ABSTRACT

In this case, there was a dispute that whether a case can be transferred from one state to another state especially between Jammu and Kashmir and other states. Disabling transfer of cases between Jammu and Kashmir and other states for the public will be a violation of the right to access justice which forms part of rights under Article 14, 21 and 32 Supreme Court can direct such transfer to meet the situation for public benefit. Importance of access to justice is also shown by citing section or portions of authorities like Universal Declaration of Human Rights, The Magna Carta and International Covenant on Civil and Political Rights, 1966 and also by the help of citing books of imminent writer and jurists and with the help of citing landmarks cases for the same. Article 39A is a facet of the right guaranteed under Article 14 and 21 of the Constitution of India. SC declared that even in the absence of enabling provision for, under Section 25 CPC,1908 or Section 409 Cr.PC,1973 or under J&K CPC,1977 or J&K Cr.PC,1989, SC has the power under Article 32 & Article 142 to direct such transfer in an appropriate case in the public interest and to do complete justice.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Transfer Petition (C) Nos. 1343 of 2008, 116 of 2011, 562 of 2011, 1161 of 2012, 1294 of 2012, 1497 of 2012, 1573 of 2012, 426 of 2013, 1773 of 2013, 1821 Of 2013, 99 of 2014, 1845 of 2013, 14 of 2014
Jurisdiction	:	Supreme Court
Case Filed On	:	2008

Case Decided On	:	July 19, 2016
Judges	:	Justice S. Thakur, Justice Fakkir Mohamed, Justice R. Banumathi, Justice A.K. Sikri, Justice S.A. Bobde
Legal Provisions Involved	:	Constitution 42nd Amendment Act, 1976; Prisons Act, 1952; Prisons Act, 1894 - Section 40; Defence of India Act, 1939; Legal Service Authorities Act, 1987; Code of Civil Procedure, 1908 (CPC) - Sections 1, 25; Code of Criminal Procedure, 1973 (CrPC) - Sections 1, 397, 406, 482; Code of Criminal Procedure, 1898.
Case Summary Prepared By	:	Prashant Kachhawa National University of Study and Research in Law, Ranchi

2. BRIEF FACTS OF THE CASE

In this case**,** Anita Kushwaha was the appellant who wanted her case to be transferred from the court of Jammu and Kashmir to court outside the State of Jammu and Kashmir and Pushpa Sudan was the Respondent who claimed that such transfer by the Supreme Court is invalid. The respondents objected the transferring of petitions on the ground that direct transfer of civil and criminal cases respectively from one State to the other by the court is empowered under the provisions of Section 25 of the CPC, and Section 406 of the Cr.PC., that does not extend to the State of Jammu and Kashmir and Jammu & Kashmir CPC and Cr.PC. does not have any provision empowering the Supreme Court to transfer any case from State of Jammu and Kashmir to a court outside the State. It is also urged that there should be no application of Article 139-A of the Constitution which empowers this Court to transfer a case pending to another state court for these transfer cases at hand as 42nd Amendment Act, 1977, which incorporates the said provision itself does not extend to the State of Jammu and the Kashmir therefore, direction to transfer such cases cannot be invoked.

It was urged that the inapplicability to the State of Jammu and Kashmir of the CPC and Cr.PC or the absence of an enabling provision in the state's civil or criminal procedure code does not automatically mean that the transfer power cannot be exercised by this court if the same is otherwise available under the provisions of the Constitution. The non-

extension of Article 139-A to the State of Jammu and Kashmir does not constitute an incapacity, leave alone, a prohibition against the exercise of the power of transfer because of the non-extension of the Constitution 42nd Amendment Act to the State of Jammu and Kashmir otherwise be traced to some other source within the constitutional structure.

- A three-judge of this court has, by an order dated April 21, 2015, referred these Transfer Petition to a constitution bench to examine whether this court has the power to transfer a civil or criminal case pending in any court in the state of Jammu and Kashmir to a court outside that state and vice versa.
- Out of thirteen transfer petition placed before us, pursuant to the reference order, eleven seek transfer of civil cases from or to the State Jammu and Kashmir while the remaining two seek transfer of criminal cases from the state to courts outside that state.

3. ISSUES RAISED IN THE CASE

I. Whether Access to Justice is a fundamental right under the Constitution of India?

II. Whether Section 25 of CPC and Section 406 of Cr. P.C. prohibits the Supreme Court from transferring cases from J & K to other states and vice versa under Article 32 and 142 of the Constitution?

III. Whether the Supreme Court has the power to transfer the cases from Jammu and Kashmir to other states and vice versa?

4. ARGUMENTS OF THE PARTIES

Petitioner

- The Petitioner submitted that Section 25 of CPC and 406 of Cr.PC. is not valid in Jammu and Kashmir even if it is valid and applicable to the rest of India, as the practice of transfer power by the Supreme Court of Indian Constitution was not expressly or impliedly forbidden under these two Codes.
- It has also been submitted that the absence of restrictive clauses in the State Civil and Criminal Procedure Code does not automatically imply, because the same is applicable in certain ways under the rules of the Constitution, that this Court cannot exercise control of transfer. There is, therefore, no incapacity, a discretion to leave

alone and a prohibition on the exercise of transfer power, if that power may be traced to any other source in a constitutional framework, on the applicability of Article 139A on the State of Jammu and Kashmir as a result of the failure to extend the Constitution's 42nd Amendment Act to that State.

- The petitioner further claimed that access to justice is a human right enshrined in Article Universal Declaration of Human Rights (UDHR) and may be read according to Article 21 of the Constitution as well as Article 39A of the Constitution.
- The petitioner was contended that the Court is not helpless in issuing any order with regard to the transfer of cases just because Central laws are not applicable to the State of Jammu and Kashmir.

Respondent

- The Respondent objected to the request for transfer on the grounds that the provisions of Section 25 of the CPC and Article 406 of the CPC that empower the courts to carry out the direct transfers of civil and criminal cases between states, do not apply on the State of Jammu and Kashmir and cannot be appealed for any such transfer.
- This was also argued that Jammu and Kashmir CPC, 1977 and Jammu and Kashmir Cr.PC,1989 do not permit such claimed transfer.
- It was also argued that the court cannot exercise the right to transfer cases in the event of the absence of authorizing requirements for the transfer of cases.
- It was submitted that the provisions under Article 139 A of the Constitution did not extend to the State of Jammu and Kashmir.
- It was also submitted that in the absence of any enabling clauses, the litigant has no right to move the cases from J&K to some other state and vice versa.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Under Section 25 of the Code of Civil Procedure,1903 and Section 406 of the Criminal Procedure,1973 - criminal and civil cases can be transferred from one state to other in India with Jammu and Kashmir as an exception because Jammu and Kashmir had its own Code of Civil Procedure,1977 and Code of Criminal Procedure, 1989. In this case, the question was on the transferring of cases from Jammu and Kashmir to other states and vice versa. As there was no provision regarding the transferring of the case from or to Jammu and Kashmir in

CPC and Cr.PC. of both India and Jammu and Kashmir. Court power to transfer such cases was also questioned in this case.

In several cases, the judiciary has taken a shield from constitutional provisions to interpret the validity of the transfer of cases. In compliance with Section 21, Section 39A, and other legislative rules, the Hon'ble Court justified the transfer of cases. In accordance with Article 21 of the Constitution, the courts had already ordered a Speedy Trial or Delivery of Justice or Access to Justice. It was emphasized by the Hon'ble Court that the cornerstone for the development of the legal system is the preservation of public policy and administration of justice. To fulfil the object of establishing the justice system, it becomes necessary to transfer the cases.

The Magna Carta, the United Nations Universal Declaration of Rights, the International Convention on Civil Rights, 1996, the ancient Roman Jurisprudence maxim of *'Ubi Jus Ibi Remedium'* the development over the last centuries of basic common law principles by court pronouncements have all helped to ensure that the rights of the judicial class are recognised for itself as basic and inalienable human rights.

6. JUDGEMENT IN BRIEF

The Court held that according to Article 139 A of the Constitution, the power to transfer cases was not exhaustive. The Court observed that, unless the conditions in this Article are met, Article 139 A allows the litigant to seek the transfer of proceedings. This Article is not meant to and does not function under Article 136 and 142 of the Constitution to affect the specific powers that this Court retains. In the opinion of the court, to extend the power of withdrawal and transfer of cases to the Apex Court is necessary for the purpose of effectuating the high purpose of Article 136 and 142(1), the power of Article 139A must be held not to exhaust the power of withdrawal and transfer.

Dealing with the question whether a provision embedded in an ordinary statute would influence the exercise of powers under Article 142 of the Constitution, this court held that the powers under Article 142 were entirely at a different level and that the exercise of that power could not be governed by an ordinary statute.

The concept of access to justice and an invaluable human right, which is also recognized as a fundamental right in most constitutional democracies, has its origin in common law as much

as in the Magna Carta. The Magna Carta lays the foundation for the universal right of access to courts. Two rights relating to access to justice under Articles 8 and 10 were acknowledged by the UDHR. For India, the legal situation is no different. Access to justice was recognized by courts in this country well long before the commencement of the Constitution.

Court has recognized Access to Justice in various landmark cases.

This court in *Hussainara Khatoon v. the State of Bihar* ruled Speedy Trial to be an integral part of Article 21 of the Constitution. It was also pointed out that Article 39A made free legal services an inalienable feature of a rational, equitable and just process, and that the right to such services was implicit in the guarantee of Article 21.

In *Imtiyaz Ahmed v. U.P. State*, the Court highlighted the value of access to justice and recognized the right as a constitutional right relevant to Article 21 of the Indian Constitution.

The Court held in *Delcourt v. Belgium* that access to justice is a basic human right and a constitutional right that is linked to Article 21 of the constitution. Having said that the court gave guidance to uphold the rule of law and administration better.

In *Brij Mohan Lal v. Union of India*, this Court has ruled that Article 21 guarantees the right to prompt and fair trial for the person.

Tamilnadu Mercantile Bank Shareholders Welfare Associations v. S. C. Sekar and Others, the Court declared that an aggrieved person cannot leave without the remedy and that access to justice is a civil right, and also a fundamental right in certain cases.

Now, if access to justice is a facet of Article 14 and 21 of the Constitution, an actual or threatened infringement of that right would justify the invocation of that Court as the power under Article 32 of the Constitution. Exercise of the power given to the Court in accordance with that Article may take the form of a transfer direction from one court of law to the other to deal with situations where such transfers are not protected by legislative provisions. Such an exercise would be legitimate because it would prevent the infringement of the fundamental rights of the people guaranteed in compliance with Article 14 and 21 of the Constitution.

That apart from Article 32 even Article 142 of the Constitution can be invoked to direct transfer of a case from one court to the other, is also settled by a Constitution Bench decision of this Court.

The exceptional power available to the court under the Article 142 of the Constitution may, therefore, be usefully invoked in cases where the Court is satisfied that the refusal to grant an order for transfer from or to the court in the State of Jammu and Kashmir will deny citizens their right of access to justice.

7. COMMENTARY

In my opinion, the state of Jammu and Kashmir should not be regarded differently from other states. To Indian states, including the State of Jammu and Kashmir, the Supreme Court is the law of the land. Article 32 offers an extraordinary opportunity of access to the very large-scale justice system in India. In the event of any J&K case where justice does not take place, the doors of the Supreme Court and other courts outside the State of Jammu and Kashmir should be open to the proceedings. Access of Justice is the basic right and no one should be denied from it. Right to Access to Justice is the facet of Article 14 and 21 of the Constitution of India. It ultimately makes Access to Justice as Fundamental Right. Therefore, they should also be able to remedy Article 32 or any other such clause.

8. IMPORTANT CASES REFERRED

- *Brij Mohan Lal v. Union of India (2012 6 SCC 502)*
- *Delcourt v. Belgium (1970 ECHR 1)*
- *Hussainara Khatton v. State of Bihar (1980 1 SCC 81)*
- *Imtiyaz Ahmed v. U.P. State (2012 2 SCC 688)*
- *Tamilnadu Mercantile bank Shareholders Welfare Associations v. S. C. Sekar and Others (2009 2 SCC 784)*

CASE NO. 13

MADHYA PRADESH STATE ROAD TRANSPORT CORPORATION

V.

JAIPRAKASH S/O LAXMINARAIN

(1991 MPLJ 439)

ACQUITTAL OF LEGALLY UNAIDED ACCUSED

ABSTRACT

Article 39A brought in by the 42nd Amendment Act, 1976 of the Constitution of India provides for free legal aid to the poor and weaker sections of the society and ensures justice for all. The following is a Case Summary of the major case on Free Legal Aid, *Madhya Pradesh State Road Transport Corporation v. Jaiprakash (1991)* based on the theme of acquittal of legally unaided accused. This case was brought before the High Court of Madhya Pradesh in 1991 and is an appeal against acquittal by the Appellate Court. Accused-respondent No. 1 was acquitted of charge Under Section 3/7 of the M. P. Rajya Parivahan Sewa Bina-Ticket Yatra Ki Rok Adhiniyam, 1974 by the 5th Additional Sessions Judge, Indore. Consequently, Accused-respondent No. 1 pleaded guilty to the charge and was convicted by the trial Court. On appeal the appellate Court set aside the conviction and acquitted the accused-respondent No. 1 of the charge Under Section 3/7 of this Adhiniyam. This case primarily dealt with the concept of Free Legal Aid and its revolution and that the Constitution has been amended providing making the legal aid and assistance as one of the Articles for the Directive Principles of State Policy. Further, it was reiterated in this case that Article 39A should be interpreted along with Article 21 of the Constitution, which is a fundamental right of the Citizens of India.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Criminal Appeal No. 344 of 1988
Jurisdiction	:	High Court of Madhya Pradesh

Case Filed On	:	1988
Case Decided On	:	March 31, 1989
Judges	:	Justice V D Gyani
Legal Provisions Involved	:	M. P. Rajya Parivahan Sewa Bina-Ticket Yatra Ki Rok Adhiniyam, 1974- Section 3/7 Constitution of India- Articles 21, 39A
Case Summary Prepared By	:	Shagun Kashyap Hidayatullah National Law University, Raipur

2. BRIEF FACTS OF THE CASE

- The petitioner in this case is Madhya Pradesh State Road Transport Corporation and the respondent is Jaiprakash s/o Laxminarain.
- Accused-Respondent No. 1 i.e. Jaiprakash s/o Laminarian was convicted by the trial Court under section 3/7 of the M.P. Rajya Parivahan Sewa Bina-Ticket Yatra Ki Rok Adhiniyam, 1974 relating to 'Supply of tickets on payment of fares' and 'Breach of duty imposed on servant, etc. of State Transport Undertaking under Section 3'.
- Later on, Appellate Court set aside the conviction and Accused-Respondent No. 1 was acquitted of charge under section 3/7 of the M.P. Rajya Parivahan Sewa Bina-Ticket Yatra Ki Rok Adhiniyam, 1974 by the 5th Additional Sessions Judge, Indore.
- This case, relates to an appeal against the acquittal of the Accused-Respondent No.1 by the judgment of the Appellate Court to the High Court of Madhya Pradesh.

3. ISSUES INVOLVED IN THE CASE

I. Whether the act of Trial Court in not informing the Accused-Respondent No.1 about Free Legal Aid excusable?
II. Whether the acquittal of the Accused-Respondent No.1 was lawful under the ambit of Article 39A of the Constitution?

4. ARGUMENTS OF THE PARTIES

Petitioner

- Argued that placing reliance on a decision of the Supreme Court in *Tara Singh v. The State* the right to legal assistance is a privilege given to the accused and it is his duty to ask for a lawyer if he wants to engage one. The only duty cast on the Magistrate is to afford him the necessary opportunity.
- Argued that in order to overcome the effect of *Suk Das V. Union Territory of Arunachal Pradesh* case as cited by the Appellate Court the decision of the Supreme Court in *Ram Sarup v. Union of India* should be considered and contended that being a larger Bench, the decision of this case should be preferred against *Suk Das* (supra). In support of this argument counsel cited a decision of the Supreme Court in *Ram Jivan v. Phoola*

Respondent

- Argued that the Supreme Court in its earlier decision in *Khatri v. State of Bihar* has ruled that the Magistrate or the Sessions Judge before whom the accused appears, must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to get free legal services at the cost of the State.
- Argued that in *Tara Singh's* case (supra), the Supreme Court was considering and interpreting Section 340(1) of the Old Criminal Procedure Code and it was in that context and in the peculiar circumstances of the case where the appellant Tara Singh was charged with both patricide as well as murder of his uncle and the relations were found to be reluctant to come to his rescue, in such a case the plea of want of legal assistance was taken for the sake of raising a point and was found to be without any substance. But now, The Code of Criminal Procedure has itself drastically changed and that apart the Constitution has been amended providing making the legal aid and assistance as one of the Articles for the Directive Principles of State Policy.
- Argued further that the *Ram Sarup's* case (supra) arose out of a General Court Martial and the Supreme Court was considering the various provisions of the Army Act also that Article 39A, which was introduced in the Constitution by 42nd Amendment, reflects the recognition of the principle that legal aid is an essential and integral part of administration of justice. This aspect of the matter did not fall for consideration in both the cases, *Suk Das* (supra) and *Ram Sarup* (supra).

5. LEGAL ASPECTS INVOLVED IN THE CASE

This case is crucial in understanding the impact of legal provision of Article 39A as added by the 42nd Amendment Act, 1976 of the Constitution of India. Further, it reiterates that Article 39A should be interpreted along with Article 21 of the Constitution. This case also highlights that Article 39A reflects the recognition of the principle that legal aid is an essential and integral part of administration of justice.

This case highlighted the fact that it is the duty of the Court to see that justice is done even to those persons who have no means to secure legal aid and assistance. It is here that Article 21 of the Constitution come into play. When the personal liberty of a citizen is at stake, Article 39A of the Constitution dictates that such an accused must be provided with legal aid because the requirement of a fair and reasonable procedure being followed before a person can be deprived of his personal liberty, is an essential postulate of Article 21 of the Constitution and such free legal aid as contemplated by Article 39A must be provided at the cost of the State, if the accused cannot afford it on his own.

6. JUDGMENT IN BRIEF

1. The Court acknowledged that the concept of free legal aid though quite old won the statutory recognition by 42nd Amendment.
2. It is not disputed that the accused in this case was not provided any legal aid nor did the Magistrate before whom he was produced, inquired of him if he was in need of such aid.
3. The Court stated that it is the duty of the Court to see that justice is done even to those persons who have no means to secure legal aid and assistance.
4. It is here that Article 21 of the Constitution come into play. When the personal liberty of a citizen is at stake.
5. Article 39A of the Constitution dictates that such an accused must be provided with legal aid because the requirement of a fair and reasonable procedure being followed before a person can be deprived of his personal liberty, is an essential postulate of Article 21 of the Constitution and such free legal aid as contemplated by Article 39A must be provided at the cost of the State, if the accused cannot afford it on his own.
6. There is no dispute on facts.
7. The accused was unassisted by any counsel.

8. The trial Court did not inform him that he could avail of free legal aid at the cost of the State.
9. In such circumstances, the view taken by the lower appellate Court in acquitting the accused-respondent does not call for any interference.
10. The Honourable High Court of Madhya Pradesh dismissed the appeal.

7. COMMENTARY

One of the most crucial provisions of the Constitution of India related to Free Legal Aid is involved in this case. This case very aptly showcases the application of Article 39A in depth. In my opinion, this is one of the most comprehensive judgments which help us to connect the link and establish connection between Article 21 and Article 39A of the Constitution. The issues involved are of utmost importance and the arguments advanced by both the counsels are also well put. In my opinion, this is one of the most crucial judgements which sets a path, leads by example and provides executory directions as well to follow-up to ensure successful implementation of provision of Legal Aid.

8. IMPORTANT CASES REFERRED

- *Khatri v. State of Bihar, AIR 1981 SC 928*
- *Ram Jivan v. Phoola, AIR 1976 SC 844*
- *Ram Sarup v. Union of India, AIR 1965 SC 257*
- *Suk Das v. Union Territory of Arunachal Pradesh, AIR 1986 SC 991*
- *Tara Singh v. The State, AIR 1951 SC 441*

CASE NO. 14

GANGULA SURYANARAYANA REDDY & ORS.

V.

STATE OF ANDHRA PRADESH

(2002 Cri LJ 2427)

FREE LEGAL AID SERVICES CASE.

ABSTRACT

The following content is the summary of the case *Gangula Suryanarayana Reddy & Ors v. State of Andhra Pradesh*. The case is related to composition of fair trial embodied with the consummate validity and scope of free legal services provided at state's cost to the needy one. In the said case the accused persons filed petition in front of the High Court of Andhra Pradesh to gain the copies of witnesses' statements. The broad perspectives on the basis of whether it questions the law popped up in the case. Justice B Nazki authored the judgment in a crystal-clear way including all the angles to work upon. It is pointing the ambience of Article 21 of the Indian Constitutionand also how Criminal Procedure Code, 1973 looks upon the matter. Arguments based on the various precedents and notable cases gave overall look to the conditions prevailing and the reforms emancipation. It made the points regarding the elements and ingredients coming under the umbrella of free legal aid services. The court focuses on the aspect that the procedure prescribed by law for depriving a person of his liberty cannot be reasonable, fair or just unless that procedure ensures a speedy trial for determination of the guilt of such person as well as in addition justifies that no procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair or justified and it would be considered as a foul of Article 21. The ultimatum comes to the fact that free legal assistance at state cost is a fundamental right of a person accused of an offence which might involve jeopardy to his/her life or personal liberty. The detailed analysis is given below through various sub points.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Criminal Appeal No 533 of 2002

Jurisdiction	:	High Court of Andhra Pradesh
Case Filed On	:	March 1999
Case Decided On	:	February 2002
Judges	:	Justice B Nazki, Justice G Tamada
Legal Provisions Involved	:	Constitution of India, 1950, Article 21 & 39A
Case Summary Prepared By	:	Jaydeep Findoria Parul University, Vadodara

2. BRIEF FACTS OF THE CASE-

1. Prior facts are there was an occurrence near Rama Naidu Studios; Banjara Hills of Hyderabad in which a bomb blast abruptly took place where 25 people died and many several others incurred injuries and harms. The petitioners of this case who were accused persons placed application for bail in front of the trial court which was then dismissed. Furthermore, they approached the High Court. The High Court also once again dismissed the application.
2. The petitioners then spoke up that they were not in a proper state to be capable of meeting the full expenses. These total expenses are those which are totally incurred by them meanwhile defending themselves in the case of bomb blast. The offences with which are charged on the accused are very heinous and serious in nature and the outcome as judgment can even be the death penalty or life imprisonment.
3. There are 430 witnesses in this case. Peeking into the practical basis, if a statement of a witness is recorded even on 5 pages the total length of the whole testimony will be in the range from 1800 to 2000 pages in approximate sense. The costs which are being charged by the Courts for obtaining a certified copy of each page is Rs.2/-. In nutshell, every accused will have to bear the costs of Rs. 4,000/- to Rs. 5,000/- on getting and holding copies of the statements of the prosecution witness's solitary.
4. Furthermore, it learned counsel for the petitioners submit that there is no mention of any such provision either in the Code of Criminal Procedure or any related statutes prescribing supply of depositions free of cost.

3. ISSUES INVOLVED IN THE CASE-

I. Whether free legal aid is completely assisted during the trial?
II. Whether fair trial in court processed within rules and regulations?
III. Whether informing the accused their rights is duty of governmental officers?
IV. Whether depriving of free legal aid service related to State cost is violating Article 21 of the Indian Constitution?
V. Should the accused persons get the copies of the witnesses on State's cost?
VI. Whether this fundamental right could lawfully be denied to the appellants if they did not apply for free legal aid?

4. ARGUMENTS OF THE PARTIES-

- If a person is unable to get the copies because he is not in a situation to pay for that, it would certainly lead to adjournment after adjournment of the case because the Advocate appearing for him, even if provided by the Government, would not be in a position to defend the case; therefore, the state has to provide the aid under the umbrella of the Indian Constitution.
- If the materials of depositions are not supplied to a person who is not able to pay for it then it may lead to unnecessarily and irrelevant prolonging the trial which would again be negation of Article 21 of the Constitution.
- Furthermore, fair trial will also mean providing of a very competent professional help to an incapable accused person, therefore it follows that the accused persons should also have the needed material with them. The most competent Advocate also will not be in a situation to do justice with a criminal case unless they have the copies of depositions, made against the accused, with them.
- Also mentioning the other case where it was said, "the right to free legal service is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held to be implicit in the guarantee of Article 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 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'. Whereas on the other side it argued that there is no specific provision empowering the Courts to do so, therefore it will have to be left to the legislature or to the High Court which has some powers for making rules.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Criminal Procedure Code, 1973- There is no presence of clause relating to providing of attested depositions. There are only following things which are attested under the law-

Section 207- In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused free of costs, a copy of each of the following

i) The police report;
ii) The first information report recorded under section 154;
iii) The statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding there from any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;
iv) The confessions and statements; if any, recorded under section 164;
v) Any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173:

Article 21 & 39A of the Indian Constitution- Fair trail and right to be heard is the integral part of the right to life with dignity and liberty. Article 39(A) clearly states the following-

> "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".

6. JUDGMENT IN BRIEF

1. In this case the judgment assured that it would be the duty of the Magistrate and Judge to inform the accused that he has a right to obtain free legal aid. In addition, the free legal assistance would not mean only making available an advocate, legal assistance in itself includes many more things. An advocate would only be able to do justice

with his brief if relevant and sufficient material is supplied to him and the very relevant material in a criminal trial would be the depositions of the prosecution witnesses. There is no hesitation in holding that free legal aid, which is now considered to be a fundamental right of an accused person, includes not only making available an advocate but also the material on which the prosecution relies.

2. The court held in the spirit of scheme of the Code of Criminal Procedure that the copies of the depositions of the prosecution witnesses should be made available to the accused persons so that they can make the defense effectively. Even the Code of Criminal Procedure mandates providing of legal aid to the persons who are not in a position to defend them financially. In view of the pronouncements of the Supreme Court holding that free legal aid is a fundamental right to an accused person who is not financially able to defend him, therefore, this court also held and directed that the copies of the depositions shall be made available to the accused persons.
3. The High Court is also directed to frame the rules in this connotation. Till the rules are framed we direct that all Magistrates and the Judges shall provide the copies of the depositions free of cost to accused persons who are not able to pay for the copies. An application accompanied with an affidavit that the person is an indigent person may have to be made by the accused persons before the concerned Magistrates or Judges as and when they need the copies. Copies shall be provided to them during the trial or after the trial but in any case, the copies, free of cost, shall be made available only once.

7. COMMENTARY

Each and everyone in this world have the right to be heard under natural justice. Free and fair trial should be given to the accused persons as it is the fundamental right under Article 21 and 39A which people should not be deprived off. It is this absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and benefits from which the poor suffer in this land. Their legal needs always stand to become crisis oriented because their ignorance prevents them from anticipating legal troubles and approaching a lawyer for consultation and advice in time and their poverty magnifies the impact of the legal troubles and difficulties when they come. Furthermore, because of their ignorance and illiteracy, they cannot become self-reliant: they cannot even aid themselves. That is the reason it has always been recognized as one of the principal items of the programme of the legal aid movement in the country to promote legal literacy. It would in these circumstances make a mockery of

legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal service. Legal aid would become merely a paper promise and it would fail of its purpose. Therefore, complete enforceability needed as an eminent part of this global village.

8. IMPORTANT CASES REFERRED

- *R.M. Wasava v. State of Gujarat (Criminal Appeal No. 934/1342 of 2018)*
- *Tara Sing v. State (1951 AIR 441, 1951 SCR 729)*
- *M.H. Hoskot v. State of Maharashtra (1978 AIR 1548, 1979 SCR (1) 192)*
- *Hussainara Khatoon v. State of Bihar (1979 AIR 1369, 1979 SCR (3) 532)*
- *Khatri v. State of Bihar (1981 SCR (2) 408, 1981 SCC (1) 627)*
- *Ranjan Dwivedi v. Union of India (1983 SCR (2) 982, 1983 SCC (3) 307)*

CASE NO. 15

ANOKHI LAL

V.

STATE OF MADHYA PRADESH

(AIR 2020 SC 232)

RIGHT OF ACCUSED TO FREE AND SUFFICIENT LEGAL AID.

ABSTRACT

The following Case Summary of the *Anokhilal Vs. State of Madhya Pradesh* is a straitjacket example wherein the Trial Court completed trial in 12 working days and inadvertently ended up circumcising the right of the accused **to 'free' and 'sufficient' legal aid**; in an attempt to deliver expeditious justice. In the last decade, India has seen an exponential rise in judicial activism advocating social change. The un-fateful Nirbhaya case in 2012 paved the way for the creation of controversial fast track courts based on the recommendations of the Justice Verma Committee; in an attempt to deliver speedy justice in special cases. The principles of criminal jurisprudence advocate that the 'right to a speedy trial' should not in any way curtail the 'right to a fair trial'. As observed by the Hon'ble Supreme Court in the present case, expeditious disposal of a case must not be pursued at the cost of a burial of the cause of justice. The present case has carried the dictum of Khatri (II) a step further. Therefore, unfolding of this judgement is certainly going to table various lessons in the way of legal development and hence it is pertinent to gain an insight into the bits and parcels of this judgment.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Criminal Appeal Nos. 62-63 of 2014
Jurisdiction	:	High Court of Madhya Pradesh
Case Filed On	:	2014
Case Decided On	:	December 18, 2019

Judges	:	Justice Uday Umesh Lalit, Justice Indu Malhotra, Justice Krishna Murari
Legal Provisions Involved	:	Indian Penal Code, 1860 The Protection of Children from Sexual Offences Act, 2012 The Code of Criminal Procedure, 1973
Case Summary Prepared By	:	Rudrakshi M Mendhe RTMNU's Dr. BACL Nagpur

2. BRIEF FACTS OF THE CASE

An F.I.R was registered against the appellant on January 30, 2013 under Section 363 and 366 of the Indian Penal Code (hereinafter referred to as the IPC); after a minor girl from the neighbourhood was found missing. The F.I.R mentioned that the appellant had sent the minor girl to purchase a *bidi* from a *kirana* shop but the victim never returned back. The body of the victim was found in an open field on February 1, 2013 and the appellant was arrested on February 2, 2013. On February 13, 2013, a charge sheet was filed in the concerned court and the case was committed to Sessions Court on February 18, 2013. The case was posted for February 19, 2013 for arguments on framing of charges.

A learned advocate was appointed by the Legal Aid Services Authority a day prior; to represent the appellant on February 19, 2013. The said advocate failed to appear and hence, another advocate was appointed on the same day to the appellant. On the same day, charges were framed against the appellant under Sections 302, 363, 366, 376(2) (f) and 377 of the IPC and under Sections 4, 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the POCSO). Thereafter, the case was dealt with on February 27, 28, 2013, March 1, 2, 4, 2013. On March 4, 2013, the Trial Court pronounced the judgment whereby the accused was convicted under Section 363, 366, 377, 376(2) (f) and Section 302 IPC read with Section 6 of POCSO.

On the same day, the Trial Court also heard arguments on sentencing and categorized the case as the rarest of the rare while citing *Rajendra Prahladrao Vasnic*[v] case. Resultantly, the appellant was awarded death sentence subject to the confirmation of death penalty by the Hon'ble High Court as per the provisions of Section 366 of the Code of Criminal Procedure, 1972 (hereinafter referred to as the Cr.PC).

The Hon'ble High Court of Madhya Pradesh, reiterating that the Prosecution proved the last seen theory beyond any reasonable doubt, affirmed the view taken by the Trial Court and upheld the death sentence and other sentences imposed by the Trial Court. The judgment and order passed by the Hon'ble High Court was challenged before the Hon'ble Supreme Court through the present special leave petition.

3. ISSUES INVOLVED IN THE CASE

I. Whether the appellant was extended real and meaningful assistance while granting free Legal Aid?

4. ARGUMENTS OF THE PARTIES

Appellant

The learned *Amicus Curiae* challenged the fairness of the trial stating that the interest of the appellant-accused was put to prejudice on more than one count. The following submissions were made by the amicus curiae on behalf of the accused:

A. Insufficient Opportunity to the Defense

The principal submission made by the learned *Amicus Curiae* before the Hon'ble Supreme Court was that the there was error on the part of the Trial Court to frame charges on the same day of appointment of amicus curiae; who did not get any opportunity interact or seek appropriate instructions from the accused.

In *Bashira v. State of Uttar Pradesh* as well as in *Ambadas Laxman Shinde and others v. State of Maharashtra*, the Hon'ble Supreme Court held that making substantial progress in the matter on the very day after a counsel was engaged as *Amicus Curiae*, was not accepted by this Court as compliance of 'sufficient opportunity' to the counsel.

In *V.K. Sasikala v. State Represented by Superintendent of Police* a caution was expressed by this Court as under:

While the anxiety to bring the trial to its earliest conclusion has to be shared it is fundamental that in the process none of the well-entrenched principles of law that have been laboriously built by illuminating judicial precedents are sacrificed or compromised. In no circumstance,

can the cause of justice be made to suffer, though, undoubtedly, it is highly desirable that the finality of any trial is achieved in the quickest possible time.

Non-Adherence to the Procedure Established By Law

The learned *amicus curiae*, relying upon the judgement in Bashira, re-emphasized that the failure on the part of the Trial Court to allow sufficient time to the defence counsel to prepare his case and conduct it on behalf of the accused will amount to violation of Article 21 of the Constitution which lays down that no person shall be deprived of his life or personal liberty, except according to procedure established by law. As observed in *Mathai Thommen v. State* that:

> Practices like this would reduce to a farce the engagement of counsel under Rule 21 of the Criminal Rules of Practice which has been made for the purpose of effectively carrying out the duty cast on courts of law to see that no one is deprived of life and liberty without a fair and reasonable opportunity being afforded to him to prove his innocence.

The Court in Mathai Thommen had consequently set aside the conviction of the accused because of the error in the procedure adopted at trial and directed for fresh trial of the accused after complying with the requirements of law.

Denial of Equal Justice guaranteed under Free Legal Aid

The learned *amicus curiae* also referred to Article 39A of the Constitution and re-emphasized that 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 guarantee of Article 21 of the Indian Constitution. Additionally, it is not necessary for an accused to ask for legal assistance and the Court dealing with the case is obliged to inform him or her of the entitlement to free legal aid.

The learned amicus curiae quoted *Tyron Nazareth v. State of Goa* wherein the Hon'ble Supreme Court reiterated the decisions in *Khatri (2) v. State of Bihar* and *Sukh Das v. UT, Arunachal Pradesh*; and observed that lack of awareness on behalf of the appellant concerning his punishment due to non-availability of free legal aid guaranteed under Section 304, Cr.PC was a ground for setting aside the conviction of the accused and ordering a *de novo* trial.

On Behalf of the State

The State submitted that the evidence on record, without any doubt, pointed towards the guilt of the accused and as such the order of conviction recorded by the Courts below was correct and did not call for any interference.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The legal aspects in this case involved are as follows-

1. Indian Penal Code, 1860 –
    - Section 302 of The Indian Penal Code, 1860 – Punishment for murder.
    - Section 363 of The Indian Penal Code, 1860 – Punishment for kidnapping.
    - Section 376 of The Indian Penal Code, 1860 – Punishment for rape.
    - Section 376 (2) (f) of The Indian Penal Code, 1860.
    - Section 377 of The Indian Penal Code, 1860 – Unnatural Offences.
2. The Protection of Children from Sexual Offences Act, 2012
    - Section 4 – Punishment for penetrative sexual assault.
    - Section 5 – Aggravated penetrative sexual assault.
    - Section 6 – Punishment for aggravated penetrative sexual assault.
    - Section 9 – Aggravated sexual assault.
3. The Code of Criminal Procedure, 1973
    - Section 211 – Contents of charge.
    - Section 232 – Acquittal.
    - Section 309 – Power to postpone or adjourn proceedings.
    - Section 311 – Power to summon material witness, or examine person present.
    - Section 313 – Power to examine the accused.
    - Section 366 – Sentence of death to be submitted by Court of Session for confirmation.

6. JUDGMENT IN BRIEF

The three-judge bench of Justice U U Lalit, Justice Indu Malhotra and Justice Krishna Murari set aside the final judgments and orders passed by the Trial Court & the High Court of

Madhya Pradesh; and directed a *de novo* consideration of the case. The decision was based on the submission that the appellant in the present case ought to have been afforded sufficient opportunity to study the matter and the infraction in that behalf resulted in miscarriage of justice. The Hon'ble Supreme Court held that an attempt at expeditious disposal of a case should not be done at the expense of the basic elements of fairness and the opportunity to the accused, on which postulates, the entire criminal administration of justice is founded. The Apex Court observed that:

> "What is paramount is the cause of justice and keeping the basic ingredients which secure that as a core idea and ideal, the process may be expedited, but fast tracking of process must never ever result in burying the cause of justice".

Additionally, the Hon'ble Supreme Court laid down certain norms so that similar infirmities are not repeated in the upcoming cases:-

In all cases where there is a possibility of life sentence or death sentence, learned Advocates who have put in minimum of 10 years practice at the Bar alone be considered to be appointed as *Amicus Curiae* or through legal services to represent an accused.

In all matters dealt with by the High Court concerning confirmation of the death sentence, Senior Advocates of the Court must first be considered to be appointed as *Amicus Curiae*. Whenever any learned counsel is appointed as *Amicus Curiae*, some reasonable time may be provided to enable the counsel to prepare the matter. There cannot be any hard and fast rule on that behalf. However, a minimum of seven days' time may normally be considered to be appropriate and adequate.

Any learned counsel, who is appointed as *Amicus Curiae* on behalf of the accused must normally be granted to have meetings and discussion with the concerned accused. Such interactions may prove to be helpful as was noticed in *Imtiyaz Ramzan Khan v. State of Maharashtra*.

7. COMMENTARY

The present case is an honest reflection of the Indian Judicial system; adding equally to the agony of both the victim and the accused. An attempt at delivering expeditious justice within 12 working days made justice seem far-fetched in reality as the Apex Court ordered a *de novo* trial after 6 years of the Trial Court judgement. As the fairness of the trial was challenged in

appeal before the Hon'ble High Court of Madhya Pradesh and eventually before the Hon'ble Supreme Court, the accused was left hanging by the nook awaiting death sentence over a period of 6 years. The paradigm of balancing the FTC scheme with the constitutional mandates as specified in *Brij Mohan Lal v. Union of India & Ors.* to provide for fair and expeditious trial to all litigants and citizens of the country is yet a long mile away. In case, a handful of guidelines issued by the Hon'ble Supreme Court concerning free legal aid only resolve a limited set of infirmities. The Centre and the State Governments should create additional judicial posts accompanied with special training to balance speedy justice with fair procedure as directed by the Hon'ble Supreme Court in the *Brij Mohan* case. While creating additional judicial posts can help in immediate redressal of the issue at hand, formulation of a special legislation to regulate the procedures of the fast-track courts is the long-term solution that still needs to be worked out by the legislative authorities.

8. IMPORTANT CASES REFERRED

- *Mukesh and Anr. v State for NCT of Delhi and Ors., AIR 2017 SC 2161.*
- *Rajendra Pralhadrao Wasnik v. State of Maharashtra, (2012) 4 SCC 37.*
- *Mohd. Hussain Alias Julfikar Ali vs. State (Government of NCT of Delhi), (2012) 9 SCC 408.*
- *Suk Das v. Union Territory of Arunachal Pradesh, (1986) 2 SCC 401.*
- *Bashira v. State of Uttar Pradesh (1969) 1 SCR 32*
- *Ambadas Laxman Shinde and others v. State of Maharashtra (2018) 14 SCALE 730*
- *V.K. Sasikala v. State Represented by Superintendent of Police (2012) 9 SCC 771*
- *Mathai Thommen v. State AIR 1959 Kerela 241*
- *Tyron Nazareth v. State of Goa 1994 Supp (3) SCC 321*
- *Khatri (2) v. State of Bihar (1981) 1 SCC 627*
- *Sukh Das v. UT, Arunachal Pradesh (1986) 2 SCC 401*
- *Imtiyaz Ramzan Khan v. State of Maharashtra (2018) 9 SCC 160*

CASE NO. 16

K N GOVINDAN KUTTY MENON

V.

C D SHAHJI

((2012) 2 SCC 51)

STATEMENT OF OBJECTS AND REASONS OF ARTICLE 39A.

ABSTRACT

In the following case *K N Govindan Kutty Menon v. C D Shaji*, a dispute over a cheque bouncing has been mentioned Lok Adalat in Ernakulam, the Supreme Court hold on to award created by a Lok Adalat (people's court), an alternate dispute resolution forum, at intervals the settlement of a criminal case is viable by a civil court. Holding that section twenty-one in every of the Legal Services Authorities Act, 1987, doesn't Differentiate between a reference by a civil court and a court, the Supreme Court said: "Even if a matter is referred by a court beneath Section 138 of the Negotiable Instruments Act and by virtue of the deeming provisions, the award gone the Lok Adalat supported a compromise possesses to be treated as a decree capable of execution by a civil court." KN Govindan Kuttay Menon and CD Shaji had reached through compromise, so Lok Adalat awarded Menon valuable quantity. As Shaji didn't build the full payment, Menon filed AN execution petition before the principle Munshiff choose in Ernakulam. However, the choose laid-off the petition holding that the award of a Lok Adalat during a criminal case cannot be construed as a decree that's viable by a civil court. The Kerala tribunal upheld this order. Interpreting the Legal Services Authorities Act, beneath that Lok Adalat is unit of measurement deep-rooted, the Supreme Court command that there's no restriction on the pliability of a Lok Adalat to pass a present supported a compromise discovered between the parties.

It commands that this was the case in respect of disputes said it by each civil and criminal courts and tribunals. Allowing the charm, the apex court command that the courts below had erred in holding that solely in matters referred by a civil court may there be a decree beneath section twenty-one in all the act.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 10209of 2011(Arising out of SLP(C) No. 2798 of 2010)
Jurisdiction	:	Supreme Court of India
Case Filed On	:	2007
Case Decided On	:	November 28, 2011
Judges	:	Justice P. Sathasivam, Justice J. Chelameswar
Legal Provisions Involved	:	Legal Services Authorities Act, 1987, Negotiable Instruments Act, 1881, Administrative act; Court-Fee Act, 1870, Constitution of India - Article 39A.
Case Summary Prepared By	:	Mansi Gupta Dr. Babasaheb Ambedkar College of Law, Nagpur

2. BRIEF FACTS OF THE CASE

1. The appellant had filed a complaint being C.C. No. 1216 of 2007 before the Judicial Magistrate First Class Court No.1, Ernakulam against the respondent herein under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the N.I. Act'). Which is define as "Section 138 provides that when the cheque is dishonoured for insufficiency of funds or for any of the prescribed reasons, the one who is at defaulter can be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or both".
2. On May 8, 2009, the appellant and the respondent appeared before the Lok Adalat as the Magistrate referred the said complaint to the Ernakulam District Legal Services Authority for trying the case for settlement between both the parties.
3. The Lok Adalat settled the case by passing the award on the same day when both the parties appeared before the court. As per the award it was decided that the settlement will be done by passing Rs 6000 to the petitioner, the Respondent herein paid only Rs. 500 on the same day and he agree to pay the same balance amount of Rs. 5,500 in five equal instalments of Rs. 1,100 per month or before 10^{th} day of per month, starting from June 2009, and it has been agreed that in case of the default in the payment, the

Appellant will be liable or eligible to recover the balance due amount from the Respondent in lump sum.

4. On September 23, 2009, the principal Munsiff, Ernakulam dismissed the petition holding that the award which had been passed by the Lok Adalat on the reference from Magistrate Court cannot be construct as a 'decree' executable by the Civil Court.
5. The Disgruntled party by the said order, filed a Writ Petition (c) No. 33013 of 2009 before the High Court of Kerala.
6. On the November 21, 2009, the High Court of Kerala dismissed the writ petition which was filed in the Court by the Petitioner (K N Govindan Kuttay Menon).
7. Against the said order by the Court, the appellant filed the appeal by way of special leave before this court.
8. According to the appellant appeal raises an important question as to the interpretation of Section 21 of the Legal Services Authorities Act, 1987. The question posed for consideration was that when a criminal case filed under Section 138 of the Negotiable Instruments Act, 1881 referred to by the Magistrate Court to Lok Adalat is settled by the parties and an award is passed recording the settlement, can it be considered as a decree of a civil court and thus executable?

This case long drawn case and thus has gone through many steps and phases, the timeline has been such:

1. The Appellant herein filed the complaint before the Judicial Magistrate First Class Court No. 1, Ernakulam against the respondent under section 138 of Negotiable Instrument Act. The Magistrate referred the said complaint to the Ernakulam District Court Legal Services Authority Act for the settlement of the case between both the parties in the Lok Adalat.
2. On May 8, 2009, both the parties appeared before the Lok Adalat and the matter was settled and the award was passed on the same day.
3. As per the award, out of Rs. 6000, the Respondent paid only Rs. 5000 and agree to pay the balance amount of Rs. 5,500 in five equal instalments, and in the case of default, the appellant can recover the balance amount from the respondent in lump sum.
4. As the respondent did not pay the balance amount, the petitioner filed the execution petition being EP in the court of principal Munsiff Judge, in Ernakulam for the award.

5. On September 23, 2009, the principal Munsiff dismissed the petition by holding that the award passed by the Lok Adalat on reference of Magistrate court cannot be constructed as 'decree' executable by the Civil Court.
6. Further, the appellant filed the Writ Petition (C) before the High Court of Kerala.
7. On November 24, 2009, the High Court dismissed the Writ petition.
8. Against the said order, the Appellant filed the appeal by way of Special Leave Petition before the Supreme Court of India.

3. ISSUES INVOLVED IN THE CASE

I. Whether the KN Govindan Kuttay Menon, is entitled to get the balance amount from the respondent?

II. When a criminal case is filed under Section 138 of Negotiable instrument Act,1881 referred by Magistrate Court of Lok Adalat is settled by the parties and an award is passed recording the settlement, can it be considered as decree of a civil court and can it be executable?

III. Whether the issue of providing free legal aid or free legal services or free legal representation should come up for consideration before the court on the behalf of respondent?

4. LEGAL ASPECTS INVOLVED IN THE CASE

In this case, it was held that the who matter is on the main issue of Section 21 of Legal Services Authority Act,1987. And Section 20,20(1),21(1). The main case was of Section 138 of Negotiable instrument Act,1881. Which defines, "Section 138 provides that when the cheque is dishonoured for insufficiency of funds or for any of the prescribed reasons, the one who is at defaulter can be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or both". The main Sections for which case went forward is defined under Legal Services Authorities Act are as follows.

- Section 20 and 20(1) is define as - Cognizance of cases by Lok Adalat (1) Where in any case referred to in clause (i) of sub-section (5) of Section 19(i) (a) the parties thereof agree; or (b) one of the parties thereof makes an application to the court, for referring the case to the Lok Adalat for settlement

and if such court is prima facie satisfied that there are chances of such settlement; or

(ii) the court is satisfied that the matter is an appropriate one to be taken cognizance

of by the Lok Adalat; the court shall refer the case to the Lok Adalat:

Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (I) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

- Section 21 and 21(1) is defined as- "Every award of the Lok Adalat shall be deemed to be a decree of a Civil Court, or as the case may be, an order of any other Court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under subsection (1) of Section 20, the Court-fee paid in such case shall be refunded in the manner provided under the Court Fees Act, 1870 (7 of 1870).
- In the following case the Supreme Court have mentioned about the Article 39A of the Indian Constitution about the "Statements of object and Reasons"- The Article 39A defines- *"It provides for free legal aid to the poor and weaker sections of the society and ensures justice for all. ... In every State, a State Legal Services Authority and in every High Court, a High Court Legal Services Committee have been constituted*" (*Khatri & Ors. v. State of Bihar & Ors*)

5. JUDGEMENT IN BRIEF

1. In the following case, this appeal raises an important question as to the interpretation of Section 21 of the Legal Services Authorities Act, 1987. The question posed for consideration is that when a case filed under Section 138 of the Negotiable Instruments Act, 1881 referred to by the Magistrate Court to Lok Adalat is settled by the parties and an award is passed recording the settlement, can it be considered as a decree of a civil court and thus executable?

   The said by the Supreme Court, after highlighting the relevant provisions, namely, Section 21 of the Act, it was contended before the High Court that every award passed by the Lok Adalat has to be deemed to be a decree of a civil court and as such executable by that court. Unfortunately, the said

argument was not acceptable by the High Court. On the other hand, the High Court has concluded that when a criminal case is referred to the Lok Adalat and it is settled at the Lok Adalat, the award passed has to be treated only as an order of that criminal court and it cannot be executed as a decree of the civil court. After saying so, the High Court finally concluded

"an award passed by the Lok Adalat on reference of a criminal case by the criminal court as already concluded can only be construed as an order by the criminal court and it is not a decree passed by a civil court" and confirmed the order of the Principal Munsiff who declined the request of the petitioner to execute the award passed by the Lok Adalat on reference of a complaint by the criminal court. Ongoing through the Statement of Objects and Reasons, definition of `Court', `legal service' as well as Section 21 of the Act, in addition to the reasons given hereunder, we are of the view that the interpretation adopted by the Kerala High Court in the impugned order is erroneous.

- It is important and useful to refer the important Case Laws to refer some of from Supreme Court and High Court which is bearing this issue.
- It was noted that, the parties were fully aware that under the Act, the district Legal Services may explore the possibilities of holding Pre-Litigation at Lok Adalat in respect of Cheque Bouncing Cases just like the above-mentioned case. This type of compromise in such cases would be treated as award with force of decree. The entire objection as raised against the execution of statutory provisions itself is rightly rejected. It attains finality to the dispute between the parties and binds all. Therefore, the order regards need no interference. Once the parties enter into the Lok Adalat the order regards no interference said by the Court under the case law *Subhash Narasappa Mangrule(M/S) and Ors. v. Sidramappa Jagdevappa Unnad*, in the High Court of Bombay.
- In *M/s Valarmarthi Oil Industries & Ors. v. M/s Saradhi Ginni Factory*, as admitted by both the learned counsel, that there was an award passed in the Lok Adalat, based on the consensus arrived at between the parties. As per the award, the accused had to pay Rs. 3,75,000 to the complainant. As it is an award made by Lok Adalat, it is final and binding to both the parties to the

criminal revision and as contemplated under Section 21(2) of the Act that no appeal shall lie to any court against the award and, As arriving to the Conclusion the Judge made it clear that as per the award passed by the Lok Adalat, the party who is entitled to get the award has the liberty to file the execution petition before the appropriate court for the reimbursement with the subsequent interest and cost as per the procedure known by the law.

- In *Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and Others, 3 (2003) 2 SCC 111*, it was held that the purpose and object of creating a legal fiction in the statute is well known and when a legal fiction is created, it must be given its full effect said by the Court.
- In the case of *Ittianam and others v. Cherichi*, it was held that whenever the legislature uses the deeming provision to create legal fiction, it is always used to achieve the purpose, said by the court.
- Under the circumstances, the act does not make out any such distinctions between reference made by Civil and Criminal Court. There is no restriction on the powers of Lok Adalat to pass an award based on compromise arrived between the parties in a case referred by criminal court under Section 138 of Negotiable Instrument Act by the virtue of deemed provision, it has to be treated as decree and capable of execution by Civil Court. In the view take in the above cases, i.e., *M/s Valarmarthi Oil Industries & Ors. v. M/s Saradhi Ginni Factory* and *Subhash Narasappa Mangrule (M/S) and Ors. v. Sidramappa Jagdevappa*, it supports this contention and will fully accept the same, said by the Court.
- In the following important case *State of Punjab & Anr. v. Jalour Singh and Ors.5 (2008) 2 SCC 660*. The ratio that decision was that the "award" of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision-making process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by the parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat. This judgment was followed in *B.P. Moideen Salamander and Anr. v. A.M. Kutty Hassan6 (2009) 2 SCC 198.*

- In the case of *P.T. Thomas v. Thomas Job,7 (2005) 6 SCC 478*, Lok Adalat, its benefits, Award and its finality has been extensively discussed in the court.
- The said by the court, even if the matter is referred by criminal court under section 138 of Negotiable Instrument Act, 1881 and by the virtue of the deemed provision the award passed by Lok Adalat based on the compromise and has to be treated as Decree capable of execution of civil court. And there is no restriction on the power of Lok Adalat to pass an award based on compromise between the parties in cases referred to various courts like Civil/Criminal, Tribunal, Family Courts and other forms of similar nature.
- However, in last the Supreme Court set aside the order date September 23, 2009 passed by the Principal Munsiff Judge in an unnumbered execution petition of 2009 in CC No. 1216 of 2007 and the order of the High Court dated November 24, 2009 in Writ Petition (C) No. 33013 of 2009. Consequently, we direct the execution court to restore the execution petition and to proceed further in accordance with law.
- The civil Appeal is allowed and leave grated to the Appellant.

6. COMMENTARY

This case is more of Deemed provisions and claim against the Respondent. The case which has already been decided in 2007, where the appellant filed a complaint being CC against the respondent under section 138 of Negotiable Instrument Act, 1881. The case proceeds for appeal in 2007, where the Appellant, questioned when a criminal case is filed under section 138 of Negotiable Instrument Act, 1881 referred to by the Magistrate Court to Lok Adalat is settled by the parties and the award is passed recording the settlement, can it be considered as decree of a civil court and thus executable?

As after the settlement of the case in the Lok Adalat, the petitioner did not the full amount, and then when he went to the Court of Principal Munsiff, Ernakulam and filed the for seeking the execution of the award. The Principal Munsiff Judge, Ernakulam dismissed the petition holding that the award passed by the Lok Adalat on reference from the Magistrate Court cannot be construed as a “decree” executable by the civil court.

When this issue came before the High Court of Kerala, the HC dismissed the petition filed by the appellant and, after that the issue was brought before the Supreme Court of India.

There are number of cases taken as a references as to take a decision. The cases clearly specify and signifies that, even if a matter is referred by a criminal court under Section 138 of the Negotiable Instruments Act, 1881 and by virtue of the deeming provisions, the award passed by the Lok Adalat based on a compromise has to be treated as a decree capable of execution by a civil court.

The court also held that, "Statement of objects and Reasons. - Article 39A of the Constitution provides that the State shall secure that the operation of the legal system promotes justice on the 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.

After taking all the references from the cases and legal provision the Court gave the Judgement that, the civil appeal is allowed and leave granted to the Appellant.

7. IMPORTANT CASES REFERRED

- *Subhash Narasappa Mangrule(M/S) and Ors v. Sidramappa Jagdevappa Unnad*
- *Valarmathi Oil Industries & M/S Saradhi Ginning Factory,AIR 2009 Madras 180.*
- *Bhavnagar University v. Palitana Sugar Mill(P) Ltd. And Ors, (2003) 2 SCC 111.*
- *Ittianam and Ors v. Cherichi @Padmin4 (2010) 8 SCC 612*
- *State of Punjab & Ors. v. Jalour Singh & Ors (2008)*
- *P.T. Thomas v. Thomas Job, 7 (2005) 6 SCC 478.*

CASE NO. 17

ADVOCATE'S ASSOCIATION, BANGALORE

V.

THE CHIEF MINISTER, GOVERNMENT OF KARNATAKA, BANGALORE

(AIR 1997 KANT. 18)

ADVOCATES DEPRIVED OF WHAT THEY DESERVE.

ABSTRACT

In this case, *Advocates' Association, Bangalore v. The Chief Minister of Karnataka, Bangalore (1996),* the petition was presented by Advocates Association, Bangalore, which is a premier association of Advocates in Karnataka State. The petitioner- Association had sought for a direction to the respondents to demolish the existing old building of the Association and to construct in its place a new building at the premises of the City Civil Court Complex, Bangalore. The petitioner's moved the Karnataka High Court exercising their Constitutional right under Advocates' Act, 1961 and Article 21 and 39A of the Constitution of India because the respondents did not give importance and did not take immediate steps for construction of the Association building as or the commitment made by the Government to the members and president of the Association and also to the Hon'ble Chief Justice of Karnataka. It was a quite long case which saw the appearance of some learned Advocates and Senior Advocates along with Sri R. N. Narasimha Murthy, who appear as *amicus curiae* on behalf of the petitioner and learned council, Sri Amarnath. This case helps lays down constitutional rights guaranteed under Article 21 of the Constitution of India and also the directive principals of the State policy provided under Article 39A of the Constitution of India. This case also highlights some provisions and rules of Advocates Act, 1961. It is the Constitutional obligation of the court, as the guardian of fundamental rights of the people to enforce the fundamental rights of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive actions, such as setting up new Courts, building new Courts houses, providing more staff and equipment to the Courts and other measures calculated to ensure dynamic speedy trial.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No 7194/1994
Jurisdiction	:	Karnataka High Court
Case Filed On	:	March 16, 1994
Case Decided On	:	June 11, 1996
Judges	:	Justice P. Vishawanatha Shetty
Legal Provisions Involved	:	Constitution of India - Article 14, 21, 39A Advocates'Act,1961
Case Summary Prepared By	:	Deboshmita Chakraborty, South Calcutta Law College, Kolkata

2. BRIEF FACTS OF THE CASE

This case was brought before the Karnataka High Court in the form of Public Interest Litigation (PIL) under Article 32 of the Constitution of India by Advocates' Association, Bangalore.

The case of the Association is that it is a unique association in the State of Karnataka and out of about 22,000 Advocates in the State, about 8,000 Advocates who are practising in various Courts including the High Court of Karnataka at Bangalore, are its members and the present premises in occupation of the Association which is located at City Civil Courts Complex is a very old building constructed more than 100 years back; that it is in a dilapidated condition and the accommodation available in the said building can hardly be sufficient to accommodate little over 100 Advocates; and since the membership of the Association for the last one decade has been increasing rapidly, the present accommodation available is totally insufficient and also totally unsuitable and minimum facilities required by its members for discharge of their professional duties which they owe to the litigant public and also to the Courts are not available.

Sri Narasimha Murthy, who appeared on behalf of the petitioner submitted that the petitioner-Association is entitled for the grant of reliefs prayed for in this petition. In support of that he made two submissions. Firstly, he submitted that providing building to the Advocates Association is one of the obligatory functions of the State Government, and it is not

permissible for the State to avoid that obligation or delay in making available the minimum facilities required by the Association on the ground of paucity of funds.

Sri Amarnath, learned Counsel who appeared on behalf of the petitioner submitted that on account of the delay in the construction of the building, the members of the Association are put to irreparable injury and hardship as they are without the minimum accommodation and also the other minimum facilities which are required for the proper functioning by the members of the Association.

Sri S. Udayashankar, learned Additional Government Advocate, who appear on behave of the defendant, submitted that there is no obligation either statutory or constitutional on the part of the state to provide a building to the members of the Petitioner-Association, it does not confer any statutory or constitutional right on the petitioner-Association to insist on the respondents.

The decision of the court lays down that providing accommodation to an Association is an obligatory function of the State and it cannot be treated differently from the building required for housing of the court. It is not permissible for the State to take a plea that on account of paucity of funds, it is not in a position to provide accommodation to the members of the Association as the State has to give preference to other priorities keeping in view of other projects.

This case was long drawn case and thus has gone through many steps and phases, the timeline has been

- A firm commitment made by the State Government to demolish the existing building of petitioner-Association and put up a new building in its place as per the plan got prepared by the State by its Chief Architect, which has been approved by the Hon'ble Chief Justice of Karnataka in the month of January 1993.
- On August 24, 1993, pursuant to the said decision taken by the State in the meeting held in the chambers of the Hon'ble Chief Justice of Karnataka, necessary drawings were got prepared by the Chief Architect of the State and was sent along with the line estimate for a sum of Rs. 475 lakhs, to the Registrar General of the High Court of Karnataka
- The President of the Association, Sri K. N. Subba Reddy wrote a letter dated September 11, 1993, to the then Hon'ble Chief Minister of Karnataka bringing to his notice about the decision taken to construct a new building for the purpose of the Association and also impressing upon him the urgency of pulling down the existing

building and putting of a new building in its place and the problems faced by Advocates and litigant public on account of want of proper accommodation for the Association and the delay in constructing the new building for the Association.

- The 4th respondent, in response to the letter Annexure-A written by the Registrar of the High Court requesting the State Government to take immediate steps in the matter, wrote a letter dated September 27, 1993, informing the Registrar that on account of financial paucity during the budgeting year 1993-1994, the work relating to construction of the Association building during the year 1993-1994 cannot be taken up.
- On June 11, 1996, a direction was given to respondents 4 and 5 by the court to put up the building on the basis of the decision taken and the plan prepared by the Chief Architect.

3. ISSUES INVOLVED IN THE CASE

I. Whether the petitioner-Association has locus standi to maintain this petition in the absence of the resolution of the petitioner-Association?

II. Whether it is obligatory on the part of the State to provide accommodation/building for Advocates' Association as contended by the petitioner?

III. Whether the State Government is required to demolished the existing building and put up a new building in its place in the City Civil Court Complex, as claimed by the petitioner-Association?

4. ARGUMENTS OF THE PARTIES

Plaintiff

- Respondents did not take immediate steps for construction of the association building as per the commitment made by the government to the president and members of the association. It was decided in January 1993, in the meeting held in the chambers of Hon'ble Chief Justice of Karnataka and thereafter, necessary drawings were prepared by the Chief Architect and were sent along with the line estimate for Rs. 475 lakhs to the Registrar General, High Court of Karnataka on August 24, 1993.

- Providing accommodation to an Advocate Association is an obligatory function of the State and it cannot be treated differently from the building required for the housing of the court.
- Poviding building to the Advocates' Association is one of the obligatory functions of the State Government, and it is not permissible for the State to avoid that obligation or delay in making available the minimum facilities required by the association on the ground of paucity of funds.
- Judiciary is one of the major organs of the State entrusted with the duties of judicial review in respect of actions of the executive, legislature and also conferred with the power of resolving the disputes between its people.

Defendant

- There is no obligation either statutory or constitutional on the part of the State to provide a building to the members of the petitioner-Association.
- Members of the petitioner-Association cannot be placed on higher pedestal than the members of any other professional Association like Doctors, Chartered Accountant, Engineers, etc.
- Merely because the State has been providing accommodation to the Advocates' Association, it does not confer any statutory or constitutional right on the petitioner-Association to insist on the respondents.
- If the State has to make a preference between the building for the Advocates' Association and for courts and quarters for the judicial officers, the state will have to naturally prefer the latter.
- The executive should have the discretion to implement their projects as per the priorities set by the State legislature, and the claim of the petitioner-Association pertains to an item of expenditure which is not a priority item.
- There is no surplus amount received by the government by way of collection of court fee and as it is the Government is finding it difficult to fulfil its obligation for construction of forty-six court buildings in the state and therefore the claim of the petitioner-Association for construction of its building cannot have preferential claim over the aforesaid obligations of the state to construct court buildings which are presently run-in rental buildings.

- The petitioner-Association has no *locus standi* to maintain this petition in the absence of any resolution of the Association.
- The State has made alternative arrangements to accommodate members of the Association.
- It is not permissible for this court to give a direction to the state to implement the project in question in exercise of the power conferred on this court under Article 226 of the Constitution of India, as it amounts to directing the Legislature to approve the budget. Further, they also argued that they were unable to accept the submission because sub-clause 3(e) of Art. 202 of the Constitution of India provides that any sums required to satisfy any judgement, decree or award of any court or Arbitral Tribunal would be treated as an expenditure charging under consolidated fund of each state.

5. LEGAL ASPECTS INVOLVED IN THE CASE

This case sets an example to how the Advocate matters shall be dealt with – this case highlights the importance of Advocates' Act, 1961 and Article 21 and 39A of the Constitution of India – the right of free legal aid and speedy trial and guaranteed fundamental rights.

This case cites some landmark cases to prove that the principles of Article 21 and Article 39A. All the decisions of the mentioned cases in unmistakable terms lays down that an advocate is an officer of the court and the duties he discharges is in the nature 'public duty'. Therefore, in a country like ours where the majority of the Advocates are not in position to acquire necessary tools or facilities required by them for effective discharge of their professional duties, a duty is cast on the state to provide minimum facilities like building for an Advocates' Association, minimum library and other facilities.

This case also highlights various provisions of Advocates' Act, 1961. A reading of various provisions of the Act and the rules framed thereunder, make it clear that Advocate is an officer of the court and he discharges public duty and has an important role to play in the administration of justice. The preamble to Chapter II of the rules specifically states that Advocate is an officer of the court. From the scheme of the Act, and more particularly reading od Section 29, 32, and 33 of the Act, it is clear that no person other than an Advocate

except in any particular case, with the permission of the court can appear before the court or carry-on profession of law.

6. JUDGEMENT IN BRIEF

1. Respondents 4 and 5 were directed to demolish the existing building of the petitioner-Association situated at City Civil Court Complex, Bangalore, and put-up new construction/ building/s in its place at City Civil Court complex, Bangalore, which comprises of basement floor, ground floor, first floor, second floor and third floor, each floor having an area of sixteen thousand one hundred fifteen sq. mts. In phrased manner as expeditiously as possible and at any event of the matter, not later than three years from the date of commencement of the construction work.
2. Respondents were directed to commence the work relating to the construction of new building of the petitioner-Association including demolition of existing building, as referred to above, as expeditiously as possible and at any event of the matter, not later than three months from the date of receipt of the order.
3. Directed to communicate this order to the respondents within one week.
4. Directed that in terms stated above, this petition is disposed off. However, in the facts and circumstance of the case, the parties are directed to bear their own cost.
5. The court permitted Sri, S. Udayashankar to file his memo of appearance for respondents in four weeks.
6. Directed that liberty is reserved to the respondents to make necessary alteration in the plan prepared without substantially altering the basic features of the plan already approved, only with the approval of the Hon'ble Chief Justice of Karnataka and in consultation of the president of the petitioner-Association.
7. A direction was given to Respondents 4 and 5 to put up the building on the basis of the decision taken and the plan prepared by the Chief Architect, as order passed on June 11, 1996. However, by typographical error, the direction to construct the fourth floor was omitted and limited only to the third floor and the area of each of the floor was mentioned as sixteen thousand one hundred fifteen sq. mts., instead of 1561.15 sq. mts.
8. A direction was issued to correct the order by substituting the area of each of the floor to be constructed as 1561.15 sq. mts. In paragraph 38 of the order and in paragraph 40(i) of the order, where it is typed/mentioned as 16115sq. mts.

9. It was further ordered to delete the word ‘and’ before the word ‘third floor’ and include the words ‘and fourth floor’ immediately after the words ‘third floor’ at paragraph 40.

7. COMMENTARY

In my view, the decision of the Karnataka Court on the Advocates’ Association case was fair, balanced and acceptable for a number of reasons. Providing minimum facilities to the Advocates is one of the obligatory functions of the State Government, and it is not permissible for the State to avoid that obligation or delay in making available the minimum facilities required by the Advocates in the Association on the basis of any ground. Since Advocate is an officer of court and the duties he discharges is in the nature ‘public duty’ which means the role of a lawyer in the Administration of Justice should not be looked from a narrow angle of an Advocate carrying on his profession for his livelihood and it must be looked at from the point of view of the beneficiary or the consumer of the services rendered by the advocate. This case highlights Article 21 of the Constitution of India guarantees right to liberty and livelihood to every person of the country, Article 39A provides for legal aid. Therefore, I think in the interest of litigant public especially those who cannot afford to have the services of the best legal talent who charge heavy fees must have the opportunity of securing the services of equally competent and good lawyers and this is possible only if lawyers are provided with the minimum accommodation and facilities.

8. IMPORTANT CASES REFERRED

- *State of Maharashtra v. Manubhai Pragaji Vashi [AIR 1989 Bom 296, (1989) 91 BOMLR 13, 1989 MhLJ 344].*
- *Hussainara Khatoon v. Home Secretary [(1979) AIR 1360 1979 SCR (3) 169 1980 SCC (1) 81].*
- *All India Judges Association v. Union of India (2002) 4 SCC 247*
- *Harishankar Rastogi v. Giridhari Sharma 1978 AIR 1019 1978 SCR (3) 493 1978 SCC (2) 165 ACT.*

CASE NO. 18

DAMO

V.

STATE OF RAJASTHAN

(AIR 1985 RAJ 230)

OBJECTION OF THE COURT CANNOT PASS AN ORDER FOR AN EARLY HEARING OF THE APPEAL ARTICLE 39A.

ABSTRACT

The defendant Damo submitted a second bail application under Section 389, Cr. P.C. in S. B. Criminal Appeal No. 512/1984. Learned Public Prosecutor placing reliance on a decision of Division Bench of this Court in *Ramju v. State of Rajasthan (1985 1 WLN 57)*, raised an objection that the Court cannot pass an order for an early hearing of the above appeal. In Ramju's case (supra) third bail application was moved by the accused-petitioner which came up for consideration before the Division Bench. It was held in the above case that it was the practice of the courts that whenever a request was made for early hearing of the case out of turn, it was accepted while rejecting the application for suspension of sentence. The parties, who engaged counsel with long purse prayed to the court for preparation of paper book out of the Court, such prayer was granted and as soon as the preparation of the paper book was completed within a shorter space of a month or two, then a further prayer was made that the case may be heard out of turn. It had become the practice of the court to grant such prayer.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Criminal Appeal No. 512/1984
Jurisdiction	:	Rajasthan High Court
Case Filed On	:	December 11, 1984
Case Decided On	:	April 29, 1985
Judges	:	Justice D. P. Gupta, Justice N. Kasliwal, Justice S. Aggarwal

Legal Provisions Involved	:	Constitution of India, Article 14, 21, 39A Section 302 IPC, Section 389 Cr.PC
Case Summary Prepared By	:	Abhishek Jain, Lloyd Law College, Greater Noida

2. BRIEF FACTS OF THE CASE

In the case of Ramju third bail application was moved by the accused-petitioner which came up for consideration before the Division Bench. It was held in the above case that it was the practice of the courts that whenever a request was made for early hearing of the case out of turn, it was accepted while rejecting the application for suspension of sentence. The parties, who engaged counsel with long purse prayed to the court for preparation of paper book out of the Court, such prayer was granted and as soon as the preparation of the paper book was completed within a shorter space of a month or two, then a further prayer was made that the case may be heard out of turn. It had become the practice of the court to grant such prayer. It was further observed that the Judges were on trial Millions of down-trodden people, who were looking to the affairs of the court, felt that the Courts were meant for the rich and not for the poor. There was a general feeling that the rich people engaged a good lawyer as they were in a position to make heavy payments to the advocates. The people having long purses and having vocal advocates prayed to the court to get their cases decided at the earliest and it was generally accepted.

It was found that the appeals, which were instituted in the year 1980 are pending and most of the appellants in these cases are persons, who are not in a position to engage a lawyer and who have been provided legal aid by the Court. If the courts cannot decide the innocence or the guilt of the persons, who are behind the bars for years together, then in fact we are not imparting justice.

Observation

It was observed that the people, who were appellants before the Court and who were behind the bars and whose sentence had not been suspended, were the persons of the same class and were situated equally. It was also noted that to hear the appeals of 1983 and 1984 first and to direct the Registry that the Appeals of 1983 and 1984 should be listed as first case will result in discrimination against those persons, who were behind the bars since 1980 and who were

not in a position to engage a senior lawyer who could come before the court and get the prayer of early hearing accepted. It was expected that there should be equality before law and as such to give a direction that the case of 1984 should be fixed for hearing as first case may be in 1985, will tantamount to denial of justice to the persons, whose appeals were pending since 1980 or prior to that.

It was further observed that everyone of us knew that there was a dearth of judges and there was no regular criminal bench. Article 14 of the Constitution provided that the State shall not deny to any person equality before the law or the equal protection of law within the territory of India. It was the general principle that first come first serve and the persons, who were behind the bars and whose sentences have not been suspended, should be served first and in this class of persons there should not be any discrimination between one and another. The Court held that

> "People have a right to ask us, why we are giving priority to those who have preferred appeals in the year 1984.? The people who have preferred appeals in the year 1980 have a right to ask the court why this court is discriminating between the persons of the same class. Their grievance is that the persons having long purses get the relief from the court out of turn though they come within the same class of appellants who are behind the bars. For this reason, we are of the view that no departure could be made in the matter of hearing of the appeals of the convicts whose sentences have not been suspended. All the similarly situated persons should be taken as one class and their appeals should be heard on the basis of date of institution or on the basis of the date from which they are behind the bars as under-trial or as convicts.

After analysing the above principles following observation was given in the case :

> "We, however, direct that all the convicts and appellants, whose sentences have not been suspended, should be treated at par and their cases should be listed for hearing either on the basis of the date of institution of the appeals before this Court or on the basis of period spent in jail as under trial prisoners as well as the period spent after conviction and during the pendency of appeals."

3. ISSUES INVOLVED IN THE CASE

I. Whether the law laid down in *Ramju v. State of Rajasthan* admits of no exception and fetters the discretion of a Judge in ordering a case to be listed at an early date even

though the case involves a shorter sentence and can be disposed off in a considerable shorter period.? In these circumstances, the matter has come before us for considering the correctness of the decision given in Ramju's case.

4. LEGAL ASPECTS INVOLVED IN THE CASE

Article 21 of the Constitution provides that no person shall be deprived of life or personal liberty without following the procedure established by law.

Article 14 of the Constitution provided that the State shall not deny to any person equality before the law or the equal protection of law within the territory of India.

Article 39A provides that:

"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 way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

Under **Section 167 (2)** of the Code of Criminal Procedure there is a safeguard that the accused cannot be detained in the custody of the police for a term exceeding 15 days in the whole.

Section 389 of Cr.P.C. a provision has been made for suspension of sentence pending the hearing of the appeal and for release of appellant on bail.

It was also pointed out that under Sub-section (6) of Section **437**, Criminal P.C. it was provided that if, in any case, triable by a Magistrate, the trial of a person accused of any non-bailable offence was not concluded within a period of 60 days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate unless for reasons be recorded in writing, the Magistrate otherwise directs.

5. JUDGEMENT IN BRIEF

It may also be important to mention that the final hearing and decision of a case also involves the process as to when it would be heard. Unless a case is taken for hearing, it cannot be decided and for that purpose, an order will have to be passed for listing the case out of priority at an early date. There is no law nor can it be so encroaching upon such right of the

court. It is absolute right of the bench concerned to follow the manner and procedure in which cases shall be heard and disposed of by it. Article 39A is one of the directive principles of State Policy which promotes justice on a basis of equal opportunity. It nowhere envisages a situation that a court has no judicial discretion to hear a case out of priority. It envisages for providing free legal aid to ensure that the process for securing justice is not denied to any citizen by reason of economic or other disabilities. It is the duty of legal aid functionaries in the State to provide free legal aid by suitable legislation or schemes to give assistance to such persons, who are unable to engage a counsel on account of poverty. Unless such aid is given to a poor citizen, simply listing the case according to their turn will merely be eyewash to the principles enshrined under this Article.

In the result, we hold that the view taken in Ramju's case is not correct and we answer the reference in the following manner:

> "The law laid down in *Ramju v. State of Rajasthan* is not correct. It cannot fetter the discretion of a Judge in ordering a case to be listed at an early date which would depend on the facts and circumstances of each individual case."

6. COMMENTARY

This case is a case of Article 39A. There are many Constitutional provisions include like Article 14 and Article 21. Both the articles are very important. There are very observations given by Judges and given their judgement. Mr. G. C. Chatterjee, learned Public Prosecutor, supported the judgment given in Ramju's case. It was submitted by Mr. Chatterjee that Article 39A of the Constitution provided for equal justice and free legal aid. According to me, the one who is unable to pay salary to lawyer are eligible for free legal aid. To provide free legal aid, in every district an authority would be appointed. The authority consisted of either retired or present law officials, judges and advocates. This is one of the best ways to give justice to everyone. Even though there is no discrimination he is rich or poor. Law is equal to all. As we all know that India is a poor Country, not everyone get justice. So, to Justice and equality we have to enforce Article 39A in true spirit. Also, one Committee would also be appointed that checks the working of free legal aid provider authority. This is done to provide justice without fear and favour, without money.

7. IMPORTANT CASES REFERRED

- *Budhan Choudhary v. State of Bihar, AIR 1955 SC 191: (1955 Cri LJ 374)*
- *Jagmohan Singh v. State of U.P., AIR 1973 SC 947: (1973 Cri LJ 370).*

CASE NO. 19

MOHAMMED AJMAL MOHAMMAD AMIR KASAB AND OTHERS

V.

STATE OF MAHARASHTRA AND OTHERS

(AIR 2012 SC 3565)

IMPOSITION OF THE DEATH PENALTY AND ARTICLE 39A.

ABSTRACT

This case concerned the imposition of the death penalty on one of the convicted terrorists in relation to the Mumbai terrorist attack on the Taj Mahal hotel on November 26, 2008. This resulted in the murder of 166 people and injury, often grievously, of a further 238 people. The victims included policemen, security personnel and foreign nationals. The property damage was assessed at over U.S $ 1.5 billion. Kasab, a Pakistani national, was sentenced by five death penalties and equal number of life terms in prison for these terrorist crimes following a trial affording due process in accordance with the laws and the Constitution of India. The sentences were confirmed in accordance with law by the High Court of Bombay. From the judgment of the High Court two appeals were filed in the Supreme Court. The Court appointed an experienced Advocate to represent Kasab.

The Supreme Court stated that since it was a case involving the death penalty, that it would examine the materials on record first hand, in accordance with the time-honoured practice of this Court, in order to reach its own conclusions on all issues of fact and law raised by the case, unbound by the earlier findings of the trial court and the High Court. The Supreme Court held that access to a lawyer was imperative to ensure full compliance with statutory provisions which, if duly complied with, would leave no room for any violation of Constitutional provisions or human rights abuses. The Court was of the view that the accused had been afforded full due process, e.g. his initial refusal of the offer of an Indian lawyer was his own decision, though his request for a Pakistani legal representative was subsequently

granted. The circumstances in which the few concessions he had made in the form of confessions did not suggest the presence of inappropriate duress.

On the facts and given the possibility of reform of the accused-appellant being foreclosed by his absence of remorse for the terrorist crimes committed, the Supreme Court was of the view that the imposition of the death penalty was fully justified

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Criminal Appeal Nos. 1899-900 of 2011
Jurisdiction	:	Supreme Court of India
Case Filed On	:	July 30, 2011
Case Decided On	:	August 29, 2012
Judges	:	Justice Aftab Alam, Justice C.K. Prasad
Legal Provisions Involved	:	Indian Penal Code, 1860: Section. 302, 302 read with 34 and 302 read with Section 109, 120-B,121, 121-A and 122 Unlawful Activities (Prevention) Act, 1967, Section 16 Constitution of India, 1950: Arts. 20(3), Arts. 21, 22(1), 39-A Code of Criminal Procedure, 1973: Section.161, 162, 163 164, 303 and 304 Evidence Act, 1872: Section 25, 26, 32
Case Summary Prepared By	:	Seher Bhalla, Symbiosis Law School, Pune

2. BRIEF FACTS OF THE CASE

Mohammed Ajmal Amir Kasab who was a Pakistani National, got 5 death sentences and life imprisonments for multiple crimes in India. These crimes included waging and abetting war against Government of India, terrorism and criminal conspiracy to murder, attempt to murder with common intention, criminal conspiracy and abetment, abduction for murder, robber and dacoity with death, causing explosions. He entered India illegally along with his comrades and brought illegal arms and ammunitions used to kill hundreds of people. He was instructed

by Lashkar-e-Toiba the Pakistan based militant organisation, which was the mastermind behind it. This act was done to liberate Kashmir and left 166 dead and 238 injured.

3. ISSUES INVOLVED IN THE CASE

I. Whether Kasab got a free and fair trial prior to conviction?
II. Whether or not the death sentenced awarded was equitable?

4. ARGUMENTS OF THE PARTIES

- Plaintiff: Kasab made arguments of being a juvenile, then claimed the confession was made under duress. This was in the trial court, in the High Court he claimed mismanagement of key evidence. Finally in Supreme Court, he argued he had been brainwashed and did not deserve an unfair trial and capital punishment.
- Defendant: The prosecutors had over 610 witnesses, material evidence, and forensic analysis. The central submission was video footage of the train stations. Furthermore, they had his confession which in the trial court he admitted was not made under duress before changing paths.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The case went through the trial court, then high court and finally, the Supreme Court. All three ensured the confession made was voluntary, the accused was able to access legal aid as per Article 39A. All three courts upheld death sentence deeming it a rarest of the rare instance.

6. JUDGEMENT IN BRIEF

Given the nature of the act dealt with the Supreme Court Bench upheld the death sentence. It was ensured that the confession made was voluntary. Furthermore, the Supreme Court continued to uphold the right of the accused to access legal aid, irrespective of the situation. This was considered necessary for a free and fair trial.

7. COMMENTARY

Practically every death sentence case comes up in appeal, leaving the Apex Court as the final arbiter of the lives of hundreds of convicts. But the fluidity of the doctrine, which is partly 'inherent' because of the terms in which it was conceived, and partly 'acquired', due to subsequent interpretation of precedents. The broad patterns that emerge from these cases turn a casual understanding of the doctrine on its head, and beg for reform and clarity. Furthermore the. death sentence was imposed on Kasab for committing multiple crimes including waging war against India, commission of terrorist acts, criminal conspiracy to commit murder, causing explosions etc., after ensuring that he got free & fair trial before his conviction and finding that severest sentence of death awarded to him was completely equitable, having regard to the fact that he had attacked Government of India and sovereignty of India.

8. IMPORTANT CASES REFERRED

- *Zahira Habibullah Sheikh (5) v. State of Gujarat (2006) 3 SCC 374*
- *T. Nagappa v. Y.R. Muralidhar (2008) 5 SCC 633*
- *Noor Aga v. State of Punjab (2008) 16 SCC 417;*
- *NHRC v. State of Gujarat (2008) 16 SCC 497*
- *Jayendra Vishnu Thakur v. State of Maharashtra (2009) 7 SCC 104*
- *G. Someshwar Rao v. Samineni Nageshwar Rao (2009) 14 SCC 677*
- *Behram Khursheed v. State of Bombay (1955) 1 SCR 613*
- *Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545*
- *Nandini Satpathy v. P.L. Dani (1978) 2 SCC 424*
- *Khatri (II) v. State of Bihar (1981) 1 SCC 627*
- *State (NCT of Delhi) v. Navjot Sandhu (2005) 11 SCC 600*
- *Kartar Singh v. State of Punjab (1994) 3 SCC 569*
- *D.K. Basu v. State of West Bengal (1997) 1 SCC 416*
- *Selvi and Ors. v. State of Karnataka (2010) 7 SCC 263*
- *State of Bombay v. Kathi Kalu Oghad (1962) 3 SCR 10*
- *Davis v. United States (1993) 512 US 452*
- *Berghuis, Warden v. Thompkins 130 S. Ct. 2250 (2010)*

- *Dietrich v. Rule (1992) 177 CLR 292*
- *R. v. Sinclair (2010) 2 S.C.R. 310; Salduz v. Turkey (2009) 49 EHRR 19*
- *Ambrose v. Harris (Procurator Fiscal, Oban) (Scotland) (2011) UKSC 43*
- *McGowan, (Procurator Fiscal, Edinburgh) v. B (Scotland) (2011) UKSC 54*
- *Poolpandi v. Superintendent, Central Excise (1992) 3 SCC 259*
- *Directorate of Revenue Intelligence v. Jugal Kishore Samra (2011) 12 SCC 362*
- *Sarwan Singh v. State of Punjab AIR 1957 SC 637 (644)*
- *Ramesh Chandra Mehta v. State of W.B.; Illias v. Collector of Customs, Madras*
- *Chambers v. Florida 309 US 227 : 84 L Ed 716 : 60 S Ct 472 (1940)*
- *Miranda v. Arizona 384 US 436 : 16 L Ed 2d 694 (1966)*
- *Escobedo v. Illinois 378 US 478 : 12 L Ed 2d 977 (1964)*
- *State of West Bengal v. Anwar Ali Sarkar AIR 1952 SC 75*
- *Hussainara Khatoon (IV) v. Home Secretary, State of Bihar (1980) 1 SCC 98*
- *Suk Das v. UT of Arunachal Pradesh (1986) 2 SCC 401*
- *Owais Alam v. State of U.P. Criminal Appeal No. 284 of 1968*
- *Bashira v. State of U.P. (1969) 1 SCR 32*
- *Ranchod Mathur Wasawa v. State of Gujarat (1974) 3 SCC 581*
- *State v. Nalini (1999) 5 SCC 253*
- *Navjot Sandhu and Mohd. Arif v. State of Delhi 2011 (8) SCALE 328*
- *Bachan Singh v. State of Punjab (1980) 2 SCC 684*
- *Machhi Singh v. State of Punjab (1983) 3 SCC 470*
- *Mohd. Mannan v. State of Bihar (2011) 5 SCC 317*
- *Swamy Shraddananda (2) v. State of Karnataka (2008) 13 SCC 767*
- *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra (2009) 6 SCC 498*
- *Mohd. Farooq Abdul Gafur v. State of Maharashtra (2009) 11 SCALE 327*
- *Rameshbhai Chandubhai Rathod v. State of Gujarat (2009) 5 SCC 740 : (2011) 2 SCC 764*
- *Mulla and Anr. v. State of Uttar Pradesh (2010) 3 SCC 508*
- *Dilip Premnarayan Tiwari v. State of Maharashtra (2010) 1 SCC 775*
- *R S Budhwar v. UOI (1996) 9 SCC 502*
- *State of Maharashtra v. Bharat Chaganlal Raghani (2001) 9 SCC 1*

CASE NO. 20

N. CHANDRASHEKAR

V.

PAPAMMA

(1995 (4) KARL LJ 688)

EQUAL JUSTICE AND FREE LEGAL AID.

ABSTRACT

The particular case is of the Karnataka High Court whereby there was delay by the appellant in filing of the appeal in the High Court. He thus filed an application for the condonation of the delay under Section 5 of the Limitation Act, 1973. The matter contented was that the appeal was first filed but was returned by the office due to certain objections which were presented and the appellant was asked to re file the appeal. During that time period, the father of the appellant expired and the families' responsibilities and the expenses fell onto the appellant completely. Further, he had to repay the debt which was incurred during the time period that his father was hospitalized. Moreover, he had to pay for the fees of his children in regard to their schooling. Thus, the entire financial burden fell on him because of such economic difficulties he was not able to pay the court fees, etc. and there was, thus, delay in filing the appeal by the appellant.

The court looked into the provision of Article 39A of the Constitution of India to resolve the matter which provides for equal justice and free legal aid. The court said that it is the responsibility of the organs of the State to ensure that justice is not denied to anyone because of the circumstances like economic disabilities or any other disabilities. Everyone should be given the equal opportunity to represent their case in the court and if they are not able to do so free legal aid should be provided by the scheme or enactment of the Legislature. The court, thus, concluded that it falls within the purview of sufficient cause as per Section 5 of the Limitation Act, 1973 to condone the delay in filing the appeal.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Regular First Appeal No. 692 of 1994
Jurisdiction	:	High Court of Karnataka
Case Decided On	:	November 22, 1994
Judges	:	Justice Hari Nath Tilhari
Legal Provisions Involved	:	Constitution of India. Article 39A Limitation Act, 1963. Section 5
Case Summary Prepared By	:	Arushi Anand VIPS, New Delhi

2. BRIEF FACTS OF THE CASE

The factual part has not been challenged but only the procedural part of the case which is the delay in filing the appeal by the appellant and the sufficient cause which he presented in his affidavit along with application for condonation of delay under Section 5 of the Limitation Act, 1963.

The facts of the case are in regard to the delay that was caused for re-filing of the Appeal in the High Court. The appeal was to be filed by the appellant. He applied for the same on May 30, 1994. After that, on June 15, 1994, the papers of appeal were returned because of certain objections in the same. It was returned by the office to be refiled in the court for appeal. This was informed to the appellant was told to meet with the counsel in the first week of the July to meet with the counsel so as to resolve the objections presented by the office and to file the appeal again. This was told to the appellant in the third week of June through writing around the time when the appeal was returned.

Further, the facts present that the appellant's father expired around the same time when he was given the time to re-file the appeal because of which there was a big hole left in his family. He, also, had to admit his children to the school for which expenses were to be incurred. Moreover, there were the debts and expenses because of the hospitalization of his father and he had to repay all those amounts as well. Furthermore, he had to set the things right in his family because of his father's death. This entire culmination led to the shortage of funds on his part so much so that he had no money at all to pay for the court fees, and other expenses in regard to the present litigation.

It led a financial and economic disability to the appellant and was not able to re-file the appeal on time. This was presented through the affidavit of the appellant in regard to the condonation of delay in filing such application. Therefore, the dispute arose because the appellant was not able to file the appeal within the limitation period prescribed for the same under the Limitation Act, 1963 and there was delay in it.

3. ISSUES INVOLVED IN THE CASE

I. Whether the delay in filing the appeal under Section 5 of the Limitation Act, 1963 because of financial difficulty amounts to sufficient cause for the condonation of delay?

4. ARGUMENTS OF THE PARTIES

The contention was presented by the petitioner only in the present case in regard to the condonation of the delay caused in filing of the appeal through the affidavit. Thus, only petitioner's side is presented and not the respondent.

Appellant

The contention presented by the appellant was that the appeal was first filed in May 5, 1994 but it was returned on June 15, 1994. The appeal was to be re-filed for which the counsel informed the petitioner through writing to meet him in the counsel's office in the first week of July. But during the period of re-filing of the appeal, the father of the appellant expired because of which all the family's responsibility fell on the appellant. He now has to look after his family completely as well in regard to all the expenses. Furthermore, he has to repay the debt that was incurred when his father was hospitalized. Moreover, he has to pay the expenses in regard to the fees of the school of his children.

Because of these conditions and circumstances, there was shortage of expenses. He faced financial incapability and economic disability in completing the formalities of the court like paying the court fees, etc. That is the reason that he was not able to file the appeal within the prescribed time limit or the limitation period as prescribed by law. Therefore, the appellant contented that this forms part of the sufficient cause for condonation of delay under Section 5 of the Limitation Act, 1963 because of economic and financial difficulties in filing the appeal.

5. LEGAL ASPECT INVOLVED IN THE CASE

The legal aspect involved in this particular case is of Article 39A of the Constitution of India and Section 5 of the Limitation Act, 1963.

Article 39 A of the Constitution

The court while dealing with the issue of the condonation of delay in filing the appeal because of financial disability looked at a very important Constitutional article which is Article 39A. This article talks about equal justice and free legal aid. This Article was inserted by the Constitution (Forty-second Amendment) Act, 1976. It was inserted so as to provide equal opportunity to the people to represent themselves despite any kind of disability that might exist, whether economic or otherwise. Thus, it was put as the Directive Principle of State Policy so as to secure justice to everyone and that justice is not denied because of the circumstances like financial difficulties to approach the authority or otherwise.

Furthermore, it provided for the free legal aid to the person who needs by the way scheme of the legislature or appropriate enactments in the matter. This was done so that everyone has the means to approach the court to get their rights enforced and no one deprived of them because any reason. This will ensure justice in the society when the rights of the people are fulfilled and they are given the opportunity to represent themselves when their means are lacking in the matter. The duty exists of the State to ensure that everyone gets equal opportunity to represent their case in the court of law and no one is denied of such representation. For that purpose, the legal aid can also be availed by the applicant or the litigant who is given free so as to pave the way for justice in the society by helping the litigant to represent their matter and get their rights enforced in the court of law.

Section 5 of the Limitation Act

The judgement also discusses Section 5 of the Limitation Act, 1963 which says that the court can condone the delay in filing of the appeal or application, other than execution application under Order XXI of the Code of Civil Procedure, 1908, if there is a sufficient cause. For that purpose, the appellant has to prove that there was sufficient cause for not filing the appeal or application within the prescribed time limit or the limitation period as is given under the Limitation Act, 1973.

This provision is very much important and it gives the power to the court to condone the delay that was caused in filing the application or appeal by a litigant if he proves that the sufficient cause existed and thereby, he was unable to file within the prescribed time period as is established. Thus, the burden of the proof is on the applicant to prove that the sufficient cause existed for the delay and accordingly the court condones the delay.

6. JUDGEMENT IN BRIEF

The court has turned to the Constitution to resolve the issue. The court talked about the Constitution which guarantees to its citizens justice and that justice includes within itself the social justice, political justice and economic justice as well through its Preamble. This justice is ensured by the organs of the State. The organs of the state which are the Legislature, the Judiciary and the Political Executive, i.e., the President and the Cabinet, ensures justice as they are the part and organ of the State. Furthermore, the court said that it is the duty of these organs to see that this justice is not denied. In that the duty of the Judiciary includes the duty of the High Courts and the Supreme Court of India which are the Courts of Record as of paramount of importance to work with other organs to ensure such justice.

When such a justice is denied because of some disability of the person or any economic difficulty, the concept of justice itself is lost because justice includes economic justice itself. When a person faces economic hardship, the State has to ensure that the justice is not denied to a person and the opportunity to represent him is given. This opportunity should be equal in nature. Therefore, the State has to ensure that the obstacles or hurdles that are faced by the person in order to seek justice in court, is not denied and is removed by the organs of the state. For that purpose, the steps should be taken by the organs of the state to remove such disabilities like in the present case of poverty or economic disability.

For that purpose, the Constitution of India has specifically put in the provision of Article 39A that states the justice should not be denied to any person because of the economic or any other disabilities. Thus, this is a very important provision in the Constitution which was inserted later on as it gives equal opportunity to the citizens and leads to justice not being taken away because of such disability faced by the people. The court in accordance with this said that this forms the part of sufficient cause as is required under Section 5 of the Limitation Act, 1963 when there is delay in filing the appeal. If this delay is caused by the economic hardship, the court cannot refuse to take up the appeal because the time limit

prescribed is gone. This is because there is sufficient cause established, and if the court will refuse, it will lead to justice being denied as the provision Article 39A of the Constitution contemplates in it.

The court has after looking at all the circumstances and the considering the constitutional portion has held that it would be unjust to not allow the delay to be condoned if there was any financial and economic disability by the applicant. The major part of the organs of the state is to ensure that the hurdles or obstacles that are faced by the citizens should be removed in such a way that justice is ensured. If the disability or obstacle is in the form of lack of money or poverty and because of that the person is not able to get justice that would lead to denial in justice itself. Therefore, the court held that there is sufficient cause in the appellant's application under Section 5 of the Limitation Act, 1963 for condonation of delay.

It is because of the fact that economic disability and financial difficulties are under the law much sufficient in nature to allow for condoning the delay because of such reasons. Article 39A of the Constitution of India ensures that there should be justice in the operation of the legal system which is established by equal opportunity for all. If this equal opportunity is not there because of paucity of money to file the requisite appeal, then there will be no justice at all because of such disabilities which are not the fault of the appellant. Therefore, the court held that the appellant has established his case in the present instance whereby, the delay that was caused by him in re-filing of the appeal was the reason of the death of his father which led to the responsibility falling on him. Moreover, there were the expenses that were occurred to put his children in school. Along with that the expenses of the family and lastly, the debt which was to be re-payed to the hospital cost of his father as his father was hospitalized. This put a strain in his financial capacity which led to shortage of funds in regard to filing the appeal.

It was because of these reasons that he was not able to file the appeal and thus, was deprived of his rights for not being able to pay the court fees etc. Thus, the court held that there definitely was sufficient cause shown by the appellant for the delay that was cause for re-filing the appeal in the prescribed time period. The court, therefore, allowed the appeal to be filed and held that the delay is condoned under Section 5 of the Limitation Act, 1963 because the sufficient cause was established by the appellant.

7. COMMENTARY

The court was justified in holding that no one should be deprived of their right because of any kind of financial difficulty or economic disability. Everyone should be given equal opportunity to present their case and if they are not able to present their case because of the conditions which are beyond their hand, then the organs of the States have to ensure that the justice is not denied to anyone because of such difficulty. The equal opportunity to represent should be there which will ensure ultimate democracy in the country.

Furthermore, Article 39A is of very much importance in such a matter because it ensures that the rights are correctly given to the applicant and he is not deprived of the justice because of any economic or other disability because there is right of equal representation for everyone. Thus, it can be concluded that the High Court of Karnataka was correct in concluding that the sufficient cause is established for the condonation of the delay in Section 5 of the Limitation Act, 1963 by the way of financial difficulty in completing the formalities of the court and not being able to fulfil those.

CASE NO. 21

GOPALANACHARI

V.

STATE OF KERALA

(1980 (SUPP) SCC 649)

VIOLATION OF ARTICLES 14, 19, 21 AND 39A.

ABSTRACT

Following is the case analysis of one of the landmark cases, *Gopalanachari v. State of Kerala (1981 0 SCC(CRI) 546)*. In this case, a prisoner named Gopalanachari had complained in a letter dated nil addressed to Hon'ble J. Shri V.R. Krishna Iyer (Supreme Court Judge) that he had been falsely charged by the Kottayam Arpukkara Police and had been kept in jail under Section 110 of the Code of Criminal Procedure (Cr.PC). Section 110 Cr.PC provides for 'security for good behaviour from habitual offenders'. Under this section, 'habitual, desperate or dangerous' criminals are made to execute a bond not exceeding 3 years in which they have to furnish sureties for good behaviour apart from executing personal bond. Letter sent by Gopalanachari was treated as writ petition and the Hon'ble Court appointed *amicus curiae* namely Shri M.M. Abdul Kader, Senior Advocate and Mr. E.M. Sadrul Enam, Advocate-on-Record in order to assist the court in the matter. A show cause notice was issued to the respondent State as well to prison authorities and the case commenced.

The Hon'ble Supreme Court heard both the parties and after relying on case of *Maneka Gandhi v. Union of India (1978 1 SCC 248)* and referring to a few cases namely *Wiseman v. Borneman, M. H. Hoskot v. State of Maharashtra (1978 3 SCC 544)* and *Prem Chand (Paniwala) v. Union of India (1981 1 SCC 639)*, came to the conclusion that unjust and unjustified use of Section 110 Cr.PC is nothing but a peril to personal liberty of a person and thus a serious violation of Article 21 read with Article 14 and Article 19 of the Constitution. It also stated that the constitutional survival of Section 110 Cr.PC depends on its obedience to Article 21 of the Constitution.

Keeping in mind all its observations, the court:

1. Directed the trial magistrate to drop the proceedings in the interests of justice.
2. Directed the release of the petitioner and Kutty Thankappan on their own bonds until formal orders are passed by the trial court in the regular criminal proceedings under Section 110 CrPC.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Writ Petition No. 350 of 1980
Jurisdiction	:	Supreme Court of India
Judges	:	Justice V.R. Krishna Iyer, Justice R.S. Pathak and Justice O. Chinnappa Reddy
Case filed On	:	April 1980
Case decided On	:	November 12, 1980
Legal provisions Involved	:	Constitution of India: Article 14, 19, 39A Code of Criminal Procedure: Section 110
Case summary prepared By	:	Richa Kalraiya RTMNU's Dr. BACL, Nagpur

2. BRIEF FACTS OF THE CASE

Gopalanachari, a person aged more than 70 years; living in Kottayam, Kerala sent a letter to Hon'ble J. Shri V.R. Krishna Iyer of Supreme Court stating that he and his prison mates have been illegally detained in the sub-jail in Kottayam. The Hon'ble SC taking cognizance of the matter, appointed advocates as *amicus curiae* in the matter. A writ petition was registered. Hon'ble Court issued show cause notice to the respondent State and gave direction to furnish details of all those prisoners who are in custody under Section 110 Cr.PC and to also to provide the court with their duration in jail for the above-mentioned reason. The court further directed the State to inform the court about the pendency of the cases under Section 110 Cr.PC. Apart from this, a separate order was issued to the Superintendent of the sub-jail.

The *amicus curiae* appointed in the matter were M.M. Abdul Kader, Senior Advocate, Mr. E.M. Sadrul Enam, Advocate-on-record. Shri Tarkunde, intervened in the matter. Counsel for the respondent State was Shri. V.J. Francis.

In April 1980, response was submitted by the respondent State to the notice issued. It stated that there were a total of six prisoners who were detained under Section 110 Cr.PC and they have been in prison since months, the petitioner being detained since February 23, 1980. The Superintendent in his defence stated that Gopalanachari, the petitioner is a habitual criminal and that he is also known as 'Kallan Gopalan' (thief Gopalan).

In short, what petitioner stated in his letter was that he had been falsely implicated, that he had been kept in jail without considering his physical illness, that he was an old man of 71 years and that he had hearing and seeing problems. As per petitioner, one day when he was near his house, he was told by a policeman; whom he knew from before; that he was required at police station for questioning. He was kept imprisoned for 10 days and then brought before the trial magistrate saying the he was arrested the night before his presence in court.

Hon'ble Court found that in reply by Superintendent, there was no indication that there has been any conviction by a criminal court as yet and that the cases against petitioner were still pending. In facts and circumstances of the case, after considering the matter on merits, Hon'ble Court held that the misuse of Section 110 Cr.PC is in fact a violation of the fundamental rights of the petitioner guaranteed by Article 21 of the Constitution of India.

3. ISSUES INVOLVED IN THE CASE

I. Whether reasons assigned by the police for levelling charge under Section 110 Cr.PC against the petitioner and for detaining him due to his inability to furnish bond and sureties required by law were in consonance with Article 21 of the Constitution of India?

4. ARGUMENTS OF THE PARTIES

As per the petitioner, he had been falsely accused. He, in his averments in his letter, stated that he is an old man with impaired seeing and hearing capacity. One day, while he was on a road near his house, he met with a policeman whom he recognised from before. That policeman asked the petitioner to come to the police station with him to enquire about something. Before producing him before the trial magistrate, he was detained for 10 days but the police, in front of the trial magistrate stated that he has been arrested on the previous night of producing him before the court. The police also added that petitioner was found hiding in the verandah of a shop and gave different introductions of himself when asked repeatedly by

the police. In charge sheet against the petitioner, Police stated that upon enquiry, Gopalanachari was found out to be an ex-criminal and thus not to be let free. The petitioner in his averments has accused the police of lying.

In reply, State and jail superintendent stated that the petitioner was a well-known habitual prisoner of the Kerala State and that he was known as Kallan Gopalan which means thief Gopalan.

The petitioner therefore pleads the court to do justice for him.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Gopalanachari was detained under section 110 Cr.PC. He was kept under illegal detention merely because there were criminal cases pending against him without being convicted by any court so far. The SC therefore concluded this to be a violation of Article 21 of the Constitution. Hon'ble Court analysed the case on touchstones of Article 21 read with Article 14 and Article 19. Therefore, the legal aspects involved in this case are Article 14, Article 19 and Article 21 of the Constitution and Section 110 of the Code of Criminal Procedure. The case also touched Article 39A since the Hon'ble SC provided amicus curiae to the petitioner in order that justice is not denied to him. It is therefore desirable and useful to reproduce relevant articles of Constitution and Section 110 of Cr.PC for more apt analysis of the case:

Article 14: Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 19: Protection of certain rights regarding freedom of speech, etc.—

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.

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 by reason of economic or other disabilities.

Section 110 of Cr.PC (as it existed at relevant time): Security for good behaviour from habitual offenders.—When an Executive Magistrate receives information that there is within his local jurisdiction a person who—

(a) is by habit a robber, house-breaker, thief, or forger, or

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under section 489A, section 489B, section 489C or section 489D of that Code, or

(e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace, or

(f) habitually commits, or attempts to commit, or abets the commission of—

(i) any offence under one or more of the following Acts, namely:—

(a) the Drugs and Cosmetics Act, 1940 (23 of 1940);

(b) the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(c) the Employees' Provident Fund and Family Pension Fund Act, 1952 (19 of 1952);

(d) the Prevention of Food Adulteration Act, 1954 (37 of 1954);

(e) the Essential Commodities Act, 1955 (10 of 1955);

(f) the Untouchability (Offences) Act, 1955 (22 of 1955);

(g) the Customs Act, 1962 (52 of 1962);

(h) the Foreigners Act, 1946 (31 of 1946); or

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or

(g) is so desperate and dangerous to render his being at large without security hazardous to the community,

such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.

6. JUDGEMENT IN BRIEF

The Bench after hearing both the parties and considering the facts and circumstances of the case, observed that unjust misuse of Section 110 Cr.PC is a breach of the personal liberty of the person detained. It is observed that the Constitutional survival of Section 110 Cr.PC depends upon its obedience to Article 21. The bench relied on ratio of *Maneka Gandhi case* and observed that the procedure to be followed by the Police and the courts in detaining any person had to be fair and reasonable and not vagarious, vague and arbitrary in order to be in accordance with Article 21.

Referring to the statement, 'the justice of the common law' cited from *Wiseman v. Borneman*, the court observed that the principles and procedures followed in any circumstances should be right and just and fair and this is the rule of natural justice (fair play in action). The court was of the opinion that this does not require directions from the Parliament as the Common Law itself is rich enough for this.

As per Hon'ble Court, procedural safeguards are the essence of liberty. The Bench held that the procedures should be fair and not merely formal. The protection of human rights is possible only through fair procedures.

Section 110 Cr.PC; the court observed; cannot be constitutional if it does not give a thought to the human rights of a person. The terms such as dangerous or habitual or desperate are exaggerated beyond requirement. It needs to be seen that these terms are used with extreme caution so that they do not cause injustice to a person for as long as three years. Hon'ble Court deprecated the practice of use of these words given in Section 110 Cr.PC by police mechanically in all cases. As per Hon'ble Court, courts are considered to be the guardians of the human rights and they are expected to look into substance justifying the allegation and

not to treat such cases negligently merely relying on the readily produced testimony. The reference for it can be found in case of *Prem Chand v. Union of India*.

The court also referred to *Haskots case* and directed the trial magistrates to discharge their duty with caution and great responsibility and to make sure that a prisoner should be provided with facility of being defended by a counsel. The court observed that the people who hardly possess the ability to defend themselves aren't non persons and the trial judges must remember this.

The Bench held that the courts must insist on specificity of facts. It cannot be unmindful of social realities and be careful to require strict proof when personal liberty of any person is at stake.

Court directed the trial magistrates to discharge their duties, when trying cases under Section 110, with great responsibility and whenever the counter-petitioner is a prisoner give him the facility of being defended by counsel now that Article 21 has been reinforced by Article 39A.

The Bench also quoted a few lines from the book named 'American Inc.' written by an American author which talked about the power that the rich hold and the poor do not. This power is what makes the poor suffer more than the rich. The book stated that the crimes committed by huge corporations do not become a priority for the police because of their opposition although they are way graver than the ones committed by petty thieves. Although the situation of both the countries are different but the point of the author has some relevance as stated by court.

The Hon'ble Supreme Court held that not only does the police need to be careful before arresting people under the shade of S. 110 Cr.PC but the courts also need to be vigilant and should be responsible while handling cases that invoke the personal liberty of a person in any manner.

With all these observations, the court ordered the trial magistrates to drop the proceedings against the detainees in the interests of justice and directed the sub-jail authority to immediately release both the detainees, Gopalanachari and Kutty Thankappan that were detained under Section 110 Cr.PC on their own bonds only (with no sureties) until formal orders are passed by the trial magistrates.

It also hinted all the other State Governments to not use this Section on the poor and the have-nots under the umbrella or dangerous or desperate or habitual and to issue suitable instructions to the police officers to use this law legitimately at places it is needed and to not use it as indiscriminate display of law of preventive measures.

7. COMMENTARY

This case is an eye-opening case for the police officials as well as the trial magistrates. They need to realise that the poor and the have-nots are not a tool to fulfil their monthly or weekly goals but are humans just like them. They cannot be thrown in the wave of formal procedures and put behind the bars. A common man looks up to the executive and the judiciary considering them as the protector of his/her rights. It is up to these protectors to fulfil their part in the league of justice and punish and detain the criminals and not the innocent.

Apart from this, the police officials also need to realise that those criminals; who are committing graver crimes than the petty thieves; need to be imprisoned on a priority basis. They cannot be left to roam around freely just because they oppose the procedure. Play of power makes the poor suffer more. This has also been pointed out in the judgment.

The Supreme Court was of the opinion that before marching poor people in the court and jail, the police have to be careful as to not violate their right to personal liberty which is a fundamental right. Violation of one's fundamental rights is a grave crime and therefore one cannot agree more to this judgement which has in clear terms stated that unjust use of Section 110 Cr.PC is a violation of Article 21.

This judgement is more of a warning to all the State governments than just being a direction and order passed by the Supreme Court in order to provide justice to Gopalanachari. At the same time, Supreme Court has reminded the trial magistrates of their duties in cases of such nature and has advised them to be very cautious in the matters where personal liberty of a person is at stake.

In my opinion, the judgement is personally justified. It is a landmark judgement and has been consistently referred to and relied on number of times by various High Courts and the Subordinate Courts. It still holds good as the propositions laid down by Hon'ble Court in this case is absolutely undefendable. It is noticeable here that even the counsel for state in this case agreed to this legal position during course of arguments before the court.

CASE NO. 22

STATE OF HARYANA

V.

DARSHANA DEVI AND ORS.

((1979) 2 SCC 236)

ESTABLISHMENT OF NEW RULES FOR MOTOR ACCIDENT CLAIMS REGARDING COMPENSATION.

ABSTRACT

The following is a Case Summary of the infamous *State of Haryana v. Smt. Darshana Devi (1996)*. In this case, the apex Court pointed out the sheer negligence on part of the State for not implementing the provisions of the Civil Procedure Code, 1908 and the Criminal Procedure Code, 1973. Justice Iyer's attitude towards a variety of issues was predictable. If it was a labour matter, his sympathies would always be with the workmen. In fatal accident cases, Justice Iyer was in favour of strict liability. In *State of Haryana v. Darshana Devi*, Justice Iyer dismissed the Special Leave Petition filed by the State of Haryana and highlighted the need for legislation providing for no fault liability in motor accidents claims in a number of decisions.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Special Leave Petition (Civil) No. 4120 of 1978
Jurisdiction	:	Supreme Court of India
Case Filed On	:	1978
Case Decided On	:	February 12, 1979
Judges	:	Justice V. R. Krishna Iyer, Justice O. Chinnappa Reddy
Legal Provisions Involved	:	Constitution of India – Article 14, 39A, 41 Code of Civil Procedure,1908 - Order 33 Rule 9 The Motor Vehicles Act, 1988
Case Summary Prepared By	:	Snigdha Agarwal,

2. BRIEF FACTS OF THE CASE

1. The respondents, a widow and her daughter, claimed compensation for the killing of their sole bread-winner, by a Haryana State Transport bus, and the Haryana Government, instead of acting on social justice and generously settling the claim, fights like a cantankerous litigant even by avoiding adjudication through the device of asking for court-fee from the pathetic plaintiffs. But the respondent could not afford to pay the court fees.
2. Firstly, the case was taken to High Court where it extended the pauper provisions to the auto accident claims. The reasoning of the High Court that Order 33, CPC applied to the Tribunals which have the trappings of the Civil Court was approved and the decision was affirmed as the Supreme Court was held in the said case that Tribunal is having the trappings of the Civil Court.
3. This case was brought before the Supreme Court of India, dispute involved was as to the payment of Court-fees. The advocates who appeared in this case on behalf of the petitioner are: Prem Malhotra and M.N. Shroff. Dismiss but the petition for leave was dismissed, hoping that the Haryana State will hasten to frame rules under the Motor Vehicles Act to enable claimants for compensation to be free from payment of court-fee.

3. ISSUES INVOLVED IN THE CASE

I. Whether the State has the right to insist the poor people to ask for court fee when they cannot afford it?

II. Is it necessary to frame rules under the Motor Vehicles Act to enable claimants for compensation to be free from payment of court-fee?

4. ARGUMENTS OF THE PARTIES

Plaintiff

- Avoided adjudication of the compensation claimed by the respondent.

- Asked for the court-fee from the respondents even after being completely aware about their financial conditions.

Defendant

- Claimed compensation for the killing of their sole bread-winner, by a Haryana State Transport bus.
- Stated that they cannot afford the court fees asked by the plaintiff.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The Constitution of India preaches equality and provides every citizen equal protection under the **Article 14**. Yet, *'access to justice'* is a distant dream for common people. Illiteracy, lack of financial resources and social backwardness, lack of courage to exercise legal rights and geographical and spatial barriers etc. are the major reasons which disempowered them from accessing justice. Therefore, the very concept of free legal aid was incorporated in **Article 39A** under the Directive Principles of State Policy at the time of birth of the Indian Constitution.

Free Legal Aid means providing an arrangement in the society so that the missionary of administration of justice becomes easily accessible to the poor and illiterates who 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.

The Constitution of India, also, makes it mandatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all.

Keeping this into consideration, Supreme Court held that the State of Haryana has unhappily failed to remember is its duty under **Article 41** of the Constitution to render public assistance, without litigation, in cases of disablement and undeserved want. The judgement was delivered with the instructions to State to provide equal justice and rules under Motor Vehicle Act, 1988 regarding the compensation to be free from payment of court fee.

6. JUDGEMENT IN BRIEF

In this case, the apex court held that no poor shall be priced out of the justice market by insistence on court-fee. Supreme Court dismissed the special leave petition in which the High Court held that the exemptive provisions of Order XXXIII, CPC, will apply to Accident Claims Tribunals, which have the trappings of the Civil Court.

Supreme Court held that the State should frame appropriate rules to exempt from levy of court fee, cases of claims of compensation where automobile accidents are the cause. Two principles are involved. Firstly, access to court, is an integral part of social justice, and the State has no rational litigation policy if it forgets this fundamental, and secondly, it is the State's duty under Article 41 of the Constitution to render assistance, without litigation, in cases of disablement and undeserved want.

Furthermore, it held that it is a public duty of each great branch of Government to obey the rule of law and uphold the tryst with the Constitution by making rules to effectuate legislation meant to help the poor. Now that insurance against third party risk is compulsory and motor insurance is nationalized, and transport itself is largely by State Undertakings, the principle of no-fault liability and on-the-spot settlement of claims should become national policy.

Court realized that all the courts must give the accident claims cases high priority, adopt simplified procedures without breach of natural justice, try out pre-trial settlements and narrow down the controversy and remember, that 'wiping every tear from every eye' has judicial relevance. For, law must keep its promise to justice.

7. COMMENTARY

Some of the basic issues related to legal aid are involved in this case, especially, the issues faced by the illiterate and weaker section of the society. However, the judges in this case realized that no poor shall be priced out of the justice market by insistence on court-fee and refusal to apply the exemptive provisions of Order XXXIII, C.P.C. From then, this case has become an effective precedent for the cases related to free legal aid.

CASE NO. 23

MUMBAI GRAHAK PANCHAYAT & OTHERS

V.

STATE OF MAHARASHTRA

(2017 SCC ONLINE BOM 726)

SPEEDY JUSTICE IS AN INGREDIENT OF ARTICLE 21 AND 39A.

ABSTRACT

The case is under the jurisdiction of High Court of Bombay. However, almost all Courts and Tribunals in the State of Maharashtra suffer from over flow of dockets. According to the National Judicial Data Grid (2017), total 32,39,623 cases were pending in Civil and Criminal Courts, Co-operative Courts and Co-operative Appellate Courts, Labour Courts and Industrial Courts as well as Family Courts in the State. In the Motor Accident Claims Tribunal at Mumbai, total 9,590 cases were pending.

It is well settled that the speedy justice is an ingredient of Article 21 of the Constitution of India and each litigant has a fundamental right of speedy justice. The State Government is under obligation to constitute sufficient number of Courts, Tribunals or Forums so that a litigant, who has knocked the door of the Court or Tribunal, is able to get speedy justice. In a city like Mumbai, the judicial officers do not get quarters immediately after they are posted and they are required to stay in a make-shift hostel facility at Small Causes Court at Mumbai.

The court is required to issue writs directing release of funds for construction of Court buildings. The courts should be able to function free of undesirable administrative and financial restrictions in order to achieve the constitutional goal of providing social, economic and political justice and equality before law to the citizens.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Public Interest Litigation No. 156 of 2011 Along with Civil Application No.155 of 2015 & Civil Application No. 157 of 2015
Jurisdiction	:	Bombay High Court
Case filed On	:	2011
Case decided On	:	May 5, 2017
Judges	:	Justice A. S. Oka, Justice A. A. Sayed
Legal Provisions Involved	:	Constitution of India. Article 21, 39A State Bank of India Act, 1955 Motor Vehicles Act, 1988, Section 6
Case Summary Prepared By	:	Juhita Hirekhan G. H. Raisoni Law College, Nagpur

2. BRIEF FACTS OF THE CASE

This case involves a group of Public Interest Litigations/Writ Petitions concerning the issues of infrastructure of Civil and Criminal Courts in the State.

ORIGINAL SIDE PUBLIC INTEREST LITIGATION NO. 61 OF 2012

This PIL is essentially filed for seeking a writ of mandamus for implementation of the provisions of the Maharashtra Fire Prevention and Life Safety Measures Act, 2006. There are consequential prayers made such as making inventory of fire prevention equipment and machinery in the Court Complexes and providing fire extinguishing equipment and fire preventing machinery to the Courts. The main contention raised by the Petitioner is that the provisions of the Fire Prevention Act are not being implemented in relation to the Courts. He has invited the attention of the Court to the fact that there was a serious fire which broke out in Mantralaya. The first prayer in the Petition is directing the Respondents to strictly implement the provisions of the Fire Prevention Act in all the Courts in Maharashtra, Mumbai Municipal Corporation to ensure that sufficient infrastructure is made available for protecting the Courts and Court record. Our attention is invited to the fact that there is always a threat of fire to the valuable Court record.

ORIGINAL SIDE WRIT PETITION NO. 1543 OF 2016

The Writ Petition No. 1543 of 2016 has been filed by Shri. Raghunath R. Shingte, President of the Bar Association of the Motor Accident Claims Tribunal, Mumbai which is an Association of lawyers practicing before the Accidents Claims Tribunal at Mumbai. The Petition is filed mainly for inviting attention to the fact that the present premises available to the Motor Accident Claims Tribunal at Mumbai are grossly insufficient.

In fact, on behalf of the Tribunal, the State Government was moved for allotment of premises in possession of the State Commission. The communication dated January 12, 2016 issued by the State Government, rejected request leading to additional affidavit filed by the Petitioner on October 6, 2016 giving figures of pendency and setting out the requirements of the said Motor Accident Claims Tribunal.

PUBLIC INTEREST LITIGATION NOS. 156 OF 2011, 59 OF 2013 AND 133 OF 2012

Public Interest Litigation No. 59 of 2013 has been filed by the Help Mumbai Foundation, a registered NGO under Section 25 of the Companies Act, 1956. The main prayer in this Petition under Article 226 of the Constitution of India is for issuing a writ of mandamus directing the State of Maharashtra to provide adequate space to the State Commission. There is also a prayer for directing the State Government to create additional six Benches of the State Commission. Public Interest Litigation No. 156 of 2011 is filed by the Mumbai Grahak Panchayat, a Society registered under the Societies Registration Act, 1860 and a Public Trust under the Maharashtra Public Trusts Act, 1950.

There are diverse prayers made in this Petition. Some of the prayers have been worked out. The issues raised propose to deal with various compliances made on the basis of the interim orders passed by this Court from time to time in this Petition. (Reference to the order dated September 21, 2015 passed in Public Interest Litigation No. 156 of 2011 and Public Interest Litigation No. 59 of 2013). After the said order was passed, the Maharashtra Co-operative Court Bar Association filed a Civil Application No. 155 of 2015 for intervention. Even this Court on the administrative side and the President of the Co-operative Appellate Court applied for intervention vide Civil Application No. 157 of 2015. The prayer made in both the Applications for intervention was allowed by an order dated October 13, 2015. By the order dated October 13, 2015, it was directed that the possession of the premises in the Old Custom House shall not be handed over to the State Commission. The said order of stay was vacated

on October 20, 2015. Public Interest Litigation No. 133 of 2012 is filed by the Petitioner. The prayer made in this PIL is for enforcement of the Government Resolution dated March 22, 2005 and for establishing State and District Consumer Protection Councils.

WRIT PETITION NO. 2544 OF 2015

Writ Petition No. 2544 of 2015 has been transferred from the Bench at Nagpur. The first prayer is for issuing a writ of mandamus directing the State Government to take steps for implementation of the recommendations which are annexed as Annexures 2, 3 4 and 5 in respect of the salary of the members of the State Commission. The second prayer which is added by way of amendment is of quashing the Government Resolution dated December 15, 2014. This Petition is filed by the Petitioner, member of the State Commission. There is a Civil Application No. 2703 of 2016 filed by the Petitioner seeking a direction to pay salary and perquisites to her which are equivalent to the salary payable to the President of the State Commission for the period between December 16, 2015 to January 10, 2016 on the ground that she was holding the charge of the post of the President during the said period.

WRIT PETITION NO. 8352 OF 2016

Writ Petition No. 8352 of 2016 has been transferred from the Bench at Aurangabad. The Petitioner is a member of the District Forum at Yeotmal. The prayer in this Petition under Article 226 of the Constitution of India is firstly for issuing a writ of mandamus directing the State Government to pay equal salary to all the members of the District Forum on the basis of the doctrine of "equal pay for equal work". The second challenge in this Petition is to the constitutional validity of Rule 10.3 of the Maharashtra Consumer Protection Rules, 2000. There is a detailed additional affidavit is filed based on the subsequent increase in the salary for pointing out the alleged discrimination.

PUBLIC INTEREST LITIGATION NO. 52 OF 2015

The Petitioner Association is a voluntary Consumer Service and Research Association registered under the Societies Registration Act, 1860. Public Interest Litigation No. 52 of 2015 has been transferred from the Bench at Nagpur. The first prayer in this PIL is for directing the State Government to issue an order of separation of cadres and recruit suitable

Registrar and other staff for smooth and effective functioning of District Fora as well as the State Commission with respect to Government Resolutions.

WRIT PETITION NO. 2547 OF 2015

Writ Petition No. 2547 of 2015 has been transferred from the Bench at Nagpur. The Petitioners are relying upon the resolution adopted in the Conference of Hon'ble Ministers along with the Secretaries of the Consumer Affairs Departments of the States as well as the Union Territories which was also attended by the Presidents of the respective State Commissions. One of the resolutions which was unanimously adopted was to the effect that the pay scales of the full-time members of the State Commission and the District Fora should be as applicable to a Joint Secretary and Director, respectively in the Central Secretariat of the Government of India. It was also resolved that till the pay scales are brought to the aforesaid level, the State Governments should adopt the pay and perquisites fixed by the Governments of Kerala or Andhra Pradesh or Haryana. The grievance made in this Petition is about the non-implementation of the Resolutions.

PUBLIC INTEREST LITIGATION NO. 14 OF 2012

It is filed for raising the issue regarding failure of the State Government to provide proper infrastructure to the judiciary.

PUBLIC INTEREST LITIGATION NO. 216 OF 2010

The PIL Raises various issues about the infrastructure in the Courts at Kalyan in the District Thane and issue of cleanliness of the Court premises.

PUBLIC INTEREST LITIGATION NO. 31 OF 2014

The PIL is tagged along with this group. Some of the prayers and issues made in this PIL may be covered by this Judgment. The main issue raised in this Petition is as regards the implementation of the ideal Judge-Population Ratio. There are directions sought to make available adequate number of Judges in all the Courts in the State.

Legal Position

The legal position will have to be restated so that the facts can be considered in light of the legal position. Part IV of the Constitution of India contains the Directive Principles of the State Policy. The Article 39A incorporated in Part IV of the Constitution of India reads thus:

> **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 by reason of economic or other disabilities."

The obligation of the State to the Judiciary will have to be considered in the light of the aforesaid directive principle of the State Policy. The issue of obligation of the State Government to provide infrastructure to the Judiciary came up for consideration.

3. ISSUES INVOLVED IN THE CASE

I. Making available updated copies of the State Acts and Rules in physical form and real time update of the State Acts and the Rules on the State Government Website,
II. Providing proper infrastructure to all Civil and Criminal Courts and Tribunals,
III. Providing proper infrastructure and adequate space to Co-operative Courts and Cooperative Appellate Courts in the State and in particular in Mumbai;
IV. Administrative control over the state employed in the Co-operative Courts and Cooperative Appellate Courts;
V. Providing infrastructure and adequate space to the State Commission and to the District Fora;
VI. Payment of adequate remuneration to the members of the State Commission as well as District Fora;
VII. Providing adequate space and infrastructure to the Motor Accident Claims Tribunal in Mumbai;
VIII. Grant of expeditious approval to proposals concerning infrastructure and the release of funds by the State Government for infrastructure of Courts a Tribunals in the State and the procedure to be followed for the release of funds;
IX. The Court Infrastructure Policy submitted by the State before this Court.

4. JUDGEMENT IN BRIEF

The Court relied upon its earlier decision in the case of *Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 98* wherein the Supreme Court observed that, it is also the constitutional obligation of the Apex Court to enforce setting up new Court buildings and Court houses providing more staff and equipment to the Courts and to take all measures calculated to ensure speedy trial.

The Apex Court in the said decision observed that the Government cannot plead financial or administrative inability to avoid its constitutional obligation to provide speedy trial to an accused.

The plea of financial limitations or constraints cannot be a valid excuse to avoid the performance of the constitutional duty of the Government to provide a proper judicial infrastructure. The existence of aforesaid fundamental right creates a corresponding obligation in the State Government to ensure that adequate numbers of Courts are established as may be decided by the High Court and a proper infrastructure is provided therein for the litigants, Judges, the members of the Bar and the Court staff

The decision of establishing the Courts is concerned or the requirement of constructing new Court buildings or new judicial quarters is concerned, the same will have to be taken by the High Court Administration after considering all the relevant factors.

As laid down by the Apex Court in the case of Brij Mohan Lal, once the High Court Administration decides to set up a new Court or to construct a new building for housing the Courts or new building for the judicial quarters, the plea of financial constraints or financial limitations is not available to the State.

State cannot refuse to perform its constitutional obligation of providing adequate judicial infrastructure and means of access to justice to citizens. The speedy disposal of cases in consonance with Article 39A of the Constitution of India cannot be achieved unless adequate numbers of Courts are established and adequate and proper infrastructure is provided to all Court premises. It was observed that the access to justice is also a fundamental right guaranteed under Article 21 of the Constitution of India. It is an obligation, both constitutional and legal, of the State to provide adequate infrastructure to the Motor Accident Claims Tribunal at Mumbai, Co-operative Courts and Co-operative Appellate Courts in the State, the State Commission and District Fora. In a city like Mumbai, the judicial officers do

not get quarters immediately after they are posted and they are required to stay in a make-shift hostel facility at Small Causes Court at Mumbai. It is required to issue writs directing release of funds for construction of Court buildings. The State shall sanction requisite number of additional posts of Judges as directed in the decision of the Apex Court in the case of *Imtiyaz Ahmad v. State of U.P*., We hold that the principles laid down in the said decision deserve to be applied for determining the Judge/member strength of the aforesaid Tribunals as well.

There is material on record to show that the allotment was made by the State Government without even consulting the High Court Administration or without the knowledge of the High Court Administration which created a very awkward situation for all the concerned. As an interim measure, the court proposed to direct the State Government to immediately allot a premise of substantial area to the Co-operative Courts. The same will have to be immediately complied with by handing over the possession of the premises to the Motor Accident Claims Tribunal at Mumbai within a period of one month from the date of judgement.

The State Government will have to reconsider its policy decision of outsourcing the work of cleanliness or will have to come out with a solution to ensure that a high standard of cleanliness and hygiene is maintained in all the Court Complexes. The Pending allotment of a larger area, the State Government will have to immediately consider of allotting sufficient area in addition to area of bungalow and residential quarters for storage of the record of the Motor Accident Claims Tribunal so that the area occupied for storage in the existing premises can be more conveniently used by setting up additional Courts and for providing facilities to the litigants.

In the Criminal Courts, *muddamal* property is kept in the Court Complexes. It is necessary to provide round the clock security in the form of police protection to all the Court Complexes in the State. Needless to add that if the Court premises are in private properties and if Judicial Officers are residing in private properties, police protection will have to be made available wherever it is necessary. The re-audit will also have to be conducted in all the Court Complexes. Wherever re-audit is not carried out, the same will have to be carried out within a reasonable time and proposals will have to be submitted to the learned Principal District Judges or the Principal Judges of various Courts containing estimates of the work which is required to be carried out taking into consideration the reports of the re-audit. The court

proposed to an outer limit of one year to complete a re-audit and to make all Court Complexes are safe. Needless to add that the Public Works Department shall ensure that all the provisions of the Fire Prevention Act are substantially complied with the newly constructed Court Complexes are concerned.

Some of the legal principles settled by the court.

- It is the constitutional obligation of the State Government to provide lands and/or adequate premises for establishing adequate number of Courts;
- It is an obligation of the State Government to appoint sufficient number of Judicial officers consistent with pendency and ling in the concerned Courts and Tribunals. The cadre strength should be such that there will be no pendency of old cases;
- It is the obligation of the State Government to provide all necessary infrastructure to the newly established as well as the existing Courts and Tribunals for the benefit of the Judicial officers, litigants, members of the staff as well as members of the Bar;
- The infrastructure has to be provided in such a manner that the Courts and Tribunals are able to function very efficiently;
- The infrastructure has to be consistent with the concept of dignity of the Court;
- Speedy disposal of cases in consonance with the mandate of Article 39A of the Constitution of India cannot be achieved unless adequate number of Courts and tribunals are established and adequate and proper infrastructure is provided to all the Court premises;
- A financial constraint is no ground to deny permission for establishing new Courts and Tribunals and for denying the essential infrastructure to all the Courts, whether existing or new.

5. COMMENTARY

Article 21 of the Constitution of India takes in its sweep the right to expeditious and fair trial. Even Article 39A of the Constitution recognises the right of citizens to equal justice and free legal aid. To put it simply, it is the constitutional duty of the Court to provide the citizens of the country with such judicial infrastructure and means of access to justice so that every person is able to receive an expeditious, inexpensive and fair trial. The plea of financial limitations or constraints can hardly be justified as a valid excuse to avoid performance of the

constitutional duty of the Government, more particularly, when such rights are accepted as basic and fundamental to the human rights of citizens.

As far as functioning of the courts i.e. dispensation of justice by the courts is concerned, the Government has no control over the courts. Further, in relation to matters of appointments to the judicial services of the States and even to the higher judiciary in the country, the Government has some say, however, the finances of the judiciary are entirely under the control of the State. It is obvious that these controls should be minimised to maintain the independence of the judiciary. The courts should be able to function free of undesirable administrative and financial restrictions in order to achieve the constitutional goal of providing social, economic and political justice and equality before law to the citizens.

Only by providing lands for establishing Courts, the State Government does not discharge its constitutional obligation. It is an obligation of the State Government to provide the entire necessary infrastructure to the newly established as well as the existing Courts, to the judicial officers, to the members of the staff as well as to the members of the Bar. The infrastructure has to be provided in such a manner that the Courts are able to function effectively. The infrastructure to be provided has to be consistent with the concept of dignity and decorum of the Court.

There is persistent lack of infrastructural development in the judiciary, especially the subordinate courts. This problem can be more efficiently be understood if one studies it in regards of the persons with physical disabilities, illiterates, women, senior citizens and trans-genders. Some of the court premises are well equipped and well designed, whereas, most of them lack the basic facilities such as the provisions of signage, directions, maps etc. for especially abled (Rights of the Persons with Disabilities Act, 2016) or general people, moreover to it, the entry and exit points are not well-managed, leading to crowds. As one moves towards the rural area from the urban areas the infrastructure of the court worsens. Basic necessities such as clean washrooms, access to water, seating arrangement, adequate lightening were badly neglected. At the end, it is important to note that being modern day courts such infrastructural standards should be maintained as they play a vital role in enhancing the functioning of a court.

It is unfortunate not to be able to get the copies of authenticated publications in the matter of Acts, Rules and Regulations. It was also an issue that it is necessary for the citizen to know

the set of laws, rules and regulations which govern his conduct and it is obvious that in case of breach of any such act, rule or regulation, he may be faced with penal consequences.

It is also to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. In the context of the complex nature of issues involved, the far-reaching consequences of a decision in the matter and its impact on the administration of the State Government, courts have taken the view that ordinarily courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity.

The increase in the Judge strength to 50 Judges per 10 lakh people should be effected and implemented with the filling up of the posts in phased manner to be determined and directed by the Union Ministry of Law, but this process should be completed and the increased vacancies and posts filled within a period of five years from today Perhaps increasing the Judge strength by 10 per 10 lakh people every year could be one of the methods which may be adopted thereby completing the first stage within five years before embarking on further increase if necessary. The said decision holds that the revision of pay scales is the matters which are primarily administrative in nature and the scope of Judicial review is limited. In the present case, when it comes to a sitting or retired Judge of the high Court or a retired or sitting District Judge, it cannot be said that there is a complete identity between this group and the group of other members of the State Commission and District Forum.

It is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such administrative decisions taken by the Government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. The court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same.

6. IMPORTANT CASES REFERRED

- *New Bombay Advocates Welfare Association and Another v. State of Maharashtra (PIL No. 239 of 2009)*
- *Imtiyaz Ahmad v. State of U.P. & Others, 2012 2 SCC 688*
- *Hussainara Khatoon v. State of Bihar, 1979 AIR 1819*
- *State of Maharashtra v. Labour Law Practitioners Association: (1998) 2 SCC 688*
- *All India Judges Association v. Union of India vs Employees Welfare Society v. Heavy Engg. Corpn. Ltd v. Union of India v. Mahajabeen Akhtar.*
- *Orissa University of Agriculture & Technology v. Manoj K. Mohanty, 2003 5 SCC 188*
- *State of Haryana and another v. Haryana Civil Secretariat Personal Staff Association. (Appeal (Civil) 3518 of 1997)*
- *State of Haryana v. Charanjit Singh, 2006 9 SCC 321*
- *Govt. Of West Bengal v. Tarun K Roy, 2004 1 SCC 347*

CASE NO. 24

HABIL SINDHU

V.

STATE OF ODISHA

(JAIL CRIMINAL APPEAL NO. 132 OF 2005,

ORISSA HIGH COURT)

APPOINTMENT OF STATE DEFENCE COUNSEL

ABSTRACT

The following is a case analysis of *Habil Sindhu v. State of Odisha*, an appeal filed for murder accused who has undergone 18 yrs. of imprisonment to give him a *de novo* trial (new trial) on the grounds that he didn't receive a proper legal trial. The former judgement was passed on June 30, 2005 by Sri J. K. Dash. The appellant Habil Sindhu was convicted under Section 302/201 of the Indian Penal Code, 1860. He was sentenced to undergo rigorous imprisonment for life in S.T. Case No.40/163 of 2003. The said judgement was heard on March 3, 2021 during the pandemic. The appeal was disposed off and the conviction was set aside. The matter was remitted back to the Sessions Judge, Mayurbhanj for a new trial. The case seeks remedy in the conviction of Habil Sindhu through a new trial. Moreover, Mr. Himansu Bhusan Das was the *Amicus Curiae* for appellant and Mr. M.S. Sahoo as Addl. Government Advocate for respondents.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Jail Criminal Appeal No. 132 of 2005
Jurisdiction	:	Orissa High Court
Case Filed On	:	2021
Case Decided On	:	April 13, 2021
Judges	:	Justice S K Mishra, Justice Savitri Ratho

Legal Provisions Involved	:	Constitution of India, Article 21, 39A Indian Penal Code, Section 201, 302
Case Summary Prepared By	:	Pooja Lakshmi Bennett University, Greater Noida

2. BRIEF FACTS OF THE CASE

The Appellant, Habil Sindhu had assailed his punishment under the Section 302/201 of Indian Penal Code, 1860 in S.T. Case No.40/163 of 2003. The appellant was sentenced to undergo rigorous imprisonment for life for the aforesaid offence under Section 302 IPC for convicting murder. Under Section 201, the appellant did not undergo separate sentence on the grounds of intention. The judgement was passed on the bases of evaluation of evidence and many other preceding judgements.

With respect to these principles, as appellant had engaged his own counsel and charges were filed under Sections 302/201 of IPC, summons was issued to the witnesses. The accused was produced in custody on August 16, 2004 and it was found that neither Advocates did not appear on behalf of accused on that date nor was he able to summons were issued to the witnesses during that day. However, on behalf of the accused, Shri P.D. Sahu was appointed as State Defence Counsel (SDC). Moreover, no witness was present, leading to postponing of case to next day and sending accused to remand.

On the next day, four witnesses were examined and SDC took part in trial and the following day two more witnesses were examined. On August 19, the post-mortem examinator of the deceased, Dr. Pradeep Kumar Misra was examined and case was adjourned. on September 14, with Ram Narayan Acharya being examined and cross examined, the court was adjourned for trial.

On the day of trial, September 15, no witnesses were present and on November 16 rest of the witnesses were examined. two more witnesses were examined on December 13 followed by investigating officer on January 17, 2005. After several adjournments, finally, on April 19, Investigating Officer was examined. Hence, the prosecution case was closed.

For recording of defence evidence and hearing other arguments court posted case to April 21, 22, 23, 28 June 28, 2005 as per direction of learned trial Judge. However, as the judgment

was not pronounced, case was adjourned to June 30 on which the conviction was pronounced and later on sentence was awarded.

3. ISSUES INVOLVED IN THE CASE

I. Whether a new trial is to be granted in the case where the parties didn't undergo proper legal trial?

II. Who can appoint a SDC or *Amicus Curiae* in cases where the privately engaged counsel do not appear or show assistance within a considerable delay?

4. ARGUMENTS OF THE PARTIES

The case of *Anokhilal v. State of Madhya Pradesh*[1] was relied on as in this case, the appellant did not receive effective free legal services from the State Defence Counsel and is bound to provide with the same as it is the duty of SDC to provide appellants with the same who has the ability to take responsibility and defend accused. The appellant's learned counsel argued that the provided SDC was already charged with the murder of three persons and on the date of trial, the said defence council did not appear. Moreover, on behalf of the prosecution, no witnesses were examined on the day of trial. Additionally, majority of witnesses were examined on next two days.

The facts of the case clearly state that the appellant was not given proper legal assistance that is mentioned under Article 39A of the Indian Constitution. The appellant was directed to be defended by an SDC due to the absence of counsel during the hearing. The learned judge did not check the qualifications of SDC and there were no observations made to check the competency of the SDC in a triple murder case. Moreover, it is to be noted that the SDC was not allotted enough time to prepare for the case. The prosecution witness 1 to 9 were first examined by the chief and then cross examined by the defence on the dates of August 17, 18 and 19, 2004. These examinations of murder case witnesses were done by a SDC who was engaged in the case one day prior to the examination i.e., August 16, 2004. So, it is clearly seen that there is no proper, valid and effective legal representation in the case. As the learnt trial judge did not grant minimum 7 days' time to the learned counsel for preparing the case, accused has been denied a fair trial and this is a violation of article 21 and 39A of the Constitution. The additional Government Advocate Mr. M S Sahoo argued that even if there

[1] (2019) 20 SCC 196

is a violation of the principles of Article 39A and 21 of the Constitution, the appellant cannot be activated as he has committed murder of 3 persons by severing their heads and were suspected practicing witchcraft. He also argued that the witch hunting is a problem dominated in the state of Mayurbhanj and due to these reasons, appellant cannot go scot free. The learned counsel of appellant submitted the details of arrest and the proof of appellant being upheld for more than 18 years in custody as to show that the appellant is now to be set at liberty.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Article 39-A - for securing justice provides for free legal aid and ensures that opportunities are not denied to any citizen due to any disability or discrimination.

Legal Services Authorities Act, 1987 – designed to mandate the above provision.

Article 21 – implicit right to 'reasonable, fair and just' procedure for accused person.

6. JUDGEMENT IN BRIEF

In the case of *Zahira Habibulla H. Sheikh v. State of Gujarat*[2] it was stated that "criminal trial is to search for the truth and the trial is not about over technicalities and must be conducted in such manner as will protect the innocent and punish the guilty."

Before Article 13 was part of the Indian Constitution, in the case of *Bashira v. State of U.P.*[3] court stated that the time given to the *Amicus Curiae* with regard to preparation for defence, if insufficient then granting a sentence of death is similar to deprivation of life of the accused and it is a breach of established procedures of law. Moreover, in *Ambadas Laxman Shinde v. State of Maharashtra*[4], to provide sufficient opportunity to counsel, substantial progress was made next day after counsel engages as *Amicus Curiae* in the matters accepted by court. There is a possibility of death sentence or life sentence where learned Advocate (Senior Advocates of the Court must first be considered) is appointed as the *Amicus Curiae* or legal services to represent accused. A reasonable time (a minimum of seven days' time is normally be considered adequate) is provided to enable the counsel to prepare the case. The *Amicus Curiae* is granted to have meetings or discussions with the accused. In the case of *Imtiyaz*

[2] (2004) 4 SCC 158
[3] (1969) 1 SCR 32
[4] (2018) 18 SCC 788

Ramzan Khan v. State of Maharashtra[5], it was noticed worthful to have such discussions or meetings.

It is noted that there is a delay in disposal of appeal and the delay in disposal of appeal cannot be attributed only to judiciary. The delay in disposal has occasion due to the factors that are beyond the control of judiciary. Taking holistic view of the case with the entire facts, it is recommended that the case should be remanded that to the learn trial judge for new trial. Moreover, it is noted that the Fast-Track Court (FTC) has been abolished leading to a circumstance at present there is no judges posted as Additional Sessions Judge (FTC), Baripada. Due to these reasons the case was remanded to the court of learned Sessions Judge Mayurbhanj, Baripada as to dispose the case as early as possible. The court also suggested that the case should be disposed within a period of three months from the date of the receipt of copy of this judgement.

During the disposal of sessions trial the learned sessions judge kept in mind that the privately engaged counsel of the case did not appear on the date of hearing or trial. So, the learnt sessions judge as per the Council Rules and Advocates Act, made a remark on the duties towards the client court and society. *Sapua Das and others v. State of Orissa*[6] is relevant in this case due to this connection. While preparing list of SDC or *Amicus Curiae*, the Additional Sessions Judge or District Judge should include names of those councils who have at least 10 years of experience. The ability of the counsel to provide meaningful assistance to the accused is to be clearly verified by learned District Judge according to inputs and opinions of Chief Judicial Magistrate as well as Registrar of the Civil Court and inputs of the Public Prosecutor, President of the local Bar (s) should form an opinion about the ability of the counsel to provide meaningful assistance to the accused. Only when the District Judge is satisfied, either on his own information or information received by him, then only a counsel should be included in the penal of State Defence Counsel for the purpose of defending persons, who do not have enough means to engage their own private counsel.

If a situation arises where the privately engaged counsel do not come forward or their assistance cannot be obtained without considerable delay and expenses, then the Presiding Judge of the court, in session of the case, may appoint a State Defence Counsel or Amicus Curiae.

[5] (2018) 9 SCC 160
[6]Criminal Misc. Case No.403 of 2018

While appointing a counsel to defend an accused, the Presiding Judge of that Court, in session of the trial, should be satisfied about his ability to defend the accused.

In this connection, the learned trial Judge may look into or take into consideration the list prepared by the District Court office, but it is not binding upon him. If he finds that as per his own judgment while deciding the case that the counsel mentioned in the panel do not have the ability to defend and give meaningful assistance to the accused, the learned trial Judge may appoint a counsel of his choice, de hors the list that has been prepared

In such cases of appointment beyond/outside the State Defence Counsel list prepared by the District Court, the payment of the dues (which in our opinion is not sufficient) should not be withheld by the Registrar or such other officer in charge of the finances and accounts of the District Court.

Such appointment from outside the list of the State Defence Counsel prepared by the District Office shall not be considered as a financial irregularity. We must hasten to add that the learned trial Judge should record a finding that the counsel named in the list, in his opinion, may not be able to render meaningful assistance to the accused. It shall be proper on the part of the learned Judge to record the reasons for his opinion. It is further observed that in order to expedite sessions trial, the learned trial Judge should not procrastinate the trial as is seen in this case. In his anxiety to examine witnesses on that date, though the trial commenced on the next date of appointment of State Defence Counsel, the learned trial Judge went on to adjourn the case for several times thereafter as noted by us in the preceding paragraphs.

With such observation, we dispose of the appeal, set aside the conviction and sentence of the appellant and remit the matter back to the learned Sessions Judge, Mayurbhanj, Baripada for *de novo* trial. We further direct that the learned Sessions Judge shall observe the directions given by us in the preceding paragraphs, especially paragraphs 7.1 to 7.7 while conducting the trial. We hope and trust that the trial should be concluded within a period of three months from the date of receipt of copy of this judgment along with Trial Court Records (TCRs). We further direct the Registry of this Court to forthwith communicate the copy of this judgment along with TCRs by Special Messenger so to ensure that the records are delivered in the office of the learned Sessions Judge within a period of seven days.

Moreover, the court directed that the learned sessions judge shall observe the directions given by this court while giving the trial, and should be able to conclude the judgement within a period of three months from the date of receipt of the judgement along with trial court records. As Covid-19 restrictions are continuing the learned counsel for the parties may utilise soft copy of judgement available in the High court website.

7. COMMENTARY

According to the judgement we can see that the case is solely depended on prevailing justice. It is not reasonable to not give a new trial in cases where the trial conducted before was not fair enough. An appropriate Self Defence Counsel (SDC) is to be granted to the party in case their counsel fails to show up and the SDC should be given adequate time to prepare for the case. No matter how heinous the crime is, the aggrieved party deserves a proper legal trial.

8. IMPORTANT CASES REFERRED

- *Anokhilal v. State of Madhya Pradesh, (2019) 20 SCC 196*
- *Zahira Habibulla H. Shekikh v. State of Gujarat, (2004) 4 SCC 158*
- *Mohd. Hussain v. State (NCT of Delhi), (2012) 9 SCC 408)*
- *Bashira v. State of U.P., (1969) 1 SCR 32*
- *Ambadas Laxman Shinde v. State of Maharashtra, (2018) 18 SCC 788*
- *Imtiyaz Ramzan Khan v. State of Maharashtra, (2018) 9 SCC 160*
- *Sapua Das and others v. State of Orissa, Criminal Misc. Case No.403 of 2018*

CASE NO. 25

STATE OF GUJARAT

V.

MANJUBEN D/O KASTURBHAI

(CRIMINAL APPEAL NO. 474 OF 2019,

GUJARAT HIGH COURT)

INEXPERIENCED LEGAL AID COUNSEL DEALING WITH SERIOUS OFFENCE.

ABSTRACT

The following is the summary of the case *State of Gujarat v. Manjuben D/O. Kasturbhai Nanjibhai Kunvariya (Devipujak)***.** The case is related to the proper interpretation and implementation of various provisions falling under the ambit of *'unsoundness of mind'* mentioned in the Criminal Procedure Code, 1973, the Indian Penal Code, 1860 that needs to be read along with Article 21 of the Constitution of India, 1950. The case was filed before the Gujarat High Court to set aside and quash the judgment delivered by the Additional Sessions Judge, who held the appellant guilty of offences punishable under Sections 302 and 307 of the IPC along with section 135 of the Gujarat Police Act, 1951. The arguments of the parties were based on the already laid-down precedents that were of great importance and gave a deep insight into the position of an accused who is (at times) of unsound mind and the 'quality' of legal aid that was provided to her. This case involved a thorough investigation of the role of the Public Prosecutor and the henceforth consequences suffered by the appellant. Justice J. B. Pardiwala authored the judgment of this case in the most prolific and intrinsic manner by covering each and every possible angle to this case. The main focus of the Division Bench lies solely on the negligence done by the Sessions Court resulting in the unjust sufferings of the appellant who already has mental disorders (at times) and considers the very fact that fair, justified and transparent proceedings need to be conducted. The final decree of the Hon'ble Court turns out to be a boon for the appellant as the Court directs the Sessions Court to conduct re-trial of the case while keeping in mind the mental condition of

the appellant as she should not be deprived of her Fundamental Right to Life envisaged by the Constitution of India and apparently, sets aside the verdict of the lower court.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Criminal Appeal no. 474/2019
Jurisdiction	:	Gujarat High Court
Case Filed On	:	January 2018
Case Decided On	:	March 18, 2019
Judges	:	Justice J. B. Pardiwala, Justice A. C. Rao
Legal Provisions Involved	:	The Constitution of India, 1950, Article 21, 39A The Criminal Procedure Code, 1973, Sections 328, 329 Gujarat Police Act, 1951, Section 135
Case Summary Prepared By	:	Sonalika Nigam Parul University, Vadodara

2. BRIEF FACTS OF THE CASE

1. The initial facts of the case claim that the appellant (Manjuben) was reprimanded by her mother (Rajiben) on February 16, 2017 due to some household chores. This led to a stiff argument and war of words between the mother-daughter duo and ultimately, the mother slapped her daughter. Outrageous by this act, the appellant (who was then 17-years old) inflicted sword blows on her mother and two sisters. Unfortunately, the mother and one of her sisters succumbed to death. Hence, because of the sensational case, an FIR was lodged with the Gandhidham Police by the appellant's brother on February 17, 2017.
2. The appellant was arrested and the trial began with the Sessions Court under the provisions of Section 209 of the Code of Criminal Procedure. After going through all the evidences, reports and witnesses presented by the Prosecution, the Court came up with its decision on December 20, 2017.
3. The Sessions Court held the appellant guilty of offences punishable under Sections 302 & 307 of the IPC along with Section 135 of Gujarat Police Act read with Section 114 of the IPC and vehemently sentenced the appellant to death.

4. The appellant was dissatisfied with the judgment and the order of convection, and hence, filed the Criminal Appeal before the Gujarat High Court. The High Court went through various perspectives, angles and turns of this case and finally concluded that the appellant, due to her mental conditions, is not guilty of the offences cited by the Sessions Court and came up with various lacunas and loopholes in the lower court's ruling.
5. It proclaimed that Article 39A must be utilized in its most effective manner, as here, the appellant was allotted such a lawyer by the District Legal Services Authority who had less experience in the field of criminology and he/she didn't even point at once about her mental conditions.
6. It ordered the Sessions Court to conduct a re-trial for this case by keeping all the sides and angles in mind, and hence, the HC struck down the death sentence imposed by the lower court on the appellant.

3. ISSUES INVOLVED IN THE CASE

I. Whether the Prosecution proves beyond doubt that the death of the deceased people in this case is homicide?
II. Whether the Prosecution proves cogently and beyond doubt that at about 5 o'clock on February 17, 2017, the accused lady caused the death of her mother and sister by inflicting serious injuries?
III. Whether the Prosecution proves beyond doubt that the accused lady has committed an offence punishable under Section 307 of the IPC and Section 135 of the Gujarat Police Act?
IV. Why didn't the Public Prosecutor and the Investigating Officer bring all kinds of materials and evidences to the notice of the trial court?
V. Whether the appellant should be entitled to the benefits mentioned under Sections 328 and 329 of the Cr.PC?
VI. Whether the legal aid is effectively provided to the appellant during the trials?

4. ARGUMENTS OF THE PARTIES

Appellant

1. Learned Counsel Mr. Darshan M. Varandani contended that the appellant had been taking treatment for her mental disorders at the Aatmiya Hospital, Gandhidham, Kachchh and submitted the proof for the same.
2. He also argued before the Court that the appellant had not been represented efficiently in the trial court and hence, this has caused her increased mental traumas as she was imposed with death penalty.
3. He further requested the Court to set aside the order passed by the trial court, as it was in violation of Sections 328 & 329 of the Cr.PC. along with Article 21 of the Indian Constitution.

Respondent

1. Learned counsels Mr. Mitesh Amin, Public Prosecutor along with Mr. Himanshu K. Patel, Additional Public Prosecutor, argued that the appellant had committed offences punishable under Sections 302 & 307 of the IPC. To prove this, they submitted a copy of FIR that was lodged by the appellant's brother on February 17, 2017.
2. It was further contended that the appellant could not be regarded as a person of unsound mind because at the time of commission of offence, she was of absolute sound mind.
3. They further claimed that during the trial, the Prosecution examined 22 witnesses in all and also laid down the documentary evidence in support for the same. Hence, they requested the Court not to set aside the order of the trial court and that the death penalty imposed on the appellant should be upheld.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- **Criminal Procedure Code, 1973**

  Chapter XXV, Sections 328-339 – Provisions as to accused persons of unsound mind.

- **The Constitution of India, 1950**

  Article 21 :- Protection of life and Personal Liberty

No person shall be deprived of his/her life or personal liberty except according to the procedure established by law.

Article 39A :- Equal Justice and Free Legal Aid

The State shall secure that the operation of the legal system promotes justice on the basis of equal opportunity, and shall in particular provide free legal aid, by suitable legislation/schemes or in any other way to ensure that opportunities for securing justice aren't denied to any citizen by reasons of economic or other disabilities.

6. JUDGEMENT IN BRIEF

1. The court took cognizance of the fact that the appellant needs to be given protection under Sections 328 & 329 of the Cr.PC. along with Section 84 of the IPC. It was noted that the inquiry as to the unsoundness of mind and incapacity of the accused under Section 329 of the Cr.PC relates only to the unsoundness of mind of the accused at the time of enquiry or trial, and not at the time of the commission of offence.
2. The Court considered this case to be of unusual nature because neither the Public Prosecutor nor the Investigating Officer, including the defence counsel, invited the attention of the trial court to the materials on record as regards the mental ailment of the accused, and hence, reprimanded the authorities for the same.
3. The Division Bench accepted the very fact that getting a season and well-experienced lawyer from the District Legal Services Authority (DLSA) is not very easy as the appellant, in this case, who was a poor and helpless 19 year old girl could not manage to get a good lawyer, and therefore was awarded the death penalty.
4. The Court agreed to set aside and quash the judgment and order of conviction along with the death sentence and ordered a re-trial. This can only be done after verifying presently whether the accused is of sound mind and consequently capable of making her defence. It was clarified that at the end of the inquiry, under Section 329 of the Cr. PC if the trial court is convinced that the accused is capable of making her defence, then it shall resume with the trial by framing the charges afresh.
5. The HC upheld the spirit and preserved the integrity of Article 39A of the Constitution of India by making it the responsibility of the DLSA to provide adept and adroit lawyer to the accused for the fresh trials at the trial court.

7. COMMENTARY

Providing free legal aid to the poor and vulnerable people is the sole purpose of one of the Directive Principles of State Policy called – "Equal Justice and Free Legal Aid" enshrined under Article 39A of the Indian Constitution. Article 39A also marks its presence under the ambit of Article 14, Article 21 and Article 22(1). The essence of this article is very diverse and deep, but unfortunately, it is neither realized nor utilized. It should be noted that legal aid is not a matter of charity or mercy or an act of kindness; it is an important right backed by the Constitution and hence, it is the duty of the Welfare State to provide the same. This should always be kept in mind by each and every one, especially by the DLSA, as this case becomes the best example to show the incompetency of the District Legal Services Authority. Therefore, proper valuation, utilization and implementation of the existing legal aid laws and rules is very important in this 'money-oriented' global society.

8. IMPORTANT CASES REFERRED

- *I. V. Shivaswamy v. State of Mysore (AIR 1971 SC 1638)*
- *State of Maharashtra v. Sindhi alias Raman (AIR 1975 SC 1665)*
- *Sunil Tejbahadur Singh Through Anil Singh s/o. Tejbahadur Singh v. State of Gujarat (2018 (1) GLR 473)*
- *Ranchod Mathur v. State of Gujarat (AIR 1974 SC 1143)*
- *Hussainara Khatoon & Other v. Home Secretary, State of Bihar (AIR 1980 SCC 98)*
- *Sunil Gaikwad v. State (2009 (3) BCR (Cri.) 504)*

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About ProBono India

Founded in October 2016 with an aim to integrate legal aid and awareness initiatives – ProBono India has ventured into different avenues viz. legal aid, legal awareness, legal intervention, legal journalism, legal activism etc. – all with the underlying objective of contributing to the positive development of the society with a strong socio-legal approach.

The activities at ProBono India include an active dissemination of legal information via the medium of its official website, rolling internship programmes for law students to help them develop a holistic personality with a socio-legal approach to their professional personality, interviews with eminent personalities working at the ground-level offering insights into their successful projects, providing a platform to promote and publish the art of research and legal writing, amongst many others.

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Mission

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