# Preface

First of all, thanks to almighty Allah, Who has been kind enough to let me complete this Research Monograph in right time under the able guidelines of Assistant Professor Deedarul Islam Bhuiyan.

I would like to acknowledge my heartfelt thanks and gratitude to my respected Assistant Professor Deedarul Islam Bhuiyan for permitting me to undertake this research. Thanks to him for his kind constructive suggestion and informative guidance through his briefing.

From beginning of my research, I am personally indebted to some book writers for their kind and valuable writings. Also I have gone through the internet, different website and followed different writers. Thanks to all from the bottom of my heart.

Signature

**KM Moshiur Rahman Lablu**
ID-LLB1803015013
Batch-15A
Department of Law
**Sonargaon University**

Date

# Certification by the Thesis Supervisor

This is hereby certified that the research Monograph titled "Judicial Development of Public Interest Litigation (PIL) in Bangladesh" submitted by my student, KM Moshiur Rahman Lablu (ID-LLB1803015013) in fulfilment of the requirements for the LLB (Hons) from Sonargaon University, under my active supervision and guidance. As per I am concern this paper has not been submitted by him anywhere earlier to the best of my knowledge.

**Deedarul Islam Bhuiyan**
Assistant professor &
Head of the Department
**Sonargaon University, Dhaka**.

# Declaration

I am KM Moshiur Rahman Lablu (ID-LLB1803015013) student of Law department in Sonargaon University hereby declare that, this research paper **titled "Judicial Development of Public Interest Litigation in Bangladesh"** has been performed by me and the research paper has not been submitted any book or journal. I would like to also affirm that I have tried to prepare this research paper obeying copyright provisions but some cases I have copied few topics from internet, however I have mentioned it with the appreciative and acknowledged accordingly to the author.

_____

Signature

**K M Moshiur Rahman Lablu**
ID-LLB1803015013
Batch-15A
Department of Law
**Sonargaon University**

Date

# Letter of transmittal

To

Deedarul Islam Bhuiyan
Assistant Professor
Department of Law
Sonargaon University
Dhaka.

**Subject: Regarding submission of research Monograph titled "Judicial Development of Public Interest Litigation in Bangladesh."**

Dear Sir,

It is a matter of joy and pride for me to submit the research monograph on the topic **"Judicial Development of Public Interest Litigation in Bangladesh."** While doing this research monograph, I have tried my level best to maintain the required standard. I have also tried to fulfil your expectation. I hope that you would be kind enough to go through this dissertation for you kind evaluation. Once again thanks for you generosity and special guidelines.

I am always available for any clarification or any other necessity of any part of this research monograph at your convenience.

Your obediently

**K M Moshiur Rahman Lablu**
ID-LLB1803015013
Batch-15A
Department of Law
**Sonargaon University**

# JUDICIAL DEVELOPMENT OF PUBLIC INTEREST LITIGATION IN BANGLADESH


## ABSTRACT

The word 'Public Interest Litigation' compromises some litigations performed with the purpose of the privilege of the public and for reduction of public grievances. But it can be said that, Public Interest Litigation suggests litigation for the preservation of public interest. 'Public Interest Litigation' has been subjected to judicial development in Bangladesh since the renowned Case *Kazi Mukhlesur Rahman vs Bangladesh and another* mostly known as *Berubari Case*. After failing to establish Standing Principle perfectly through this early case by the Court as this case's subject-matter was under Parliamentary approval and enactment, the *FAP 20 Case* finally has been described as a perfect example of PIL by the AD in 1996 where PIL has been identified as a particular type of Constitutional Litigation under the Bangladeshi legal system. Afterwards, if public wrong or injury is identified by any member of the public, he/she has option to file a writ petition on behalf of the group of people or vulnerable section of the community. 'Public Interest Litigation' is stated under Article 102 of the Constitution.[1] Article 102(1) enables court to uphold a ruling when a breach of fundamental rights has been happened. Such kind of rights has been described under Part III of the Constitution.[2]In this Article, Sub-Article 102(1)(a) authorizes court to uphold an order imposing government to take action what is required by law and not to take action what is forbidden by law. Particularly these litigations may arise if the victim does not have essential resources to commence litigation or for any reason, his liberty to proceed the court has been impeded and violated. In this respect, court can hold cognizance of the issue as well as proceed *suo motu* or litigation can begin if any public-spirited person or organisation files any petition.


[1] The Constitution Of The People's Republic Of Bangladesh (2011).

# LIST OF ABBREVIATIONS

- AD : Appellate Division
- AIR: All India Report
- Art. : Article
- BCR: Bangladesh Case Reports
- BLC: Bangladesh Law Chronicles
- BLD: Bangladesh Legal Decisions
- CLR: Commonwealth Law Reports
- DLR: Dhaka Law Reports
- e.g. : exempli gratia meaning ‘for example'
- End. : Edition
- HCD: High Court Division
- Ibid : Ibidem meaning ‘ the same place'
- i. e. : id est meaning ‘ in other words'
- NGO: Non-Government Organisation
- No. : Number
- QB : Queen's Bench(UK)
- SC : Supreme Court
- SCC : Supreme Court Cases
- Vs. : Versus
- Vol. : Volume

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# Chapter-1

## Introduction of Public Interest Litigation

### 1.1 Background of the Study

At the present time, Public Interest Litigation has tremendous significance drawing the attention of all concerned. '*Locus Standi'* or standing for filing a suit is broadly stated by courts in some cases where any violation has been happened for a person. In recent times, courts grant litigation if filed by any public-spirited individuals to ensure the constitutionally guaranteed rights mainly fundamental rights. For this reason, at the current situation, for public welfare or for other public interests, any individual or organization works for public interest may approach to the courts to file a petition under Article 102[3] of the Constitution with the HCD.

The terms 'Public Interest' state ordinary spirit and similarly social interest as well as 'Litigation' compromises a legitimate activity incorporating all of proceedings in, inaugurated in the court of law for implementing the privilege and pursuing a redress. Accordingly, the word 'Public Interest Litigation' compromises some litigation performed with the purpose of the privilege of the public and for reduction of public grievances. But it can be said that, Public Interest Litigation suggests litigation for the preservation of public interest.

This kind of litigation is litigation initiated in a court of law by the aggrieved person and to some instances, the court itself can initiate as well as by any other private party. This is not essential to exercise the court's jurisdiction that someone who is sufferer of the infringement of his or her right should privately move toward the court. 'Public Interest Litigation' is an authority bestowed to the organization/public by court under judicial activism.[4]

Particularly these litigations may arise if the victim does not have essential resources to commence litigation or for any reason, his liberty to proceed the court has been impeded and violated. In this respect, court can hold cognizance of the issue as well as proceed *suo motu* or litigation can begin if any public-spirited person or organization files any petition.

Black Law Dictionary interprets 'public interest litigation'. In accordance with the Black law dictionary, 'public litigation' refers legal action introduced in a court of law to enforce the 'public interest' or 'common interest' where the public or society has monetary interest or other interest for their legal rights and liabilities which have been affected.[5]

[3] The Constitution Of The People's Republic Of Bangladesh (2011).
[4] Mahbubul Islam, Understanding The Constitution Of Bangladesh (1st edn, University Publication 2015).
[5] 'Public Interest Litigation'.

It was held in *State vs* Md Zillur Rahman and others that ‘public interest litigation' refers litigation to preserve the ‘public interest’ and this litigation is introduced in a court of law either by the court itself or by other private individual.

Basically, ‘Public Interest Litigation’ had been properly articulated for the protection of fundamental rights of people who are mainly needy, illiterate, and socially or economically underdeveloped. It was held in Peoples Union for Democratic Rights vs Union of India that court can authorize ‘public interest litigation' in respect of public-spirited individuals to enforce the constitutionally guaranteed rights and legitimate rights for any person or community who could not approach the court for their underdeveloped condition for remedy. So, it may be said that ‘public interest litigation’ refers about participatory justice and standing for civil litigation.

Actually, there is no clear definition of ‘public interest litigation’ in any statute or act. Mainly, judges have explained this term at the time of judgement considering the fact of the litigation. ‘Public interest' is the main focusing point in such litigation but other areas may be considered for which ‘public interest litigation might be brought to the court. Such grounds are given below *e.g.*

a. There must be infringement of basic human rights of the common people.
b. There must be some contents or conducts which are from government policies.
c. There must be pressure on public authorities to complete public duty.
d. There must be violation of basic fundamental rights guaranteed under any Part of Constitution.

That is why, it may be said that, in a unique situation third party/organization though actually not aggrieved can file ‘public interest litigation’. ‘public interest litigation’ is different from ordinary litigation in that sense that it is not initiated against another private person/party by a person/party to implement of personal rights. For public interest litigation, there must be public interest and this public interest is important issue.

## 1.2 Statement of the Problem

‘Public Interest Litigation', a term, widely used, has been stated that to support public interest some mindful public or organisations may move to the court with *bona fide* interest. An innocent person has been held for 12 years without trial in Bangladesh and for this innocent person, concerned public and organisations then have contested this illegal confinement. Some other issues have been challenged by conscious citizens are like radioactive milk imported by a company , imperfect flood action programme taken which caused huge environmental damage

, a chief metropolitan magistrate had been appointed but there was no previous consultation with the Supreme Court and many more cases like these had been filed with the HCD.

'Public Interest Litigation' as it is currently broadening its boundary, incorporates litigations like destitution linked cases, monstrosities of police, confinement which illegitimate, environment and consumer related issues, health related issues, children and women rights, ethnicity and some other fundamental and human rights cases.

## 1.3 Research Questions

Research questions can be divided into two parts where the main question is as follows:

- How has public interest litigation been judicially developed in Bangladesh?

The subsidiary research questions which will be explained are as follows:

- What is meant by 'public interest litigation' and '*Locus Standi*'?
- Is there any constitutional provision for 'public interest litigation' in Bangladesh?

## 1.4 Research Objectives

The core objectives of this research is to focus on the judicial development of public interest litigation in Bangladesh. With this one main objective, there are also some objectives of this research which are as follows:

1. To find out the meaning of public interest litigation.
2. To try to evaluate *locus standi* of 'public interest litigation' petitioner.
3. To unearth the Constitutional Provision related to 'public interest litigation' in the Constitution of Bangladesh.
4. To indicate the recent development of 'public interest litigation' cases.

## 1.5 Scope of the Research

This research is an analysis about the judicial development of 'public interest litigation' in Bangladesh so it will at first examine how far judicial development happened in Bangladesh on the 'public interest litigation' and certainly this research will include relevant case laws on the 'public interest litigation' so far filed with the public interest. On the other hand, as there is no definition of public interest litigation given by any statute, this research will find out a suitable definition for PIL in the context of litigations. Another point this research will include for filing a PIL is necessary like *locus standi* where it will examine how *locus standi* can be determined and a public interest litigation is correctly filed or not.

Obviously this research will find out the Constitutional Provision in Bangladesh regarding the PIL and it will try to scrutinize the provision comparing with other countries constitutional provisions like India in this regard that which fields are needed to reshuffle in Bangladesh for betterment of PIL.

This research will exclude points like if there is any remedy can be given by some other laws, there is no application will be entertained on the Article 102 of the Constitution of Bangladesh. This research will explain and draw some point on the recent developments of public interest litigation cases in the context of Bangladesh.

## 1.6 Limitations of the Research

So many Books under PIL **specially** in Bangladesh have not been written so far. Writers like Islam has written a book on the Constitution of Bangladesh where many cases are cited to indicate the issue properly. In recent cases, under Article 102 of the Constitution, many writ has been filed with the HCD. These cases have been crucial to do the research perfectly.

Lacking of books on the PIL is the main barrier to do a research on PIL. However, in the midst of pandemic like COVID-19, it has been difficult to get the opportunities of physical access to library and for which many journals and books written on constitutional law of Bangladesh are not studied. So the research are limited to some books and articles collected from various sources which are related to public interest litigation as mentioned in the Bibliography.

## 1.7 Justification of the Study

This research has pointed out that at the present times, 'public interest litigation' has been launched with great success and by this time, the view of PIL has been familiared using widespreadly in the country. To facilitate the use of 'public interest litigation, the Supreme Court has acted as main character. The research will point out that under the Constitutional perimeter, a brand of Bangladeshi PIL has been introduced and locally it has gained momentum as using of PIL has been increasing day by day to enforce some collective people's rights.

This research will focus on the future destination of PIL in Bangladesh trying to set some examples by cited some adjudicated PIL litigations. This research will try to introduce some points of issues for 'public interest litigation' in Bangladesh taken from Indian cases of Public Interest and other countries which may help our public spirited lawyers and organisations to move the court to seek remedy on behalf of vulnerable group/community. Finally this research will motivate others to so research on the 'judicial development of the public interest litigation in Bangladesh'.

## 1.8 Methodology of the Research

This research is a qualitative research. The data collected to complete this research are mainly from secondary sources likes books, journals, articles and newspaper articles. Some data are based on primary sources like The Constitution of Bangladesh.

## 1.9 A Brief Structure of the Research

The research monograph titled, ‘Judicial Development of Public Interest Litigation in Bangladesh: An Analysis' will discuss the judicial development of ‘public interest litigation' in Bangladesh. This research has been outlined into seven chapters. The introductory chapter deals with the statement of the problem, objectives of the study and methodology of the research. Chapter two deals with literature review and chapter three contains conceptual and theoretical framework for the research. Chapter four states judicial development of PIL in Bangladesh while chapter five outlines cases on the Public Interest Litigation and constitutional provision.

# Chapter-2
# Literature Review

## 2.1 Introduction

Main objective of law and legal system is to acquire justice for the society and in this case, 'public interest litigation' has been regarded as a useful instrument to gain the objective set out by law. In Bangladesh, there are many people who have less financial support to get access to justice because they are marginal and poor people, considering such financial condition, 'public interest litigation' has been originated as the key factor. It is known to all that under the established standing law, who has sustained legal damage for infringement of his/her legal rights where violator is the state and some cases, other public authority, there is judicial remedy for the victim.

This kind of *pro bono* public litigation is for only public-spirited individuals or organisations because they support others who are victims generally. Articles 44 and 102 of the Constitution of Bangladesh[6] contain provisions ,depending on 'public interest litigation' can be brought before the HCD for the purpose of enforcement of rights guaranteed under Part III of the Constitution.

## 2.2 Historical Background of PIL

'Public interest law' originated in United States at the very first time and it had sustained properly at that time in the world. Many actions which are marked to identify the essence of 'public interest law' were taken in the United States. These actions or movements have set its structures of organisations, financing methods and other options of strategies.

In the meantime, at the starting point of 1870s legal aid campaign began in United States and it is supposed that was the very first origin of 'public interest law' in United States. There were two features which newly created by legal aid campaign and one was *pro bono* function which had been established in the society perfectly and another one was the interest of the society supported by the third party/ organisation.

In the midst of 1960s and 1970s, in the United States 'public interest' gained success because in this time, many actions taken socially achieved the highest quality and intended citizens and other organisations had developed the options to represent the unrepresented poor, vulnerable sections to obliterate bias and inequality. That is why, it is said that the United States are frontrunner who originated the tool of 'public interest law' like PIL.

[6] The Constitution of the People's Republic of Bangladesh.

In Bangladesh, PIL had been initiated by a remarkable case popularly known as *Berubari case*. The Bangladeshi Constitution has a great historical background[7] and it has been gone through some important amendments because it has tried to interpret the boundaries of fundamental rights. Among many amendments already happened in the Constitution of Bangladesh, Third Amendmenthad been accelerated by *Kazi Mukhlesur Rahman vs Bangladesh and another* , which is popularly known as the *Berubari Case.* PIL is believed to be initiated using this case and such notion has always been accepted by the people of Bangladesh because the court had expressed its view on PIL at the time of this case's hearing.

### 2.3 Present Position of PIL

In *Mohiuddin Farooque vs Government of Bangladesh* , for the first time, the AD of the Bangladesh Supreme Court had delivered judgment in favor of the PIL. In this case, Mr. Farooque, the then Secretary General of Bangladesh Environmental Lawyers Association(BELA) had initiated a writ petition contesting Flood Action Plan No. 20. But it is hard to know that the HCD dismissed the filed petition and said that the petitioner is not an individual who is aggrieved on this issue, mainly termed 'aggrieved party' shortly. When appealed, AD allowing the appeal said that the petitioner is an 'aggrieved person' and from this unprecedented decision, it is believed to create legal recognition of PIL in Bangladesh.

Judicial activism has helped PIL to establish enormously in Bangladesh to ensure the uncontested rights of public whose rights are being infringed regularly by state or public authorities. Marginal and vulnerable people are mostly unable to get access to justice because they have no means of financial support or less financial support which is not enough to get justice in the costlier process of ordinary litigations and PIL in such cases has been an important tool to serve them with proper remedy.

[7] Mustafa Kamal, 'Bangladesh Constitution: Trends And Issues'.

# Chapter-3

## Conceptual and Theoretical Framework

### 3.1 Introduction

Whatever may be the reasons and justifications of the newly emerging concept of PIL, it must concern to the prevailing scheme and spirit of the Constitution. In other words, it can be termed that under the Constitutional Provisions, PIL has to be interpreted, substantiated and rationalized.

### 3.2 Basic Concepts of PIL

In the 1960s and 1970s, litigation's concept was in its rudimentary aspect and had been supported just for particular purpose to invoke the particular interest for which it vested. To address the personal complaints or other personal problems, individuals could initiate cases at that time and litigation contained some actions to loosen up those grievances. Therefore, at the time of 1970s, institution of suit and continuation of suit was only for sufferer or who was actually aggrieved from the wrong done to him. But with the arrival of the concept of PIL, that procedure totally shifted after 1980s and the Indian Supreme Court had acted as a main actor giving many important decisions on the public interest issues.

Basically, PIL has not been clarified in any statute but when cases filed before court on the public spirited issues , many justices have delivered important clarification of PIL. If there is any legal wrong or legal injury has been ensued to a person or class of persons who are mainly vulnerable or marginalised people and they have no ability to move the court for seeking remedy, on behalf of them, any public spirited person or organisations can file an application seeking proper redress to the Court. This concept of PIL has been established by Justice Bhagwati in remarkable case *SP Gupta vs Union of India*.

### 3.3 Theory Related to PIL

There are some viewpoints that PIL is originally a great uprising and reformation and it has been an extreme evolution. However, PIL is required to be explained by the advocates and activists as well as assumed by lawyers. In consequence of such thoughts, many endeavours have been developed to theories of PIL. But it might be impossible to give a single and reliable theory of PIL which could be adopted by all.

Cappelletti, in his Article ‘vindicating the public interest through the courts: A Comperativist’s Contribution' has discussed about ‘Massification’ theory. In the contemporary world PIL is deemed to have justified as the result of massification manifestations. There are much

sophistication, problems and expanded extent of the contemporary world existing right now, in calculating all of these obstacles, particular rights and privileges may not be obtained using common methods. So, to solve such kinds of obstacles, PIL is believed to be a great tool and so is highlighted perfectly. In this way, PIL can sustain as an ever-present tool in the area of legal side in contemporary world, in which the society can express their grievances seeking redress. Cappelletti explains current position of PIL as in a sole litigation it may solve mass people's problems in the contemporary world where sometimes complications are too many and regarding this, PIL may be effective for large-scale of community at a time. On the other hand, public may be ignorant of his own rights or incapable to invoke his rights before the court for financial problems. So ordinary litigation file system can not be viable to those who are not aware of the fact or sometimes they are denied to seek remedy for their financial inability before the court. Such rights may be violated for collective people. Therefore, to avoid all complications, common move to court by private person is considered to be discontinued and in this position, new approach to the court to support such rights of individual or collective people can be originated by third party who can seek remedy for the unable people before the court. By this way, 'public interest litigation' has been developed as a redress for the mass people or single public and public interest law has gained momentum in the contemporary world.

PIL, at this time, is being characterized as a tremendous means of supporting the underdeveloped people in the society. This way PIL or public interest law is deemed to have attained passion among the public spirited people or organizations.

## 3.4 Legal and Policy Framework of PIL

Under the Article 102 of the Constitution[8], a 'Public Interest Litigation' has been supported and anyone can move to the court if his/ her fundamental rights guaranteed under Part III of the Constitution have been encroached by others. In this respect, the HCD can pass an order using Article 102(1) of the Constitution if it us evident from the fact that fundamental rights violated by the State or Public Authority. An aggrieved person can make an application before the Court seeking remedy and Article 102(1)(a) can be used by the HCD to direct the government by passing an order where the Court can instruct the government what is required to do within law and what is not within law and in this respect, illegal or beyond law activities should be postponed by the government or public authority.

'An aggrieved person' is determined by the Court and incorporates all legal aid, human rights and organisations or NGOs which are believed to work for public interest and they are

[8] The Constitution of the People's Republic of Bangladesh.

recognised as the starter of ‘PIL’. They can file a petition before the HCD to support the underdeveloped or vulnerable group of people, workers and other individuals mainly unable to seek remedy personally. The HCD has power to issue specific orders and directions upon the application filed by an aggrieved party if appropriate and this power given to the HCD under Article 102 of the Constitution.

To enforce the fundamental rights violated by the State or Public Authority for any individual or group of people, the HCD may resorting on the application filed by third party or organisations on behalf of the vulnerable group give such directions or orders to the related public authorities who are conducting such functions of government from which rights have been infringed not to do such functions and on the other hand, if any function should be initiated to satisfy the public aggrieved, such kinds of directions can be made by the HCD. This rights are mainly fundamental rights which have been incorporated under Part III of the Constitution and he /she has right to move to the HCD under Article 44 and Article 102 when infringement is tracked.

# Chapter-4

## Judicial Development of PIL in Bangladesh

### 4.1 Introduction

There are many deficiencies of the Bangladeshi legal system for which the colonial legacy is mostly responsible. Though we have gained liberation with cost of many lives and we had to gain liberation at first from the British period in1947 when India and Pakistan, two States, had been created by the colonial ruler as well as we finally obtained our freedom from Pakistan, that means, two times we have obtained independence. Nonetheless, the legal system prevailing in this modern time is the unaltered system inherited from the British period. So mostly common law which had been introduced by the British ruler after they conquered this subcontinent from Mughals has totally been implemented by them.

Insertion of Common Law in this subcontinent was for betterment of colony as they thought at that time. To rule the colony effectively, the main motive was to generate a system which would be helpful to manage. Bangladesh has struggled to gain independence from Pakistan that is the reason of skirmishes between Pakistan and Bangladesh. Accordingly, martial law has been imposed by the then ruler of Pakistan and many times in that period democracy was not in action as well as Constitution has been consequently repealed by the martial law supported rulers, eliminated and written according by their will. All of those malfunctions created many problems for the advancement of law and legal system and this way, frustration was marked as an impediment to advance the law.

At the end, liberation war ensued between the East Pakistan and West Pakistan and accordingly Bangladesh was born in 1971 as an independent nation. Newly born Bangladesh adopted its first Constitution on 16 December, 1972 by the then Constituent Assembly where a 34 members committee worked so hard to adopt a perfect Constitution for the nation. After adoption, Constitution had to through some amendments and it was common matter at that time to the Parliament to describe the fundamental rights. The very first amendment had been accepted in 1973[9] and after that amendment, within very early time, third amendment happened, because some disputes put forward at that time about the land exchanged between India and Bangladesh, from where the famous case *Berubari Case*[10] filed by *Kazi Mukhlesur Rahman.*

[9] *The Constitution (First Amendment) Act*, (1973) XV of 1973.
[10] Kazi Mukhlesur Rahman vs Bangladesh and Another [1974] SC, 26 DLR (SC).

## 4.2 Judicial Development of PIL

In 1974, a case was filed before the Court challenging the exchange of enclaves between India and Bangladesh and it was filed by *Kazi Mukhlesur Rahman,* an advocate, where it was pointed out that the executive has no place power to legally to do that. He came to the Court as an aggrieved Citizen and whether he has standing to do challenge the fact was questioned. But Sayeem CJ granted his *locus standi* depending on the subject that this case is under the Constitutional territory where significant issue has been found to challenge and it is under the Fundamental Rights of the citizens which has been threatened by this exchange. Moreover, this issue can cover the whole territory of Bangladesh. It is not the case whether the Court has the power to decide the case but it is the case that whether the applicant is capable of being heard. But the petition had been dismissed by the Court regarding prematurity and the Court recognized this is under the Parliament to decide the territorial issue and Parliament can approve and enact the law regarding territory under the Constitutional provisions. Very soon after this case, the government introduced the third amendment of the Constitution to validate the exchange of enclaves between India and Bangladesh.[11]

This above-cited case has had great significance and positive impact on PIL as well it is believed to have started the PIL by this case in Bangladesh and in this case, the Court considered *locus standi* principle under public interest litigation. So the *Berubari Case* is a great accomplishment after the liberation war of Bangladesh which is supposed to at that time very inexperienced nation regarding the judicial history. In the *FAP 20 Case* , this case(*Berubari* Case) has been declared an extraordinary attainment because from the *Berubari Case,* India has inaugurated its action to improve the PIL thoughts.

Afzal CJ at the time of delivering judgment in the *FAP 20 case* measured that ‘ at the very beginning of our Constitutional mission *locus standi* principle declared in the *Berubari Case* which is a matter of gratification for us and liberalisation of standing is important in this sense that PIL can be filed by third party'.

Soon after Independence the democracy began to spread , but a serious threat on Constitution was observed at the time of 1975 when many problems started to destabilise the country like instability, natural catastrophes and breakdown of law and order. All of these problems including martial law for some time was adopted delayed the Constitutional functions which are applied by the Court and in this time constitutional journey was slow regarding public interest matter because the Court could not function properly. If the court was in smooth

[11] The Constitution (Third Amendment) Act (1974) LCCIV of 1974.

mood, the *Berubari principles* would have done more good progress and it was turning point for the Court to move advance using this principle in the PIL cases. However, this did not happen because the Constitutional order has been impeded by the many obstacles in the time of martial law rule and afterwards.

The 8th Amendment case in which Article 100 of the Constitution had been questioned and termed as *ultra vires.* When it was heard before the Court, with majority 3 against 1, the Court observed the amendment of basic structure of the Constitution is not possible and therefore, this amendment was invalid. The Court had to resort on the Indian Case *Keshavananda Case* to make a decision favouring the petitioners who challenged the 8th Amendment Case. This case is significant from various aspects like judicial review power has been established by the Court in this case and judicial activism and other constitutionalism aspects substantiated by the Court. In the 8th Amendment case, among other matters, Constitutional Supremacy was solidified by the Court and enhanced the dignity of Court. So, this case termed as the ancestor of PIL cases.

In 1996, PIL gained huge achievement, where many cases have been decided by judges marking the 'public interest litigation' as well petitioners have been awarded standing and by terming PIL as outstanding tool for protection of social interest.

Political disturbances had been increased at this time and the opponent parties were demanding caretaker government to start a fresh and fair election as well as they revolt against the election held under the sitting government. Finally caretaker government concept had been accepted by the then government and in parliament, the thirteenth amendment of constitution passed. [12] At that time, Muhammad Habibur Rahman, former Chief Justice, was appointed as the head of the Caretaker Government, first instances in Bangladesh. Afterwards, the Thirteenth Amendment was subject to challenge and challenge made by *Syed Muhammad Mashiur Rahman*[13] and after the petition to the Court, MM Hoque J dismissed the petition saying that 'Thirteenth Amendment does not come within the claim of petitioner because such amendment was not accepted distorting, substituting or abolishing the provision of Constitution.'

The Awami League won the election conducted by the Caretaker Government fairly and Justice Shahabuddin Ahmed was assigned as the President by the newly formed Government. Therefore, Abu Bakar Siddique, the then President of Muslim Millat Party contested the appointment of The President in *Abu Bakar Siddique vs Justice Shahabuddin and others* . In

[12] *The Constitution (Thirteenth Amendment) Act,* (1996) I of 1988.
[13] *Syed Muhammad Mashiur Rahman vs Bangladesh and others* (1997) 17 BLD.

this petition, Mr. Siddique questioned that after retirement from Justice Mr. Shahabuddin can not enter the service of the republic. Mr. Siddique lost on the ground of merit of the case and MM Hoque J here conferred the *Berubari Case* granting him standing and explained that 'as the Supreme Court previously described standing principle in many constitutional issues where significant public interest is present, in this petition also holds like constitutional issues which are regarded important issue under the present case, so the writ petition filed before the Court is maintainable'.

This action has been a tremendous action for PIL and this way *Berubari* principle was recognized by the Court and termed such principles were not dead letters. In 1996, a renowned lawyer, worked for BELA, Dr. Farooque filed many petitions before the Court which were PIL cases. One of the cases was *Judges Appointment*[14] , where in the vacant posts of the Supreme Court, he tried to stimulate the government to nominate judges but Mahmudur Rahman J stated in this case that no constitutional or legal rights violated by such inaction of the government and thereby he dismissed the standing of Mr. Farooque.

*Radioactive Milk*[15] Case was initiated by Dr. Farooque before the Court which was involved the right to life, one of the fundamental rights. In this case. Radioactive Milk was imported by the Commerce Ministry which was harmful to the health of children consumers and Kazi Ebadul Hoque J delivered some points like the governmental departments should arrange controlling system if such incidents would not occur in future time. This case granted standing for Dr. Farooque because it was involved with the right to life which has constitutional value and it was another important case for PIL.

## 4.3 Recent Landmark Cases on PIL

After the final decision given by the AD on *FAP 20 Case* which is termed as the landmark decision in respect of PIL cases, there was positive scenario among the lawyers, activists and other NGOs who were working to establish the PIL as a means of beneficial tool for vulnerable group of people. The decision on *locus standi* was recognised by the AD for the third party if there were rights violations by the State or public authorities in this cases which eradicated all of the concerns and complications regarding standing of the 'aggrieved party' and validated the PIL cases. After this Judgment, many PIL cases were filed before the HCD to seek remedy in various matters by the activists, lawyers who are concerned about rights of the citizens and other Private Organisations or NGOs. Among them some cases are cited below :

[14] *Dr Mohiuddin Farooque vs Bangladesh represented by Secretary Ministry of Law , Justice and Parliamentary Affairs* (1996) 48 DLR.
[15] *Dr Mohiuddin Farooque vs Bangladesh represented by Secretary Ministry of Commerce and others* (1996) 48 DLR.

One of the much-talked PIL petitions was *Md Idrisur Rahman vs Shahiduddin Ahmed and others* where there was no initial meeting happened with the Supreme Court in regards of appointment of the Chief Metropolitan Magistrate and for this reason, such appointment was contested by Md Idrisur Rahman in 1994. In 1999, the HCD delivered its decision on this case on behalf of the petitioner. When appealed by the respondent to the AD, there was no alternative decision of the HCD held by the AD and it was for the Petitioner like the HCD .

Local Governments of Rangamati, Khagracchhari and Bandarban associated three laws had been enacted by the Government of Bangladesh and from which some political activists along with MPS challenged the enacted laws and this challenged petition finally heard by the Court and the Court delivered its verdict on behalf of petitioners as well as the Court fixed a time limit to hold a new election in these regions. This was held in the *Ziaur Rahman vs Government of Bangladesh* case.

*Bilkis Akhter* Case has been the milestone case in Bangladeshi legal system because in this case, for the first time compensation has been granted to the victims by the Court for illegal incarceration by the Government which was just for political purpose marked by the Court.[16]

Another compensation related case was *Md Shahanewas vs Government of Bangladesh Case* where the Court granted monetary redress to the petitioner for illegal detention by an ASI of Police. The victim was actually an innocent man who did not know why he had been detained instead of the fugitive criminal.

[16] *Bilkis Akhter Hossain vs Secy Ministry of Home* [1997] HCD, 2 BLC (HCD).

# Chapter-5

## Cases on 'Public Interest Litigation' and Constitutional Provision of PIL

### 5.1 Introduction

The terms 'Public Interest' state ordinary spirit and similarly social interest as well as 'Litigation' compromises a legitimate activity incorporating all of proceedings in, inaugurated in the court of law for implementing the privilege and pursuing a redress. Accordingly, the word 'Public Interest Litigation' compromises some litigation performed with the purpose of the privilege of the public and for reduction of public grievances. But it can be said that, Public Interest Litigation suggests litigation for the preservation of public interest.

### 5.2 PIL Evolving Through Cases

When PIL was in the initial stage, the concept of PIL could not be understood perfectly by the judges at the starting point of PIL in the subcontinent. But a landmark PIL case was *People's Union of Democratic Rights vs Union of India*, at the time of delivering judgment in this writ petition Bhagawati J, who is considered one of the pioneers of PIL in India, contemplated that 'for PIL petitioner, the State and the public authority, Public Interest litigation is deemed to be collective action to get the positive consequences of constitutional rights guaranteed by the Constitution for the benefits of the underdeveloped and unrepresented group of people who can be victims in many cases continuously and this is the tool using which , such vulnerable group may get common justice.'

Evolution of PIL was so quick and judges had helped a lot on behalf of PIL to expanding the PIL for social interest as well as many judges explained the term PIL with great deliberation in many writ petition for PIL. Maximum judges described the term PIL from the wide corner as the term PIL can be useful to eradicate many obstacles for vulnerable groups and PIL can maintain its core vision to support the socially and economically disadvantaged people with social interest.

In *People's Union for Democratic Rights vs Ministry of Home Affairs Case*, Kirpal J stated that the Phrase 'Public Interest Litigation' is meant to me that it is a litigation in the interest of the public. This litigation is not for the satisfaction of the curiosity of the Public but it is a litigation filed with a preference that the Court would be able to provide significant remedy for the whole or a group of the society.

In *FAP 20 Case*, Mustafa Kamal J stated that 'if public injury or wrong or violation of fundamental rights has been happened with many persons or group of people under the

Constitutional Scheme at a time, it is not mandatory that all people have to file writ petition individually under Article 102 of the Constitution. In this case, any member of the public, being a citizen, who has suffered the common injury or wrong with others can file writ petition under Article 102 of the Constitution where this individual is regarded as an aggrieved person'. There are many reasons for what PIL is considered to be exceptional. PIL is separated from conventional litigation in some cases which are as follows :

a. First, for collective people or group of vulnerable people, in many fundamental rights violated by the State or Public Authority PIL may be useful tool seeking redress for all in a single writ petition. That is why it is working for public interest separated from private interest in that sense.

b. Second, any concerned citizen can move towards the Court for seeking redress where he has standing regarding fundamental rights violations. *Suo motu* intervention by the judges has been observed as they are also concerned citizens .

c. Third, sometimes a letter or application in the Court can be treated as writ petition where compensation might be sought for disadvantaged people in which case, gross violations of fundamental rights occurred like environmental degradation.

For such reasons mentioned above, to secure collective or social justice for many people who are vulnerable or disadvantaged a single writ petition can be a beneficial tool which is termed as PIL is a special type of litigation separated from private litigation.

## 5.3 PIL under The Constitutional Provision of Bangladesh

If the origin of Constitution of Bangladesh is closely scrutinized, biasness to the social and collective justice is marked and this has been changed after the formal adoption of Constitution in 1972 where many good things like social justice, equality and human dignity have been declared as the core subject matters of the Constitution as our Constitution has been created holding socialist view. If we look at the Preamble of the Constitution, many rules are said to be found which need to be explained properly.[17]

Preamble in some cases may be used to clarify the purpose of the Constitution when obscurity was identified in enacting part. But it can not be traced as an origin of power. From the 8th Amendment Case, it has been pointed out that Constitution architects motive must be the guiding principles in regards of interpretation of the Constitution.[18] Further it has been highlighted by the Judges that Preamble is considered to be a part of the Constitution.

[17] Mahmudul Islam, *Constitutional Law Of Bangladesh* (Mullick 2006).
[18] *Anwar Hossain Chowdhury vs Bangladesh* [1989] AD, 41 DLR (AD).

Article 142(1) of the Constitution refers that Preamble of the Constitution can be amended with referendum. When Constitutional provision is countered with the Preamble, then architects intention will be considered. In *FAP 20 Case* Mustafa Kamal J states that 'Comparing other Constitutions it can be said that preamble of our Constitution takes distinct footing and its origin is also distinct from others'.

When the Preamble is needed to be interpreted and if there needs to refer social and collective justice, the Preamble should read with the Article 7 of the Constitution of Bangladesh. Article 7 refers that powers of Republic must belong to the people and this power is exercised on behalf of people. This Article again refers that the Constitution is the Supreme law of the Republic and if any law is inconsistent with this Constitution, then such law shall be void for such inconsistency as it is the solemn expression of the will of the people.

As in the *FAP 20 Case* Latifur Rahman j stated that 'as the Constitution is the Supreme law, so this Supremacy is a particular and unique element of Constitution and this Supremacy is not declared in Indian and Pakistani Constitution as well such provision is substantive which considers all powers of the Republic must be exercised by the authority'.

People as they belong all powers of the Republic are considered to be given priority in respect of collective rights and interests. The preamble declared aims and objectives of the Constitution and priority should be given with conformity of these aims and objectives.

People's rights and interests should be endorsed according to Article 7 of the Constitution and particular matters are referred in Constitution as fundamental. Articles 8-25 which are inserted under Part II of the Constitution refer fundamental principles of State Policy, on the other hand, Articles 26- 47 inserted under Part III of the Constitution contain fundamental rights.

Article 26 refers that prevailing laws and newly enacted laws must correspond with the Part III where basically fundamental rights have been inserted as well as if any laws is found to be inconsistent with Part III that law shall be held void. Right to move the HCD when fundamental rights infringed has been ensured under Article 44 and under Article 102, the HCD's power to issue certain orders and directions to implement the fundamental rights has been ensured but there is no provision containing the word writ directly in Constitution but under common law system five writs are being practiced.[19]

[19] *Haji joynal Abedin vs State* (1978) 30 DLR.

# Chapter-6

## Procedure and Remedies: Judicial Activism in PIL

### 6.1 Introduction

As PIL is contradicted from private interest litigation which is mainly followed the adversary procedure, so PIL has brought many changes which are deemed to be creative relating to procedures and redress and often, PIL is believed to have non-adversary model. There are several reasons why these innovative techniques are essential.

a. First, PIL petitioners are concerned citizens. It can not be expected in all cases that they will bear all the expenditure, time and energy required to properly present and pursue the cases initiated .

b. Second, the poor and the helpless are often no match for powerful opponents such as vested interest groups. Huge disparity of strength of the contending parties may cause injustice unless the court intervenes.

c. Third, public interest matters often involve thinly spread out rights and diffused rights. As a result, traditional private interest model sometimes fails to provide adequate and appropriate relief.

d. Fourth, safeguarding public interest demands a wider vision, which is not concerned merely with the settling of disputes. The court considers in detail the effects and consequences of its decision upon the socio-economic life the nation.

### 6.2 Epistolary Jurisdiction

The court has power to treat letter and telegrams sent to it as writ petitions and initiate PIL cases on the basis of such communications. This has termed as epistolary jurisdiction, this has been an invention of the Indian Courts in epoch making cases including *Sunil Batra vs Delhi Administration*[20] and *Ichhu Devi vs Union of India*[21] . This was later followed in Pakistan in the famous case of *Darshan Masih vs the State*[22] . In Bangladesh, this practice has yet to be developed. Any objection on the ground that Article 102 of the Constitution contains the terms ‘on the application of' is not tenable because the Constitution neither defines the term ‘application' not restrictively determines its scope. Also, the Constitution itself does not lay down any specific procedure for preparing such an application. Thus, it appears that there is no bar to treat or convert letters as writ petitions. Acceptance of letters and telegrams as writ

[20] [1980] SC, AIR (SC).
[21] [1980] SC, AIR (SC).
[22] [1990] SC, PLD (SC).

petitions does not mean that it makes all sorts of procedural rules and requirements redundant. Once the communication is accepted as a petition, the court follows all rules and procedures which are applicable in a writ case. Power of the court to treat letters and telegrams as writ petitions is not unfettered. It is mainly a matter of discretion of the court which is to be considered according to the facts and circumstances of each case.

1. First, it must be apparent from the circumstances that justice will be denied unless the letter is given consideration .
2. Second, epistolary jurisdiction applies mainly to violations of fundamental rights.
3. Third, it applies to very grave, inhuman and serious situations only, for example, *have as corpus* matters including police atrocities and torture.

## 6.3 *Suo Motu* Intervention

Where public interest is concerned, the judge can act *suo motu* and initiate a PIL case. The words '*suo motu'* mean 'on his own motion' as opposed to 'on an application by a party'.

Generally, and in almost all the cases, newspaper reports prompt the judges to act *suo motu*. But the judge's source of information may be anything other than newspapers including letters, news item n any communication media including television, report given by a friend somebody knocking at his door or the judges coking across some injustice in his daily life.

In a *suo motu* case, the judge himself appears, as a concerned citizen, to be the applicant. This is problematic from a theoretical perspective in the sense that it violates one of the basic tenets of jurisprudence – no one can be the judge of his own case. However, PIL cases merely create an exception without violating the general rule. *Suo motu* interventions in public interest do not propose to violate the principle of Justice – the only intention is to protect social and public interest where immediate intervention is necessary. In fact, any apprehension that the judges might use the *suo motu* power arbitrarily is unfounded due to several reasons.

1. First, the power to intervene *suo motu* is exercised cautiously with much discretion. There is hardly any example where the court has abused this power.

2. Second, the courts do not generally intervene where fundamental rights, which the court is duty-bound under the Constitution to protect, are not violated.

3. Third, in practice, only very grave instances of violation are taken up by the courts *suo motu*. Each and every public interest matter will not qualify. Generally, unlawful detention matters are seen as fit cases for *suo motu* intervention.

4. Fourth, although the court may initiate a PIL case, it generally appoints lawyers to present the case of the person suffering. Thus, ultimately, the case is pleaded not by the judge, but by the lawyers of the respective parties.

The most famous Bangladeshi *suo motu* case is *State vs Deputy Commissioner, Sathkhira and others*[23] where the judge issued a *suo motu* rule after reading a news item in a daily newspaper. One Nazrul Islam, who was held in custody for 12 years without trail, was soon released. Recently, in *State vs Deputy Commissioner Bogura and others*[24] *suo motu* rule was issued when a newspaper reported unlawful detention in jail. The rule was subsequently discharged.

A very interesting *suo motu* rule was issued in *The State vs Md Zillur Rahman and others*[25] , where the legality of *hartal* was assessed in the light of offences against public tranquillity under sections 141 to 160 of the Penal Code[26] . It was decided that decision to observe *hartal* by five or more persons amounts to unlawful assembly only when they decide to compel others to observe the same. However, the *suo motu* file in this case was issued under the inherent power affirmed in section 561A of the Code of Criminal Procedure . The Court said: 'It is well-settled that this section does not confer any new power to the HCD, but affirms its inherent power which it owns instinctively to do that real and substantial justice for the administration of which alone it exists.'

## 6.4 Award of Compensation

Regarding PIL litigation, the HCD has power to grant monetary redress to the vulnerable people or group against whom unlawful acts have been ensued. This power of HCD is discretionary power. In many cases so far decided in Bangladesh where compensation granted to the victims and the discretionary power of Court has been understood. In *Bilkis Akhter* Case Justice Md Moyeenul Hoque said that 'as in our Constitution no specific provision to grant compensation, mainly monetary compensation but the HCD can use it discretion may pass such order granting monetary compensation considering the facts and circumstances of cases'.

Generally, money suit is initiated to the lowest grade component court but under Article 102 of the Constitution compensation is given following public law and it is regarded as public law compensation. But this award of compensation is not substitute to the civil suit. Because if a victim is granted compensation under Article 102 of Constitution, even he is competent to seek money suit under the civil Court under general procedure of civil court. This kind of

[23] (1993) 45 DLR.
[24] [1999] Unreported Writ Petition No 1389 (Unreported Writ Petition No 1389).
[25] [1999] HCD, 19 BLD (HCD).
[26] The Penal Code 1860.

great principle had been established in the Indian case *MC Mehta vs Union of India and others.* When compensation is granted under the Constitution under Article 102, such award is deemed to act as an alleviative character. Granting compensation is a great relief to the victim as they are vulnerable, destitute and such public law monetary compensation may help them to move the civil court for appropriate money suit because what is provided under Constitution is token in nature but civil court can grant more than that nature and what is proper remedy can be perfectly decided by the Civil Court.Some leading cases in Bangladesh regarding compensation are *Bilkis Akhter Case* and *Shahanewas Case*. *Bilkis Akhter* Case has been the milestone case in Bangladeshi legal system because in this case, for the first time compensation has been granted to the victims by the Court for illegal incarceration by the Government which was just for political purpose marked by the Court.[27]

Another compensation related case was *Md Shahanewas vs Government of Bangladesh Case* where the Court granted monetary redress to the petitioner for illegal detention by an ASI of Police. The victim was actually an innocent man who did not know why he had been detained instead of the fugitive criminal.[28]

Some Indian cases which are trend setter for compensation include detention in prison for over 14 years, unlawful detention of civilians by army personnel , illegal detention of a person on the basis of 'untrustworthy and meaningless evidence'[29], failure of police to produce arrested persons before the Magistrate within the requisite period.

There are two phases to grant compensation :

1. First, after issuing rule immediately Court can grant remedy and it is deemed to be temporary relief for the victim as well as there is time required to solve the case, so far such immediate relief may be helpful to the victim.
2. Second, the Court at the time of final disposal can grant proper amount and must revise the amount from the early amount given to the victim as immediate relief.

So, the granting relief by the HCD is termed as temporary relief and victims are free to seek appropriate relief to the civil court by filing regular suit for and in this respect, the HCD sends the suit to the appropriate Court to dispose the matter.

[27] *Bilkis Akhter Hossain vs Secy Ministry of Home* [1997] HCD, 2 BLC (HCD).
[28] (1998) 18 BLD.
[29] *State of Maharatr vs Dadaji Kacharan Sonawane* (1984) Cri LJ.

# Chapter -7

## Recommendations and Conclusions

### 7.1 Findings

There are two new rules found before the *FAP 20 Case* in respect of 'Public Interest Standing'. These are as follows:

(1) Representative Public Interest Standing: when a person or group of persons for any reason is believed to be vulnerable, disable or financially incapable for which they can not approach to the Court for relief, to protect their interest if any petitioner appears to the Court on behalf of them. In this respect, a well-settled PIL case may be referred here like *Bangladesh Retired Government Employees Welfare Association vs Bangladesh.*[30]

(2) Citizen Standing : when a violation of public duty occurs, that is regarded as a violation of collective right of the public at large. For this aspect, a case may be referred like *Anwar Hossain Khan vs Speaker of Bangladesh Sangsad Bhavan and others*.[31]

In the *FAP 20 Case,* a new set of rules have been marked by the Judges for public interest standing in which a public cause is matched. Rules are as cited below:

(a) There must have presence of wrong, injury or violation,

(b) There must have sufficient interest of the petitioner, and

(c) There must have *bona fide* intention of the petitioner.

For some PIL cases, monetary redress may be given by the Court as Compensation. In *Bilkis Akhter Case*, MM Hoque J stated that 'considering facts and circumstances of each case, this Court has the power to grant reasonable cost of the case as well as monetary compensation'.

There are other findings regarding the PIL identified analysing many cases which are valuable to PIL petitioners and from these findings it may be learned that PIL has some advantages. However, findings are cited bellow:

1. First, litigation gives publicity to the cause for which it has been espoused for, this kind of publicity is often free. After taking of notice of any problem or issue by the Court, it starts an ongoing debate. In other words, it can be said that the activists for PIL can file a problem through litigation and bring little known human rights issues in

[30] (1994) 46 DLR.
[31] (1995) 47 DLR.

the forefront. This kind of litigation helps human rights activists to create, mobilize and direct public opinion in favour of public interest. For instance, the problems associated with the Flood Action Plan in Tangail area came to light because of the PIL case that has been challenged[32] .

2. Second, filing litigation has been a great achievement for social activists because litigation has an important fact finding role for them. The Court can request the government to release the information regarding the filed PIL and may even compel the government for information. Therefore, PIL is often more successful in obtaining facts and information than lengthened research and lobbying. Even commissions and experts appointed by the court can help in this process.

3. Third, if PIL cases is pending before the court, even it can pressurize the executive and legislature to ensure compliance of the Constitution and the law related to this PIL. PIL cases stage and publicize loopholes or injustices in the existing laws, accordingly provoking the legislators to rethink public policy and pass new legislation to address the problem. PIL is often catalyst to legislation even when the court fails to give relief due to any existing law. Similarly, PIL cases can energize inactive government departments, regulatory agencies and public institutions into action[33] . Also, PIL cases often greatly increase the bargaining power of the activists in different forums. Finally, the PIL may encourage supporters within the bureaucracy and advance social justice causes.

4. Fourth, there is a deterrence factor of PIL. Once a case is initiated, it indicates the alertness of the activists. The vested interests receive a signal that any further violation will not go unchallenged.

5. Fifth, the function of delay is another very important role of PIL. On the one hand, litigation can provide much needed time for the activists to organize and mobilize through other strategies to pursue their cause. On the other hand, delay often provides relief to the aggrieved persons who use the time to make alternate arrangements. In a number of petitions challenging eviction of slum dwellers without providing alternative arrangements, the eviction orders remain not enforced while the cases are pending .

[32] *Dr Mohiuddin Farooque vs Bangladesh (FAP 20)* [1997] AD, 17 BLD (AD).
[33] *Syed Borhan Kabir vs Bangladesh and others(Paracetamol)* (1993) Unreported Writ Petition 701/1993.

6. Sixth, PIL cases help the greater movement of legal aid, or public interest law in many ways. Litigation helps the activist's lawyers to focus on particular problems. It is very much responsible for the development of flexible lawyering. PIL cases increase the social consciousness of the lawyers' community.

## 7.2 Recommendations

Regarding 'person aggrieved' in PIL cases, there are some indications comparing our Constitutional view with India. An aggrieved person can file writ petition under Article 102 of the Constitution but in case of *habeas corpus* or *quo warranto,* procedure is exceptional. So for *locus standi,* an application for *certiorari, mandamus* and *prohibition* when is submitted, the applicant must ascertain that he is 'aggrieved'. A foreigner even can file an application before the HCD under Article 102(2) if he is 'aggrieved' from any action happened in Bangladesh and he resides in Bangladesh.[34]

1. For *locus standi,* an English leading case can be cited here and this case is *Exparte Sidebothom*. In this case the Court observed that aggrieved person is a man who suffered legal wrong directly or a decision given against him from which he has been erroneously denied his title or other rights.[35]

2. *Kazi Mukhlesur Rahman Case* the AD stated about the *locus standi* where the petitioner was not an inhabitant of South Berubari or adjoining enclaves. But this case is related to grave importance of Constitutional provision like fundamental rights(right to move freely). As here in this case *locus standi* principle was almost acknowledged by the Court.

3. Krishna Iyer J described in *Mumbai Sabha vs Abdulbhai Case* for common people *pro bono* public and other issues can be considered to have *locus standi* and there must be representative nature of such actions.[36]

4. In *Fertilizer Corp. Kamgar Union vs India*, the Supreme Court allowed the workers' union and two individual workers of a factory to challenge the action of the government in selling the factory.[37]

5. *Bangladesh Sangbadpatra Parishad vs Bangladesh* this case is another example of person aggrieved how can be determined. A compensation award was given by the

[34] *Northpole(Bangladesh) Ltd Vs BEPZA* (2005) 57 DLR.
[35] 1880] AD, 14 Ch. D. (AD).
[36] [1976] SC, AIR (SC).
[37] [1981] SC, AIR (SC).

Wage Board and subsequently it was challenged by the association of newspaper-owners. The HCD rejected the challenge petition and said that there is no *locus standi* of association. When appealed, the AD asserting the HCD's verdict and said citing Indian decisions in respect of PIL case that 'who seeks to enforce fundamental rights and constitutional remedies under the Constitution, he must be an aggrieved person.[38] So, it may be said that a person personally is not affected if he has sufficient interest in the contested issue can be an aggrieved person.

6. Another point here can be mentioned regarding the compensation awarded in PIL cases. Awarding compensation may be a great remedy for PIL petitioner in cases of fundamental rights violations. How compensation can be granted is cited bellow:

a. In case of fundamental rights violations by the state and other individuals , there should be compensations under the public law. In this regard, J.S. Verma J. pointed out the following principles- at the time of writing *Nilabati Behra*[39].

b. 'Award of compensation in a proceeding under Article 32[40] by this Court or by High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. Enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention.'

c. Justice Yethirajulu described that the Supreme Court of India has introduced a great issue like compensatory jurisprudence under Article 32 of the Indian Constitution. As some incidents like State lawlessness, police atrocities, custodial violence, wrongful detentions and other inhuman activities by the State sponsored Actors are increasing day by day, the compensatory jurisprudence has attained immense significance in recent years. This litigation system is reducing diversity of litigation and at the same time assisting the Court to solve the litigations speedily. By this way, the Supreme Court can deliver justice to the victims whose right to life and personal liberty has been violated.

d. Can the HCD have the power to award compensation in Bangladesh, this issue has been referred by Md Mozammel Hoque J in *Bilkis Akhter case* as in our

[38] 1991] AD, 43 DLR (AD).
[39] *Nilabati Behera vs Orissa* [1993] SC, AIR (SC).
[40] Indian Constitution.

Constitution no specific provision to grant compensation, mainly monetary compensation but the HCD can use it discretion may pass such order granting monetary compensation considering the facts and circumstances of cases.

e. *ZI Khan Panna* Case is another example of compensatory jurisprudence in Bangladesh. In this case Justice Moyeenul Islam Chowdhury delivering the judgment said that 'seeing realities a court of law can not be blind. As usual it is seen that punishment is given to the offender to pacify the victims and their family members but they are not wholly satisfied from such mere punishment. If monetary compensation is claimed under civil law, it could take long time and also the procedures are cumbersome for many victims. In regards, by way of redress monetary compensation can be given under public law by the Court to the victims'.

## 7.3 Conclusion

At the very beginning, the development of PIL in Bangladesh was sluggish due to the threshold problem. This was for the prolonged periods of martial laws and autocratic regimes that reduced the fundamental rights and disrupted the normal functions of the judiciary. After being charged of democratic process, the judiciary has been speedy and boldly taking constitutional role. As a result, progressive interpretations of Constitution have been possible and PIL has been taken as an important instrument. The nature of Public Interest Litigation is completely different from traditional case which is adversarial in nature whereas PIL is instituted to vindicate rights of the people. In such a case, benefit will be derived by a large number of people in contrast to a few. PIL considers the interest of others and therefore, the court in a public interest litigation acts as the guardian of all the people whereas in a private case, the court does not have such power. Therefore, in PIL the court will lean to protect the interest of the general public and the rule of law vis-à-vis the private interest. Where the rule of law comes in conflict with third party interest the rule of law, of course, prevail. It is believed that PIL works with public interest and it is associated with others subject matters of social interest. That is why it is said that PIL is not working in separated way. PIL is now being considered as a part of the legal aid movement. For public welfare and social justice perspective, many citizens especially lawyers and social activists are working to establish the PIL as a great instrument with some organizations and NGOs. They have already gained great success in the field of PIL and in future, more successful PIL petition will observe in Bangladesh.

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