

# **EPISTOLARY JURISDICTION: A TOOL TO ENSURE HUMAN RIGHTS OF HAVE-NOTS**

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## **INTRODUCTION**

Writing is an important tool to participate in a democratic society and also part of the freedom of speech and expression as guaranteed under the Constitution of India<sup>2</sup>. In *Francis Coralie v Delhi Administration*<sup>3</sup>, Court observed that the word “life” includes “facilities for reading, writing, and expressing oneself in diverse forms. No doubt, writing can be a powerful tool to help people to explore, articulate, refine ideas and even access justice. In Indian human rights jurisprudence, the process of writing a letter to the judge to secure justice is called ‘Epistolary Jurisdiction’. The epistolary jurisdiction has enabled the Constitutional Courts in India to treat a letter by a person or on behalf of an aggrieved, telegram or an article in the newspaper as a writ petition<sup>4</sup>

Epistolary Jurisdiction is a unique feature of Public Interest Litigation. It provides access to justice to the poor and the weaker section of the society. The Right to access to justice is one of the fundamental rights and right to an effective remedy is a key element of human rights protection and serves as a procedural means to ensure that individuals can enforce their rights and obtain redress<sup>5</sup>The epistolary/letter jurisdiction has significance for its symbolic reaching out to the needy and the Court entertains a letter as writ petition ignoring all procedural norms and technicalities. It is a new strategy adopted by the Indian judiciary for protection of the human rights of the vulnerable sections of the society. In *V. Annaraja vs The Secretary to The Union Of India*<sup>6</sup>, the Court held that the constitutional courts can entertain letter petitions and deal with them as writ petitions. But it will depend upon the nature of the issue sought to be advanced. There cannot be uncontrolled or unguided exercise of epistolary jurisdiction. Further, Supreme Court in *Re-Inhuman conditions in 1382 Prisons case*<sup>7</sup>, observed as follows:

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<sup>2</sup> Article 19(1)(a) of Indian Constitution.

<sup>3</sup> 1981 AIR 746

<sup>4</sup> Soli J. Sorabji, “Protection of Fundamental Rights by Public Interest Litigation,” in Sarah Hossain, Shahdeen Malik & Bushra Musa (eds), *Public Interest Litigation in South Asia*, Dhaka 1994, at p. 31

<sup>5</sup> Article 8 of UDHR, 1948 and Article 3 of ICCPR, 1966

<sup>6</sup> *V. Annaraja vs The Secretary to The Union of India*, Ministry of Environment and Forests, Madras High Court on 8 February, 2019

<sup>7</sup> 2018 SCC Online SC 1662

During the last several decades, public interest litigation including Epistolary Jurisdiction has compelled this Court to consider issues relating to the environment, social justice, violation of human rights and disregard for Article 21 of the Indian Constitution ; either because of an absence of governance due to the failure of the State to faithfully and sincerely implement laws enacted by Parliament or due to mis-governance by the State, that is, the Central Government, the State Governments and Union Territory Administrations leading to rampant illegalities. The failure of the State to take remedial steps to fill in the gap when there is no operative law, except that enshrined in the Constitution, more particularly Article 21 has resulted in invoking Epistolary Jurisdiction which is a part of public interest litigation.

People living in poverty are often prevented from claiming, enforcing and contesting violations of their human rights. Without equal access to justice, persons below the poverty line are not able to claim their basic rights. The inability of the poor to quest for justice remedies through existing systems increases their vulnerability to poverty and violations of their human rights. Weaker sections of the society in India are unable to have access justice in the higher courts due to complex and technical legal procedure, lack of financial resources-the cost of legal advice, lack of access to information, arise out of inequality and structural discrimination against the poorest and most marginalized and lack of legal identity etc. Furthermore, institutional and systemic obstacles are found in the ideology, design and operation of justice system that create barriers for the poor at all stages of the justice chain<sup>8</sup>.

Providing access to justice to the marginalized sections is a fundamental tool for poverty eradication and the enjoyment of all human rights in a number of ways. Access to justice can play a significant role both in protecting rights and in fulfilling those rights. Invoking epistolary jurisdiction is a boon for have-nots to secure justice without financial implications. In this background, the paper examines Whether proper implementation of epistolary jurisdiction in constitutional courts will enhance access to justice for poor people in India to enforce their basic human rights?

Is epistolary jurisdiction an effective tool and viable mechanism to protect and promote the human rights of have-nots? Further, the paper discusses the role of constitutional courts in entertaining letter petitions to protect the rights of the needy.

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<sup>8</sup> The justice chain is the series of steps that a person has to take to access the formal justice system, or to claim her rights. UN Women, 2011, pp. 11–12

## **EPISTOLARY**

Epistolary was formed from the noun epistle, which refers to a composition written in the form of a letter to a particular person or group. Epistle came to English in the 13<sup>th</sup> century, via Anglo-French and Latin, from the Greek noun *epistolē*, meaning "message" or "letter." *Epistolē*, in turn, came from the verb *epistellein*, meaning "to send to" or "to send from." Epistolary appeared in English four centuries after epistle and can be used to describe something related to or contained in a letter (as in "epistolary greetings") or composed of letters (as in "an epistolary novel")<sup>9</sup>.

## **DEVELOPMENT AND EXPANSION OF EPISTOLARY JURISDICTION**

Letter Petition/epistolary jurisdiction means relaxing the traditional practice of locus standi to enable vulnerable sections of the society to approach courts by sending postcards/letters, and making others to represent them in court. In *Gideon v. Wainwright*<sup>10</sup>, the U.S Supreme Court accepted a postcard from a prisoner and it was treated as a writ and Court adopted the innovative methods to provide justice by liberalizing the rule of locus standi and considered the letter as petition. This innovation represents the fact that the rules of procedure of the court are to aid the administration of justice, to advance the cause of justice and not defeat it. In India, the Supreme Court became a symbol of hope for the deprived and vulnerable sections of Indian society<sup>11</sup>.

In *Fertilizer Corporation Kamgar Union v. Union of India*<sup>12</sup>, Justice V. R. Krishna Iyer used the term 'Epistolary Jurisdiction' and said that the technical procedure had to be relaxed to meet the ends of justice. Mere letters addressed to the Court can be treated as a writ petition in cases where there is a glaring violation of basic rights of the citizen and even in the area of environmental protection as well. In *S. P. Gupta v. Union of India*<sup>13</sup> Court observed that: Where a legal wrong or a legal injury is caused [or threatened] to a person or to a determinate class of persons. ' and such person[s] ... [are] by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court<sup>14</sup> and in case of breach of any fundamental right of such person or

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<sup>9</sup> According to Merriam- Dictionary

<sup>10</sup> (1963) 372 U.S. 335.

<sup>11</sup> P.N. Bhagwati & C.J. Dias Article on "The Judiciary in India: A Hunger and Thirst for Justice" Published In NUJS Law Review (5 )171 (2012) p.178

<sup>12</sup> [1981] SC 344 (AIR)

<sup>13</sup> AIR 1982 SC 149

<sup>14</sup> Article 226 of the Constitution of India

determinate class of persons, in the Supreme Court<sup>15</sup> seeking judicial redress for the legal wrong or injury caused to such person or determine class.

In order to eliminate impediments to access to justice, the Court held that a petitioner can approach the Constitutional Courts by means of a simple letter giving way to establishment of epistolary jurisdiction<sup>16</sup>. The object behind letter petition was explained in *State of Uttaranchal v. Balwant Singh Chauffal*<sup>17</sup> and observed that:

This Court exercising its jurisdiction of Judicial Review realized that a very large section of the society, because of extreme poverty, ignorance, they have no access to justice. Predominantly, to provide access to justice to the poor, deprived, vulnerable, discriminated and marginalized sections of the society, this Court has initiated, encouraged and propelled the public interest litigation. The litigation is upshot and product of this Court's deep and intense urge to fulfill its bounden duty and constitutional obligation.

In order to promote the citizens to bring to the notice of the Court the socio-legal problems of the marginalized and down-trodden, Constitutional Courts in India have been treating even 'letters', 'postcards' and 'telegrams' addressed to judges, the Court or the Legal Aid Committee, as writ petitions. This is, indeed, a significant development that secernate Indian judicial system from other judicial systems in the world. By adopting this method, the deprived and weaker sections of the society are not only exempted from legal expenses, but they are also absolved of the cumbersome procedure which is not easily understandable to the poor, illiterate persons who have no idea of law and Court-door at the very outset<sup>18</sup>. The process of approaching the Courts by way of letters, telegrams and postcards started continuing and in number of cases, where the Supreme Court entertained telegrams, letters and postcards as PIL cases<sup>19</sup>.

Where there is a violation of a fundamental or other legal right of a person or class of persons who by reason of poverty/disability/socially or economically disadvantaged position cannot approach a Court of law for justice, it would be open to any public-spirited individual or social action group to bring an action for vindication of the fundamental or other legal right of such

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<sup>15</sup> Article 32 of the Constitution of India

<sup>16</sup> *Ms. Veena Sethi v. State of Bihar* AIR 1983 SC 339, *Citizen for Democracy through its President v. State of Assam* AIR 1996 SC 2193.

<sup>17</sup> AIR 2010 SC 2550 at 2560 para 34.

<sup>18</sup> *Chintakrindi Venkateswarlu vs Head Constable 6<sup>th</sup> Town Police*, 1997 (2) APLJ 372

<sup>19</sup> *Upendra Baxi v. State of U.P.*, (1981) 3 SCALE 113; *Olga Tellis v. State of Maharashtra*; *Kadra Pahadiya v. State of Bihar*; *Sheela Barse v. State of Maharashtra*; *Ghanshyam Pardes v. State of Tamil Nadu* (W.P. No. 2261 of 1980); *Veena Sethi v. State of Bihar*; *Katheerji Bi v. Superintendent Engineer; Salal Hydro-Electric Project v. State of J & K*; *Ram Kumar Mishra v. State of Bihar*; *Neerja Chaudhary v. State of M.P.*; *Lakshmi Kant Pande v. Union of India*; *Janki v. Sardar Nagar Municipality*; *Pratul Kumar Sinha v. State of Orissa* and *Matter of Complaint Received From Delhi Judicial Service Association, Tis Hazari Court, Delhi* (1989) 2 SCALE 654.

individual or class of individuals and this can be done not only by filing regular writ petition under Articles 226 and 32 of Constitution of India respectively before High Court and Supreme Court, but also by addressing a letter to the Court<sup>20</sup>.

Even if a letter is addressed to an individual judge of the Court, it should be entertained, provided of course it is by or on behalf of a person in custody or on behalf of a woman or a child or a class or deprived or disadvantaged persons. Letters addressed to individual justices of these Courts should not be rejected merely because they fail to conform to the preferred form of address nor should the Court adopt a rigid stance that no letters will be entertained unless they are supported by an affidavit. If the Court were to insist on an affidavit as a condition of entertaining the letters the entire object and purpose of epistolary jurisdiction would be defeated and frustrated because most of the poor and disadvantaged persons will then not be able to have easy access to the Court and even the social action groups will find it difficult to approach the Court.

### **SUBJECT MATTERS OF EPISTOLARY JURISDICTION/LETTER PETITIONS**

The Supreme Court of India laid down the guidelines to be followed for entertaining letters/petitions filed by the general public. No petition involving individual/ personal matter shall be entertained and letter-petitions falling under the following categories alone will ordinarily be entertained as Public Interest Litigation<sup>21</sup>:

Bonded labor matters;

Neglected children;

Non-payment of minimum wages;

Petitions from jails complaining of harassment, death in jail, speedy trial as a fundamental right, etc.;

Petitions for premature release<sup>22</sup>, parole etc. are not matters which deserve to be treated as petitions under Article 32 as they can effectively be dealt with by the concerned High Courts.

Petitions against police for refusing to register a case, harassment by police and death in police custody; petitions against atrocities on women, in particular harassment of bride, bride-burning, rape, murder, kidnapping, etc. Petitions complaining harassment or torture of persons belonging to scheduled caste and scheduled tribes; Petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of

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<sup>20</sup> M.C. Mehta And Anr vs Union of India & Ors 1987 AIR 1086, 1987 SCR (1) 819

<sup>21</sup>Annexure I of The Supreme Court of India Handbook on Practice and Procedure and Office Procedure, 2017

<sup>22</sup> Added based on Order dated 19.8.1993 of the Chief Justice of India.

heritage and culture, antiques, forest and wildlife and other matters of public importance; Petitions from riot-victims; Family pensions.

## **PROCEDURE**

Public Interest Litigation Cell screens all the letter petitions received from the general public and petitions which fall under the above-mentioned subject matters will be placed before a judge to be nominated by the Chief Justice of India for directions after which the case will be listed before the Bench concerned. If a letter is to be lodged, the orders to that effect should be passed by Registrar (Judicial) or any Registrar nominated by the Chief Justice of India, instead of Additional Registrar, or any junior officer.

To begin with, only one judge was allotted this work and the number increased to two or three later depending on the workload. Submission notes are put up before the judge nominated for such periods as may be decided by the Chief Justice of India from time to time<sup>23</sup>. If on scrutiny of a letter petition, it is found that the same is not covered under the PIL guidelines and no public interest is involved, then the same may be lodged only after the approval from the Registrar nominated by the Chief Justice of India. It may be worthwhile to require an affidavit to be filed in support of the statements contained in the petition whenever it is not too onerous a requirement.

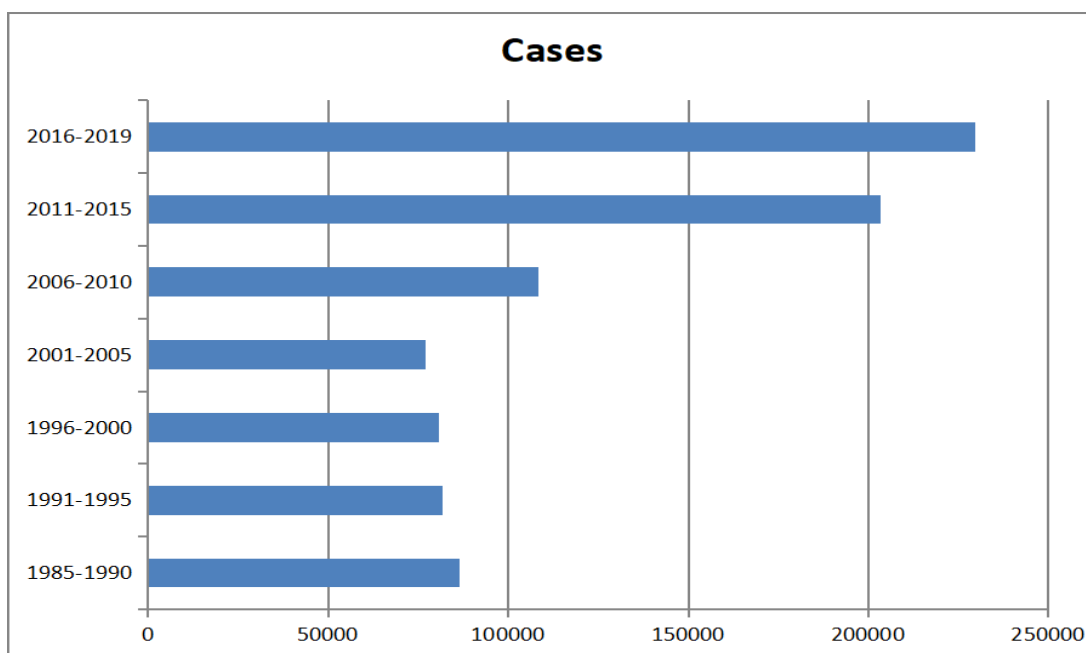
## **NUMBER OF LETTER PETITIONS**

After liberalizing the old concept of locus standi by the Supreme Court, many letters were received from the general public across the country and strict rules of 'locus standi' which were applicable in the writ jurisdiction of our Constitutional Courts has practically vanished. This has really helped to improve the miseries of thousands of persons, arising from repression, governmental omissions or excesses, administrative lethargy or arbitrariness or the non-enforcement of beneficial legislation. Cases of under-trials as well convicted prisoners, women in protective homes, unorganized laborers, untouchables, miseries of scheduled castes and tribes, landless agricultural laborers, slum-dwellers etc. are taken up<sup>24</sup>.

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<sup>23</sup> Added as per Order dated 29.8.2003 of the Chief Justice of India.

<sup>24</sup> Access to Justice-by-Justice M. Jagannadha Rao, Chairman of seventeenth Law Commission of India.



This graph depicts the total number of cases raised in every five years, since 1985 till 31.10.2019<sup>25</sup>. This shows that, without procedural formalities, even poor people can also knock on the door of justice before the Supreme Court of India. Unfortunately, even though the Supreme Court received over 75,000 letter petitions in 2011 and 2012, not a single one was found fit to be converted into a writ petition or public interest litigation. However, as many as five letters, out of over 66,000 received during 2008, 2009 and 2010 were treated as writ petitions.<sup>26</sup> Another important development during this period is the rise in letter litigation and the advent of epistolary jurisdiction. Umpteen number of letter petitions were received by the Supreme Court as well as a large number of social action litigation were commenced.

**The table below shows the number of letters received from 1985-2019**

<b>Year</b>	<b>1985</b>	<b>1986</b>	<b>1987</b>	<b>1988</b>	<b>1989</b>	<b>1990</b>
<b>No. of Letters</b>	24716	25419	18411	16271	17769	17971
<b>Year</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>
<b>No. of Letters</b>	17474	16961	15749	16466	15094	19180
<b>Year</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
<b>No. of Letters</b>	15503	13087	15339	17764	17198	15518
<b>Year</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
<b>No. of Letters</b>	14293	15653	14261	19840	18200	24666

<sup>25</sup>[https://main.sci.gov.in/pdf/AnnualReports/Supreme\\_High\\_Court\\_AR\\_English\\_2018-19](https://main.sci.gov.in/pdf/AnnualReports/Supreme_High_Court_AR_English_2018-19).

<sup>26</sup> RTI application filed by Uttar Pradesh resident Gaurav Agarwal, the Supreme Court registry stated that in 2008 [ New Delhi, Ashish Tripathi, Dec 8, 2013, DHNS]

<b>Year</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>No. of Letters</b>	21180	24611	35026	41314	45588	30404
<b>Year</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	
<b>No. of Letters</b>	51203	53282	59561	61061	55791	

The letters sent between 2015 to 2019 under epistolary jurisdiction are in high rise, i.e., 2 lakhs to 2.5 lakhs. Awareness regarding subject matters of letter petitions and Public Interest Litigation Cell need to be made known to the general public. Having rights including remedy without access to justice will defeat the very objectives enshrined under the Constitution of India. Epistolary (Letter petitions) jurisdiction is the hope for have-nots to approach the court of law without any hurdles.

### **JUDICIAL DICTUM TO ENSURE HUMAN RIGHTS VIA EPISTOLARY JURISDICTION**

Constitutional Courts in India have played a significant role in entertaining letter petitions filed by the undefendable groups of the society. The exercise of epistolary jurisdiction “was a major breakthrough achieved by the Apex Court in bringing justice closer to the large masses of people”. This expansive jurisdiction was further expanded by the Supreme Court itself by conferring upon itself the epistolary jurisdiction and added to it the jurisdiction enjoyed by entertaining social action litigation.<sup>27</sup> In a series of cases, the Supreme Court exercised its epistolary jurisdiction and took suo moto actions on mere postal letters disclosing the human rights violations in society. Human rights violations, which were published in the newspapers, were taken into judicial consideration. The court entertains the petitions which are being filed by the public-spirited persons in the public interest<sup>28</sup>.

In *Sunil Batra v. Delhi Administration*<sup>29</sup>, A prisoner wrote to Justice Krishna Iyer from prison cell that another prisoner in his neighbor prison cell was being tortured by police by inserting a baton into his anus. The Court considered that letter as a writ petition, and The Court said that the technicalities cannot stop the court from protecting the civil liberties of the individuals. In *Kadra Pahadiya & Others v Bihar*<sup>30</sup> Apex Court positively responded to a letter written by a

<sup>27</sup>Law commission of India one hundred twenty fifth report on the Supreme Court -- A Fresh Look,1988

<sup>28</sup> Prof. Dr. Nishtha Jaswal & Dr. Lakhwinder Singh “Judicial Activism in India” published in *Bharati Law Review*, Jan. – March, 2017

<sup>29</sup> AIR 1978 SC 1675 Court stated that: "technicalities and legal niceties are no impediment to the court entertaining even an informal communication as a proceeding for habeas corpus if the basic facts are found"

<sup>30</sup> 1981 SC 939 and (1983) 2 SCC 104



social scientist and ordered acquittal of undertrial prisoners who were young boys. In *Lakshmi Kant Pandey v. Union of India*<sup>31</sup>, Court accepted the petition on the basis of a letter revealing the transportation of hundreds of unwanted newborn babies Kolkata slums to abroad leading to death of these new babies because of different physical conditions. Taking note of this, the Apex Court laid down various guidelines in the matter of foreign or inter-country adoptions. Further, in *Sheela Barse vs the State of Maharashtra*<sup>32</sup>, Court not only recognized the Epistolary Jurisdiction of the constitutional courts but also made this informal way of initiation of writ proceedings in the Supreme Court, especially when the question of upholding the human rights of the needy came before the court. The petitioner, a journalist, in her letter addressed to this Court stated that Five out of fifteen women prisoners interviewed by her in the Bombay Central Jail alleged that they had been assaulted by the police in the police lock up and two of them in particular alleged that they had been assaulted and tortured in the lockup. Treating the letter as a writ petition the Court issued notices to all concerned. Further, the Court gave instructions that safeguarded the safety of women prisoners and the interrogation should take place only in the presence of female constables.

In *D.K. Basu v State of West Bengal*,<sup>33</sup> D.K Basu addressed a letter to the Apex Court drawing the court's attention to a piece of news published in various newspapers about deaths in police custody and lockups. In the letter, it was mentioned that such crimes of custodial violence always went unpunished despite the efforts made and urged the courts to look into the matter so that the family members of the victims are given some form of compensation. He requested that the letter be treated as a Writ Petition within the Public Interest Litigation category. Considering the significance of the issues brought up in the letter, it was treated as a written petition and the defendants were informed. In *Citizens for Democracy v. State of Assam*<sup>34</sup>, Supreme Court while invoking epistolary jurisdiction admitted a writ petition on the basis of concern raised through letter from *Kuldip Nayar*<sup>35</sup> informing about the inhumane treatment to seven TADA detainees in Guwahati. The Court taking into account the duty of jail authorities & police to prevent prisoners from escaping from the custody recommended to maintain a balance between adequate measures to prevent detainees escaping and protection of prisoners'

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<sup>31</sup> AIR 1984 SC 468

<sup>32</sup> (1988) 4 SCC 233

<sup>33</sup> *D.K. Basu v. West Bengal* AIR 1997 SC 610 (D.K. Basu was the Executive Chairman of Legal Aid Services, West Bengal)

<sup>34</sup> (1995) 3 SCC 743.

<sup>35</sup> *Kuldip Nayar* was an Indian journalist, syndicated columnist, human rights activist, author and former High Commissioner of India to the United Kingdom noted for his long career as a left-wing political commentator. He was also nominated as a member of the Upper House of the Indian Parliament in 1997

rights under the Constitution. Unguided powers in the hands of authorities to use fetters or chains are bad in law. Handcuffs or fetters can't be used on a prisoner, whether convicted or under-trial, without prior authorization of a magistrate. This authorization should only be granted in exceptional cases concerning such circumstances pointing towards a strong inference of prisoner escaping out of custody.

In *Bandhua Mukti Morcha v. Union of India*,<sup>36</sup> the Court treated a letter of a volunteer NGO, alleging that there were large numbers of workers in the stone quarries of Haryana who were bonded laborer's, in violation of the Bonded Labor System (Abolition) Act, 1976. Based on the letter, the Court appointed two lawyers as commissioners to visit the stone quarries and to interview the workers named in the petition.

In *Mukesh Advani v State of Madhya Pradesh*,<sup>37</sup> an advocate addressed a letter to Judges of the Supreme Court, depicting the horrified plight of bonded labor from Tamil Nadu, working in stone quarries. Entertaining the complaint, the Supreme Court treated the letter "as part of social action litigation as a writ petition under Article 32 of the Constitution".<sup>38</sup> In *RLEK, Dehradun v. State of Uttar Pradesh*<sup>39</sup>, group of persons wrote a letter to the Supreme Court of India against incessant mining in Mussoorie, which caused denudation and fastened the process of soil erosion, which led to frequent landslides and blockage of water. The Court considered it as a writ petition under Article 32 of the Constitution of India and ordered appropriate relief to the petitioners<sup>40</sup>.

In the case of deforestation, the Court should continue to recognize epistolary jurisdiction as a way to increase and equalize access to the judicial system.<sup>41</sup> In *Rural Litigation and Entitlement Kendra v. State of UP*<sup>42</sup> a letter addressed by the Rural Litigation and Entitlement Kendra, Dehradun, was treated as writ petition and the Apex Court directed closing down the mines of 'A' category located within the municipal limits of Mussoorie. In *M.C.Mehtha v. Union of India*<sup>43</sup>, news item published under the title 'Falling Groundwater Threatens City' in Indian Express on 18-3-1996 was considered and the Supreme Court directed the Central Government to constitute the Central Ground Water Board under Section 3(3) of Environment

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<sup>36</sup> 1984 AIR 802, 831

<sup>37</sup> 1985 AIR 1363 27.

<sup>38</sup> Ibid

<sup>39</sup> 1985 SCR (3) 169.

<sup>40</sup> Infra note 31 at 2.

<sup>41</sup> Ajit Menon, *Situating Law: Adivasi Rights and the Political Economy of Environment and Development in India*, in *Law, Land Use and The Environment, Afro-Indian Dialogues* 363 (2007).

<sup>42</sup> AIR 1985 SC 652,

<sup>43</sup> (1997) 11 SCC 312(Ground Water Level Case)

Protection Act, 1986 . In *Subhash Kumar v. State of Bihar and Ors*<sup>44</sup> has imposed heavy costs on malicious petitions filed by the petitioners.

In *Parmanand Katara v. Union of India*<sup>45</sup>, a newspaper article titled, “Law Helps the Injured to die”, published by The Hindustan Times was accepted by the Apex Court and directed medical establishments to provide instant medical aid to such injured people, notwithstanding the formalities to be followed.

Similarly, in *Nilibati Behra v State of Orissa*, a mother wrote a letter to the Supreme Court seeking an order of Habeas Corpus with regard to her dead son. The letter was treated as a writ petition. In *Upendra Baxii (Dr) vs. State of UP*, the Supreme Court accepted a letter written by two law professionals as a matter of public interest litigation and treated it as a writ petition before proceeding to issue guidelines with a view of improving the pathetic conditions prevailing in the government protective homes at Agra. In *Veena Seth v. State of Bihar*<sup>46</sup>, the Supreme Court treated a letter addressed to a Judge of Supreme Court by the Free Legal Aid Committee at Hazaribagh, Bihar a writ petition.

In the *ASIAD case*<sup>47</sup> too, a letter was dealt with as a writ petition by the Supreme Court for ensuring the observance of certain labour laws. In a few cases the Courts have even taken suo motu cognizance of ‘letters to editor’ in newspapers and treating them as petitions granting appropriate relief<sup>48</sup>. In *Olga Tellis*<sup>49</sup> case, Court entertained a letter addressed by a journalist claiming relief against demolition of the homes of pavement dwellers by the Bombay Municipal Corporation.

## CONCLUSION

In India, in consonance with the doctrine of participatory justice<sup>50</sup>, the doors of the court were opened to the underprivileged and helpless people who are unable to bear the cost of litigation or are unaware of their rights<sup>51</sup>. The maximum use of the epistolary jurisdiction of the higher judiciary could be instrumental to uphold and ensure the Human Rights of persons belonging to socially and economically weaker sections. Epistolary jurisdiction seeks to bypass all

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<sup>44</sup> AIR 1991 SC 420.

<sup>45</sup> 1989 AIR 2039. In this case, the petitioner brought to light the difficulties faced by persons injured in road and other accidents in availing urgent and life-saving medical treatment, since many hospitals and doctors refused to treat them unless certain legal procedural formalities were completed.

<sup>46</sup> AIR 1983 SC 339.

<sup>47</sup> Peoples’ Union for Democratic Rights v. Union of India, AIR 1982 SC 1473.

<sup>48</sup> Ram Pyari v. Union of India, AIR 1988 Raj 124.

<sup>49</sup> *Olga Tellis v State of Bombay*, AIR 1986 SC 180

<sup>50</sup> *Fertiliser Corporation Kamgar Union (Regd.) vs Union of India*, 1981, 1 SCC at p. 587

<sup>51</sup> *Ibid* d at p. 189

procedural, legal, institutional and structural barriers that may impede access to court. There is no Court fee, no special way of drafting and no special place of registry to file a petition are the characteristics of this dimension of letter petition. Further, it empowers the have-nots to get an equal status in accessing justice and enforcing their human rights. Ensuring access to justice necessitates a comprehensive and holistic approach that looks beyond legal and judicial reforms and tackles broader structural, social and economic factors. Therefore, it is the bounden duty of the State to facilitate access to justice in a practical and tangible sense for the poorest segments of society.

Further, the Framers of the Indian Constitution did not anticipate inserting express provisions to create an exception in the adversarial system of litigation regarding access to constitutional Higher Courts in their extraordinary jurisdiction. The lack of express authority in the Constitution caused judicial inertia and, for a long time, the poor people of India were kept at arm's length to access justice. Indian judiciary by the mid-nineties had played a significant and unique role in developing the quality of jurisprudence and norm setting, primarily using the right to life discourse through the epistolary jurisdiction. Higher Courts under Articles 32 and 226, less expensive and expedient access to justice was made available to the unfortunate millions of victims removing the constraints of adversarial system and introducing new principles of Social Action Litigation. The constitutional Courts have enhanced access to justice for the poor masses, exploring the hidden treasure of right to life guaranteed under Article 21 of the Indian Constitution.

Finally, author opines that if Parliament by law empowers the District Court within the local limits of its jurisdiction<sup>52</sup> to entertain letter petitions as well as writ petitions in a matter of violations of human rights of have-nots, there will be no impediments to access to justice to the needy and which minimizes the burden of Higher courts. If the District Judges are authorized to exercise the writ powers by Parliament, it would help the people to get affordable and speedy justice at their doors. Speedy and affordable justice to the people is the need of the hour. Providing basic rights including remedies without access justice are as written in water.

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<sup>52</sup> Article 32(3) of Constitution of India