Punishment and the Prison

Indian and International Perspectives

Editor

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Pushpa Kapila Hingorani

I

January 1979 will remain a memorable month in Indian legal history. It was then that the jurisprudence known as Public Interest Litigation (PIL) came into existence in India. It was on 8 and 9 January 1979 that *The Indian Express* (Delhi edition) published two articles by K.F. Rustamji, then Member of the National Police Commission, based on his Tour Note No. 10 in which he gave 19 instances of prisoners, some of whom had been in jail awaiting trial for periods that were longer than the time they might have spent had they been charged, tried, convicted and given maximum punishment for the offence. Some instances of the case studies excerpted from Rustamji's Tour Note to the central government on undertrial prisoners languishing in the district jails at Patna and Muzaffarpur for no crime other than their poverty are being reproduced here to give an idea of the desperate plight of those involved.

Hussainara Khatoon: Some time in the year 1975, Hussainara Khatoon (and her family) ran away from Dhaka after the crackdown by the forces of Yahya Khan (President of Pakistan), and was arrested and sent into 'protective custody'. She carried with her a tattered paper—a disintegrating jail ticket—which protected her from total rejection by the system and from incarceration. She had spent four years in jail although instructions had been issued that all those who were arrested under the Foreigners Act coming from Bangladesh should be released on a bond.

Bhola Mahto: His jail ticket showed that he was arrested under Section 363, 368 IPC. He did not remember how long he had been in prison. Probably nine years, perhaps 13—he had lost count of the years. For the

last six years it has not been possible to find out which criminal case he was wanted for. His file was untraceable. In the meantime, he had lost his wife and his son. He had no relatives. In a peculiar sort of way he had adjusted to life in jail. 'Whatever happens, will happen. Man struggles vainly in the web of destiny,' he said to me. 'If you were not a damned philosopher, you would have gone on a hunger strike or done something sensational,' I felt like retorting, 'and got out'.

Four letters were sent by the jail authorities to the District Judge saying that this man seemed to be 'lost property', and asking what should be done about him. The last letter said that he had been misbehaving of late. He had even threatened to go on a 'fast' if nothing was done about tracing his file. A great deal of persuasion, the letter said, had been used to keep him quiet. Could Kafka have designed a more grotesque situation—'a prisoner in search of his crime'.

Ghansham Mahto: He was arrested in 1967, and the jail and its experiences had obviously affected his mind. He did not even remember how long he had spent in jail. He had not been committed to sessions. In a desperate bid to control his sexual urges, he had inserted a tube in his urethra and was carried to hospital in a moribund condition. The tube was removed in the hospital, and when he recovered consciousness, he had whispered the word 'uranium'. At once violent suspicions were aroused. Smuggler? Foreign agent? The tube had been examined to find out whether it contained uranium. Ghansham Mahto, half-demented victim of the criminal system, appeared to have stumbled upon the answer to radiation hazards which had escaped the best scientists of the world for years.

Ram Sagar Mistri: He was arrested for dacoity in 1969 and committed to sessions in 1972. The sessions trial had not yet started, and he had been in custody for nine and a half years. Apart from the injustice to him, what would happen to his case in court? Where would the witnesses be found, how would the sub-inspector who investigated the case be traced? Would the sub-inspector be able to trace the case-diary or remember the case? If he had retired, would he care to come and give evidence?

Itwaria Ahir: The woman was completely vague about what had happened to her. She behaved as if some big object had struck her, and she just did not know what to do and why. Even the jail authorities did not know what the charge against her was. The police could offer only a vague explanation. She had apparently been sent under 171 Criminal PC, because she refused to give an undertaking, or could not give a bond, to appear as a witness in a certain case. Five years for that. She had a child

aged four, a girl born in jail, innocent and beautiful. What had that little child done to deserve the treatment that was given her?

Reena Kumari: She was arrested in 1976. She did not know on what charge or why, but presumably it was 'soliciting', for she was sent to a protection home which was closed down, and from there she was sent to jail because she was homeless. Here was a little girl, almost a child, lost, defenceless, fighting against a blind system, without knowing how to fight, with nobody to help. Her jail ticket said 24.11.1978, 4.12.1978, 8.12.1978. She was taken to court on these dates. Each time the court had had no time to see her.

Janki Devi: A young Scheduled Caste girl who had been in jail for seven years as an undertrial. She looked frightened, shy, despairing. She had been prosecuted for infanticide of her newborn child, who she maintained was stillborn, and the villagers conspired to give evidence against her. There was a son with her who had spent his entire life in jail. He did not seem to have seen the outside world. He was just an ill-fated citizen of this land. Seven years was a long time of pain and agony for a woman accused of killing her own child, and what damage would occur to society if she were sent out, without bail, without a bond; just to live?

Devkali: A pasi girl, who, five years ago, was arrested in a case of dacoity. Whether this poor, bashful creature, tearful at the mention of her connection with the case, could ever have committed a 'dacoity' is a matter of conjecture and evidence.

Poonam: This girl had been five years in 'safe custody'. She seemed to be another of St. Paul's victims. There was no doubt that the action that had been taken to protect girls under the Suppression of Immoral Traffic Act was utterly immoral.

Indra Kumari: She had spent three years and 10 months in the *ashram* and was then sent to jail. It was a vain hope of hers that her case would come up soon. Each time she went there, her trial remained where it was. She was too poor to rebel against the system and was helpless and docile.

Jhagrimusma Koiri: She was an old woman who had been in jail nine years for attempted murder. For seven years, her little son lived with her, and he died at the age of 13.

Gulkan Rai and Ramswarup Sahni: They had been in Muzaffarpur jail for 10 years as undertrials. Gulkan Rai said that he was 80 years old. If he were to be sent out of the jail he would probably die as a result of shock. Ten years was a long time for an old man to spend in one place and then to start a new life again.

Lalji Pande: He had been in jail for 10 years. The girl whom he was alleged to have kidnapped was in the same jail, and he wanted to marry her. He appeared to have been courting her secretly—carrying food to her, saying a few words of love for a minute in the gloom of a prison. She had agreed. But how could a situation of this kind be worked out under the law? You need a Hindi film to do it.

II

Nirmal Hingorani, a Supreme Court lawyer, happened to read Rustamji's second article published on 9 January 1979. He and the author, Kapila Hingorani, moved the Supreme Court through a habeas corpus petition under Article 32 of the Constitution, a move that neither Rustamji nor *The Indian Express* expected. However, neither Nirmal Hingorani nor the author had a power of attorney to approach the Court, nor were they the close relations or 'next of kin' of the undertrials. Though Supreme Court rules do not permit the filing of a habeas corpus petition based on newspaper reports, the author, as a citizen of the country and officer of the Court, filed the petition on 11 January 1979, prepared by Nirmal Hingorani, on behalf of 19 undertrial prisoners mentioned in the articles. The Registrar's Office, duty bound, took objection, but were requested to list the petition before the Court with an office report.

Those were the days when the memories, and the excesses of the Emergency were still fresh in the minds of the public and the courts in India. The extremely legalist decision of the Supreme Court in *A.D.M. Jabalpur* v. *Shivkant Shukla* upholding the suspension of fundamental rights during the proclamation of Emergency had contributed to the identification of the court as being merely an arm of the state—the state which, during Emergency, had earned the reputation of callousness, nepotism, corruption, lawlessness and violence.[1] The common man had become desensitised to poverty with its dehumanising consequences; to criminalisation of politics, to the impotence of law in delivering justice. The court was anything but newsworthy, functioning within the Anglo–Saxon paradigm and dealing primarily with cases of men who could afford to move the Supreme Court.

Given this backdrop, when the habeas corpus petition, registered as *Hussainara Khatoon* v. *State of Bihar*[2] was filed, the author had no inkling as to what would be the reaction of the Court to such a petition filed without a client, without a power of attorney, without confirmation of

facts and only on the basis of newspaper reports of findings of Rustamji that had been submitted to the central government. Would the Court entertain the petition under Article 32 of the Constitution, subscribing to the view that such detention, being illegal in view of the provisions of the Criminal Procedure Code, constitutes violation of the constitutional guarantees or would the Court decline to interfere in the matter, citing procedural technicalities?

On 22 January 1979, a Bench consisting of Justices V.D. Tulzapurkar and R.S. Pathak was persuaded about the gravity of the situation and, in view of the fact that the findings of Rustamji had been submitted to the central government, issued notice to the state of Bihar.

The Supreme Court of India, after hearing extensive and often heated arguments, both on the petition as well as on numerous applications for directions, has passed historic orders revolutionising the criminal justice system of the country. While all the above named undertrial prisoners were released on their personal bond without any monetary obligation by virtue of the Order of 5 January 1979, the Court, by its next six Orders of 12, 19, 26 February and 9 March, 19 April and 4 May 1979, went on to read a right to speedy trial as being implicit in the right to life and personal liberty enshrined in Article 21 of the Constitution. The Court declared that it was a 'crying shame' that the judicial system permitted such a shocking state of affairs to continue that betrayed 'complete lack of concern for human values' and reasoned that speedy trial was the essence of criminal justice and therefore delay in trial by itself constituted a denial of justice. The Court relied on the Directive Principles of State Policy contained in Article 39A (of the Constitution) to hold that every accused who was unable to engage a lawyer and secure legal services on account of reasons of poverty or indigence had a right to a lawyer at state expense. The Court held that the state could not avoid its constitutional obligation to provide speedy trial to the accused pleading financial or administrative inability, and that it was the constitutional obligation of the Supreme Court, as the guardian of the fundamental rights, to enforce fundamental rights of citizens by taking positive action such as augmenting and strengthening the investigative machinery, setting up new courts, building new court-houses, appointing additional judges and other measures calculated to ensure speedy trial. The Court took the subordinate judiciary and the government to task for the 'leisurely and lethargic manner' in which they functioned. The court directed the Patna High Court to furnish information regarding the location of courts, the number of cases pending in each of them and the reason for delay in disposal of cases to

enable it to issue necessary directions for setting up more courts, appointing additional judges, and providing more facilities by way of staff and equipment. The Court recommended to the state to introduce a comprehensive legal services programme in the country. This led to the constitution of a committee for implementing the Legal Aid Scheme in 1980 which was funded by the Government of India.

The Court stated that one reason why the Indian legal system seemed to continually deny justice to the poor was its reliance upon a highly unsatisfactory and antiquated bail system which is property-oriented and which was also applied too mechanically by the courts. The Court recommended the complete revamping of the bail system, laying down criteria for granting bail. The Court laid down a positive obligation on every magistrate in the country to inform the accused before making a further order of remand to judicial custody, that he/she was entitled to bail and to ensure that the accused had a lawyer at state expense to enable him/her to apply for bail.

Upon application, the Court, while directing the compliance of the provisions of the Criminal Procedure Code, particularly those contained in Section 167(5) and 468, ordered the release of all undertrial prisoners against whom chargesheets had not been filed by the police within the period of limitation provided for in Section 468(2) as well as those who had been in jail for periods more than the maximum term that could be passed on them on conviction. The Court subsequently released undertrials charged with bailable offences and those who had already been in jail for periods more than half the term of maximum sentence that could be imposed on them had they been convicted. The Court directed that where police investigations had been delayed by over two years, the chargesheet had to be submitted by the police within a period of three months, and if that had not been done, the state had to withdraw the case.

As for the particular cases of detention of women in 'protective custody', the Court observed that the expression, 'protective custody' was intended to merely appease the conscience and was simply an euphemism calculated to disguise what was really and in effect nothing but imprisonment, and that such 'custody' was a blatant violation of personal liberty guaranteed under Article 21 of the Constitution. The Court released all women and children who were in jail in 'protective custody'. On an oral application by the author, again based on newspaper reports, that the women and children so released needed protection from anti-social elements, and therefore should be escorted to the Social Welfare Board of the state of Bihar, the Court directed the Board to contact the

released women and children and to arrange to look after them pending the disposal of the writ petition. It directed the government to set up rescue and welfare homes for the purposes of taking care of women and children who had nowhere else to go and who were otherwise uncared for by society.

The release of children from jails brought up the issue of children's home/observation homes. It was found that in Bihar, there was no Children's Act establishing such observation homes where the released children could be looked after. The state government had been issuing ordinances every six months to attend to the problem. The state legislature then passed the Bihar Children's Act, 1982, during the pendency of the Court proceedings. The Court, by its subsequent Order of 6 January 1982, directed that children who were under the age of 16 on the date of their admission to jail were to be produced before the nearest children's court, and where there was no such court, before the nearest judicial magistrate (First Class). If any parent or guardian appeared before such a court, the child would be released on bail on the personal bond of the parent/guardian. If no parent/guardian appeared, then the child would be sent to the nearest observation home established under the said Bihar Children's Act, 1982.

The Court further directed the state to furnish information relating to undertrial prisoners suffering from leprosy and contagious diseases. It directed that 'lunatics' and persons of 'unsound mind' were not to be kept in ordinary jails.

After collecting further data, the author filed 10 petitions and brought eight states before the Supreme Court. In one petition (*Nimeon Sangma* v. *Home Secretary, Government of Meghalaya*)[3], the Court directed on 30 April 1979 that except where the charge related to Section 302 (murder) and 395 (dacoity) of the Indian Penal Code, all persons who had been in custody for over six months and whose trial had not commenced or against whom chargesheets had not been framed were to be released immediately.

Hussainara Khatoon's case resulted in the release, through interim orders, of about 40,000 undertrial prisoners out of the estimated 120,000 undertrials throughout the country within four months of the filing of the first petition. The case aroused tremendous interest, both nationally and internationally. Newspapers published detailed reports of the Court proceedings and helped in the investigation and collection of data. Talks and panel discussions were held in law faculties and broadcast on the national radio and television networks (All India Radio and Doordarshan). The

Law Commission brought out a report recommending speedy trial. In April 1979, the Union Home Ministry convened a meeting of Chief Secretaries of all States and Union Territories to consider the problems of undertrial prisoners—an issue which, for the first time, became a focal point of action. This, as Baxi put it, 'may accelerate the process of an integrated national policy towards the problems of undertrials in particular and jail administration in general' which 'is an important contribution to national planning'.[4]

Let us consider the significance of Hussainara Khatoon's case from the standpoint of undertrials. The case brought to light the degree of injustice suffered by poor undertrials. It highlighted their wasted lives and senseless incarceration by an oblivious and callous executive and an insensitive subordinate judiciary. Hussainara Khatoon's case enabled the Court to pierce the prison walls to give relief to thousands of prisoners without their even being aware of the action being taken on their behalf. For the first time, it made the highest court of the land accessible to the most impoverished. It gradually made a vast jail population somewhat conscious of the concept of 'rights'; it made the state aware of its constitutional obligations and it made the Court aware of the ineffectiveness of legal procedure administered mechanically, compelling it to evolve new strategies and techniques to administer justice. Hussainara Khatoon's case gave birth to judicial activism in cases lacking a 'lis' and in such cases the Court ceased to perform the traditional function of adjudication prescribed by Anglo-Saxon jurisprudence. Instead it discharged the constitutional obligation under Article 32 to enforce guaranteed fundamental rights, seeking thereby to reform institutional malaise and provide remedies for social wrongs.[5]

While Hussainara Khatoon's case established the fundamental right to speedy trial, two cases that were offshoots of Hussainara Khatoon's case laid down the investigative nature of PIL and the proposition that the remedial powers of the Supreme Court under Article 32 of the Constitution include the power to grant monetary compensation in addition to compensation under the civil law. These two cases were *Anil Yadav* v. *State of Bihar* and *Rudul Sah* v. *State of Bihar*[6]. Perhaps the most horrifying PIL case was that of *Anil Yadav* v. *State of Bihar*, which resulted from a letter received by the author on 28 September 1980 from a lawyer in Bhagalpur district of Bihar stating that many suspected criminals had been blinded by the police when acid was poured into their eyes after they had been arrested. Allowing the writ petition filed on the basis of this letter, the Court deputed its Registrar to visit Bhagalpur to investi-

gate whether the contents of the letter were true. It was found that at least 33 persons had been blinded by the police using needles and acid that burnt the eyes, which had then been bandaged with cotton soaked in acid and left to rot. The confirmation by the medical doctor of the manner and mode of blinding spurred the Court to declare that it would 'shock the conscience of mankind' and that it showed to what depths of depravity the administrators of law could sink in Bihar. In judgements seething with anger and anguish, the Court condemned the policemen for having perpetrated what it aptly described as 'a crime against the very essence of humanity'. After hearing lengthy arguments on the constitutional questions involved and upon numerous applications, the Court, through interim orders, quashed the trial of the blinded prisoners and directed the state of Bihar to bring them to New Delhi, fund their medical treatment and formulate a scheme for their rehabilitation. Each of the blinded was given, at the instance of the Court, Rs. 15,000 by the state and Rs. 15,000 from the Prime Minister's Relief Fund. The Court, upon application, awarded each blinded a monthly pension of Rs. 500 which has been increased to Rs. 750 with effect from 1 April 1995. It ordered the speedy prosecution of the guilty policemen and doctors involved in the 'barbaric act for which there is no parallel in civilised society'. Astonished that no legal representation had been provided to the blinded prisoners simply because they had not asked for it, the Court reiterated that the state was under a constitutional mandate under Article 39A of the Constitution to provide free legal aid. It imposed a positive constitutional obligation on every magistrate and sessions judge throughout the country to inform each accused brought before them of his/her right to free legal aid.

While the question of compensation under Article 32 arose first in Anil Yadav's case and was unfortunately left unanswered by the Court in that case, the first matter in which such compensation was actually awarded by the Supreme Court was the aforementioned case of *Rudul Sah* v. *State of Bihar*. Rudul Sah was arrested in 1953 on the charge of murder and was acquitted by the sessions judge in 1968, to be released on further orders. These orders did not come for over 14 years after his acquittal. By the time Rudul Sah was released in 1982, he had spent 29 years in prison for a crime he had never committed. The Court awarded a compensation of Rs. 35,000 holding that it is 'some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield'. The award of such compensation does not preclude the aggrieved person from bringing an independent suit for civil damages.

Though the Court passed these landmark directions revolutionising the criminal justice system in India, there were doubts about the actual implementation of certain directions. The author therefore filed Criminal Miscellaneous Application No.6136/1981 in Hussainara Khatoon's case, asking the Court to direct the state of Bihar to file an affidavit stating whether it had complied with the various directions of the Court at different stages of the case. The Court, by its Order of 28 January 1982, agreed that:

> It is not enough merely to give directions but it is vital to ensure that these directions are carried out and do not remain only paper directions. The time has now come when we must look into this matter and satisfy ourselves that the directions given by us are being implemented.

The Court directed the state government as well as the Patna High Court to keep it informed about the steps that had been taken to carry out its directions, particularly the circulars issued by the high court for the purpose of informing the subordinate judiciary about the law laid down by it. Several adjournments later, Hussainara Khatoon's case was listed together with subsequent matters relating to undertrial prisoners in various jails throughout India. This, coupled with the retirement of some of the activist judges, inevitably slowed the pace of the case and of any concrete orders. The subsequent approach of the Court to the undertrial prisoners issue was extremely unfortunate, as was evident from its Order of 4 August 1995, disposing of Hussainara Khatoon's case. On 29 October 1993, the author filed Criminal Miscellaneous Application No. 5660/93 in Hussainara Khatoon's case, once again requesting the Court to direct the state to comply with its previous directions and to supply to the Court information which the Court itself had directed the state to furnish, namely, those relating to the setting up of more courts, appointment of additional judges, increased staff and equipment, and other means of augmenting and strengthening the investigative machinery as well as the circulation of the guidelines laid down by the Supreme Court to the subordinate judiciary. However, this time, the Bench, presided by the Chief Justice of India, took the view that the subordinate courts' enforcement of guidelines should be the responsibility of the high courts of the respective states.

> We think it would suffice if we request the Chief Justice of the High Courts to undertake a review of such cases in their States and give

appropriate directions where needed to ensure proper and effective implementation of the guidelines. The high court being on the spot would be able to diagnose the ailment rather than merely deal with the symptoms.

The above observations of the Supreme Court in its Order dated 4 August 1995 indicated its innocence of its previous Orders as well as of its constitutional role envisaged by Article 32 of the Constitution. As held by the Court in its previous Orders, it was its own constitutional obligation as the sentinel on the qui vive to enforce fundamental rights in view of the language of Article 32, which guarantees the citizen the enforcement by the Supreme Court of his/her fundamental rights. Article 226, conferring concurrent writ jurisdiction on the high court, does not contain any such guarantee. The Full Bench of the Supreme Court has laid down in *Romesh Thapar* v. *State of Madras* that the Supreme Court had been constituted under the Constitution as the guarantor and protector of fundamental rights.[7] In fact, the Constitution Bench of the Supreme Court, in *A. R. Antulay* v. *R. S. Nayak* (1992), specifically affirmed the rulings in Hussainara Khatoon's case and, needless to say, these decisions were binding on the Bench which passed the Order of 4 August 1995.[8] Law aside, it was obvious to anyone familiar with the state of affairs in the executive or in the subordinate judiciary that if the Supreme Court did not take an active interest in implementing its own directions, they would soon be reduced to pious exhortations. It is relevant to note that even 15 months after the Supreme Court 'requested' the chief justice of each high court to ensure implementation of the guidelines, the Patna High Court did not seem to have been able to 'diagnose the ailment' or even 'treat the symptoms'. *The Indian Express*, (Delhi edition) of 17 November 1996 reported that 'one of the main reasons for the illegal detention of undertrial prisoners . . . has been the non-production of prisoners before the magistrates or judges on the scheduled date'. Despite the directions of the Court in 1979 to the subordinate judiciary, 'a large number of prisoners have so far not seen the judge or court room' according to the Human Rights Committee of the Bihar Legislative Council, which has had to request the 'Chief Justice of the Patna High Court to visit the jails in the state to acquaint himself with the denial of the basic human rights of the prisoners'.

It is significant that the cases of Anil Yadav and Rudul Sah would not have arisen had the Supreme Court ensured the compliance of its direc-

tions in Hussainara Khatoon's case—a constitutional obligation which it eventually abdicated to the high court.

PIL was originally perceived in Hussainara Khatoon's case in 1979 to be a non-adversarial remedial jurisprudence which directed courts to act to protect the fundamental rights of the disadvantaged sections of society on a petition by a member of the public acting pro bono. Hussainara Khatoon's case was the first case in Indian judicial history where the Court departed from the traditional judicial function entailed by Anglo-Saxon jurisprudence to provide relief to helpless prisoners and to launch widespread reform. The Court characterised the legal process as collaborative in contradistinction to the adversarial litigation entailed by Anglo-Saxon law. In addition to the non-adversarial nature of this litigation and absence of the traditional 'lis', other characteristics of PIL exemplified by Hussainara Khatoon's case included the acceptance of press reports as the basis of petitions; the releasing of the petitioner from the burden of proving alleged facts; the grant of immediate and interim remedial relief once a prima facie case was made out; the typical sprawling and amorphous structure of parties to litigation; the active role of the judge; the reliance on unenforceable Directive Principles of State Policy specified in the Constitution to read new rights into guaranteed fundamental rights, particularly into the right to life and personal liberty enshrined in Article 21; and the relaxation of the rule of locus stand to confer a 'standing' on any person, acting bona fide, to approach the court for the vindication of rights of the disadvantaged sections of society or, as subsequently held, for the vindication of diffuse rights. It is these characteristics that made PIL and the paradigm of law entailed in it unique to India.

It is unfortunate that some judges, scholars and lawyers have an erroneous notion of PIL and of the kind of matters that could be entertained by a court as PIL. The Supreme Court and the high courts entertain PIL under their writ jurisdiction conferred by Articles 32 and 226 of the Constitution respectively. The language of both these Articles does not restrain the court from transcending the traditional judicial function of adjudication prescribed by Anglo-Saxon jurisprudence. Rather, the court has taken on new roles of providing system-wide reform to social maladies; of being a monitor, a mediator, an investigator, or of simply highlighting social wrongs. However, Article 32 empowers the Supreme Court to entertain only those matters where the complaint pertains to infringement of a fundamental right, and hence those public interest matters which do not relate to fundamental rights cannot be entertained by it. Article 226 is wider in its ambit as it empowers the high court to exercise its writ

jurisdiction in matters which relate to fundamental rights as well as any other legal rights. It is regrettable that the Supreme Court has in a few recent cases consistently overlooked this constitutional limitation and has entertained PIL actions where the infringement of a fundamental right is not even alleged, let alone established.

Hussainara Khatoon's case has resulted in law taking on a new identity as an instrument of justice responding to the needs of society. The changes are both structural as well as substantive. The remedial nature of law, the socially motivated court action, the adherence to the principle of substantive equality rather than formal equality, the procedural flexibility and the relaxation of the rule of standing has resulted in the lowering of the barriers between the common man and the court which has made it possible for the Supreme Court today to play its extremely active role in containing corruption in public office, criminalisation of politics, state terrorism and administrative sclerosis.

NOTES

1. The 'Emergency' was a period that lasted about two years and was a vicarious result of the judgement of the High Court at Allahabad which set aside Prime Minister Indira Gandhi's election on grounds of corrupt practices.
2. AIR 1976 SC 1643.
3. AIR 1979 SC 1518.
4. Upendra Baxi (1980), 'The Supreme Court Under Trial: Undertrials and the Supreme Court', 1 SCC 35.
5. The subsequent development of PIL lies beyond the scope of this article. For a detailed critique on PIL, see Aman Hingorani, 'Indian Public Interest Litigation: Locating Justice in State Law' (1995), 17 *Delhi Law Review*, 159; C.D. Cunningham 'Public Interest Litigation in Indian Supreme Court: A Study in Light of the American Experience' (1987), 29 *Journal of Indian Law Institute*, P. 494.
6. AIR 1982 SC 1008 (see also, *Khatri* v. *State of Bihar* AIR 1981 SC 928, 1068), and AIR 1983 SC 1086 respectively.
7. 1950 SCR 594.
8. AIR 1992 SC 1701.