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"Public Interest Litigation: Strategies for Advancing Human Rights in Bangladesh."

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Declaration

I hereby humbly declare that the research work entitled "**"Public Interest Litigation : Strategies for Advancing Human Rights in Bangladesh"**" was carried out under the guidance of Md **Deedarul Islam Bhuiyan, Assistant Professor & Head department of Law**, Sonargoan University (SU), Dhaka for achieving the LL.M (02 Years) degree. This is an original work of mine. No part of work has been submitted for another in any other institute at home or in abroad.

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Table of Content

Declaration i

Approval ii

Acknowledgement iii

Title page iv

Chapter 1
Introductory part

1.1 Abstract 1

1.2 Introduction 1-4

1.3 Objectives of the research 4-5

1.4 Methodology 5

1.5 Limitation of the research 5

Chapter 2
Concept of Public Interest Litigation of Bangladesh

2.1 Meaning and Concept of Public interest litigation of Bangladesh 6-7

2.2 Kinds of prerogative writs of Bangladesh 8

2.2.1 WRIT OF HABEAS CORPUS 8

2.2.2. WRIT OF MANDAMUS 8

2.2.3. WRIT OF PROHIBITION 8-9

2.2.4. WRIT OF CERTIORARI 9

2.2.5. WRIT OF QUO WARRANTO 9

2.3.PIL can be filed when the following conditions are fulfilled: 10

2.4. Initial experience and the Berubari case (1972-1974) 10

Chapter 3
Development of PIL in Bangladesh

3.1. Initial experience and the Berubari case (1972-1974) 11-12

3.2 .The barren period (1975-1986) 12-13

3.3. Beginning of public interest cases (1987-1990) 13-14

3.4. Misconceived attempts (1991) 15

3.5.Heightening of the consciousness of PIL (1992) 15-16

3.6. New wave of PIL attempts: gaining more grounds (1994) 17

3.7. The Supreme Court dragged into politics (1995) 17-18

3.8. The year of success (1996) 18-20

Chapter 4

Role of NGOs in developing of PIL

4.1.Bela: 21-22

4.2 Blast: 23-24

Chapter 5

Some landmark cases

5.1 Kazi Mukhlesur Rahman v. Bangladesh and another1974. 25

5.2 Bangladesh Sangbadpatra Parishad (BSP) v. the government of People's Republic of Bangladesh, 1991. 26

5.3 *Dr. Mohiuddin Farooque v. Bangladesh (FAP 20 cases),* 1997 26-28

Chapter 6

Recommendations And Concluding Remark

6.1 Recommendations. 31

6.2 Concluding Remark. 32

Bibliography 33

Chapter 1

Introductory Part

1.1 Abstract

In order to advance human rights one needs to approach courts to clarify what the content of the rights are for a group of people. When the international and regional human rights norms are internalised through implementation into a domestic system, you have fertile ground for public interest litigation. The suggested conclusion is that there has been a gradual evolution in terms of the development of a body of law on human rights, moving from the international to the regional system.The article focuses on the practice of public interest litigation in South Africa as it discusses questions of access to justice, clinical legal education, and legal aid to the population. As an illustration of strategies in a public litigation, the author analyses the suit brought against the government by an action campaign for the treatment of Aids.

1.2. Introduction

The term 'public interest litigation' (PIL), a new phenomenon in our legal system, is used to describe cases where conscious citizens or organizations approach the court *bona fide* in public interest.[1]

In Bangladesh, concerned citizens and organizations have challenged illegal detention of and innocent person for 12 years without trial,[2] importation if radio-active milk,[3] environmental damage resulting from defective flood action programme,[4] appointment of the Chief Metropolitan Magistrate without prior consultation with the Supreme Court5 and so on. Within its scope, which

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[1] . *Naim Ahmed, Public Interest litigation- Constitutional Issues and Remedies, 1st ed. (Dhaka: Bangladesh Legal Aid and Service Trust, 1999), P.1*

[2] *State v. Deputy Commissioner Satkhira and others 45 (1993) DLR, 643*

[3] *Dr. Mohiuddin Farooque v. Bangladesh represented by Secretary Ministry of Commerce and others 48 (1996) DLR, 438.*

[4] *Dr. Mohiuddin Farooque v. Bangladesh (FAP 20) 17 (1997) BLD, AD, 1.*

is continuously expanding, PIL includes cases involving poverty related problems, police atrocities, illegal detention, environmental and consumer matters, health related problems, rights of children and women, minority affairs and other human rights issues..

"Public Interest Litigation" has been defined as "a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected".3

The Durban Symposium on Public Interest Law4 took a broader view of public interest law by defining it in terms of what it was not, as a field of law: not public law, not administrative law, not criminal law and not civil law. They used the term as a way of working with the law and an attitude towards the law. They pointed out that bringing selected cases to the courts is not the only public interest strategy, but it could include law reform, legal education, literacy training and legal services. It is not a field reserved for lawyers because it may involve lobbying, research, advocacy and human rights education. Lastly, public interest litigation is a demonstrated attempt at rights empowerment giving tangible meaning and content to human rights.

Public Interest Litigation(PIL) can be described as a legal system in which the courts of law can initiate and enforce action for securing any significant public or general interest which is being adversely affected or is likely to be so by the action of any agency, public or private.

In one of its judgments, the Supreme Court has defined Public Interest Litigation as "a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community has pecuniary or some other interest to which its legal rights or liabilities are affected."

Under the system any citizen or a group of citizens or an organisation can approach in writing, even on a postcard, to the highest court or a High Court, bringing to its notice the need for the protection of public interest vis-a-vis a particular law or policy or action of the government.

The judges can initiate the case, in case they find it justified in public interest. Even the judges, after reading newspapers, or after reading about a particular case, can suo moto initiate action for securing a matter involving general/public interest.

However, the situation was changing rapidly. The revival of democracy was followed by significant constitutional developments including free elections and re-introduction of a parliamentary system of government. These changes re affirmed, at least at an ideological level, the supreme status of the Constitution and the place of the people as the ultimate holders of power. The spirit and scheme of the re-energised Constitution became an important source of inspiration as there was a renewed sense of possessing democratic power and a rekindled awareness of social and collective justice. The liberal atmosphere encouraged social activists, along with constitutional lawyers and political activists, to resort to the Supreme Court with public and political causes. The Court started to explore new ways to accommodate PIL under the Constitution and gradually recognised its various aspects as compatible with the Bangladeshi situation.3 By 1996, the issue was how full recognition of PIL could be ensured.

The main feature, of Public Interest Litigation is that it is a system of dispensing justice without the usual requirement of the person affected alone seeking redress from a court of law. The legal and social activists can move the court for securing relief to the poor and deprived section of society for securing public interest. Even the judges can act suo moto after reading newspaper reports or otherwise.

PIL involves a combination of formalism that stands attached with the judicial system, with an in formalism that characterises a tribunal and/or a departmental system. PIL avoids the formal approach to the court system. Its initiation does not require that a formal petition in a prescribed format and manner be presented to the court.The persons/agencies seeking justice can write even a postcard to the court and in case the court considers it a fit case, it can initiate action. This is called the epistolary jurisdiction of the higher courts.

Another innovative feature of the PIL system is that it involves the appointment of lawyers and others to see whether the court's order has been in fact implemented or not. They can also be appointed to carry out the required investigations into the concerned/referred or assigned case/matter.

It is an important tool to make human rights reach those who have been denied rights. It democratizes the access of justice to all. Any citizen/agency who is capable can file petitions on behalf of those who cannot or do not have the means to do so.[5]

[5] https://byjus.com > free-ias-prep > public-interest-litigation

Public Interest litigation, itself says that this is a litigation for any public interest. In the words of some learned people we can say that public interest litigation in a litigation which can be file in any court of law by any public spirited person for the protection of "public interest." Now a question comes in the mind that "what in public interest?" so answer is 'any act for the benefit of public is public interest.' and those act are such as pollution, Terrorism, Road safety, constructional hazards etc. in all these activities we can clearly see the public interest. As it is said that this petition can file any public spirited person so its mean that there should not be interest of only himself. There in word only says that in can be possible that in that act for what he is filing a PIL there in a small part of his benefit also hide But it's not mean that he cannot file. If the is interest of public then he can file public interest litigation.

Public interest litigation is not defined in any statute or any act. It has been interpreted by judge to consider the intent of public at large. This is just like a writ petition which is file in high court or supreme court under article 226 for high court and article 32 for supreme court. When public interest in affecting at large then this can be filed but affection on only one person is not a ground for filing this petition.

Finally, in late 1996, the Supreme Court accorded comprehensive recognition of PIL in Dr Mohiuddin Farooque v. Bangladesh (FAP 20).[6] It was established that there is no bar for a citizen to litigate in the public interest since PIL derives its inspiration and validity directly from the Constitution of Bangladesh. From an obscure topic, PIL has thus suddenly become an important feature of the Bangladeshi law.

1.3. Objectives of the research

The chief objective behind PILs is ensuring justice to all and promoting the welfare of the people. It is generally used to safeguard group interests and not individual interests, for which Fundamental Rights have been provided. The Supreme Court of Bangladesh and the High Courts have the right to issue PIL.

[6] *Dr. Mohiuddin Farooque v. Bangladesh represented by Secretary Ministry of Commerce and others 48 (1996) DLR, 438.*

'Public Interest Litigation' is stated under Article 102 of the Constitution. 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. 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. Key Words: Public Interest, Litigation, Grievance, Standing Principle, Writ Petition, Vulnerable Section, Fundamental Rights, Court, Suo Motu, Public-Spirited.[7]

1.4. Methodology

The methodology of the present research work include- Review of related PIL in Bangladesh. Research method of documentary analysis or content analysis has used which has helped me to focus the concept of PIL in existing laws and to find out the demerits of the methodology of the present research work include- review of related PIL. Side by side the analytical research method has helped to find out the purpose of the study, relevant judicial decisions have been collected from various sources and analysis to identify the main trends on the issues.

1.5. Limitation of the research

Though their huge information in text books, journals and the it's not sufficient. I have to also give about time and cost. Furthermore, the present study is undertaken as part of fulfilment of the requirements of LLM (2 Years) degree. The researcher gets only one month to complete the research. Moreover, the research is directed to be within prescribed word limit. Therefore, there is not much scope for doing a comprehensive study. Yet, I try my best to fulfil objective set out in present study.

Chapter 2

[7] Bangladesh Constitution Article 102. Sub Article 102(1)(a)

Concept of Public Interest Litigation of Bangladesh

2.1 Meaning and Concept of Public interest litigation of Bangladesh

PIL (Public Interest litigation) is a system to file a case to get a court order in favor of public interest or to protect the rights of public litigation filed into the higher court.

Specifically, Public interest litigation is defined in the Constitution of Bangladesh. Article 102 of the Bangladesh Constitution. Under this article given such powers to issue certain orders and directions of the High court division.

Since 1996, BLAST has filed 82 public interest litigation petitions in the Supreme Court of Bangladesh. These petitions have resulted in judicial orders for government action to comply with statutory duties, and have led to expanded interpretations of fundamental rights guaranteed under the Constitution of Bangladesh. Significant PIL petitions include: challenging arbitrary arrests and unreasonable police remand and obtaining guidelines to safeguard persons under arrest or in police custody; challenging delays in trials of under-trial prisoners; challenging incarceration of children in prisons; challenging continued detention of foreigners who have overstayed their sentence in prisons; preventing forced eviction and displacement and securing alternative rehabilitation of slum dwellers; securing consumer safety and health rights; seeking protection of workers' rights for safety in the workplace; challenging gender discrimination in public employment; challenging the failure of state authorities to ensure safety and security of women through taking action against extra-judicial penalties by informal village tribunals.[8] Obtaining directions to ensure effective action against government servants for sexual harassment; ensuring effective and participatory local government by challenging the establishment of bodies to be controlled by central government; ensuring enforcement of safety standards in public transport; ensuring accountability of public representatives by referring their payment of dues to public bodies; and directions for the establishment of courts and furthering the separation of the judiciary from the executive in the Chittagong.

There is no confusion as to the general meaning of PIL- that it is 'litigation in the interest of the

[8] *Naim Ahmed, (199)Public Interest Litigation- Constitutional issues and remedies, Dhaka, BLAST at*

public'. Yet the more one attempts to be specific about the scope of PIL, the less satisfactory becomes this general description. Terms like 'litigation', 'public' or 'interest' have different meanings and scope in different situations. Further complications arise when the term 'public interest' is the issue. Since the term is culture specific, no single definition can satisfy everyone. Now, I should explain meaning of the term 'public interest litigation'. *Actio Popularis,* Writ and Public Interest Litigation- these three terms are interrelated and may be denominated as indivisible. First, I should explain the term *actio popularis.* This term comes from the very ancient Roman law. It means such action to obtain remedy by a person or a group in the name of the general public, or other abstract entities such as morale etc. without being or directly in an authorized way representing the victim.[9] The undeveloped concept of public interest litigation can be traced in the system of ***actio popularis*** of Roman law which permitted anyone in the society to initiate an action for a public delict in the court of law can be described as historical basis of the present form of public interest litigation.[10] The expression next is 'writ', which is the most popular and over the years it's playing significant role in upholding justice not only in our country but many other countries all over world. Historically it was originated and developed in British legal system. In law, a writ is a formal written order issued by abody with administrative or judicial jurisdiction.[11] It may also be defined as written document by which one is summoned or refrain from doing something.[9] As the governmental functions increased and the concept of rule of law come into sight and the courts become independent, writ came to be prerogative of the people. By gradual evolution, it becomes a strong machinery to enforce fundamental rights for the person suffers injury.

2.2 Kinds of prerorative writs of Bangladesh

[9] *Actio popularis, [http://sim.law.uu.nl/sim/thesaurus, nsf, last visited 26th July 2009*
[10] *Kaylash Rai, Administrative Law, 4th ed. (Faridabad: Central Law Publication, 2005), p.327*
[11] *Writ, [http://en.wikipedia.org/wiki/Writ, last visited 26th July 2009*

Five kinds of prerogative writs have been introduced in Bangladesh through Article 102 (ii) of the Constitution. Those are- *habeas corpus, quo warranto, prohibiton, mandamus, and certiorari.*

2.2.1. WRIT OF HABEAS CORPUS

The word Habeas Corpus defined 'have his body' to have the body present the court. It is also an order of the higher court that, commands the authorities holding an individual in custody to bring that person into court.

Also the writ of 'Habeas Corpus' is a process for the defense of the personal life of the subjects by affording an effective means of **immediate release from unlawful detention of custody**, whether in public prison or in private custody.

2.2.2. WRIT OF MANDAMUS

The order of mandamus is an order of a most extensive remedial nature and is in the form a command issuing from the High court of justice directed to any person, corporation, or inferior tribunal, requiring him or them to do some particular thing therein specified which appertaining to his or their office and is in the nature of public duty.

in Halsbury's Laws of England described the writ of mandamus as follows. It is clear that when an authority or a person has refused or failed to perform his statutory duty, it is the writ of mandamus by which the higher court can compel the authority or court or person to do his duty or obligation. The writ of mandamus is a positive remedy**.**

2.2.3. WRIT OF PROHIBITION

At the point when a court or a council or a position or an individual is going to disregard the standards of common equity or is going to manhandle the force or is going to act in overabundance of it's jurisdiction, the higher court by giving a writ of preclusion can preclude

the court, court or authority from doing such demonstration. Writ of Prohibition is a preventive remedy.

2.2.4. WRIT OF CERTIORARI

If a court or a tribunal or an authority or a person has already violated the principle of natural justice or misused the power or acted in excess of its jurisdiction, the Supreme court issuing by certiorari can quash that act can declare that act illegal.

This is a writ of certiorari.

2.2.5. WRIT OF QUO WARRANTO

If a person illegally holds a public or private office created by law, the higher court may, on the application of any person, by issuing quo-warranto, ask the person to show on what authority he holds the workplace and can make him not to hold such office further.

Written document by which one is summoned or refrain from doing something.[12] As the governmental functions increased and the concept of rule of law come into sight and the courts become independent, writ came to be prerogative of the people. By gradual evolution, it becomes a strong machinery to enforce fundamental rights for the person suffers injury. Five kinds of prerogative writs have been introduced in Bangladesh through Article 102 (ii) of the Constitution. Those are- *habeas corpus, quo warranto, prohibiton, mandamus, and certiorari.* It is assumed that the expression 'Public Interest Litigation' my generated from the idea of the above two terms. Through gradual evaluation we find PIL in recent yeas in a new dimens on but the skeleton is *actio popularis* and writ. It is a special type of litigation which may be distinguished

First, PIL is for the benefit of the people as a whole or a segment of the society. It aims to enhance social ad collective justice and there must be a public cause involved as opposed to a private cause. This includes several situation

[12] . *Md. Abdul Halim, Constitution, Constitutional law and politics: Bangladesh Perspective, 4th ed. (Dhaka: CCB Foundation, 2005), p. 369.*

2.3. PIL can be filed when the following conditions are fulfilled:

-There must be a public injury and public wrong caused by the wrongful act or omission of the
-It is for the enforcement of basic human rights of weaker sections of the community who are downtrodden, ignorant and whose fundamental and constitutional rights have been infringed.
-It must act be frivolous litigation by persons having vested interests.[13]
Over the years, Public Interest Litigation (PIL) has emerged as an effective tool for seeking judicial responses and subsequent government actions to the socio-economic challenges of the unorganized, powerless and those segments of thesociety who are precluded from resorting to legal redress owing to resource or knowledge constraints. PIL has enabled public-spirited individuals, groups and conscious to litigate in the interest of the poor and disadvantaged; and widened the scope for NGOs and civil society to participate in formulation of pro-people policies and laws.

2.4. Initial experience and the *Berubari* case (1972-1974)

The Constitution of Bangladesh has a chequered history. From the very beginning, it was subject to major amendments that tended to restrictively redefine the limits of fundamental rights. One of these early amendments, the Third Amendment, was triggered by *Kazi Mukhlesur Rahman v. Bangladesh and another,*[12] popularly know as the *Berubari* case. In *Berubari* case, this was *Locus standi* was granted by Sayeem CJ on the ground that Mr Rahman agitated a question affecting a constitutional issue of grave importance posing a threat to his fundamental rights that pervade and extend to the entire territory of Bangladesh. The Court decided that the question is not whether the Court has jurisdiction but whether the petitioner is competent to claim a hearing. So the question is one of discretion which the Court is to exercise upon due consideration in each case.

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[13] *PIL-who can file, [http://www.virtualpune.com/citizen-centre/html/file-pil.shtml, last visited 26th July 2009]*

Chapter 3

Development of PIL in Bangladesh

Development of PIL has been gradual. Before its introduction in Bangladesh, it successfully developed in several other jurisdictions. The term 'Public interest litigation' was first used in the USA. Success of PIL in the USA influenced other jurisdictions including Canada, Australia and England. The most remarkable development of PIL took place in India. However, we have welcomed PIL in Bangladesh very recently. Bangladesh adopted a constitution in 1972.[14] Now, I should explain development of PIL

3.1 Initial experience and the Berubari case (1972-1974)

The Constitution of Bangladesh has a chequered history. From the very beginning, it was subject to major amendments that tended to restrictively redefine the limits of fundamental rights. One of these early amendments, the Third Amendment, was triggered by ***Kazi Mukhlesur Rahman v. Bangladesh and another,***[15]popularly know as the ***Berubari*** case. In ***Berubari*** case, this was reported as the first case of public interest in Bangladesh.

Locus standi was granted by Sayeem CJ on the ground that Mr Rahman agitated a question affecting a constitutional issue of grave importance posing a threat to his fundamental rights that pervade and ***extend to the entire territory of Bangladesh. The Court decided that the question is not whether the*** Court has jurisdiction but whether the petitioner is competent to claim a hearing. So the question is one of discretion which the Court is to exercise upon due consideration in each case.

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[14] ***Ibid at p.21.***
[15] ***26 (1974) DLR, SC, 44.***

The application, however, was rejected on the ground of being pre-mature. But since the Court observed that a cession of territory needs parliamentary approval and enactment, the government soon initiated the Third Amendment of the Constitution. Where it is merely a question of law, the old rules of certiorari, prohibition or mandamus will determine standing depending on the type of relief sought. But when it is a question of fact, the old rules can be abandoned since standing will depend on the gravity of the situation.[16]
The effect and influence of the ***Berubari*** case is enormous. It has often been considered as the starting point of PIL in Bangladesh where "the Court went very close to the doctrine of public interest litigation".[17] Being the judgement of the Appellate Division, ***Berubari*** was resorted and referred to whenever a widening of the standing rule was sought. This case may be regarded as an early achievement of the young Bangladeshi jurisdiction in its attempt to assert its creative authority. This case, it has recently been claimed in the FAP 20 case, is unique since it precedes the PIL developments of the neighboring jurisdictions.[18] The ***Berubari*** is often regard as the first Bangladeshi PIL case and was relied upon by the PIL petitioners in almost. But from a PIL perspective, the ***Berubari*** has its limitations. .

3.2 The barren period (1975-1986)

The effect of the ***Berubari*** case is vast but after that it took a long time to come in lime light. Because from 1975-1986, the constitutional was under a serious threat due to post-war instability, natural calamities including a famine and deterioration of the law and order situation. Martial law becomes the power of the rulers and the constitution, which is provided for a parliamentary democracy, remains powerless and inactive.

The Constitutional journey in the first 15 years shows that the Court did not have an opportunity to function properly, let alone allow for the development of new ideas and views under the martial law regimes. The ***Berubari*** principle could have marked the turning point in the

[16] *Ibid at P.123.*
[17] *Sayed Ishtiaq Ahmed, 'An expanding frontier of judicial review- public interest litigation' in DLR journal, Vol.45 (1993), PP.36-45.*
[18] *Dr. Mohiuddin Farooque v. Bangladesh and others (FAP 20) 17 (1997) BLD, AD, 1 at 14.*

Bangladeshi jurisdiction for carrying forward the movement of PIL but the process was thwarted when the constituter was disrupted.[19]

A Significant case from this period is *Ak Mujibur Rahman v. Returning Officer and others.*[20] General Ziaur Rahman was a presidential candidate amended to facilitate his candidacy. This amendment was challenged by a Voter. The petition was summarily rejected by Shahabuddin Ahmed J. on merit but the question of standing was not disputed.

Standing was discussed in MG Bhuiyan v. Bangladesh.[21] where an advocate challenged an Ordinance as a citizen. As he was not personally affected, Munim CJ denied standing following the traditional view.

The modern legal aid movement can be traced back to this period. In 1978, the Madaripur Legal Aid Association was established. It was the first village-based and grass-root legal aid organisation in Bangladesh.[22] This association not only spread the idea of legal rights of the poor but gradually came to assist public interest activists

3.3 Beginning of public interest cases (1987-1990)

In this time, concerned citizens started coming to the court with their petitions. The first group of petitions came in the nature of *quo warranto*, since such proceedings do not require the petitioner to.

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[19] *. Sayed Ishtiaq Ahmed, 'An expanding frontier of judicial review- public interest litigation' in DLR journal, vol.45 (1993), at 8 at 44.*

[20] *31 (1979) DLR, 156.*

[21] *BCR 1981 (AD) 80. This was an appeal from MG Bhuiyan v. Bangladesh BCR 1982 HCD 320.*

[22] *Alimuzzamn Chowdhury, 'Collective legal self reliance movement in South Asia' in DLR journal, vol.39 (1987), PP. 21-23.*

The position of quo warranto petitioners was strengthened in M Mostafa Hassain v. Sikdar M Faruque and another,[23] where BH Chowdhury CJ reaffirmed that in a writ of quo warranto challenging authority of a person holding public, any citizen, irrespective of personal grievance can come to the court. In that case the court even rejected a compromise petition on the ground that a mater of great public and involved.

In *Anwar Hassain Chowdhury v. Bangladesh (8th Amendment case)*[24] the amended Articles 100 of the Constitution was challenged as ***ultra vires***. The Court, by a majority judgement of three against one, declared that the basic structure of the Constitution can not be altered and as such the amendment was void. This case is sometimes described as a forerunner of PIL cases.

In 1988, the Young Lawyers Forum ***(Jubo Ainjibi Forum)*** initiated ***KM Zabir v. Amanullah and others***. The petitioner claimed that the soft drink company Pepsi had violated the law resorting to lottery techniques. Claimed by the Forum to be the first of its kind, the case was fought in the name of PIL and won. The Court even awarded cost to the association since they had 'fought the case on behalf of the whole country'.

During this period, the Young lawyers Forum did not pursue its initial success by filing more public interest cases, perhaps because it was mainly concerned with young advocate rather than with social justice. But the reason the ***Pepsi*** remained relatively unimportant was due to the fact that it was fought in a Magistrate Court, the Judgement having no force of judicial precedent. However these cases dealt mainly with the political rights of the applicants. Even in the few cases where the subject matter is not political, they represent concerns of the middle classer rather than those of the poor or socially deprived.[25]

[23] *7 (1987) BLD, AD, 315.*
[24] *41 (1989) DLR, AD, 165.*
[25] *Ibid at p.28.*

3.4 Misconceived attempts (1991)

In this year came *Bangladesh Sangbadpatra Parishad v. The Government of Bangladesh*.[26] The Government had constituted a wage board for fixing the wages of newspaper employees. An association of newspaper owners challenged the Constitution of the wage board and its authority and pleaded PIL. In the Appellate Division, Mustafa Kamal J. refused standing on the ground that the applicant was not a 'person aggrieved'. It was also pointed out that the Indian PIL decisions can not be followed blindly since the Indian constitutional provisions are not similar to the Bangladeshi ones.

The lawyers and some judges of the High Court Division remained under the impression that since the Constitution of Bangladesh does not have provisions similar to the Indian ones, there is no scope for PIL. Also, the use of the term 'a phrase which have received a meaning and a dimension over the years' caused some confusion at a time when very few of the lawyers and judges had any firm idea or understanding about this new concept.[27] This judgement for them meant that there can be no departure from the traditional view. The ***Sangbadpatra*** is, therefore, a perfect example where attempts by a privileged group to use the techniques of PIL have actually damaged the movement for cases with genuine concern for social justice.

3.5 Heightening of the consciousness of PIL (1992)

In the political arena, 1992 was a year of calm when the newly earned democracy started to function. The most significant PIL cases in this year related to personal liberty matters Anwarul Hoque Chowdhury J. in *Ayesha Khanam and others v. Major sabbir Ahmed and*

[26] *43 (1991) DLR, 424.*
[27] *Mustafa Kamal, 'Democracy, Constitutionalism and Compromise', in BLD Journal, vol. 15 (1995), pp.6-10.*

others[28] expanded the traditional *habeas corpus* principle by giving standing in a case of private detention. The petitioner was a mother seeking custody of her child. *Bangladesh Mohila Parishad*, a voluntary organisation, fought successfully as a party.

A precedent on PIL was to be set in State v. Deputy Commissioner, Satkhira and others, known as Nazrul Islam's case.[29] Nazrul Islam had been held in prison for 12 years without any trial. Justice MM Hoque noticed a newspaper reporting this news, initiated the criminal miscellaneous case suo motu and released Nazrul.

These cases demonstrated the power of PIL and the prestige it can give to the Court. It was difficult for law professionals to remain ignorant of these newly emerging public interest issues. As these personal liberty cases involved genuine and serious violations of fundamental rights, the Court was not hesitant to resort to a liberal approach.

However the success in detention cases was offset by failures in some other cases. In *syed Mahbub Ali and others v. Bangladesh* a number of subordinate court judges were promoted without consultation with the Supreme Court. This was challenged by a group of practising advocates as 'concerned citizens'. Relying on the *Sangbadpatra*. Abdul Jalil J. held that they had no *locus standi*.

In another interesting case, *Dr Ahmed Hussain v. Bangladesh*,[30] an advocate was given standing to challenge the reservation of seats for women in the parliament as anti-constitution. But MH Rahman J. held that the case itself had no merit.

The steady increase of the involvement if lawyers' groups and voluntary sector organizations was further boosted when in October 1992, a two-day seminar on PIL titled

[28] *46 (1994) DLR, 399.*
[29] *45 (1993) DLR, 643.*
[30] *44 (1992) DLR, AD, 109.*

3.6. New wave of PIL attempts: gaining more grounds (1994)

Although a consideration number of cases were filed as PIL in 1994, they fall into two broad categories. The first type involved political issues while the second type dealt with environmental.

Political issues as PIL cases:

From 1 march 1994, the opposition parties started to boycott sessions of the Parliament. Their first complaint was against a supposedly slanderous statement made by a government minister in Parliament. But after a highly controversial parliamentary by-election, they continued the boycott on the demand of a caretaker government. This proposed non-party government, they explained, will run the country in times of parliamentary elections, eliminating the possibility of vote-rigging. This demand gained popular support and was accompanied by demonstrations, processions, picketing and frequent nation-wide strikes.

The boycott was challenged by a political activist supporting the party in power. Public interest standing rule was successfully used as he approached the Court as a 'citizen and voter'. This was *Anwar Hossain Khan v. Speaker of Bangladesh Sangsad Bhavan and others*,[31] known as the *Parliament Boycott* case.

3.7. The Supreme Court dragged into politics (1995)

On 28 December 1994, the opposition *en-masse* resigned from parliament and continued their movement. Thus they could avoid the Court's direction, given in the *Parliament Boycott*[32] case, to go back to the Parliament. But the Speaker, in the hope of a compromise, was delaying his acceptance of their resignation. This caused a stalemate.

The result, the famous *MPs Resignation* case,[33] comprised of two writs. Raufique Hossain claimed that the attempt to resign is anti-constitutional while Alauddin Khalid asserted that the Speaker, by not accepting the resignation, is violating the Constitution. The Court was again

[31] *47 (1995) DLR, 42.*
[32] *47 (1995) DLR, 42.*
[33] *Raufique (Md) Hossain v. Speaker 15 (1995) BLD, 383.*

involved in a controversial political issue and was under tremendous pressure, as the future of democracy largely depended on its decision.

The Chief Justice constituted a special bench of three judges. In the leading judgement, Mahmudur Rahman J. rejected the plea that the Court had no jurisdiction. However, both the petitioners, who came as 'conscious citizens', were denied standing because they did not have any constitutional or legal right that was violated. The *Sangbadpatra* provided the guiding principle.

Finally the government, unable to decide, asked the Supreme Court to advise Finally the government, unable to decide, asked the Supreme Court to advise whether the boycott rendered the seats of the members empty. This was the *First Constitutional Reference* in the history of Bangladesh.[34]

In the meantime, nation-wide processions, picketing and strike continued. These strikes or *hartals* were challenged by an advocate. In *Abu Bakar Siddique v. Sheikh Hasina and others (Hartal case),*[35] AB Siddique claimed that calling of *hartal* infringes his constitutional rights. MM Hoque J. summarily rejected his petition.

3.8 The year of success (1996)

Steady success of PIL cases:

The year of success for PIL was 1996. In a number of cases, the judges not only recognised PIL and granted standing to the petitioners, they proceeded to construct a jurisprudential basis.

[34] *47 (1995) DLR, 111.*
[35] *The State v. Md Zillur Rahman and others 19 (1999) BLD, HCD, 303.*

Use of PIL for political purposes continued in 1996. The ruling party conducted a general election in March that was boycotted by all major opposition parties. The new Parliament constitutionalised the concept of caretaker government by incorporating the Thirteenth Amendment. The first Caretaker government was formed under former Chief Justice Muhammad Habibur Rahman. The Thirteenth Amendment was challenged is Syed Muhammad Mashiur Rahman v. President of Bangladesh and others.[36] MM Hoque J. summarily rejected the application on the ground that the Amendment do not appear to come within the definition of alteration, substitution or repeal of any provision of the Constitution.

The Caretaker government faced a challenge in *Md Asaduzznman Ripon v. The State* where the Court restrained the functioning of several Government officers. The petitioner, a student leader of the Bangladesh Nationalist Party, claimed that these officers took part in the opposition movement violating their service rules. On appeal, the Appellate Division ordered them to resume

The Caretaker government conducted a free and fair election which was won by the Awami League. Democracy survived another great challenge. The new Awami League Government appointed Justice Shahabuddin Ahmed as the President, a ceremonial post. This appointment was challenged in *Abu Bakar Siddique v. Justice Shahabuddin and others*[37] by AB Siddique, the President of the Muslim Millat Party. Mr. Siddique claimed that one can not join 'service of the republic' after retiring as a judge. He lost on merit. But discussing the ***Berubari*** principle, MM Hoque J. granted standing: the aforesaid principle enunciated by the Supreme Court we hold that since several constitutional questions of great public importance having far-reaching consequences are involved in the preset case, the present writ petition is maintainable.

This was a great stride for PIL that proved that the ***Berubari*** principles wered not dead letters. Dr Farooque came in 1996 with a number of PIL cases. In *Judges Appointment*,[38] he sought to compel the government to appoint judges in vacant seats of the Supreme Court. Mahmudur

[36] *17 (1997) BLD, 55.*
[37] *1 (1996) BLC, 483.*
[38] *Dr Mohiuddin Farooque v. Bangladesh represented by Secrtary Ministry of Law, Justice and Parlimentary Affairs 48 (1996) DLR, 433.*

Rahman J. observed that this is a PIL but refused standing on the ground that no constitutional or legal right has been infringed. The right to life was extended in the ***Radioactive Milk***[39] case where the importation of radio-active milk was successfully challenged by Dr Farooque. Kazi Ebadul Hoque J. even went on to dictate how and in what manner government departments should co-ordinate their monitoring system. The standing of Dr Farooque was not challenged by the respondents. This case discussed right to life, extended its meaning and provided another stepping stone for the consumer activists. In the ***Child Trafficking*** case, Dr Farooque sought to stop kidnapping and trafficking of Bangladeshi children and using them as Camel jockeys, especially in the United Arab Emirates. Rule was issued.

The FAP 20: Appellate Division's verdict:

The formal exposition of PIL for which the activists were waiting for a long time came from the Appellate Division in 1996. The standing of the petitioner was seriously contested by the government in the appeal of Dr Mohiuddin Farooque v. Bangladesh/Sikandar Ali Mindol v. Bangladesh (FAP 20).40

This was the case that was previously lost in the High Court in 1994.

The only issue in question before the Appellate Division was the petitioners standing, not the merit of the case. However, the concern of the petitioner was genuine because the environment of a huge The five justices of the Appellate Division found that the petitioner's intention was bonafide and unanimously granted standing in an epoch-making judgement. It was declared that in the Constitution of Bangladesh, which is 'autochthonous' in nature, the people are the ultimate holders of power. Accordingly, social and economic justice issues must have primacy over special or individual interest. Thus in cases of public wrong or injury, any member or the public can file a writ petition on behalf of the entire public or a particular vulnerable section of the society

[39] *Dr Mohiuddin Farooque v. Bangladesh represented by Secrtary Ministry of Commerce and others (1996) DLR, 438*

[40] *17 (1997) BLD, AD, 1 Dr Mohiuddin Farooque v. Bagladesh 50 (1998) DLR, 85.*

Chapter 4

Role of NGOs in developing of PIL

These PILs have brought about a great change of thought in public mind regarding people's rights, government responsibilities, rules and governance. It definitely shows the progress of PIL in Bangladesh. NGOs, journalists, judges, lawyers and administration are still working hard to utilize this new avenue and try to give a new shape and popularize among people. Among them Bangladesh Environmental Lawyers Association (BELA) and Bangladesh Legal Aid and Services

4.1. Bela:

Public Interest Litigation got great fillip with the emergence of Bangladesh Environmental Lawyers Association (BELA). At the instance of BELA High Court Division prohibited environmental pollution during Dhaka City Corporation election on 1994, and strike by doctors working in the government hospitals causing untold sufferings to the patients. At the instance of BELA High Court Division in 1996 also directed the government to take measures to prevent import of contaminated foods from abroad. In those cases question of *locus standi* was not raised. In 1993, High Court Division held that President of Retired Government Servants' Association has *locus standi* to file a writ petition on behalf of its members and that decision remained stayed till 1996 by the Appellate Division on appeal. BELA brought several public interest litigations for protection of environment, public health, prevention of pollution, enforcement of fundamental right of right to life, freedom of expression to prevent state control of Radio and Television, prevention of child trafficking, prevention of discrimination in public service against blind persons etc, but those are still pending for decision. On the application of a citizen High Court Division directed abstaining members of the parliament to attend the session of the Sangsad. On appeal that direction has been stayed by the Appellate Division.

Question of *locus standi* his finally has finally been settled by the Appellate Division in the Flood Action Plan case brought by Dr. Mohiuddin Faruk, Founder secretary of BELA in 1996 holding that any member of the public suffering a common wrong, common injury or common

invasion of fundamental rights of an indeterminate number of people or any citizen or an indigenous association espousing such cause has *locus standi*. Before and after that decision BELA, Ain -O-Shalish Kendra (AOSK), Bangladesh Legal Aid Services Trust (BLAST), Bangladesh National Women Lawyers' Association Bangladesh Nari Progati Sangha, Bangladesh Mahila Ainjibi Samiti and many public spirited persons brought public interest litigations before the High Court Division for redress of the grievances of the deprived sections of the people.

Since *locus standi* has been liberalized in 1996, some of the public interest litigations have been disposed of by the High Court Division in 1997. In Flood Action Plan Case the government was directed to protect the environment and ecology and to observe relevant provisions of law in executing the flood protection scheme. In 1999, High Court Division direted Rajdhani Unnayan Kartripaksha (RAJUK) not to reduce the area of park and other common facilities by covering the same into residential or commercial plots in Uttara model town. Earlier in a case, High Court Division declared that park in Gulshan residential area should be maintained free from nuisance for the protection of health and hygiene of the residents of that area. That Division also directed removal of bar fetters of a prison detainee, and also released a woman in handcuffs from safe custody. That Court also stayed construction of a market building in the site earmarked for car parks, filling up of a lake, and eviction of slum dwellers in the Dhaka City.

With the liberalisation of *locus standi* public interest litigation has great prospect in amelioration the conditions of the downtrodden and deprived sections of the people, and bringing succor to their sufferings making the assurances of fundamental rights in the Constitution a reality in their lives. But there is also the danger of flooding the court with unnecessary litigations at the instance of busybodies posing as public spirited persons, and thereby unnecessarily burdening the High Court Division which is already overburdened with cases which take years together for disposal, and thus causing undue hardship on the litigant public. This crisis can be averted if the court remains vigilant at the inception, and meticulously examines the bonafide of the petitioner to seek redress through public interest litigation.[41]

[41] *Bela, [http://banglapedia.org/HT/P_0307.HTM, last visited 15th September 2009]*

4.2 Blast:

BLAST took a number of public interest issues to the Supreme Court and obtained positive rulings. Those ranged from release of ling held prisoners to environment protection, from protection of bostee dwellers to enforcement of law on edible iodized salt. The progress in the implementation of the rulings of the High Court Division of the Supreme Court has been skewed, partly due to government administrative indifference and partly due to the limited capacity of BLAST to monitor external agencies specially government.[42]

The Advocacy and Public Interest Litigation (PIL) Cell of BLAST was conceived with the objective of effecting systemic pro-poor changes in legislative policy and practice through advocacy as well as litigating in the interest of the poor and the marginalized. BLAST thought its unit offices, has effective presence in 18 districts across the country. It also has a very close-knit network with all bar associations, leading human rights organisations, civil society and the media. BLAST has the advantage of having a very knowledgeable and illustrious Board of Trustees comprising eminent jurists and legal luminaries, retired ad experienced Supreme Court judges and prominent journalists of the country. Since its inception in April 2003, the Advocacy and PIL Cell is endeavoring to ensure increased safety and security and access to justice for the poor and the disadvantaged who are deprived of their basic human rights owing to resource and knowledge constraints.

As a matter of policy and basic mandate, BLAST engages all its strength to ensure an equitable, fair and accessible legal system through which the economically disadvantaged and vulnerable segments of the society, especially women, men children, can establish and enforce their fundamental rights to life, liberty and property. Simultaneously, the organisation is committed to the protection of other fundamental as well as social and economic rights of the indigent people in particular. BLAST strives to empower the poor, women and disadvantaged people through legal aid; legal rights awareness campaigns, mediation and public interest litigation in the establishment of their rights. It also aims to create an enabling legal environment through reviewing and proposing changes to impugned and repressive laws and policies those are discriminatory and oppressive against the poor and the marginalised. The Advocacy and PIL cell is meant to supplement BLAST to achieve is above noted objectives. To this effect, issues under the following categories will, as a matter of general policy, be prioritized and taken up for advocacy and PIL:

[42] *BLAST & PIL Advocacy, [http://www.blast.org.bd, last visited 15th September 2009]*

1. Legal problems encountered by the hardcore poor;
2. Reduction of inequality;
3. Fundamental human rights violations of the poor in particular;
4. Legal issues having vast implication on the overwhelming majority of the impoverished population of Bangladesh;
5. All forms of discriminations (particularly against women);
6. Burning issues that have a direct linkage to poverty alleviation;
7. Laws those are repressive, discriminatory against the poor and women in particular;
8. Legal issues concerning safety and human security; and
9. Regulatory reform.[43]

I think, the judiciary system of our country is not so befit for the PIL. Truly, there is no definite law for PIL. The general rules which have in our country, these are turning into PIL by expanding. So the rules are not sufficient for it. In this way, I mean, it is necessary to amend the civil procedure and these should have a system for remission from the lower court. These are civil procedure over the country so no pressure will fall upon any definite court. As a result, the judgment will complete very fast and the popularity of PIL will increase gradually.

The NGOs of other countries are charring out creditable contribution in the sector of PIL. It is needed to increase the contribution of PIL in the field of Bangladesh. Besides this, the Bar association should keep contribution for the development of PIL.

Most of the sector there is good judgement on behalf of PIL. But it does not turn into act. So the PIL is being harmful and the people are depriving from the useful of PIL. I mean, to rehabilitee the verdict, the system we have, to have done modernize and active.
I hope that, there will be progress in the sector of law in the next coming new years. As a result, PIL will be blessing for human being.

[43] *PIL & Advocacy, [http://www.blast.org.bd/pilandad.html , last visited 15th September 2009]*

Chapter 5

Some landmark cases

5.1 *Kazi Mukhlesur Rahman v. Bangladesh and another* 1974.[44]

In the application Kazi Mukhlesur Rahman prayed for declaration that the agreement between the governments of the PRB and the Republic of India signed on the 16th day of May, 1974 by the prime Ministers of the two countries involved cession of Bangladesh territory was without lawful authority and of no legal effect.

The Prime Ministers of Bangladesh and India signed a treaty in Delhi providing inter alia that India will return the southern of South Berubari Union No. 12 and the adjacent enclaves and in exchange Bangladesh will the Dahagram and Angarpota enclaves.

The appeal dismissed on the ground of being premature. But the main feature is that *locus standi* was granted by Sayeem CJ on the ground that Mr. Rahman agitated. He said- "The fact that the appellant in not a resident of the southern half of South Berubari Union No. 12 or of the adjacent enclaves involved in the Delhi Treaty need not stand in the way of his claim to be heard in this case. We heard him in view of the constitutional issue of grave importance raised in, the instant case involving an international treaty affecting the territory of Bangladesh and his complaint as an to an impending threat to his certain fundamental rights guaranteed by the constitution, namely, to move freely throughout the territory of Bangladesh, to reside and settle in any place therein as well as his of franchise. Evidently, these rights attached to a citizen are not local.

They pervade and extend to every inch of the territory of Bangladesh stretching up to the continental shelf" He added- It appears to us that the question of *locus standi* does not involve the Court's jurisdiction to near a person but of the competency.

of the person to claim a hearing so that the question is one of discretion which the court exercises upon due consideration o f faces and circumstance of each case."

[44] *26 (1974) DLR, SC, 44*

5.2 *Bangladesh Sangbadpatra Parishad (BSP) v. the government of People's Republic of Bangladesh,* 1991.[45]

Bangladesh Sangbadpatra Parishad (BSP), an association of owners of newspapers and news organisations, challenged (1) section 9, 10(3) and 11 of the Newspaper Employees Act, 1974 as unconstitutional and (2) the constitution of the Fourth Wage Board and the interim award dated 30.12.90 given by it.

A rule was issued, but it was discharged by the High Court Division. It held that- "The petitioner has no direst personal interest in the Act or in the implementation of the Wage Board Award. It is not liable to pay anything to anybody under the award in question but it is the owners of the individual newspaper who are pay and they actually aggrieved. It is nothing to lose or win by the impugned award."

The Appellate Division observed, "In our Constitution, the petitioner seeking enforcement of a fundamental right or constitutional remedies must be a 'person aggrieved'. Our Constitution is not at *pari materi* with the Indian Constitution on this pint. The Indian Constitution, either in Article 32 or 226, has not mentioned who can apply for enforcement of fundamental rights and constitutional remedies," We must confine ourselves to asking whether the petitioner is an aggrieved person.

Mustafa Kamal J. further clarified that, "The petitioner can never file a writ petition. It can and it may, if has a personal interest in the subject matter." The petition was dismissed. Similar sort of opinion was observed in subsequent cases namely Dada Match Workers Union vs. Government of Bangladesh, 29 DLR (1977) 188; Khulna Shipyard Employees Union vs. General Maneger, Khulna Shipyard and Others, 30 DLR (1978) 368. These two cases were also dismissed for not having *locus standi*.

5.3 *Dr. Mohiuddin Farooque v. Bangladesh (FAP 20 cases),* 1997[46]

Dr. Mohiuddin Farooque, Secretary General, Bangladesh Environmental Lawyers Association shoddy BELA filed the writ petition both under Article 102 (1) and Article 102 (2) (a) of the Constitution praying for issuance of a Rule Nisi upon the respondents to show souse as to why all the activities and implementation of FAP-20 undertaken in the District of Tangail Should not be have been taken without lawful authority and to be of no legal effect. The cause which the appellant espoused in the writ petition is the apprehended environmental ill-effect of a Flood Control Plan affecting the life, property, livelihood, vocation and environmental security of more than a million people in the district of Tangail.

[45] *43 (1991) DLR, 424.*
[46] *17 (1997) BLD, AD, 1.*

The leading judgment was delivered by Mr. Justice Mustafa Kamal with whom concurred the Chief Justice Mr. Justice ATM Afjal and Mr. Justic Mihammad in the FAP-20 areas. During the local inspection it was found that a significant number of people of the project area were against the project.

Dr. Mohiuddin Farooque, earned Advocate appearing with the leave of the Court, Abdur Rouf, Mr. Justice Latfur Rahman and Mr. Justice Bimalendu Bikash Roy Chowdhury delivered separate judgments fully agreeing with Mr. Mostafa Kamal. The judgment was delivered on July 25, 1996.

As to the *locus standi* of the petitioner-appellant it was stated that the appellant is the Secretary-General of Bangladesh Environment Lawyers Association, shortly BELA, an Association registered under the Societies Registration Act, 1860. He has been authorised by a resolution of the Executive Committee of BELA dated 16-6-1994 to represent the Association and move the High Court Division under Article 102 of the Constitution and to do all other acts and things in connection therewith. BELA has been active since 1991 as one of the leading organisations in the field of environment, ecology and relevant matters of public interest. It has studied policies, surveyed and examined

quasi-legal issues; institutional aspects and traditional issues on environment and ecology and actively predicated in many government, non-Government and independent national and international activities and has gained widespread recognition both at home and abroad. BELA being an Association of Lawyers has been raising the legality of the FAP activities on all available occasions, especially as an invited panel speaker in the Second Conference on the Flood Action Plan held at Dhaka in March, 1992. BELA's questioning of the legality of FAP and FPCO evoked derogatory remarks from certain quarters. BELA also received written complaints from a number of aggrieved people from Tangail District seeking legal assistance and other supports after having been frustrated in pursuing their own remedies with the FAP-20 authorities, human rights organisations etc. The media has also repeatedly published the adverse environmental and ecological impact of FAP-20.As an environmentally concerned and active organisation. BELA Responded to the complaints of the local people and conducted investigations at various times in 1992-93 has himself argued the appeal on behalf of the petitioner-appellant. He submits that the words "any person aggrieved" occurring in Article 102 of the Constitution have to be read in the context if the entire Constitution, not isolated. Article 102 institution h vehicle for ventilating the rights and duties under the Constitution and not a mere procedural device, Article 38 of the Constitution confers on every citizen the right to form association and BELA has been registered as an association under the Societies Registration Act, 1860 with the aims and objects inter alias to organise legal measures to protect environmentally sensitive and fragile ecosystems. BELA devoted its time, energy and resources in studying the FAP project ever since its inception, meeting local people, listening to their grievances and carrying a lot of research on their behalf to find out the legal and constitutional infraction that FAP-20 has committed- It can claim a legal relationship with the Court in pursuance of its declared aims and objects as the right to form an association also embraces the right to pursue the association's lawful objects as well.

Dr. Farooque then referred to Article 21 (1) of the Constitution which is as follows: "21. (1) it is the duty of every citizen to observe the Constitution and the laws, to maintain discipline to perform public duties and to protect public property.

He submits that if one has to require doing a thing that is standing. He has to have an opportunity to do so. An association of lawyers dedicated to the protection of a healthy environment has a concern when it perceives and studies an environmental hazard which calls for prevention on rectification. As a concerned group it is very much a "person aggrieved" and it must have an opportunity to put its concern at rest by approaching the Court for redress.

The denial of *locus standi* to such a group will be not only an unconstitutional bar to the performance of public duty but also a judicial condemnation of the association's dedicated efforts to perform its public duty. Besides, the preamble of the Constitution, which is a pledge taken by the people of Bangladesh, declares that it shall be a fundamental aim of the State to relies a society in which amongst others "the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens".

Dr. Farooque quotes from the Bar Council Rules of Professional Etiquette for lawyers and submits that the lawyers in general and the present association of lawyers in Particular are committed to realise the rule of law in the country through Law Courts. The preamble gives the association a standing. The preamble and Article 8 also proclaim "the principles of absolute trust and faith in the Almighty Allah" as a fundamental principle of the Continuation and as a Fundamental principle of State Policy. The appellant is aggrieved, because Allah's creations and environment are in mortal danger of extinction and degradation.

Judgment:

Justice Mustapha Kamal, in his famous judgment, held: Now we proceed to say how we interpret Article 102 as a whole. We do not give much importance to the dictionary meaning or punctuation of the words "any person aggrieved" Article 102 of our Constitution is not isolated island standing above or beyond the sea-level if the other provisions of the Constitution. It is a part of the over-all scheme, objectives and purposes of the Constitution. And its interpretation is inextricably linked with the (i) emergence of Bangladesh and framing of its Constitution, (ii) the preamble and Article 7, (iii) Fundamental principles of State Policy (iv) Fundamental Rights and (v) the other provisions of the Constitution.

As to (i) about, it is wrong to view our Constitution as just a replica with local adaptations of a Constitution of the Westminster model among the Commonwealth countries of Anglo-Saxon legal tradition. This Constitution of ours is not the outcome to a negotiated settlement with a former colonial power. It was not drawn upon the consent, concurrence of approval of any external sovereign power. Nor is it the last of an oft-replaced and often substituted Constitution after several Constitutions were tried and failed, although as many as 13 amendments have so far

been made to it. It is the fruit of a historic war of independence, achieved with the lives and sacrifice of a telling number if people for a common cause making it a class part from other Constitutions of comparable description. It is a Constitution in which the people feature as the dominant actor. It was the people of Bangladesh who in exercise of their own self-proclaimed native power made a clean break from the past unshackling the bondage of a past statehood and adopted a Constitution of its own choosing. The Constitution historically and in real terms is a manifestation of what is called the people's Power", the people of Bangladesh, therefore, are central, as opposed to ornamental to the framing of the Constitution.

As for (ii) the preamble and Article n7, the preamble of our Constitution stands of different footing form that of other Constitution by the very fact of the essence of its birth which is different form others. It is in our Constitution a real and positive declaration of pledges, adopted, enacted and given to themselves by the people no by way of a presentation from skilful draftsmen, but as reflecting the ethos of their historic war of independence. Among other pledges the high ideals of absolute trust and faith in the Almightily Allah, a pledge to secure for all citizens a society in which the rule of law, fundamental human rights and the affirmation of the sacred duty to safeguard, protect and defend the Constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh are salutary in indicating the course of path that the people wish to read in the days to come. Article 7 of the Constitution bestows the powers of the Republic with people shall be effected only under and by the authority of, the Constitution. Article 7 does not conferred on the Parliament, the Executive and the Judiciary respectively are constitutionally the power of the people themselves and the various functionaries and institutions created by the Constitution exercise not their own indigenous and native power but the power of the people on terms expressed by the Constitution. The people, again, are the repository of all power under Article 7.

As for (iii) in Part II of the Constitution, containing Fundamental Principles of State Policy. Article 8 (2) provides that the principles set out in his part "shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh." It is constitutionally impermissible to leave out of consideration Part II of our Constitution when an interpretation of Article 102 needs guidance.
As for (iv) Part III of the Constitution bestowed Fundamental Rights on the citizens and other residents of Bangladesh. Article 44(1) guarantees the right to move the High Court Division in accordance with Article 102(1) for the enforcement if these rights. Article 102(1) is therefore a mechanism for the enforcement of Fundamental Rights which can be enjoyed by an individual alone in so far his individual in common with others when the rights pervade and extend to the entire population and territory. Article 102(1) especially cannot be divorced from Part III of the Constitution.

As For (v) the other provisions of the Constitution which will vary from case to case may also come to play a role in interpreting Article 102 of the Constitution. Article 102 therefore in an instrumentality and a mechanism, containing both substantives and procedural provisions, by means of which the people as a collective personality, and not merely as conglomerate or individuals, have devised for themselves a method and manner to realize the objectives, purposes, policies, rights and duties which they have set out for themselves and which they have strewn over the fabric of the Constitution.

With the power of the people looming large behind the constitutional horizon it is difficult to conceive of article 102 as a vehicle or mechanism for realizing exclusively individual rights upon individual complaints. The supreme Court being a vehicle, a medium or mechanism devised by the Constitution for the exercise of the judicial power if the people on behalf of the people, the people will always remain the focal point of concern of the Supreme Court while disposing of justice or propounding any judicial theory or interpreting any provision of the Constitution. Viewed in this context interpreting the words "any person aggrieved" meaning only and exclusively individuals and excluding the consideration of people as a collective and consolidated personality will be island taken against the Constitution. There is no question of enlarging *locus standi* or legislation by court.

It is therefore the cause that citizen- applicant or the indigenous and native association espouses which will determined whether the applicant has the competency to claim a hearing or not, If he espouses a purely individual cause, he is a person aggrieved if he is own interest are affected. If he espouses a public causes involving public wrong or public injury, he need not be personally effected. The public worn or injury is very much a primary concern of the Supreme Court which in the scheme of our Constitution is a constitutional vehicle for exercising the judicial power of the people.

The High Court Division will exercise some rule of caution in each case. It will see that the applicant is in fact espousing a public cause, that his interest in the subject matter is real and not in the interest of generating some publicity for himself or to create mere public sensation, that he is acting bona fide, that he is not a busybody or an interloper, that it is in the public interest to grant him standing and that he is not acting a collateral purpose to achieve a dubious goal, including serving a foreign interest. As to the apprehension of floodgate, the people controls are no doubt a flood and the Constitution is the sluice-gate through which the people control its own entry. Our Courts will be prudent enough to recognize the people when the people appear through an applicant as also those who masquerade, under the name of the people. Taking up the people's causes at the expose of his own is a rare phenomenon, not a common place occurrence.

Comment:

It (the Supreme Court) interpret the term 'a person aggrieved' in a liberal mood and with a progressive attitude and thus widens the writ Jurisdiction of the High Court conferred on it by Article 102 of the Constitution of the people's Republic of Bangladesh.

Chapter 6

Recommendations And Concluding Remark

6.1. Recommendations:

I forward the Following recommendations:

a. Public Interest litigation should be modified in Bangladesh.
b. Legal problems encountered by the hardcore poor;
c. Reduction of inequality;
d. Fundamental human rights violations of the poor in particular;
e. Legal issues having vast implication on the overwhelming majority of the impoverished population of Bangladesh;
f. All forms of discriminations (particularly against women);
g. Burning issues that have a direct linkage to poverty alleviation;
h. Laws those are repressive, discriminatory against the poor and women in particular;
i. Legal issues concerning safety and human security; and
j. Regulatory reform

6.2. Concluding Remark

The development of PIL in Bangladesh was slow due to the threshold problem. This was mainly because of the prolonged periods of martial laws and autocratic regimes that curtailed the fundamental rights and disrupted the normal functions of the judiciary. Once the democratic institutions had a change to operate, the judiciary boldly re-asserted its proper constitutional role. As a result, progressive interpretation of the Constitution, including the development of PIL, became possible. Apparently the process of democratization of me system and the development of PIL coincided in Bangladesh. The growth of PIL in the midst of this process has produced interesting results- each in turn influencing the other. Since activists and lawyers were focused on the participation of the people in the decision making process, they often used the new technique of PIL for this end. During the last few years, there is hardly any constitutional question of significance that has not been raised before the Court.[47]

A PIL (a petition brought before the High Court Division of the Supreme Court of Bangladesh in the nature of writ under Article 102 of the Constitution) is generally instituted for the enforcement of the constitutional and legal rights of the poor and excluded groups as well as ensuring accountability of concerned government and public authorities towards issues of public importance. Persistent efforts by NGOs and social action groups through PIL has, in many occasions, prompted the High Court Division to issue directives and orders that in turn addressed the socio-economic concerns of the poor and the marginalized groups.[48]

Finally, it needs to be mentioned that PIL does not work in isolation. It is a part of the greater movement for legal aid of a constituent of the greater theme of public interest law. So in the hand of the social activist lawyer, PIL is one of many strategies which the concerned citizens and activists in Bangladesh are now using in combination. There is a realization that litigation is not a cure-all for all types of issues and problems. Retaining a close nexus with the press, the voluntary sector organizations are increasingly using new strategies including publication, lobbying and representation.

[47] *Ibid at P.156.*
[48] *Public interest litigation and BLAST, [http://www.blast.org.bd./pilandad.html , last visited 15th September 2009]*

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