

Epistolary and grown  
in an essentially  
individualistic society



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Epistolary jurisdiction is defined as a legal innovation devoid of many procedural technicalities through which the wronged or those seeking redress from the courts may channel their concerns to the courts by way of informal documentation such as letters, telegrams, and newspaper articles amongst others. 1 Generally, it is a procedural innovation that by passes the many limitations of accessing the courts process and consequently receiving redress caused by rigid requirements of standing (locus standi).

These requirements of locus standi, a product of a common law system that has developed and grown in an essentially individualistic society to deal with private- right duty patterns, provide that one must have a personal interest in a specific matter in order for them to institute court proceedings, thus they need to prove harm or injury caused to them in order to be heard by the court. 2 Epistolary jurisdiction was first developed in the United States in the case of Gideon v Wainwright<sup>3</sup> when a prisoner's postcard was accepted by the court as a petition, however, the principle of epistolary jurisdiction has by large been developed in India where its resultant form has been adapted and adopted in other South Asian countries including Pakistan and Bangladesh.

India has had a long history of fighting for the rights and freedoms of its majority population, most of whom are poor. The Supreme Court in its efforts to promote justice for all, that is the rich and poor, over-privileged and under-privileged, disadvantaged and vulnerable, exploited and excluded alike, has developed a special breed of public interest litigation which is known as Social Action Litigation. 4 SAL was developed as a response to the problem most people in India and many other third world countries face, poverty and

inequality among classes. The Supreme Court in India, through the efforts of the Chief Justice at the time, Justice P.

N Bhagwati, realized that access to court and redress of injustices had become a prerogative of the rich and wealthy, a means of protecting their interests. <sup>5</sup>Meanwhile, there was a large number of Indians, most of them poor, illiterate or unaware of their constitutional rights who were unable to access the courts and find legal redress for their abuses. The adversarial system of litigation was a hurdle in affording poor people legal redress and it was essential to rethink the entire litigation system and move away from Western influenced models of thinking in order to accommodate the circumstances of poor people. Since the adversarial system was based on the rule of fairness among parties, the poor and disadvantaged could not possibly be held to be on equal footing as those with enough resources to see their case through the process. <sup>6</sup>As a result, Social Action Litigation was developed to provide an alternative approach towards the traditional court process by departing away from the adversarial system but still preserving the principles of fair play.

<sup>7</sup>Consequently, it has become an avenue for the government to take a bolder step towards making human rights more meaningful for the poor and disadvantaged in India. 3. 1.

History of Epistolary Jurisdiction The Constitution of India guarantees a right to move the Supreme Court, through appropriate proceedings, for the enforcement of rights under it. <sup>8</sup>Moreover, the Constitution grants the Supreme Court authority to issue any order or writ, whichever may be

appropriate, for the enforcement of rights and freedoms guaranteed under it. 9 More so, the High Courts are granted the same prerogative within their territories for the enforcement of rights. 10 Thus, the Constitution of India grants a wide berth of appropriate avenues for Courts to uphold and enforce rights under the Constitution. However, for a long time these provisions of the Constitution remained ineffective as it was uncovered that Indian courts had outpriced the poor and disadvantaged, allowing only the wealthy to afford redress from them. Effectively, this left the poor and disadvantaged in a de facto state of lawlessness. It was impossible for the poor to approach the Court for justice because they lacked the awareness, assertiveness, and access to the machinery required to enforce their constitutional and legal rights. 11 More so, the rules of locus standi were an impediment to the redress of violations occasioned on the poor and disadvantaged.

The rules required that only persons who had suffered a specific legal injury, by reason of actual or threatened violation of a legal right or a legally-protected interest can bring an action for judicial redress. Additionally, it was only the holder of the right who could bring an action to court for redress. Obviously, this requirement of standing prevented many poor people who were unaware or ignorant of their rights and duties from moving the court to enforce their rights. This requirements also prevented access to courts for these groups of people due to the exorbitant court fees and legal costs. Moreover, the requirements of evidence for proving violations against them were impossible to satisfy since these groups of people rarely had the means or influence to collect material documentation to prove their cases. As

As a result, the Supreme Court decided to move away from the traditional rules of standing and broaden them to enable suits from the poor and disadvantaged to be instituted. In a landmark decision in the case of *Bandhua Mukti Morcha v Union of India*<sup>12</sup>, the court held that the 'appropriate relief' in Article 32 did not refer to appropriateness in reference to any rule whatsoever, but appropriateness in the purpose of the proceedings.

Consequently, the court held that Article 32 not only allowed the Supreme Court to make high prerogative writs such as habeas corpus, mandamus, prohibition, certiorari and quo warranto, but also make directives, orders and writs in the nature of these high prerogative writs. Therefore, if in making a directive, order or writ, the conditions of these high prerogative writs were not fulfilled, the Court could, nevertheless, issue directives, orders or writs appropriate for the enforcement of rights and fundamental freedoms in the Constitution. Following this decision, in the case of *People's Union for Democratic Rights v Union of India*,<sup>13</sup> the court expanded the rules of locus standi to include, where a legal wrong or a legal injury was caused to a person or to a class of persons by reason of violation of their constitutional or legal right, and such person or class of person was by reason of poverty or disability or socially or economically disadvantaged position unable to approach the court for relief, any member of the public or social action group acting bona fide could institute an action on their behalf. More so, in preserving fairness, the court acknowledging that it would not be right to expect these public spirited individuals or social action groups to cater from their own coffers the legal costs and court fees when instituting cases for the poor and downtrodden, it allowed for such cases to be instituted through

letters sent to the Supreme Court. Thus, the court developed a new procedure to be known as 'Epistolary Jurisdiction'. The courts in India have successfully adopted this interpretation of Article 32 and consequently epistolary jurisdiction.

In the landmark case of *Sunil Batra v. Delhi Administration*, the case was initiated by a letter that was written by a prisoner lodged in jail to a Judge of the Supreme Court. The prisoner complained of a brutal assault committed by a Head Warder on another prisoner. The Court treated that letter as a writ petition, and, while issuing various directions, 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." In *Upendra Baxi (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 *Parmanand Katara v. Union of India*, the Supreme Court accepted an application by an advocate that highlighted a news item titled "Law Helps the Injured to Die" published in a national daily, *The Hindustan Times*. 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 procedural formalities were completed in these medico-legal cases. The Supreme Court directed medical establishments to provide instant medical aid to such injured people, notwithstanding the formalities to be followed under the procedural criminal law.

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So was the case in *Nilibati Behra v State of Orissa and Drs*, 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 Pakistan the epistolary jurisdiction was first exercised in the case of *Darshan Mashi v the State*, where a telegram received from a bonded labourer, Darshan Mashi, was treated as a writ petition and proceeding was initiated to redress the bonded labourers who were under the inhuman condition under their master.

1 Edward R. Paranta, 'Access to Justice: Epistolary Jurisdiction as a Means of Enhancing Access to Justice in Kenya.' Published Dissertation Paper, Strathmore University School of Law, 2016. 2 3 4 Upendra Baxi, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India', 4 *Third World Legal Studies* 107, 108-11 (1985).

5 *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, 947: AIR 1973SC 1461, 2009 (Dwivedi, J. observed that the Supreme Court operated as an "arena of legal quibbling for men with long purses"). 6 *S. P. Gupta v. Union of India*, 1981 Supp. SC 87, 210 (Explicitly stating that there is a need for opening standing to the disadvantaged where there is legal injury.

The direct inference is an acknowledgement that it is unfavourable to continue to limit access to legal remedies). 7 P. N Bhangwatti and C. J Dias, 'the Judiciary in India: A Hunger and Thirst for Justice.' 8 Article 32 (1), the Indian Constitution. 9 Article 32 (2), the Indian Constitution. 10 Article 226, the Indian Constitution. 11 P. N Bhangwatti and C. J Dias, 'the Judiciary in India: A Hunger and Thirst for Justice.' 12 *Bandhua Mukti Morcha v Union of India and others* 1984 AIR 802, 1984 SCR (2) 67. 13 *People's Union for Democratic Rights v Union of India* 1982 AIR 1473, 1983 SCR (1) 456.  
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