

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

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**Volume 5 | Issue 3**

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**2022**

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# Role of Public Interest Litigation in Reference to Human Rights Jurisprudence and Prisoner Rights

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## ABSTRACT

*Public Interest Litigation is the result of judicial activism and has been seen as an instrument of bringing justice to the doorstep of the poor and less fortunate. It came into existence as a response to an endemic problem of exploitation and injustice caused to the vulnerable sections of the society in India and in many Third World countries. The Indian Supreme Court thus devised the Public Interest Litigation principle; thereunder the public-spirited citizens or groups can activate the Court to prevent the infringement of fundamental rights/human rights of weaker sections. Public Interest Litigations have sought the implementation of constitutional and statutory obligations towards poor and weaker sections of the society. In this research work the researcher will discuss that how this instrument of Public Interest Litigation been used by the judiciary for the purpose of inculcating the human rights jurisprudence and protection of rights of the prisoners.*

**Keywords:** *Public Interest Litigation, Human Rights, Prisoner Rights, Fundamental Rights, Right to Life*

## I. INTRODUCTION

Human rights have a close connection with fundamental freedoms of individuals. Every human being is born free but everywhere he finds himself in chains, the chains of inhuman treatment, or unemployment, chains of color, caste, religion, race, sex, language, property, birth or place. The claim for human right everywhere breaks these chains. The struggle for human rights is more vital for the poor and developing countries than for the developed and affluent countries. The preamble of the Universal Declaration of Human Rights, 1948 states “recognition of the inherent and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. The said declaration provides in Article 3 that everyone has the right to life, liberty and security of persons. Similarly, Article 6(1) of the International Covenant on Civil and Political Rights, 1966, provides that “every human being has the inherent right to life. Law should protect this right. No one shall be deprived of

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his life.”<sup>2</sup>

India inherited a colonial legal heritage from British rule. Due to procedural technicalities courts were accessible only to rich and influential people, which in result continued to exploit the basic human rights of the marginalized and disadvantaged groups. So in post-emergency era it was pioneered by two Justices of the Supreme Court, Justice V. R. Krishna Iyer and Justice P. N. Bhagwati the possibility of providing access to justice to the poor and exploited people by relaxing the rules of standing. As a result Public Interest Litigation emerged and proved to be a savior of human rights of the poor and exploited ones.

The Supreme Court of India played a very vital role in protection of human rights of the prisoners. It became very vigilant against encroachments upon the Human Rights of the prisoners. Article 21 of the Indian Constitution provides that “No person shall be deprived of his life and Personal Liberty except according to procedure established by law.” The duty of the State to ensure the well being of those in prison and other institutions is equivalent to those in its care. The inmates of those institutions who are removed from the rest of the society, as a punishment, for protection or for care, are dependent upon the State for all aspects of their life. These cases have come before the Court because of the reason that State has failed to treat such people with same dignity. Cases relating to prisons and prisoners, mental health and detention,<sup>3</sup> hospitals<sup>4</sup> and institutions for women<sup>5</sup> all reveal a common concern. Various strands of concern can be identified including the long pendency of criminal cases,<sup>6</sup> the use of fetters, handcuffs and solitary confinement,<sup>7</sup> torture,<sup>8</sup> the exploitation of prison labour,<sup>9</sup> conditions in prisons,<sup>10</sup> the court’s concern that the petitioners approach an appropriate forum,<sup>11</sup> access to prisons,<sup>12</sup> sentencing detention and parole.<sup>13</sup>

Two things need to be considered in framing the policies while providing justice to the

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<sup>2</sup> S.R. BHANSALI, LAW RELATING TO HUMAN RIGHTS 45 (Universal Law Publishing Co. 2013).

<sup>3</sup> Rudul Shah v. State of Bihar, AIR 1983 SC 1086; Veena Sethi v. State of Bihar and others (1982) 2 SCC 583; Sant Bir v. State of Bihar, 1982 (1) SCALE 144; Sheela Barse v. UOI (1993) 4 SCC 204.

<sup>4</sup> Free Legal Aid Committee, Jamshedpur v. Mahatama Gandhi Memorial Medical College Hospital, Sakchi, Jamshedpur, 1987 (1) SCALE 327; Parmanand Kataria v. UOI, AIR 1989 SC 2039.

<sup>5</sup> Upendra Baxi v. State of UP, 1982 (1) SCALE 84 and AIR 1987 SC 191; Vikram Deo Singh Tomar v. State of Bihar, AIR 1988 SC 1782.

<sup>6</sup> Hussainara Khatoon v. Home Secretary, Bihar, (1980) 1 SCC 81.

<sup>7</sup> Prem Shankar Shukla v. Delhi Administration, (1980) 3 SCC 526; Kishore Singh Ravinder Dev etc. v. State of Rajasthan, AIR 1981 SC 625; Aeltemesh Rein v. UOI, (1988) 4 SCC 54.

<sup>8</sup> Sunil Batra (II) v. Delhi Administration, (1980) 3 SCC 488.

<sup>9</sup> Poola Bhaskara Vijaykumar v. State of Andhra Pradesh, AIR 1988 AP 295; Gurdev Singh and others v. State of Himachal Pradesh and others, AIR 1992 HP 76.

<sup>10</sup> *In Re: A Prisoner*, 1993 (2) KLT 10

<sup>11</sup> *In Re the Petitions of Nawal Thakur, a convict kept in the Kulu Jail* (1984) 3 SCC 572.

<sup>12</sup> Sheela Barse v. State of Maharashtra, (1983) 2 SCC 96, (1987) 4 SCC 373.

<sup>13</sup> R M Tewari v. Home Secretary, State of UP, 1991 (1) SCALE 71; Simranjeet Singh Mann v. UOI, 1992 (2) SCALE 102; Karamjeet Singh v. UOI, JT 1992 (5) SC 598.

prisoners. First consideration is that ‘who has been removed from society and why’? It is because of the maladministration of the criminal justice system that results in delay in dispensing justice and the questionable methods by which the mentally unstable have been committed to institutions and jails that the inmates are suffering and lingering in such institutions without a valid reason. Most effected among them are the under trials who keep on waiting for their trial for year longs which would ultimately determine their guilt. Majority of them are economically and socially disadvantaged, scheduled castes or scheduled tribes, as they have lack of resources for getting justice and are easily intimidated and harassed by officials. The second consideration is to examine the conditions of the confinement, whether basic amenities such as water, clothing, toilets, etc. have been provided or not and the living conditions in the jails.<sup>14</sup>

## II. ROLE OF JUDICIARY

The Supreme Court of India, with awakened human rights conscience, has on several occasions laid down momentous decisions condemning the conduct of escort police in ‘handcuffing’ the prisoners/under-trials without any justification. Justice Krishna Iyer, speaking for himself and Justice Chinnappa Reddy, in *Prem Shanker Shukla v. Delhi Administration*<sup>15</sup> had emphasized that ‘handcuffs’ should not be used in routine and they were to be used in ‘rarest of rare cases’ and only when the person was ‘desperate’, ‘rowdy’ or the one who was involved in non-bailable offence.<sup>16</sup>

The first reported case of Public Interest Litigation in 1979 focused on the inhumane conditions of prisons and undertrials prisoners. In *Hussainara Khatoon v. State of Bihar*<sup>17</sup> an advocate came up with the Public Interest Litigation, which was based on the news report in which the difficult situation of thousands of undertrial prisoners who were languishing in various jails in Bihar was being highlighted. The failure of criminal justice system was exposed through this litigation and as a result 40,000 undertrial prisoners were released as the cases of those prisoners languishing in the jail were proceeded faster after this litigation. In this case Court declared right to speedy justice as a basic fundamental right and read the same in Right to life that was earlier denied to the prisoners. This petition also led to nation wide debates among the public on prison reforms.

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<sup>14</sup> MONIKA SANGEETA AHUJA, PUBLIC INTEREST LITIGATION IN INDIA: A SOCIO-LEGAL STUDY 124 (Unpublished Ph. D. thesis, University of London 1995).

<sup>15</sup> AIR 1980 SC 1535.

<sup>16</sup> *Id.* at 1541.

<sup>17</sup> *Hussainara Khatoon supra* note 5.

In *Sunil Batra v. Delhi Administration*,<sup>18</sup> the court responded to a letter written by Sunil Batra, a prison inmate drawing its attention to the miserable conditions of a fellow prisoner who was subject to unbearable physical torture by the authorities. The prisoner had written the letter on a piece of paper and somehow managed to send it to Justice Krishna Iyer who was the sitting judge of Supreme Court that time. The learned judge treated that letter as a petition and that response emerged the first judicial discourse on prisoners' rights. Since then several letters were written to individual judges, and on these letters cognizance was taken and commissions were appointed to inquire into the matters.

It was through investigative journalism and judicial activism that these issues were highlighted and which further helped in framing the policies for them. More and more journalists started investigation the conditions prevailing in the jails and exposing the issues regarding them like delay in trials, incidences of torture, deprivation, and bad living conditions, etc. these revelations were supported by a series of judgments given by the Supreme Court, mainly by Justice Krishna Iyer, in which the rights of prisoners had begun to be enunciated and criminology discussed in ways that were new to the Court. Responding to this situation, petitions were filed by the advocates and letters sent to the Court by the prisoners and legal aid organisations.<sup>19</sup>

The Prison Act, 1894 is the main legal framework to govern prison and other institutions. Already the lack of accountability of the administrators and their unwillingness to provide proper facilities to the inmates, and further this situation got worsen by the overcrowding of such institutions. Similarly, in cases of inmates suffering from mental health were governed under the Indian Lunacy Act, 1912, which was then superseded by Mental Health Act, 1987. Due to the absence of any sound criteria regarding separation of criminal and non-criminal lunatics, many sane persons were confined too. The similar situation existed in many government run hospitals and women institutions too.<sup>20</sup>

Access to justice, which was the major obstacle in preventing justice to these prisoners, the Court by invoking Article 39-A of the Constitution, responded to this horrific situation. Many tentative steps were taken to broaden the rules of standing and relaxing the rules of procedure to provide justice to these people. Investigative journalism, Public Interest Litigation filed by activists' organisations, legal-aid, treating letters as petitions, *suo moto* action on newspaper headlines by the Court, were some of the ways that acted as catalyst to bring justice to this

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<sup>18</sup> AIR 1980 SC 1579.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

neglected section of the society and make them realize their human rights.

In 1981 the case of *Anil Yadav v. State of Bihar*<sup>21</sup> the police brutalities were exposed through public interest litigation. There was a news report, which revealed that by putting acid into the eyes of about 33 suspected criminals were blinded by police in Bihar. In response to this Public Interest Litigation, Registrar was deputed to Bhagalpur by the Supreme Court for investigating the truth. The trial of blinded persons was quashed by the interim orders of the court. This inhumane act of the police was highly criticized and condemned. The court also directed that the blinded persons should be brought to Delhi by the State government for their medical treatment. Speedy prosecution of the guilty policemen was also ordered. The court read right to free legal aid as a fundamental right of every accused. It was directed to Sessions judges throughout the country that each accused be informed about his fundamental right to legal aid.

In 1981 two law professors brought to the notice of the Supreme Court about the barbaric conditions of the inmates of Agra Protective Home for women. The letter petition, after some initial difficulties, succeeded in securing humane conditions for the inmates.<sup>22</sup> The horrific conditions of institutions for mentally ill in Ranchi and Delhi were recorded by *R.C. Narain v. State of Bihar*<sup>23</sup> and *B.R. Kapoor v. UOI*<sup>24</sup> and in this Public Interest Litigation, the court issued broad guidelines for bringing improvements in the management of these institutions and also its administration was taken out of the hands of local administration. To monitor the progress of these institutions by Supreme Court judges, commissions were appointed, inquiries were conducted. The human rights of mentally ill patients were also protected by another Public Interest Litigation, which secured release of these patients from jails in Bihar.<sup>25</sup>

In landmark judgment of *Sheela Barse v. State of Maharashtra*<sup>26</sup> which came on the Public Interest Litigation filed through which the court's attention was brought to the condition of five women prisoners who were subjected to custodial violence in Bombay city jail. The Supreme Court in this judgment issued guidelines through which it was made compulsory that for the purpose to guard or interrogate women suspects of prisoners then only the women police officers could be used.

Then there are few instances of custodial violence where granting compensation is the only way to protect human rights. The Supreme Court laid down the compensation jurisprudence in

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<sup>21</sup> AIR 1982 SC 1008.

<sup>22</sup> Upendra Baxi v. State of Uttar Pradesh, 1981 (3) SCALE 1136.

<sup>23</sup> 1986 (Supp) SCC 576.

<sup>24</sup> AIR 1990 SC 752.

<sup>25</sup> Veena Sethi v. State of Bihar, (1982) 2 SCC 583.

<sup>26</sup> Sheela Barse *supra* note 11.

1993 in *Nilabati Behera v. State of Orissa*<sup>27</sup> in response to a Public Interest Litigation alleging death of a boy 22 years in police custody. The court evolved the principle of public law doctrine of compensation for violation of human rights. According to this doctrine, no sovereign immunity be granted to the state for violation of human rights liability of the state would be absolute.<sup>28</sup> In this case for the custodial death of the boy the court awarded compensation of Rs. 1,50,000 to the mother.

In 1995 a telegram was received by the Supreme Court that stated that Punjab Police had abducted Jaswant Singh Khalra, General Secretary, and Human Rights Wing of Shiromai Akali Dal. Another petition was filed by Khalra's wife also to the Supreme Court in which she alleged that her husband was being threatened by the Senior Superintendent of Police to withdraw the writ petitions filed by her husband challenging police excesses, custodial deaths and police cremation of dead bodies in large scale and subsequently he picked her up husband. In *Paramjit Kaur v. State of Punjab*<sup>29</sup> CBI was directed to investigate into the matter and report the Supreme Court. It was revealed in the inquiry that the allegations put were true. Referring to mass cremation of persons labeled as unidentified by the Punjab Police, the court remarked: "Our faith in democracy and rule of law assures us that nothing of this type can happen in this country but the allegations in the press note horrendous as they are need thorough investigation".<sup>30</sup> The Punjab government was directed to grant sanction to prosecute the guilty police officers by the Supreme Court. It was also directed to pay Rs. 1,00,000 as compensation to Paramjit Kaur. The report of CBI, which was placed on record on December 13, 1996 by the court, confirmed that over 585 bodies of persons were cremated as unidentified whereas they were identified subsequently. The Court gave the power to National Human Rights Commission to determine the compensation that could be claimed by the families of those identified.<sup>31</sup> Later, a technical question was raised about the authority of National Human Rights Commission to investigate a matter after the expiry of one year from the date of incident.<sup>32</sup> In *Paramjit Kaur v. State of Punjab*<sup>33</sup> the Supreme Court declared that in the exercise of its power under article 32 it was open for the court to ask any authority in India to act in aid of the Supreme Court as laid down in article 144. The Supreme Court can direct

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<sup>27</sup> AIR 1993 SC 1961.

<sup>28</sup> Parmanand Singh, *Protection of Human Rights Through Public Interest Litigation in India*, 42 JILI 263, 269 (2000).

<sup>29</sup> (1996) 7 SCC 20.

<sup>30</sup> *Id.* at 26.

<sup>31</sup> *Paramjit Kaur v. State of Punjab*, (1996) 8 SCALE 6.

<sup>32</sup> Section 36(2) of the Protection of Human Rights Act, 1993 states that National Human Rights Commission shall not enquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.

<sup>33</sup> (1998) 5 SCALE 219.

National Human Rights Commission to deal with any matter. In such a situation the National Human Rights Commission would function pursuant to the court's direction and not under the Protection of Human Rights Act 1993. In another Public Interest Litigation the parents of a person who was killed as a result of criminal conspiracy of Punjab Police were granted Rs. 2,00,000 as compensation.<sup>34</sup>

There are number of cases of army excesses. There was a case in which about 81 tribal people lost their lives on account of Army Test Firing Range in a place in Madhya Pradesh. A Public Interest Litigation was filed for the same issue and it resulted in the closure of test firing range.<sup>35</sup> Through that Public Interest Litigation it was brought to the notice of the Supreme Court that number of villagers have lost their life because of the indiscriminate firing by Para-military forces in certain villages in Nagaland. The judicial inquiry was ordered into the incident by the court.<sup>36</sup>

Thus Public Interest Litigation has undoubtedly contributed to enhance the accountability of the government towards the human rights of the poor. The Public Interest Litigations have brought those astonishing results of which it was not even thought of few decades ago. Degraded bonded labourers, tortured undertrials and women prisoners, humiliated inmates of protective women's home, blinded prisoners, exploited children and many others got the relief through judicial intervention. Public Interest Litigation emerges as a medium of struggle whenever the dominant elements in the society try and invade the rights of people for protection of their human rights. Public Interest Litigation activism interrogates power and makes the courts as people's court.

Recently in 2017, in *Re: Inhuman Conditions in 1382 prisons v. Director General of Prisons, State of Andhra Pradesh*<sup>37</sup> the apex court delivered a landmark judgment in regard to legal and constitutional rights of prisoners in India especially the under trials. This subject of Prison Reforms in the country has been the matter of discussion since couples of decades now and decisions are being rendered from time to time. While rendering the judgment in this Public Interest Litigation the apex court categorically upheld the rights of Prisoners, who are human beings like all others and deserved to be treated with dignity under Article 21 of the Indian Constitution. The Social Justice Bench comprising of Justices Madan Lokur and R.K. Agrawal dealt with the issues relating to prisons in the country and issued guidelines for their reform.

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<sup>34</sup>Ranjit Kumar v. Secretary of Home Affairs, Punjab, 1996 (2) SCALE 51.

<sup>35</sup>Sudip Majumdar v. State of MP, (1996) 5 SCC 368.

<sup>36</sup>PUCL v. Union of India, 1996 (3) SCALE 5.

<sup>37</sup>Re: Inhuman Conditions in 1382 prisons v. Director General of Prisons, State of Andhra Pradesh, AIR 2016 SC 993.

This Public Interest Litigation was initiated when on 13<sup>th</sup> June 2013 former Chief Justice of India R.C. Lahoti wrote a letter to Chief Justice of India relating to the disturbing inhuman conditions prevailing in 1382 prisons in India as reflected in a Graphic Story appearing in the national newspaper 'Dainik Bhaskar' on 24<sup>th</sup> March, 2013. This letter was then on 5<sup>th</sup> July, 2013 registered as a Public Interest Litigation and notices were issued to the appropriate authorities. The Bench after considering submissions, reports and arguments from both sides issued the following directions in this case:

1. In every district the Under Trial Review Committee should meet quarterly and the first such meeting should take place on or before 31<sup>st</sup> March, 2016 and every such meeting should be attended by the Secretary of the District Legal Services Committee and follow up the discussions with appropriate steps for the release of undertrial prisoners and convicts who have undergone their sentence or are entitled to release because of remission granted to them.
2. The above mentioned committee should specifically look into aspects pertaining to effective implementation of section 436 and 436 A of the Code of Criminal Procedure so that the undertrial prisoners be released at the earliest and those who are unable to furnish bail bonds because of their poverty are not subjected to incarceration only for that reason and the committee should ensure the applicability of the Probation of Offenders Act 1958 so that they may get a chance of rehabilitation or restoration in the society.
3. The coordination of State Legal Authority of every state with the District Legal Committee in every district be assured to provide free legal aid to undertrial prisoners and convicts particularly among the destitute.
4. The secretary of the District Legal Committee should also look into the matters of release of undertrial prisoners in compoundable offences and try to effectively explore the possibility of compounding in such cases rather than requiring a trial to take place.
5. The authority in-charges of prisons should ensure the proper and effective utilization of the funds available so that the inmates of the prison should get living conditions commensurate with human dignity, which includes the issue of their health, hygiene, food, clothing, rehabilitation etc.
6. The ministry of Home Affairs should ensure the effective management of the prison and the prisoners. An annual review to be conducted of the implementation of the Model Prison Manual 2016 for which considerable efforts have been made not only by senior

officers of the Ministry of Home Affairs but also persons from civil society. The annual review of the Manual will also be done to consider the needs for making any changes therein.

7. The Under Trial Review Committee will look into the issues raised by the Manual including the regular jail visits for keeping a check on the living conditions of the inmates.

In this judgment it was also directed by the Bench to the Ministry of Women and Child Development for preparing a Manual like 'Prison Manual' which will take into consideration the living conditions and other issues relating to the juveniles in Observation Homes or Special Homes or Places of Safety in terms of the Juvenile Justice (Care and Protection of Children) Act, 2015.<sup>38</sup>

### III. CONCLUSION

To conclude from the above discussion it is clear that it was Public Interest Litigation that exhibits this unique pattern of operational mechanism and remedial mechanism, which is distinguishable from routine cases of contest between two individuals or an individual and an authority and was to realize this potential, leading to protection of human rights jurisprudence and prisoner rights giving broad interpretation of this Article 21 of the Indian Constitution. This creative interpretation by the judges lead to democratization of remedies to an extent that was unimaginable few decades ago. This strategy made justice in the reach of the common man and also made it accessible to large segments of the population who were hitherto excluded from getting it. There are no procedural technicalities that can hamper the court in using this writ jurisdiction while doing justice. The Supreme Court is under a solemn obligation to protect the rights and as such it has to play the role of a 'sentinel on the qui nine'<sup>39</sup> and has always regarded it as its solemn duty to protect fundamental rights 'zealously and vigilantly'.<sup>40</sup> Therefore the traditional procedure is not required to be followed in such cases especially where rights of underprivileged and weaker sections are infringed.

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<sup>38</sup> *Ibid.*

<sup>39</sup> State of Madras v. V.G. Row, AIR 1952 SC 196, 199.

<sup>40</sup> Daryo v. State of UP, AIR 1961 SC 1457, 1461.