

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 11613/2025

Suo Motu

-----Petitioner

Versus

Union Of India

-----Respondent

Connected With

D.B. Civil Writ Petition No. 3673/2013

Radha Shekhawat

-----Petitioner

Versus

State Of Raj And Ors

-----Respondents

D.B. Civil Writ Petition No. 8990/2013

Prof Rajeev Gupta And Anr

-----Petitioners

Versus

U O I And Ors

-----Respondents

D.B. Civil Writ Petition No. 13769/2014

Suo Moto

-----Petitioner

Versus

U O I And Ors

-----Respondents

D.B. Civil Writ Petition No. 16406/2022

Social Jurist, A Civil Rights Group

-----Petitioner

Versus

State Of Rajasthan

-----Respondent

D.B. Civil Writ Petition No. 8679/2025

Mohammad Shariph S/o Shakur

-----Petitioner

Versus

The State Of Rajasthan

-----Respondent

D.B. Civil Writ Petition No. 11527/2025

Suo Motu In The Matter Of Safety And Well Being Of School



Going Children

-----Petitioner

Versus

Union Of India

-----Respondent

For Petitioner(s)	:	By Court Order Mr. Tanmay Dhand Mr. Prateek Kasliwal Mr. Swadeep Singh Hora Mr. Pradeep Sharma Mr. Mahesh Gurjar Mr. Ashok Agarwal, through V.C. Ms. Naina Saraf Mr. Sunil Samdaria Mr. Alok Garg Mr. Punit Singhvi with Mr. Ayush Singh
For Respondent(s)	:	Mr. Rajendra Prasad (Senior Advocate), AG with Ms. Dhriti Laddha Mr. Pradeep Mathur with Mr. Sandeep Kalwaniya Mr. Vagish Kumar Singh with Ms. Sakshi Agarwal Mr. Bharat Vyas (Senior Advocate), ASG with Mr. Rakesh Choudhary Mr. S.M. Sharma for Mr. Manoj Sharma, AAG Mr. S.S. Naruka, AAG with Mr. Anshuman Singh

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

05/03/2026

1. The present Public Interest Litigation arises on account of collapse of a Government School building in District Jhalawar in the month of July, 2025 resulting into loss of life of seven toddler students and injuries to various others. Despite an assurance extended by the State by way of an affidavit of Secretary, School Education Department, Government of Rajasthan dated

04.09.2025 that no dilapidated room/building was being used and alternative arrangements for safe and smooth study of the students have been made, a number of incidents have happened in the State of Rajasthan wherein, buildings/roof of the Government schools have collapsed. Fortunately and fortuitously, except loss of life of one student, others escaped miraculously. Further, from the material on record including the report submitted by the various District Legal Services Authorities, we find that the students are still studying under open sky/trees in totally unhealthy and unhygienic condition.

2. As per the additional affidavit dated 31.01.2026 filed by the Secretary, School Education Department, a sum of ₹20,000 crores approximately is required for construction/repair work in government schools out of which, a sum of ₹1,624 crores was already sanctioned.

3. The additional affidavit of Shri Devi Shankar Sharma, the District Education Officer (Legal), Secondary Education, Department Jaipur dated 16.02.2026, reflects that a sum of ₹1,000 crores is proposed in the budget for the financial year 2026-27 for construction and repair of new schools/dilapidated schools/rooms. In view of the requirement of ₹20,000 crores for this purpose, as projected by the respondents themselves, this budget proposal appears to be a drop in the ocean. Despite being granted the opportunity, learned Advocate General is unable to convince this Court as to how, with such a paltry and highly inadequate budget, the Government shall be able to provide safe and secure infrastructure to the school going children. We may also observe that, it is a matter of common knowledge that cost of

every infrastructure project, particularly those floated by the Government, increases by at least 10% annually. Given this budgetary constraint, it appears highly improbable that the State will be able to ensure a safe, secure and conducive environment for school going children in the near future unless, drastic measures are adopted immediately.

4. Learned *Amicus Curiae*, S/Shri Swadeep Singh Hora and Tanmay Dhand have brought to our notice the judgment of the Hon'ble Supreme Court of India in the case of **Paschim Banga Khet Mazdoor Samity and Ors. Vs. State of W.B. and Anr. reported as (1996) 4 SCC 37**, wherein, their Lordships have held as under:

"16. It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done. In the context of the constitutional obligation to provide free legal aid to a poor accused this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. [See: Khatri (II) v. State of Bihar, 1981 (1) SCC 627 at p. 631]. The said observations would apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State to provide medical aid to preserve human life. In the matter of allocation of funds for medical services the said constitutional obligation of the State has to be kept in view. It is necessary that a time-bound plan for providing these services should be chalked out keeping in view the recommendations of the Committee as well as the requirements for ensuring availability of proper medical services in this regard as indicated by us and steps should be taken to implement the same. The State of West Bengal alone is a party to these proceedings. Other States, though not parties, should also

take necessary steps in the light of the recommendations made by the Committee, the directions contained in the Memorandum of the Government of West Bengal dated 22-08-1995 and the further directions given herein."

5. They also referred and relied upon the judgment in the case of **Khatri and Ors. Vs. State of Bihar and Ors.; (1981) 1 SCC 627**, wherein, while considering the right of free legal aid to poor and indigent accused who are incapable of engaging lawyers and while dealing with the submission of State Government that it is unable to do so for want of requisite fund, it was held as under:

"5. That takes us to one other important issue which arises in this case. It is clear from the particulars supplied by the State from the records of the various judicial magistrates dealing with the blinded prisoners from time to time that, neither at the time when the blinded prisoners were produced for the first time before the judicial magistrate nor at the time when the remand orders were passed, was any legal representation available to most of the blinded prisoners. The records of the judicial magistrates show that no legal representation was provided to the blinded prisoners, because none of them asked for it nor did the judicial magistrates enquire from the blinded prisoners produced before them either initially or at the time of remand whether they wanted any legal representation at State cost. The only excuse for not providing legal representation to the blinded prisoners at the cost of the State was that none of the blinded prisoners asked for it. The result was that barring two or three blinded prisoners who managed to get a lawyer to represent them at the later stages of remand, most of the blinded prisoners were not represented by any lawyers and save a few who were released on bail, and that too after being in jail for quite some time, the rest of them continued to languish in jail. It is difficult to understand how this state of affairs could be permitted

to continue despite the decision of this Court in Hussainara Khatonn's case. This Court has pointed out in Hussainara Khatoon's case (supra) which was decided as far back as 9th March, 1979 that the right to free legal services is 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 and the State is under a constitutional 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. It is unfortunate that though this Court declared the right to legal aid as a Fundamental Right of an accused person by a process of judicial construction of Article 21, most of the States in the country have not taken note of this decision and provided free legal services to a person accused of an offence. We regret this disregard of the decision of the highest court in the land by many of the States despite the constitutional declaration in Article 141 that the law declared by this Court shall be binding through-out the territory of India. Mr. K. G. Bhagat on behalf of the State agreed that in view of the decision of this Court the State was bound to provide free legal services to an indigent accused but he suggested that the State might find it difficulty to do so owing to financial constraints. We may point out to the State of Bihar that it cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability. The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for his purpose has to be done by the State. The State may have its financial constraints and its priorities in expenditure but, as pointed out by the court in *Rhem v. Malcolm*. "The law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty" and to quote the words of Justice Blackmun in *Jackson vs. Bishop*, "humane considerations and constitutional requirements are not in this day to be measured by dollar considerations."

Moreover, this constitutional obligation to provide free legal services to an indigent accused does not arise only when the trial commences but also attaches when the accused is for the first time produced before the magistrate. It is elementary that the jeopardy to his personal liberty arises as soon as a person is arrested and produced before a magistrate, for it is at that stage that he gets the first opportunity to apply for bail and obtain his release as also to resist remand to police or jail custody. That is the stage at which an accused person needs competent legal advice and representation and no procedure can be said to be reasonable, fair and just which denies legal advice and representation to him at this stage. We must, therefore, hold that the State is under a constitutional obligation to provide free legal services to an indigent accused not only at the stage of trial but also at the stage when he is first produced before the magistrate as also when he is remanded from time to time.

6. But even this right to free legal services would be illusory for an indigent accused unless the magistrate or the Sessions Judge before whom he is produced informs him of such right. It is common knowledge that about 70 per cent of the people in the rural areas are illiterate and even more than that percentage of people are not aware of the rights conferred upon them by law. There is so much lack of legal awareness that it has always been recognised as one of the principal items of the programme of the legal aid movement in this country to promote legal literacy. 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 of its purpose. 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 obtain free legal services at the cost of the State. Unfortunately, the judicial magistrates failed to discharge this obligation in the case of the blinded prisoners and they merely stated that no

legal representation was asked for by the blinded prisoners and hence none was provided. We would, therefore, direct the magistrates and Session Judges in the country to inform every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the State. Unless he is not willing to take advantage of the free legal services provided by the State, he must be provided legal representation at the cost of the State. We would also direct the State of Bihar and require every other State in the country to make provision for grant of free legal services to an accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or incommunicable situation. The only qualification would be that 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 circumstances of the case and the needs of social justice require that he should be given free legal representation. 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."

6. Yet again in the case of **Municipal Council, Ratlam Vs. Shri Vardichan and Ors; (1980) 4 SCC 162**, the Hon'ble Supreme Court held as under:

"12. The statutory setting being thus plain, the municipality cannot extricate itself from its responsibility. Its plea is not that the facts are wrong but that the law is not right because the municipal funds being insufficient it cannot carry out the duties under Section 123 of the Act. This 'alibi' made us issue notice to the State which is now represented by counsel, Shri Gambhir, before us. The plea of the municipality that notwithstanding the public nuisance financial inability validly exonerates it from statutory liability has no juridical basis. The Criminal

Procedure Code operates against statutory bodies and others regardless of the cash in their coffers, even as human rights under Part III of the Constitution have to be respected by the State regardless of budgetary provision. Likewise, section 123 of the Act has no saving clause when the municipal council is penniless. Otherwise, a profligate statutory body or pachydermic governmental agency may legally defy duties under the law by urging in self-defence a self-created bankruptcy or perverted expenditure budget. That cannot be."

7. In case of **Avinash Mehrotra Vs. Union of India and Ors;** **(2009) 6 SCC 398**, while entertaining a Public Interest Litigation relating to a fire which started in kitchen of a middle school in the District Kumbakonam in the City of Madras, Tamil Nadu, their Lordships have held as under:

"46. It is fundamental right of each and every child to receive education free from fear of security and safety. The children cannot be compelled to receive education from an unsound and unsafe building.

47. In view of what happened in Lord Krishna Middle School in District Kumbakonam where 93 children were burnt alive and several similar incidences had happened in the past, therefore, it has become imperative to direct that safety measures as prescribed by the National Building Code of India, 2005 be implemented by all government and private schools functioning in our country. We direct that:-

(i) Before granting recognition or affiliation, the State Governments and Union Territories concerned are directed to ensure that the buildings are safe and secured from every angle and they are constructed according to the safety norms incorporated in the National Building Code of India.

(ii) All existing government and private schools shall install fire extinguishing equipments within a period of six months.

(iii) The school buildings be kept free from inflammable and toxic material. If storage is inevitable, they should be stored safely.

(iv) Evaluation of structural aspect of the school may be carried out periodically. We direct that the engineers and officials concerned must strictly follow the National Building Code. The safety certificate be issued only after proper inspection. Dereliction in duty must attract immediate disciplinary action against the concerned officials.

(v) Necessary training be imparted to the staff and other officials of the school to use the fire extinguishing equipments."

(Emphasis supplied)

8. On the strength of aforesaid authoritative judicial pronouncements, learned *Amicus Curiae* canvassed that State cannot plead financial constraint to obviate its statutory and fundamental obligation to provide safe and secure environment to school going children.

9. The proposition *ibid* is not disputed even by the learned Advocate General.

10. Learned Additional Solicitor General submits that despite his repeated requests to the State Authorities, to share with him information/communication which they are having with the Central Government Officials to get financial aid to the tune of ₹2,000 crores for construction/repair of the school buildings/rooms so as to enable him to use his good offices, they have turned deaf ear. It

is very sorry state of affairs on the part of the State Authorities which also reflects upon their callous and apathetic approach to an issue of utmost and vital importance. However, learned Advocate General has extended an assurance to provide the necessary information/communication to the learned Additional Solicitor General, during course of the day.

11. In the conspectus of aforesaid circumstances, we are not convinced that the State Authorities are genuinely sincere to ensure safe and secure infrastructure to the school going children even in near future. Therefore, we deem it just and proper to direct the Chief Secretary, Government of Rajasthan to file an affidavit disclosing the complete road map for construction/repair of the school buildings/rooms. The affidavit shall also contain the measures proposed to be taken to ensure safety of the school going children and the action proposed to be taken against the erring official(s) responsible for mishappening, if any, occurs in the meanwhile.

12. We request the learned Amicus Curiae as also the learned Advocate General to suggest a panel of experts/expert teams who can supervise the construction/repair of the school buildings/rooms and also issue a certificate that the same is in accordance with the norms prescribed by the National Commission for Protection of Child Rights.

13. List on 19.03.2026 at 10:30 A.M. as prayed.

(ASHOK KUMAR JAIN),J
Chetna/1-7

(MAHENDAR KUMAR GOYAL),J