



Justice A F M Abdur Rahman

**“UPHOLDING HUMAN RIGHT’S OF THE
POOR:
EPISTOLARY JURISDICTION COULD BE
INSTRUMENTAL”**

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Although not being covered by any of the article of the constitution alike Indian and constitution of Pakistan, the Supreme Judiciary of Bangladesh did not sit idle when called on for exercising its inherent power manifested through *Epistolary Jurisdiction* to uphold the Human Right’s of the poor. This has its qualifying characteristics from the jurisdiction known as ‘*Sua moto*’ so also *Public Interest Litigation (PIL)*. On being apprised through any means either through news paper feature or news item, from a letter, even transcript upon a postcard, telegram or by an oral information laid before the Judge, the superior Court may exercise such jurisdiction which meanwhile styled as *Epistolary Jurisdiction*. The adjective *Epistolary* has its genus in the word *Epistle* meaning thereby any of the letters in the new testament of the Bible and as such the adjective *Epistolary* generally manifest an expression made in the from of letter. Through a letter this jurisdiction of the higher judiciary can be invoked but certainly that must be connected with the question of upholding Human Rights.

The Indian constitution at its Article 39A empowered the High Courts of India to exercise *Epistolary Jurisdiction* which provides;

“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”.

Alike Indian constitution Article 39A, the Pakistan constitution of 1973 in its Article 184 provides that notwithstanding anything contained in Article 199, if it transpires to the Supreme Court that necessary action must be taken in respect of upholding fundamental rights involved in a case relating to public interest the court may pass any order. Relying upon such power the Supreme Court of India in a number of cases acted on non-formal petition specially letters sent to the court by any person or organization engaged in the cause of upholding Human Right’s, treating the letter as writ petition one of such is the case of **Bandhua Mukti Morcha -Vs- Union of India**¹. The hurdle the petitioner had to face initially in this case is the question of ‘*Locus Standi*’ of the *Bandhua Mukti Morcha* as it appeared that the said organization not being directly aggrieved with the time old bonded labour system not entitled to invoke the writ jurisdiction of the Supreme Court even though formal petition not to speak of through informal letter. Their Lordship examined the relevant Provision of Article 32 of the Indian constitution and found that no specific method of proceeding has been Provided in invoking the writ jurisdiction of the Indian Supreme Court and as such the Supreme Court of India is empowered to initiate writ proceeding either though formal or non-formal petition. So far the question of ‘*Locus Standi*’ of *Bandhua Mukti Morcha* was raised the court found that organization long engaged in upholding the interest of a class of people

who have little access to Justice due to monetary disability is entitled to initiate writ proceeding by way of informal petition since the organization can not be compelled to expand money in order to set the ball in motion for the poor people with monetary disability. (Reported in AIR 1984 (Sc) 802)

Earlier in the case of **Peoples Union of Democratic Rights and other -Vs- Union of India**¹, and **Sila Barce -Vs- the State of Maharastra**² and in many other cases after the case of **Bandhua Mukti Morcha**, the Supreme Court of India not only recognized the *Epistolary Jurisdiction* of the superior courts of India but also made this informal way of initiation of writ proceeding in the Supreme Court institutional, specially when the question of upholding the Human Right's of poor came before the court.

One of such celebrated case was **Sunil Batra -Vs- Delhi Administration**³ in which their Lordship in the India Supreme Court **Mr. Justice V.R. Krishna Aeyer, Mr. Justice R.S. Pathak and Mr. Justice Chinnappa Reddi** categorically opined that mere technically can not be bar is initiating writ proceeding when the same involves a '*Habeas Corpus*' matter. There lordship specifically expressed the view that the court shall uphold the human rights of the prisoner by exercising its writ jurisdiction when information reaches the court by any manner. In this case Sunil Batra, being a co-prisoner in Tihar jail witnessed one incidence of torture committed by a jail warden in order to extort money from the concerned prisoner in which the warden poked a batton through the annus of the prisoner. Sunil Batra managed to sent a letter to one of the Judge of the Supreme Court upon which writ proceeding was initiated. (1. Reported in AIR 1982 (Sc) 1472 2. Reported in AIR 1982 (Sc) 378 3. Reported in AIR 1982 (Sc) 1579)

In Pakistan the *Epistolary Jurisdiction* was first exercised in the case of **Darshan Mashi -Vs- the State**¹ where a telegram received from a bonded labour Darshan Mashi was treated as writ petition and proceeding was initiated to redress the bonded labours who were under the inhuman condition under there master. (Reported PLD (1990) 513)

First in its kind in Bangladesh is the case of **Dr. Fastina Perera**¹ which was initiated by Advocate Dr. Fastina Perera through sending a letter to the then Chief Justice of Bangladesh Mr. Justice Mahmudul Amin Chowdhury. Wherein she upon annexing a news paper report published in daily 'Prothom Alo' prayed for taking appropriate step against the illegal detention of 29 foreign national in Dhaka central jail for years together after expire of their terms of sentence. The honorable Chief Justice sent the letter to the High Court Division with a direction for taking appropriate step in the matter and their lordship **Mr. Justice Hamidul Hoque and Justice Nazmun Ara Sultana** issued '*Sua moto*' Rule in Criminal Misc Case No. 2737 of 2001. After hearing the rule on 22 May 2001 not only the 29 foreign national in the Dhaka central jail but also 822 such detainee were directed to be released from different jails of Bangladesh whose term of sentence expired earlier. (Reported in 53 DLR 414).

The galaxy of opportunity that has appeared from this new innovation in the jurisprudence has not yet been adequately exploited in Bangladesh. The people or class of people having monetary disability have little access to Justice which becoming more costlier due to the rise in rate of fees charged by the learned Advocates of the Bangladesh Supreme Court. A detained rikshaw puller under the Provision of Section 54 of the Code of Criminal Procedure certainly has no ability to approach a lawyer of the Apex Court to uphold his human right in obtaining the constitutional guarantee to be treated only in accordance with law if he is never brought before the court. The correct exploitation of the *Epistolary Jurisdiction* of the superior judiciary could be an instrumental to uphold the Human Right's of such persons. A country with 14 corror people having 80% below the poverty level must keep some avenue for the poorest oppressed to avail the judicial system of the country in upholding his or their

human rights without indulging himself to sell out his all belonging to meet up the ever rising greed of the person connected with judicial Justice.

But to talk about informal way of invoking writ jurisdiction of the superior court does not mean to avoid all the age old procedure of the system. It has already been settled in Indian jurisdiction that even if the *Epistolary Jurisdiction* is available to an appropriate petitioner the formal system of proceeding of writ must be followed where it is possible to follow. The Chief Justice of India in the year 1986 formulated a number of principle to be followed in exercising *Epistolary Jurisdiction* which is now being under follow in the Indian jurisdiction which is worth to mention;

1. To invoke Epistolary jurisdiction informal petition by way of letter, telegram or by laying information before the court must be addressed to the court and not to a particular Judge.
2. Informal petitions containing allegation regarding violation of human rights should only be treated as writ petition when such informal petition is preferred on behalf of socially in advanced people or class of people when such people or class of peoples suffers from any sort of disability monetary or physical specially when such person is a detainee.
3. There should be a public distress cell within the Supreme Court administration, which will consider these informal petitions and send the same to the appropriate bench for consideration of the same as writ by the Judges on their leave.
4. When any such informal petition on behalf of people in taken as writ, general notification in the news paper must be made allowing impleading parties in the writ either infavour or against the cause.
5. The court shall appoint amicus curia in the case and on public hearing decide the matter.
6. If any of the Judge desires to act on any information published in the newspaper he must act through the Chief Justice.

Although no such institutional action has yet been taken in Pakistan and in Bangladesh yet in view of the emerging non-accessibility to Justice due to poverty of the peoples the *Epistolary Jurisdiction* of Bangladesh Supreme Court needs institutional recognition. Such a recognition must first come from the Judges of this august institution prior to which a change in mind set should occur to some of the Judges who are too acquainted with formal procedure of the court and reluctant to even step beyond technicality. The desire to render Justice to the oppressed should be the only mesurstick whether *Epistolary Jurisdiction* should be exercised in future to uphold the Human Right's of the poor in Bangladesh.
