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Speedy trial-A new face of Article 21

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ABSTRACT

This case study is one of the prominent cases of whether speedy trials are the Fundamental Right of the accused especially when it comes to children below 16 years of age or a mentally or physically retarded person. This case has been filed by Ms. Sheela Barse, a social activist. She had filed a writ petition under Article 32 of the Indian Constitution for the release of children below the age of 16 years held in jails within different States of the country, production of complete information of children in jails and existence of Juvenile Courts, remand homes and schools for children in the country. This case study has taken the landmark case of Hussainara Khatoon and Ors vs. Home Secretary, the State of Bihar as a reference for the present case of speedy trials. The case was filed in favor of the children and mentally retarded people who were accused of a crime but they were never presented before the Magistrates which led to delay in the Judgements of such cases and thus it was violated of the Article 21. The health facilities provided inside the jail were adverse and miserable. The matter was of great public importance and hence the court issued notice against State of West Bengal and Union of India. Hon'ble Supreme Court of India had given the Judgement in favor of the petitioner, Sheela Barse which clearly stated that Speedy trial is a part of the fundamental right under the Article 21. It was further affirmed that if an accused is not tried before the Magistrate or Sessions Court within a reasonable period of time, his Right to speedy trial is violated unless the trial is held on account of some interim order passed by the Supreme Court stating the delay for the case. Thus, this case gave a new side and facet of Article 21 which was not explicitly included under the "Article 21- Right to Life and Personal Liberty", before this case.

Keywords— Speedy trial, Fundamental right, Article 21 of the Constitution of India, Destitute or delinquent children, Directions from Supreme Court

1. INTRODUCTION

Sheela Barse & Ors (Petitioner)
V/s
Union of India & Ors (Respondent)

Case Citation: 1986 AIR 1773, 1986 SCR (3) 443, 1986 SCC (3) 596, JT 1986 136, 1986 SCALE (2)230 [1]

Criminal Original Jurisdiction: Writ Petition (Criminal) No. 1451 of 1985

Judgment Date: 13th August 1986 [2]

Bench: 2 Member

- Hon'ble Justice Bhagwati P.N. (Chief Justice of India)
- Hon'ble Justice Misra Rangnath

1.1 Case facts

This case takes into account the subject matter of the Indian Constitution as it is talking about the unsaid dimensions of Article 21- Right to life and Personal Liberty. This case majorly deals with the issue that "Whether the right to Speedy trials is a fundamental right of the accused or not?" The case also involves Article 144 discussing the scope and duty of the Subordinate Courts/Judicial Authorities to abide by the directions for the provisions given by the Apex Court [3]. It also includes Article 39(f) under the Part IV- Directive Principles of State Policies which states that, children should be given basic opportunities and amenities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material desertion. This case even talked about the enactment and enforcement of Children's Act and made it a constitutional obligation for states also to enforce the Children's Act in respective states in accordance to the Article 39(f) of the Indian Constitution [4]. Similarly, even District Judges were required to visit jails and see that juvenile prisoners are looked after according to their Jail Manual.

This case primarily deals with the implied version of the Article 21 which predominantly focuses on the rapid trial of the accused person (especially in case of children and mentally/physically impaired individuals). As it has been clear from the referred case of *Hussainara Khatoon vs. Home Secretary, State of Bihar* 1979 AIR 1369 [5] that expeditious trial is one of the most important

fundamental and basic rights of an accused whether it is a child, mentally/physically impaired person or even a common prudent man. The Supreme Court further held that the state cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to improving speedy trial [6]. Thus, it drew in the concept, that every individual has a right to fair, just and reasonable procedures and thus speedy trial comes under this procedure.

The suit was filed under the Article 32 as a writ petition for discharging the children below 16 years of age where children are kept as detainees in jails of different States, wherein the Court has issued various direction and instructions in regard to mentally/physically retarded children who are lodged in various jails of the country for 'safe custody'. It has been clearly stated that if an accused is not tried rapidly and his/her case remains pending before the Magistrate for an unreasonable time period, then it is considered to be a violation of his fundamental right to speedy trial. [7] The petitioner even prayed for a direction to the State Legal Aid Boards to appoint duty counsel to ensure that the children are provided with legal protection especially when they are involved in criminal cases, for their speedy trials. The Supreme Court agreed with the request of the Petitioner and instructed the State Legal Aid, Advice Board of each state and other Legal Aid organizations to send 2 lawyers to each jail within the state once a week for inspecting whether proper legal assistance is provided to children (below 16 years) and call for information from the District Judges about the conditions prevailing in jails of different States. However, after passing of the Judgement, many District Judges did not conform to the directions given by the Supreme Court within the time period fixed by the Supreme Court. It was a shock for Supreme Court that a direction given by apex court was not properly carried out by the District Judges. [8]

The case so far particularly focuses on the expeditious trial of accused wherein if a child is accused of a punishable offense which cannot include an imprisonment of more than 7 years for the child. It further states that a period of 3 months time is permissible for investigation after the filing of complaint or lodging an FIR, and a period of 6 months is granted from the date of filing the charge sheet within which the trial of the child should be completed. If that is not done, then the prosecution against the child would be liable for the annulment of the suit. Even the State Governments are instructed to follow the same law. Every State Government shall give effect to this principle or norm in so far as any future cases are concerned. The State Government must set up necessary remand and observation homes where children accused of an offense reside until the investigation and trial are completed and on no account, the children should be kept in jail with the other convicts. If the State Government has not got enough accommodation for these children then, they should be released on bail instead of being subjected to captivity in jail.

The Union of India and all the States and Union Territories have been impleaded as respondents. On September 24, 1985, notice was directed to all the respondents. A few of the respondent States filed counter affidavits in response to the notice. The matter was adjourned on March 31, 1986, to April 15, 1986, to enable the respondents who had not yet filed their affidavits to file such affidavits. [9]

There were suggestions from the Judges' Bench- Bhagwati P.N. (C.J.) and Misra Rangnath, to the Legislation, stating that rather than having separate Children's Act in every state, it would be much better if Central Government commences Parliamentary legislation on this subject, so that there can be absolute standardization with regard to provisions relating to children throughout the territory of India. The Children's Act should not only contain clauses related to the investigation and speedy trials of the accused children but also include certain compulsory provisions with respect to the social, psychological and economic rehabilitation of those accused/abandoned children.[10] The legislation is not wholly and solely capable enough to bring about this change just by framing new provisions, they need to be properly executed and implemented also so that people are aware of these clauses and are able to exercise them.

The petitioner is truly credible for the kind of social service she has undertaken by bringing this case before the Court and opening the eyes of Court as this was the duty of State to look after the conditions of Juvenile and grant them a speedy trial. She even wishes to visit different parts of the country with a view to gather further information about the young and physically/mentally impaired detainees and corroborating the validity of the statements of facts given in the counter affidavits filed by the Respondent States.

The Judgement of this case was given on August 13th, 1986 wherein the Court has given directions to the State Legal Aid Boards to provide the facility of lawyer's service in regard to under-trial children. Certain other directions were given earlier by the Court which has to be complied with and returns shall be furnished to the Court by August 31st, 1986. Thus, the Court is looking forward to a strict compliance of the directions from the Stateside.

1.2 Issues involved

- Whether the right to speedy trial comes under the purview of Article 21?
- Whether the case of juvenile or physically/mentally impaired people, if not tried speedily stands quashed?
- Whether the accused children below 16 years and physically/mentally impaired children should reside apart from other inmates?
- Whether there should be only one uniform Children's Act within the territory of India?

1.3 Statutes Involved

- Article 21 of the Constitution of India, 1949
- Article 144 of the Constitution of India, 1949
- The Children Act, 1960
- Hussainara Khatoon and Ors Vs. Home Secretary, State of Bihar
- Article 32 of the Constitution of India, 1949

1.4 Principles involved

- Right to a speedy trial as an inherent part of the right to life with human dignity (article 21)
- Guidelines for detaining the children in jails
- Right to fair, just and reasonable procedures of the court
- Jurisdiction of Court

2. JUDGMENT

The judgment of The Case

On 12th July 1986, this Court issued various directions in regard to the physically and mentally retarded children as also abandoned or destitute children who are lodged in various jails in the country for 'safe custody'. The right to speedy trial is a fundamental right implicit in Article 21 of the Constitution.

If an accused is not tried speedily and his case remains pending before the Magistrate or the Sessions Court for an unreasonable length of time, it is clear that his fundamental right to speedy trial would be violated unless, of course, the trial is held up on account of some interim order passed by a superior court or the accused is responsible for the delay in the trial of the case. The consequence of the violation of the fundamental right to a speedy trial would be that the prosecution itself would be liable to be quashed on this ground. Every State Government must take necessary measures for the purpose of setting up an adequate number of courts, appointing requisite number of Judges and providing them the necessary facilities.

So far as a child-accused of an offence punishable with imprisonment of not more than 7 years is concerned, a period of 3 months from the date of filing of the complaint or lodging of the First Information Report is the maximum time permissible for investigation and a period of 6 months from the filing of the charge sheet as a reasonable period within which the trial of the child must be completed. The State Governments must set up necessary remand homes and observation homes where children accused of an offence can be lodged pending investigation and trial.

Instead of each State having its own Children's Act different in procedure and content from the Children's Act in other States, the Central Government should initiate Parliamentary Legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to children in the entire territory of the country. [11] Thus, these were the contentions on which the final verdict was given by the Supreme Court with reference to Sheela Barse vs. Union of India case.

3. CASE ANALYSIS

After examining the case of Sheela Barse vs. Union of India, it can be inferred that Judgement given by Supreme Court is in the favor of the public at large and it mainly focuses on the speedy trials of juvenile and physically/mentally impaired detainees. The Judgement clearly states that right to speedy trial is an integral part of the right to life with human dignity as the speedy trial is a right entitled to each and every accused irrespective whether he is below 16 years, physically/mentally disabled or a common ordinary man. Thus, right to speedy trial gives a new direction and face to the Article 21 of the Constitution of India.

This case also talks about the people who are aware of others rights and even fighting for them selflessly. The petitioner does not wish to be against the law or oppose the litigation; instead she should be looked upon as the volunteer ready to work for destitute children who are detained behind the bars, because this part of implementing and administering the laws comes under the obligation of State, wherein State has not been able to do so. In fact, the Petitioner also intends to visit jails, have access to information, visit remand homes associated with the delinquent children. She even shows interest in verifying the authenticity of the Statement of Facts mentioned in the counter-affidavits of the States. Thus, this case tries to make the functioning of the Courts and jails easier and feasible so that people can enjoy their right to speedy trial and on the violation of this right the prosecution will be held accountable for the annulment of the case.

4. CONCLUSION

The 2 Judges Bench of Honourable Supreme Court of India, which includes Chief Justice P.N. Bhagwati and Judge Misra Rangnath after dealing with all facts of the case that right to speedy and expeditious trial is the right of every accused person as it has been aforementioned in the case of Hussainara Khatoon and Ors vs. Home Secretary, State of Bihar that right to speedy trial is a fundamental right of an accused person and comes under the ambit of Article 21 - Right to Life and personal Liberty. Therefore, if a person is not tried within the prescribed time period of then the prosecution will be held liable for the quashing of the case.

The Apex Court also gave certain directions to State Legal Aid Boards to provide the facility of legal aid to the undertrial children. Even the District Judges are asked to appoint 2 lawyers who would keep a check by visiting jail once a week and submit a report to the Apex Court stating about the conditions of their respective jails in their State. The decision was given in favor of the petitioner as it was concluded that it was the duty of State to ensure the right to speedy trial to each and every accused person, which the State was unable to do. Hence, according to me implementing and administering law is not possible unless and until people are cooperative on whom the law is going to apply. If people are cooperative then will be aware of their rights also which will help the society at large. Thus, the petitioner should not be seen as opposing or rival of law, instead, she should be looked as a helper of the State who is working in the interest of the undertrial delinquent children and physically/mentally impaired people.

Thus, it can be understood that right to speedy trial was earlier a hidden aspect of the right to live with human dignity but now it has been explicitly declared as a part of the fundamental right under the Article 21- Right to Life and personal liberty.

5. REFERENCES

[1] <http://ncpcr.gov.in/>

[2] <https://indiankanoon.org/doc/525548/>

[3] <http://www.rishabhdara.com/>

[4] Ibid

[5] Supra 2

[6] http://www.hrcr.org/safrica/access_courts/India/Indiacases.html

[7] <http://ncpcr.gov.in/>

[8] <http://www.rishabhdara.com/>

[9] Ibid 8

[10] http://www.oscpcr.nic.in/sites/default/files/Sheela_Barse_%26_Ors_vs_Union_Of_India_%26_Ors_on_13_August,_1986.PDF

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[11] <http://ncpcr.gov.in/>