Sonargaon University
Research Monograph
On
"Judicial Development of Public Interest Litigation In Bangladesh: An Appraisal".

This Research paper is submitted in partial fulfillment of the requirements of the degree of LLB (Honors) under Sonargaon University.

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At first, thanks to almighty, who has been kind enough to let me complete this Research Monograph in right time.

I would like to acknowledge my gratitude to my honorable teacher **MD.Deedarul Islam Bhuiyan** Head and Assistant Professor for permitting me to undertake this research. Thanks to him for his most constructive suggestion. And informative guidance through his lectures.

From beginning of my research, I am personally indebted to some book writers for their kind And valuable writings. Thanks to all from the bottom of my heart.

Signature

Certification by the research advisor

This is hereby certified that the research Monograph on the topic **‘‘Judicial Development of Public Interest Litigation In Bangladesh: An Appraisal** submitted by **Taslima Chowdhury Eva, ID** No: LLB-1803015015 in fulfillment of the requirements for LLB (hones from Sonargaon University, under my active supervision and guidance and that no part of this paper has been submitted any place earlier, as far as i know.

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Declaration

This is, a student **Taslima Chowdhury Eva,**ID No: LLB-1803015015 of LL.B program of Department of Law of Sonargaon University, do hereby declare that the Research Monograph Titled, ` **Judicial Development of Public Interest Litigation In Bangladesh: An Appraisal** an original work. The assigned work has done by me for partial requirement of my LLB degree, as a part of academic curriculum. I certify that this thesis does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any university; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where dereference is made in the text.
I also declare that the presented work do not breach any existing copyright and no portion of this research monograph has been copied entirely from any work done earlier for a degree or otherwise.

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Letter of transmittal

To,

MD.Deedarul Islam Bhuiyan

Head and Assistant Professor

Department of Law

Sonargaon University, Dhaka.

Subject: For the submission of research Monograph titled Judicial Development of Public Interest Litigation in Bangladesh: An Appraisal

Dear Sir,

This is a matter of joy for me to submit the research monograph on the title '**Judicial Development of Public Interest Litigation In Bangladesh: An Appraisal**' While doing this research monograph, I have tried my level best to keep the required standard. I Hope, this dissertation will fulfill your expectation. I hope that you would be kind enough to go through this dissertation for you kind evaluation. I am always available for any clarification or any other necessity of any part of this research Monograph at your convenience.

Yours obediently

Student

Taslima Chowdhury Eva

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List of Abbreviations:

DLR	Dhaka Law Reports
BLD	Bangladesh Legal Decision
AIR	All India Reports
PIL	Public Interest Litigation
MLR	Mainstream Law Reports
DIU	Dhaka International University
SC	Supreme Court
AD	Appellate Division
BELA	Bangladesh Environmental Lawyers Association
CCF	Children Charity Foundation
ASK	Ain O Shalish Kendra
HRPB	Human Rights and Peace for Bangladesh
BNWLA	Bangladesh National Women Lawyers' Association
BLAST	Bangladesh Legal Aid Services & Trust

Abstract

By analyzing public interest litigation (PIL) jurisprudence, this article examines Bangladeshi judicial activism in dispensing justice through the promotion and protection of the 'public interest' and imperatives of constitutionalism. Originally linked with the idea of having an accessible judicial system for the wider community, PIL in Bangladesh previously focused
primarily on 'the weak', as well as on pure rights. However, while PIL has recently extended its stake to a broader set of constitutional issues, it has not delivered on its promises. It is said that the elitist use of PIL has undermined a much-needed focus on social justice and public empowerment. This article argues that PIL's underperformance is not rooted in its elite-driven use alone, but is also a consequence of judicial unwillingness to remain jurisprudentially creative. Adopting a broader rather than minimalist approach to PIL, it focuses on the limits of social-rights-centric concept of social justice, and argues that enforcing principles of constitutionalism through PIL, even if pursued by the elites, could be a viable avenue towards social and constitutional justice.

'Judicial activism' and 'public interest litigation' (PIL) are fairly recent phenomena in Bangladesh. PIL refers to that activist jurisprudence that allows any person without being actually aggrieved to activate the judicial method to pursue a public cause or the rule of law, and allows the court to provide
unorthodox remedies. PIL-based judicial activism in South Asia can be characterized by its successful transformation of the traditional judicial role from a disinterested passive arbiter of ordinary disputes into one of an engagingly active guarantor of justice, adjudicating both ordinary and polycentric social rights
disputes. This radical departure from the western private interest-based and adversarial adjudicative tradition, prominently orchestrated by the Indian judiciary in the late 1970s, was driven by a deep judicial sense of duty to seriously address injustice and suffering among the general public.

CHAPTER-1

Definition, beginning and development

1.1 Introduction

Since the dawn of civilization humans were arrested for crimes that they had committed and laws

Were made to make sure the security of ordinary citizens from the criminals. Arrest means restraint on someone for any criminal act that he has done. It is very indispensable a part of law and order of a rustic which has been there for thousands of years. Just in case of arrest, the Accused person does any reasonably criminal act but just in case of preventive detention, people get detained thanks to suspicion that they could do something. This goes beyond any question that folks cannot predict future and when someone has been detained on some act which he has not committed yet, it becomes injustice for the detent. that why international human rights associations made treaties like "Universal Declaration of Human Rights" an International Covenant on Civil and Political Rights" which declared Preventive Detention as a transparent breach of human rights. State and authority believes that though human liberty is treasurable but it should be sacrificed for domestic safety and success. Although preventive detention may be a necessity for emergencies and war periods but it can never be an answer in peace time. Bangladesh has been using this for several year despite of it's being comparatively a peaceful country. This paper will discuss about the laws associated with this matter and the way it's been breaching several forms of human rights and constitutional rights of its native people.

1.2 Context of the research

Arbitrary arrest and detention which is known in other words as preventive detention derived

From the misuse of Special Powers Act- 1974 causes a good violation of human rights and

Protection thereof. Arbitrary detention by law enforcing agencies have remained a persistent

Feature of our criminal justice system. These practices are widespread in Bangladesh regardless Of the varieties of government, and successive governments have didn't stop this endemic Problem. Torture while detention is usually committed by different state agencies-law enforcing, Intelligence and security agencies, which include police army, para-military forces, coast guard, Navy forces, prison officers and security agencies like the National counterintelligence (NSI) and Director General of Foreign Intelligence (DGFI).Usually, the venue of custody is that the police headquarters. But arrested persons also are frequently taken to the cantonment, or to unknown locations for interrogation by police-army Joint cells, which is evident violation of law. Arbitrary detention is unacceptable in any style of Government that's committed to democracy and also the rule of law. Though preventive detention was introduced to face the grim and grave situation to cater to the matter, it's some lacunas. This study reveals that with whatever saintly motive the Special Powers Act may are enacted, it's been used invariably to repress people whom the administration don't like. Though our Constitution has inserted the availability regarding the safeguards of preventive detention, these area sufficient and therefore the law enforcing agencies also because the court administration area interested to the provisions and also the folk have little knowledge about these safeguards.

1.3 Review of literature

This study relies on an analytical approach and demanding appraisal of judicial decisions of the Supreme Court of Bangladesh. For the aim of the study, relevant judicial decisions are collected from various sources and analyzed to spot the most trends on the problem. The study has also Reviewed the prevailing legal framework on arrest, detention and torture under both national and law. My research monograph is completely supported the books, articles, and journals, newspaper reports, reports by many right Organizations and internet survey. In my research monograph i take help from national statutory provisions, case laws, website, international journals and therefore the help from my supervisor.

The legislation governing the administration and management of the preventive detention in Bangladesh is enumerated because **the Special Powers Act -1974, The Code of Criminal Procedure -1898, The Emergency Power Rule -2007 and Article-33 of the Constitution of Bangladesh**. The Special Powers Act provides provision regarding preventive detention, article-33 of Constitution of Bangladesh provides safeguards against preventive detention and section 54 of CrPC says about the overall Power of Arrest by Police. This study will consider the validity of preventive detention law and see to what extent the rightsAre infringed because of misapplication of preventive detention laws and can finally put Necessary recommendations to prevent the misuse of the law. The aim of this study is to analyses the past decisions of upper judiciary within the field of arrest, detention and torture. So in future, it be helpful for the policy makers, legislators, teachers, students and researcher to grasp about the issues and prospects of the preventive detention system in our country. As in Bangladesh there are inadequate rules on safeguards of implement the provisions associated with safeguards of preventive detention in Bangladesh.

1.5 Aims and objectives of the study

The aims and objectives of the study are as follows-

1. To find out the problems faced in the preventive detention process in Bangladesh.

2. To highlight some leading cases regarding preventive detention.

3. To highlight the constitutional as well as the judicial safeguards of preventive detention in Bangladesh.

4. To make recommendations to improve the current preventive detention process in Bangladesh.

5. To point out suggestions to reform the laws related to preventive detention.

1.6 Methodology of the study

This research has been based on secondary doctrinal sources and primary legislative sources and qualitative in nature. This is a critical study based on article, journal report, case laws and relevant books. This paper mostly relies on national legislations, constitutions, statutes, case laws,

published books, and journal articles and online resources. Research Method of documentary analysis or content analysis has used which has helped me to focus the Concept of

preventive detention in existing laws and to seek out out the demerits of this preventive detention system in Bangladesh. Side by side the analytical research method has helped to search out the aim of the study, relevant judicial decisions are collected from various sources and analysis to spot the most trends on the problems.

1.7 Collection of data

Data has been collected for this study from both primary similarly as secondary sources. This can

Be a critical study on the difficulty of preventive detention statute, case law and existing research

Report as primary source. i've got also used text books, journals and knowledge from internet as secondary sources so as to grant complete shape to the study.

1.8 Scope of the study

The present study projects specialize in preventive detention and violation of human rights in

Criminal justice system in Bangladesh. In doing so, this study

- **Firstly** makes an effort to substantiate the right knowledge about preventive detention, arbitrary arrest by law enforcing Agency and violation of human rights.
- **Secondly,** the current study makes an analysis on laws Associated with preventive detention. Thirdly, the current study gives an overview and makes a Critical evolution of the prevailing law regarding preventive detention in criminal justice system in Bangladesh.
- **Finally**, the study makes a humble effort to draw some suggestions, acquired the Conclusion of the current study.

1.9 Limitation of the study

Though there are huge information in text books, journals and in internet it's not sufficient. I've got to also give concern about time and price. Furthermore, the current study is undertaken as a part of fulfillment of the wants of LLB degree. The researcher gets only 1 month to complete the

Research. Moreover, the research is directed to be within prescribed word limit. Therefore, there

Not much scope for doing a comprehensive study. Yet, I try my best to satisfy the objectives Launched within the present study.

1.10 Chapter Outline

The research is under the following heading "Preventive Detention and Violation of Human

Rights: Bangladesh Perspective". The research will be divided into eight different chapters. The

Chapters are as follows:

- Introduction to preventive detention,
- Concept of preventive detention,
- Preventive Detention under the Constitution of Bangladesh and other statutory laws,
- Preventive Detention Legislation in Bangladesh, India, and Pakistan
- Violation of Human Rights by Preventive Detention,
- Case studies on preventive detention,
- Incidences of Arrest / Detention under Section 54
- Section 54 of code of criminal procedure and misuse of power by the police
- Preventive detention contrary to rule of law
- Recommendations and Conclusion

CHAPTER -2

Public interest litigation

2.1 What is Public interest litigation:

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. [1]Under this article given such powers to issue certain orders and directions of the High court division.

Another name of PIL (Public Interest litigation) is the writ. Historically PIL originated and developed in the British legal system. The Public Interest litigation was royal prerogatives.

2.2 Kinds of Public Interest Litigation

The prerogatives writs are five in number

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.

[1] Public interest litigation is defined in the Constitution of Bangladesh, Article 102 of the Bangladesh Constitution.

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 its 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.

2.3 Who can file PIL (Public Interest Litigation) in Bangladesh?

If any person aggrieved or as may be appropriate for the enforcement of any of the fundamental rights by the constitution, he can want remedy to the High court division by the application.

Article 102 of the Bangladesh Constitution the High court division may, if satisfied that no other equally efficacious remedy is provided by law.[2]

The sub-article 3 provides the high court division shall have no power under this article to pass any interim or other order in relation to any law to which article 47 applies. So, we see that PIL can file in different stages

2.4 Public Interest Litigation in Bangladesh

The concept of public interest litigation as has emerged into the judicial administration of Bangladesh is yet to mature with the concept of justice as guaranteed by the Constitution. This is a crucial concept in a country like ours where 65% of the total populace have no or less access to judiciary although the constitution commits for equality before law, justice, right to life and equal enjoyment of fundamental rights by all citizens. With obvious socio-economic constraints

[2] Article 102 of the Bangladesh Constitution the High court division may, if satisfied that no other equally efficacious remedy is provided by law.

and a long history of feudal past, the realization of legally recognized rights is at its nascent stage.

In recent times the civil society movement for enjoyment of rights took a new dimension with the judiciary being increasingly occupied with public interest cases seeking relief against administrative anarchy and ignorance. It is interesting to note that the concept of PIL is developing in Bangladesh as a performance of public duty by civil society groups advocating in support of progressive ideologies. In 1994 a petition was first taken before the High Court by BELA on behalf of the people of a given locality where a disputed development action was being implemented. The petition was at first rejected by the court on the ground of standing of the organization. An appeal was preferred from that rejection where the core question was whether groups like BELA with dedicated and sincere record of activism can claim to have acquired sufficient interest to seek judicial redress against anarchy in its own field of action. The question was vital as it was a constitutional requirement under Article 102 that it is only "a person aggrieved" who can file petitions for enforcement of fundamental rights. Being positively responded by the Supreme Court this case became the turning point in the history of PIL in Bangladesh. Lile BELA BLAST ODHIKAR AIN O SHALIS KANDRO also filed PIL to establish Citizens Rights to Zone 2003 the number of cases are BELA filed 31 PIL cases. BLASTS 21 ASK-25 ODHKER 5 and BMDW filed 30 PIL cases.

CHAPTER-3

Judicial Development of PIL

3.1 Judicial 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.[11] Now, I should explain development of PIL in Bangladesh.

PIL in Bangladesh is a post-democratic (i.e. post-1991) phenomenon and its entrenchment in-Bangladeshi constitutional jurisprudence in the mid-1990s were significantly influenced by this political change. Indeed, the primary reason behind Bangladesh's belated embrace of PIL appears to have been judicial unwillingness to break away from colonial legal thinking and abandon constitutional teetotalism or legal formalism. Moreover, while the emergence of PIL owes much to the judicial adoption of an autochthonous mode of Constitutional interpretation, there has hardly been any articulated urge for socially relevant jurisprudence in Bangladesh, nor is (here much realization about the in adequacy of the inherited, age-old British legal traditions. There was an early decision (1974) in Kazi Mukhlesur Rahman v Bangladesh (Berubari case[3]) that had a strong PIL flavor, and went very close to establishing the principle of judicial review in the public interest. This decision is sometimes proudly characterized as the precursor of South Asian PIL. However, although Beruburi made the rule of standing a matter of judicial discretion, it did not authoritatively establish PIL in the sense understood today. In Beruburi, a citizen was given standing to challenge the constitutionality of the Dhaka-Delhi Treaty (involving territorial cession) because it involved an 'outstanding' constitutional issue 'affecting the rights of the people of Bangladesh as a whole'.

[3] Kazi Mukhlesur Rahman *vs. Bandladesh and another. 26 DLR (AD) 44*

In our Constitution the petitioner seeking enforcement of a fundamental right must be a 'person aggrieved'. It seems that the court rejected the possibility of PIL in-Bangladesh because its Constitution, unlike India's, required a petition by 'a person aggrieved' for constitutional remedies (Article 102).

This is how PIL in Bangladesh took off; probably a not-so-radical start in comparison with other successes elsewhere, but nevertheless historic. The stage for actions having been set, one could expect more PILs. The judiciary and legal circles, including the human rights groups, needed time to construct a sustainable support base for future actions, which today appears to remain under-construction. This initial phase of Bangladeshi PIL revealed a state of jurisprudential uncertainty and a general hesitation among legal activists. This is evident from the paucity of PIL actions, as well as their being framed as actionable civil rights claims filed mostly by, or conjointly with, more directly affected petitioners.39 However, there were also cases concerning civil-political rights and constitutional principles beyond the classic pattern of actions on behalf of the 'most disadvantaged'. Along with civil-society groups and public-minded individuals/lawyers, political litigants or litigation for political interests also began to appear as an emerging, if not ultimately dangerous, feature of this period. Bangladeshi PIL entered this advanced phase of 'the middle class usurpation' of PIL techniques rather rapidly, and without passing through the desirable 'pioneer stage' of focusing on issues of serious violations of most basic fundamental rights. Nonetheless, the recent orientation of PIL towards more genuine, wider constitutional causes has largely minimized the risk of its misuse for selfish interests.

An action can be brought for public interest litigation under the following:

¬ Environmental degradation,

¬ Violation of basic human rights of the poor,

¬ Content or conduct of government policy,

¬ Compel municipal authorities to perform a public duty,

¬ Violation of religious rights or other basic fundamental rights.

Before entertaining a petition the Court will have to decide the extent of sufficiency of interest and the fitness of the person invoking the discretionary jurisdiction. PIL in India

In India, the liberalization of the rule of Locus Standi came out of the following considerations:

* to enable the court to reach the poor and the disadvantaged sections disadvantaged sections of society who denied their rights and entitlement,

* to enable individuals or groups of people to raise matters of common concern arising from dishonest or inefficient governance, and

* to increase public participation in the process of constitutional adjudication.

It appears that in India, the late 1970s and early 1980s was dominated by PIL on behalf of oppressed people for the enforcement of human rights within the scope of fundamental rights guaranteed by the Constitution. The liberal rules of locus standi enabled the courts to reach victims of injustice. justice Bhagwati in P.U.D.v. India held:

"we wish to point out with all the emphasis at our command that public interest litigation which is a strategic arm of the legal aid movement and which is intened to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such clam or resisting such relief, Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary, but it is intended to promote vindicate public interest which demands that violations of constitutional or legal rights number of people who are poor, ignorant or in socially or economically disadvantaged position should not go unnoticed and unrepressed".

PIL was extended for the group rights. The Supreme Court of India also entertained a PIL petition by the workers of a public sector company challenging the sale of a plant by its management causing colossal loss to the public treasury relaxing the traditional view of locus

standi.Since the late 1980s, the main focus of public interest litigation seems to have shifted towards prevention of government lawlessness, nourishment of the doctrine of rule of law and protection of the environment. References may be given to M.C. Mehta v India [4]for protection and conservation of wild life, M.C. Mehta V India against degradation of the Taj Mahal, M.C. Mehta V India against pollution of the river Ganges by Calcutta tanneries, etc.

The traditional concept of mandamus has been changed and its scope has increased under PIL. mandamus, under the traditional sense, is issued to compel the government or public authority to do what it is legally obliged to do. However, the mandamus under PIL, is issued to mandate the government or the public authority to do what is the entirely within its discretion to do or not do. Indian Courts has applied it in many cases. In Parmajitkaur v Punjab mandamus was issued against the allegation of violation of human rights and the CBI was asked to investigate it, mandamus was issued on a petition against non-functioning of medical equipment in government hospitals, petition for improving the conditions of service of the members of subordinate judicial service and so on.

The Supreme Court of Bangladesh fully embraced the concept of PIL by widening both the rules of locus standi and justifiability in the case of Dr. Mohiuddin Farooque v. Bangladesh. The Appellate Division held:

"…when a public injury or a public wrong or infraction of a fundamental right affecting an indeterminate number of people is involved it is not necessary in the scheme of our constitution, that the multitude of individuals who has been collectively wronged or injured or whose collective rights have been invaded are to invoke the jurisdiction under Article 102 in a multitude of individual writ petitions, each requesting his own portion of concern. In so far as it concerns public wrong or public injury or invasion of fundamental rights of an indeterminate number of people, any member of the public, being a citizen, suffering the common injury or common invasion in common with others or any citizen or an indigenous association, as distinguished from a local component of a foreign organization, espousing that particular cause is a person aggrieved and has the right to invoke the jurisdiction under Article 102"

[4] M.C. Mehta v India ,1987 SCR (1) 819; AIR 1987 965A

A PIL can be filed only against state/central government, municipal authorities but not my private party. ii. However "Private Party" can be included in PIL as "Respondent", after making concerned state authority party. Procedure to file PIL: PIL is filed in the same manner as a writ petition is filed. In High Court: If a PIL is filed in a High Court, then two (2) copies of the petition have to be filed. Also, an advance copy of the petition has to be served on each respondent, i.e. opposite party. In Supreme Court: If a PIL is filed in the Supreme Court then 5 sets of petition have to be filed apposite party is served, the copy only when notice is issued. Procedure: i. Proceeding, in PIL start and carry on in the same manner, as other cases. ii. However in between the proceedings if the judge feels he/she may appoint a commissioner, to inspect allegations like pollution being caused, trees being cut, sewer problems etc. iii. After filing of replies, by opposite party, and rejoinder by the petitioner, final hearing takes place, and the judge gives his final decision.

Mukhlesur Rehman Kazi v. Bangladesh[5], popularly known as the Berubari case, is generally regarded as the starting point of PIL in Bangladesh. The petitioner Kazi Mukhlesur Rehman, an advocate by profession, came to the court challenging an international treaty signed by the Prime Ministers of Bangladesh and India in May 1974, allowing India to retrain the Southern half of South Berubari Union No. 12 on the ground that the agreement involved cession of territory and was entered into without lawful authority by the executive head of government. Since the petitioner had come to the court as a citizen his standing was disputed. But Chief Justice Sayeem granted him 'locus standi' on the ground that the petitioner agitated a question involving a constitutional question of grave importance which threatened his right as a citizen to move freely throughout the territory of Bangladesh and to reside and settle in any part therein. The court held that the question is not whether the court has jurisdiction but whether the petitioner is competent to claim a hearing Reinterpreting a citizen's right vis-à-vis the power of the state, CJ Sayeem observed: "it appears to us that the question of locus standi does not involve the court's jurisdiction to hear a person but the competency of the person to claim a hearing so that the question is one of discretion which the court exercises upon due consideration of the facts and circumstances of each case."33 The Berubari case cast enormous influence on the development of PIL in Bangladesh. It has been time and again resorted to and relied upon by the PIL

[5] Mukhlesur Rehman Kazi v. Bangladesh ,Civil Appeal No. 23 of 1974, 26 DLR (AD) (1974) 44

petitioners in subsequent PIL cases attempting to acquire standing. However, the period of 1975-1986 following the Berubari case (1974) remained almost barren from the PIL viewpoint. This was so because of the imposition of martial law and suspension of the Bangladesh constitution. However, after its establishment in 1978 the Madaripur Legal Aid Movement, the first village based and grass-root legal aid organization, was engaged in spreading the idea of legal rights of the poor and started assisting public interest activities.

PIL can flourish only in an environment conducive to proper functioning of constitution and the rule of law. Even after the withdrawal of martial law on Nov. 11, 1986, the democracy introduced by military ruler General Ershad was controlled and guided. Nevertheless, concerned citizens defying Gen. Ershad's autocratic rule, started coming to the court agitating public interest issues. This period also saw a number of lawyers starting to form themselves into groups to fight pro-bono publico cases. The year 1987 is regarded as a year marking the beginning of PIL cases in Bangladesh. In Anwar Hossain Chaudhary v. Bangladesh34, also known as the 8th Amendment case, the majority judgment of the court, confirming its power of judicial review, held that the basic structure of the constitution cannot be altered, and thus voided the Eighth Amendment which had decentralized the higher judiciary. This 8th Amendment case is sometimes also described as a forerunner of PIL cases in Bangladesh. However, in Bangladesh Sangbadpatra Parishad v. the Government of Bangladesh [6]in which the constitutional authority of a wage Board for fixing the wages of newspaper employees was challenged by an association of newspaper owners, the Appellate Division refused standing to the petitioner on the ground that it was not a person aggrieved: "The petitioner is not espousing the cause of a downtrodden and deprived section of the community unable to spend money to establish its fundamental rights and enforce its constitutional remedies. It is not acting pro-bono public but in the interest of its members."35 Only after democracy started functioning in Bangladesh, some significant PIL cases relating to personal liberty were agitated before the court in 1992 and immediately thereafter. In Ayesha Khanam& Others v. Major Sabir Ahmed & Others36 the court expanded the orbit of habeas corpus by giving standing in a case of private detention involving the issue of a mother seeking the custody of her child. Similarly, investigative journalism gave birth to a

[6] Government *of the People's Republic of* Bangladesh*, 43 DLR (AD) 126, hereinafter referred to as Bangladesh Sangbadpatra Parishad* (BSP) *v. The Government of Bangladesh* 12. BLD (AD) (1992)

leading case, State v. Falu Mia,37 which resulted in the release of Falu Miya after 21 years in jail who had overstayed in prison due to administrative callousness. State v. Deputy Commissioner, Satkhira& Others,38 also known as Nazrul Islam's case, was initiated 'so moto' by Justice MM Hoque who came across a newspaper reporting about the plight of one NazrulIalam who had been detained in the prison for 12 years without any trial. This case resulted in subsequent release of Nazrul Islam from illegal detention. The year 1994 witnessed the filing of a considerable number of PIL cases in Bangladesh which fell into two broad categories:

one involving political issues and another dealing with environmental and consumer concerns. In Anwar Hossain Khan v. Speaker of Bangladesh SangsadBhaban& Others[7], also known as the Parliament Boycott case, the 'locus standi' of a political activist was upheld by the court who had sought the enforcement of his fundamental right of being represented in Parliament.

3.2 Objectives and subject matter of public interest litigation:

Public Interest Litigation has various objects. It is filed in a court-

¬ To ensure the constitutional and legal rights of the poor and excluded groups.

¬ To enhance social and collective justice.

¬ To ensure the accountability of concerned govt. And public authorities towards the issues of public importance.

Public interest litigation is important because of several factors. Important among these are as below-

[7] Anwar Hossain Khan v. Speaker of Bangladesh SangsadBhaban& Others

¬ In most developing countries, the legal regime of environmental laws is weak and the laws are difficult to enforce and sometimes ambiguous. Public interest litigation has helped bridge this gap.

¬ PIL is important where the government is not willing to protect the environment. The government may not be willing to prosecute those who violate environmental laws and at times the government is a violator of environmental laws.

¬ In most developing countries governments lack resources to prosecute and investigate the entire criminal cases that take place within its jurisdiction. Public interest litigation enables individuals to bring action on behalf of the community, a role the government may not play.

¬ Where criminal remedies are not enough, for example a fine may be too small compared to the amount of environmental degradation.

¬ Where criminal remedies are not enforceable, e.g. where a crime is committed by a company and yet the punishment for the crime is imprisonment, it becomes hard to punish the company.

Public interest litigation can be filed only in that case where any "public interest" is affecting at large. If only one person is affecting, then it is not a ground for filing PIL. There are some of the possible areas where a Public Interest Litigation can be filed-

¬ Where a factory or industrial unit is causing air pollution, and people nearly are getting affected.

¬ Where, in an area or street there are no street lights, causing inconvenience to commuters.

¬ Where some 'Banquet Hall' plays a loud music in night in a residential area causing noise pollution.

¬ Where some construction company is cutting down trees, causing environmental pollution.

¬ Where poor people are affected because of government's arbitrary decision to impose heavy 'tax'.

¬ For directing the police or Jail authorities to take appropriate decisions in regards to jail reforms, such as segregation of convicts, delay in trial, production of under trial before the court on remand dates.

¬ For abolishing child labour, and bonded labour.

¬ Where rights of working women are affected by sexual harassment.

¬ For keeping a check on corruption and crime involving holders of high political officer.

¬ For maintaining Roads, drains, Sewer etc in good conditions.

¬ For removal of Big Hoarding and signboard from the busy road to avoid traffic problem.

So these are the various area in which any public spirited person can file any PIL for the interest of public.

Public Interest Litigation is meant for enforcement of fundamental and other legal rights of the people who are poor, weak, ignorant of legal redressed system or otherwise in a disadvantageous position, due to their social or economic background. Such litigation can be initiated only for redressed of a public injury, enforcement of a public duty or vindicating interest of public nature. It is necessary that the petition is not filed for personal gain or private motive or for other extraneous consideration and is filed bona fide in public interest. The following are the subjects which may be litigated under the head of Public Interest Litigation:

(I) The matters of public interest: Generally, they include

1. bonded labor matters
2. matters of neglected children

3. Exploitation of casual laborers and non-payment of wages to them (except in individual cases)
4. matters of harassment or torture of persons belonging to Scheduled Castes, Scheduled Tribes and Economically Backward Classes, either by co-villagers or by police
5. matters relating to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forests and wild life,
6. petitions from riot victims and
7. other matters of public importance.

(II) The matters of private nature: They include:

1. threat to or harassment of the petitioner by private persons,
2. seeking enquiry by an agency other than local police,
3. seeking police protection,
4. admission to medic

al or engineering colleges,

1. early hearing of matters pending in High Court and subordinate courts and are not considered matters of public interest.

(III) Letter Petitions:

Petitions received by post even though not in public interest can be treated as writ petitions if so directed by the Hon'ble Judge nominated for this purpose. Individual petitions complaining harassment or torture or death in jail or by

police, complaints of atrocities on women such as harassment for dowry, bride burning, rape, murder and kidnapping, complaints relating to family pensions and complaints of refusal by police to register the case can be registered as writ petitions, if so approved by the concerned Hon'ble Judge. If deemed expedient, a report from the concerned authority is called before placing the matter before the Hon'ble Judge for directions. If so directed by the Hon'ble Judge, the letter is registered as a writ petition and is thereafter listed before the Court for hearing

CHAPTER-4

CHALLENGES TO ENFORCE RIGHT TO LIFE PUBLIC INTEREST LITIGATION

4.1 Challenges to enforce right to life through Public Interest Litigation:

So far as we know that to win over a good work requires countering enormous challenges of which life threatening is the master one. From the experience of practice in the legal arena, it is very often found that those who dream and work to enforce the rights of public including right to life through PIL have to count and face limitless challenges, sufferings and threats in Bangladesh. Even threats of killing, abduction, physical assault, political harassment etc. have become part and parcel of life when dealing with PIL.

More regretfully, it can be brought forward that funding problems, security issues, delayed communication of orders implementation of judgments, negligence and audacity showing tendency by the executives to execute order and judgment many more limitations and challenges try to grip on the legs of persons and /or organizations working dedicatedly to ensure and enforce the right to life for citizens through PIL in Bangladesh.

Apart from this, many untold pains and challenges have to overcome by the learned advocates who conducts the PIL, though learned advocates are intrepid and determined enough to do their professional responsibility.

In a sentence, I feel like to express my view that to win over the journey of PIL is nothing but a fight with no arms and ammunitions.

4.2 Organizations and persons working for protection of right to life in Bangladesh:

It is undoubtedly the good sign that a good number of learned advocates, organizations and human rights activists have actively been working in Bangladesh for protection of right to life through public interest litigation. If someone thinks a person to name who has been contributing a lot and already been a pioneer in PIL in Bangladesh is nobody else but advocate Manzil Morshed. Apart from this, Barrister Sara Hossain of BLAST, Advocate Sultana Kamal of AIN-O SALISH KENDRA, Barrister Abdul Halim of Children Charity Foundation (CCBF), Advocate Adilur Rahman of ODHIKAR, Advocate Farhad Uddin Ahmed Bhuiyan of MANUSHER JONNO TRUST, Advocate Syeda Rejwana Chowdhury of BELA and Bangladesh National Women Lawyers' Association(BNWLA) etc. Besides, many learned friends of Bangladesh Supreme Court ,more particularly, Barrister Anik R Haque, Barrister Ruhul Quddus Kazal , Advocate Amit Das Gupta Barrister Humayun Kabir Pallab have been keeping rated and utmost contribution in enforcing right to life and other constitutional rights in Bangladesh through Public Interest Litigation.

No telling to say that in recent days the trend of filing PIL in Bangladesh has been skyrocketing having significant remedies from the Courts.

Interestingly, to enforce the right to life , now a days ,tortuous reliefs are being entertained by the Supreme Court of Bangladesh. A famous PIL of these days in Bangladesh filed by our learned friend Barrister Shihab Uddin to remove and withdraw the adulterated , quality less, contaminated 52 food items of Bangladesh from market with the plea that these foods can take the lives of the countrymen like as slow poison which is contradictory with the spirit of right to life as guaranteed under article 32 of the Constitution of Bangladesh.[8]

[8] article 32 of the Constitution of Bangladesh.

4.3 Locus Standi expanding to ensure right to life:

It can safely be deduced from the criteria mentioned in this judgmental that PIL can mainly be entertained in the case of serious violation of fundamental right to life and liberty, for group rights of least advantaged and for protection of environment. Clauses 7 and 9 of paragraph no. 38 of the judgment seem to have Deviated from the earlier jurisprudence of locus standi developed by the Appellate Division in Dr. Mohiudin Farooque v. Bangladesh and ekushey Television Ltd v. Chowdhury Mahamood Hasan[9]. Subsequent decision of the Appellate Division dated 03.07.2017 in 16th Amendment case followed the principles of Dr. Mohiuddin Farooque's cse since the since the case was concerned with the protection of independence Clause 11 of paragraph no. 38 also seems not to be in the line of judicial principles as regards the scope of PIL enunciated in the Dr. Mohiuddin Farooque case. By the instant criteria, the redress against public wrong for the enforcement of the rule of law and petitions for protection of basic structure of the Constitution, against violation of the provisions of the Constitution, ensuring the independence of the judiciary, contempt of court for scandalizing the court are left out.

In other words, many successful PIL cases filed by HRPB and other public spirited people and organization can hardly be entertained if the above criteria are followed strictly. However, the Appellate Division in the case of National board of Revenue vs. Abu Saeed Khan and others did not overrule the earlier decisions of the Appellate Division and therefore the principles expounded by the Appellate Division in the Dr. Mohiuddin Farooque case and other cases, pinnacle in their own regard, are still the governing and applicable principles in relation to locus st andi and justifiability as the those principles were followed in the latest case of the 16th Amendment of the Constitution. Further during the hearing of 16th Amendment case in both the Divisions, the case of National Board of Revenue vs. Abu Saeed Khan and others was referred and both the Divisions were not inclined to accept the criteria specified therein. It is submitted that in the case of National Board of Revenue vs. Abu Saeed Khan and others, [10]the PIL petition failed not on the ground of locus standi but for lack of justiciability. However, to determine the locus st andi and justiciability. In PIL cases, the court has to put its endeavor to find out as to

[9] *Ekushey Television Ltd*. and others *Vs*. Dr. *Chowdhury Mahmood ... Dr*. *Mohiuddin Farooque Vs*. *Bangladesh* and others, 1996, 25 CLC (HCD)
[10] National Board of Revenue Vs. Abu Saeed Khan and others*, 2012, 41 CLC (AD)*

whether the principles already accepted in our jurisdiction in the earlier cases are applicable in the given facts and circumstances of a particular case. The court also must guard against the interloper/busybody from bringing any action under PIL for oblique purpose.

4.4 Public Interest Litigation to enforce the right to life:

It is through using PIL, that environmental activists and social action groups have least about law and its limitations. By the 1990's, PIL was being mobilized as one part of a smuggle in which the Court was not the major arena. The delays, the unwillingness of the Court to respond to basic questions and the poor implementation of Court decisions, have informed this perspective. Of the six environmental controversies discussed in a 1993 survey of the environment, documentation has been available for PIL cases filed in at least five: Chilika Lake in Orissa, the Narmada Project, the Konkan Railway, the East Coast Road and the Ganga Action Plan. It is interesting to note that law is mentioned in just two of the controversies, and it is only in an article by advocate M C Mehta that there is a lengthy discussion of the Supreme Court's directives in a case relating to the pollution of the River Ganges. He notes that these directives only had the effect of controlling industrial pollution of the river, and not in implementing the broader-based Ganga Action Plan.

Mehta, M C 'Ganga action plan; Tied up in red tape' in 'Survey of the Environment', 127-131. The fervour created by this case cannot be underestimated leading to a discussion in the Lok Sahba, 'Closure and shifting of industries following Supreme Court Judgement', Lok Sabha Debates, Series 8 Session 10 Vol 39, 10/5/88, 271-72[11]. The very threat of legal action is sufficient. whilst valuing the opportunities that law provides: It should however be kept in mind that although the legal scope [of PIL] is worth exploring, it must be accompanied by other forms of social action. … Financial and other resources will be required to carry on a sustained long-term struggle. Teams of committed lawyers and legal activists must also exist.

[11] Mehta, M C 'Ganga action plan; Tied up in red tape' in 'Survey of the Environment', 127-131. The fervour created by this case cannot be underestimated leading to a discussion in the Lok Sahba, 'Closure and shifting of industries following Supreme Court Judgement', Lok Sabha Debates, Series 8 Session 10 Vol 39, 10/5/88, 271-72

CHAPTER-5

COMPARATIVE STUDY ON ENFORCING RIGHT TO LIFE THROUGH PIL

5.1 Comparative study on enforcing right to life through PIL in Bangladesh:

Right to life enforcement in India has got satisfactory level than Bangladesh. Though the History of PIL starts from India, Bangladesh has been trying to bring excellence in enforcing right to life as guaranteed under article 32 of the constitution of Bangladesh.[12] In fact, the achievement in PIL is far better than the last 10 years in Bangladesh. It is relevant to mention that now a day the concept of right to life in Bangladesh has been widened by the judicial decisions of the Courts. It is a matter of hope that Bangladesh is about to compete with the race of right to life enforcement of India. In the last couple of years, we find enormous booming of PIL in Bangladesh, more particularly, the PIL of right to life enforcement. These are the important cases Bangladesh sets example of enforcing right to life:

1. Writ Petition No. 324 of 2009-Ensuring Pure Food
2. Writ Petition No.1190 of 2009-Stop Vat in health Service.
3. Writ Petition No. 3503 of 2009-Save the rivers Buriganga, Balu, Turag and Shitalakkha
4. Writ Petition No. 9329 of 2008-Arrangement of Earthquake rescue equipme
5. Writ Petition No. 945 of 2011-Protectin of Uttara Lake in Dhaka
6. Writ Petition No.3676 of 2010-Save the Water of Buriganga River and to stop the sewerage line.
7. Writ Petition No. 626 of 2011-Protection of Cox Bazar sea beach area
8. Writ Petition No. 5959 of 2011-Stop hill cutting at Cox Bazar

[12] Enforcing right to life as guaranteed under article 32 of the constitution of Bangladesh.

9. Writ Petition No.6930 of 2010-Stop the use of tannery waste in poultryThe Petition was filed with legal assistance from Bangladesh Environmental Lawyers Association (BELA) by Mr. Sharif NurulAmbia, Joint General Secretary of (JSD).[13]

The Petition was moved by the Secretary General of BELA, Dr. MohiuddinFarooque submitting that the DCC has undertaken the construction of the multi storied building at the site earmarked for public car park in the RAJUK Master Plan unlawfully and without the latter's approval and hence liable to be demolished. It was further submitted that the construction was continuing defying DoE's finding that the said building would create a disruption to the environment of the area and the neighborhood depriving them the right to life, body and healthy environment against hazardous pollution and obstruction to air and light as being endangered by the unauthorized construction by the Respondents.

Upon hearing the petitioner, the Court stayed the said construction till disposal of suit. The rule was ultimately disposed of against which an appeal is pending before the Appellate Division.

1. Dr. Mohiuddin Farooque v. Bangladesh & others (Writ Petition No.998/94)Sekandar Ali Mondol v. Bangladesh and others (Writ Petition No.1576/1994) (Challenging Flood Action Plan-20)[14]

[13] The Petition was filed with legal assistance from Bangladesh Environmental Lawyers Association (BELA) by Mr. Sharif NurulAmbia, Joint General Secretary of (JSD).

[14] Dr. Mohiuddin Farooque v. Bangladesh & others (Writ Petition No.998/94)Sekandar Ali Mondol v. Bangladesh and others (Writ Petition No.1576/1994) (Challenging Flood Action Plan-20)

In 1994, a Petition was filed by BELA challenging the implementation of Flood action Plan-20 in Tangail. The Petition, first rejected by Court on the ground of Standing of the Petitioner was subsequently sent for hearing on merit to the High Court after the Appellate Division granted standing (Bangladesh Legal Decisions, (BLD) 1997 Appellate Division (AD), pg.1).

In the petition, the authorities were accused of violating a number of laws that provide for compensating affected people for all sorts of loss and protecting the national heritage. The Court delivered Judgment on 28 August '97 and observed that "… in implementing the project the respondents cannot with impunity violate the provisions of law. We are of the view that the FAP-20 project work should be executed in complying with the requirements of law."

2. Dr. Mohiuddin Farooque v. Bangladesh & Others WP No.891/1994 (Industrial Pollution Case)[15]

In 1994 BELA filed this Writ Petition seeking relief against indiscriminate pollution of air, water, soil and the environment by 903 industries of 14 sectors identified as polluters by the Ministry of Local Government, Rural Development and Cooperatives (LGRDC) vide Gazette notification dated 7 August 1986. The 14 sectors include Tanneries, Paper and Pulp, Sugar Mills, Distilleries, Iron and Steel, Fertilizer, Insecticide and Pesticide Industries, Chemical Industries, Cement, Pharmaceuticals, Textile, Rubber and Plastic, Tyre and Tube and Jute.

The Notification of 7th August 1986 directed the Department of Environment (DoE), the Ministry of Environment and Forests (MoEF) and the Ministry of Industries to ensure within three years that appropriate pollution control measures were undertaken by those industries. The Notification also required the said authorities to ensure that no new industry could be set up

[15] Dr. Mohiuddin Farooque v. Bangladesh & Others WP No.891/1994 (Industrial Pollution Case)

without pollution fighting devices. But unfortunately, even after the lapse of eight years when no measure was taken the above Petition was filed.

3. BELA v. Bangladesh and others

Writ Petition No 4919/2010 (Nimtoli-Fire, Dhaka)[16]

The writ petition was filed jointly by BELA, ASK, BLAST, BRAC and IAB on 10 June, 2010 against the failure of the concerned authorities to prepare adequately and effectively for preventing and fighting against fire break outs in the City and to ensure safety of the inhabitants of the township and prevent unauthorized expansion of hazardous industrial activities in the City particularly in the high density township of the Old Dhaka.

4. BELA v. Bangladesh and others

Writ Petition No. 6848/2009 (St. Martin's Island)[17]

The petition sought for directions upon respondents to regulate commercial tourism in the ecologically fragile Island of the St. Martins and to prevent the indiscriminate and unauthorized constructions of hotels, motels, restaurants etc. in the said island. On 18 October, 2009, the Honorable High Court issued a rule nisi calling upon the respondents to show cause as to why they should not be directed to act upon their legal mandates in regulating tourism in the Island of St. Martin and in demolishing all unauthorized, unlawful and illegal contractions of commercial houses in the said Island. Moreover, an order of injunction was passed restraining respondents from constructing all unauthorized new commercial buildings for a period of 3 (three) months.

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[16] **BELA v. Bangladesh and others**,Writ Petition No 4919/2010 (Nimtoli-Fire, Dhaka)

[17] BELA v. Bangladesh and others,Writ Petition No. 6848/2009 (St. Martin's Island

Rule returnable within 4 (four) weeks from the date. Also on 15.1.2010, the order of injunction was extended till disposal of the Rule.

5. BELA vs. Bangladesh & Others;

Writ Petition No. 2393 of 2010 (Ramnabad River of Barisal)[18]

The petition was filed for a direction to restore river area of the Ramnabad of Patuakhali district under Barisal division in its original position by removing the earth filled and the wall erected by respondent No.5 (Mr. Golam Mowla Rony, the then MP, 113, Patuakhali-3, for constructing stadium, children's park and market thereon. On 5 April, 2010 the honourable High Court issued a Rule Nisi calling upon the respondents to show cause as to why the filling of the river area of the Ramnabad and the erecting of the wall thereon by respondent No.5 shall not be declared as illegal, without any lawful authority and against public interest and why the respondents shall not be directed to restore the river area in the original position and such other/further order passed as to this Court may be seem fit and proper.

6. BELA vs. Bangladesh & Others

Writ Petition No. 2434 of 2014 (Discharging of Dam built in the River Bangali of Dhunot, Bogra)[19]

[18] BELA vs. Bangladesh & Others; Writ Petition No. 6848/2009 (St. Martin's Island)

Writ Petition No. 2393 of 2010 (Ramnabad River of Barisal)

[19] BELA vs. Bangladesh & Others,Writ Petition No. 2434 of 2014 (Discharging of Dam built in the River Bangali of Dhunot, Bogra)

A writ petition was filed by BELA to keep normal water flow in the river Bangali of Dhunotupazila in Bogra. After primary hearing, the honourable Court ordered the Ministry of Environment, Director General of WAPDA and DC of Bogra to make report to the Court after discharging the dam that is built on a branch of the Bangali River within 4 weeks. The Court issued a Rule Nisi calling upon the respondents to show cause as to why shall not be ordered to protect the river. It is also instructed in the Rule that, why shall not be taken compensation from the concerned person for damaging river ecosystem by creating dam in the river. A High Court Division bench combined with justice Mirja Hossain Hayder and justice Muhammad Khurshid Alam Sharkar gave this instruction.

7. Dr. Mohiuddin Farooque vs. Bangladesh & Others

Writ Petition No.891 of 1994 (Industrial Pollution Case)[20]

In 1994 BELA filed this Writ Petition seeking relief against indiscriminate pollution of air, water, soil and the environment by 903 industries of 14 sectors identified as polluters by the Ministry of Local Government, Rural Development and Cooperatives (LGRDC) vide Gazette notification dated 7 August 1986. The 14 sectors include Tanneries, Paper and Pulp, Sugar Mills, Distilleries, Iron and Steel, Fertilizer, Insecticide and Pesticide Industries, Chemical Industries, Cement, Pharmaceuticals, Textile, Rubber and Plastic, Tyre and Tube and Jute. After seven years since the date of filling of the petition on the 15 July of 2001, the court has directed the Directed General, Department of Environment to implement the decision taken with regard to mitigation of pollution by 903 industries identified as polluters within the time frame of six months from the date of the judgment. The Petitioner pleaded that the ecological system of the country more particularly the air and water including the major rivers are being severely affected by the

[20] **Dr. Mohiuddin Farooque vs. Bangladesh & Others**,Writ Petition No.891 of 1994 (Industrial Pollution Case)

identified 903 industries and that no affirmative action has been taken in furtherance of the decisions of the Gazette dated 7th August, 1986. Rather the number of polluting industries has multiplied as the recent list prepared by the DoE shows that the number of polluting industries have raised up to 1176. The Court earlier issued Rule Nisi to the Respondents including the LGRDC, Ministry of Environment and Forest, Ministry of Industries and Department of Environment.

8. BELA vs. Bangladesh & Others Writ Petition No. 6072 of 2010 (Housing)[21]

A division bench of the High Court Division comprising Mr. Justice Wahab Miah and Justice Kazi Rezaul Haque has directed the govt. to take effective measures for preventing the advertisement and earth filling and selling plots in the unauthorized private housing projects. The direction came in a writ petition filed by five environmental and urban planning groups including BELA, Ain o Salish Kendra (ASK), BAPA, Institute of Architects Bangladesh (IAB) and POBA.

9. BELA vs. Banglaresh and Others

Writ Petition No. 8603 of 2005 (Stone crushing mill in residential area at Jaflong)

A Writ Petition was filed on 4 December, 2005 where Rule Nisi was issued by the Court calling upon the respondents to show cause as to why the unauthorized establishment and operation of stone crushing mills/machines in the Jaflong Forest area in Jaintapur and GoainghatUpazilas shall not be declared to be in violation of laws, against public interest and as such illegal, without lawful authority and of no legal effect. The Court also directed the concerned authorities to evict

[21] BELA vs. Bangladesh & Others Writ Petition No. 6072 of 2010 (Housing)

the illegal stone crushers from the protected and ecologically sensitive forest area of Jaflong, to prevent any further unlawful and unauthorized activities of stone crushing in the said area and to realize compensation for the said illegal and destructive activities.

"Abuse of power and authority by the law enforcing agency resulting in torture and rape in police custody and promoting the other persons to be involved in torture and solemnization of child marriage".

ASK is the petitioner in the Public Interest Litigation which has been filed with a Special Original Jurisdiction in the High Court Appellate Division in 2014. The Writ Petition has been filed as an application under Article 102 of the constitution of the Peoples Republic of Bangladesh.

The Respondents are-

1. Secretary, Ministry of Home affairs, Bangladesh Secretariat, Ramna, Dhaka.
2. Inspector General of police, Police Head Quarters, Fulbaria, Dhaka

Superintendent of Police, district- Pirozpur.

- Officer In Charge, Nazirpur police station, District –Pirozpur
- Abdur Rahman, Assistant Sub-Inspector, Nazirpur, District-Pirozpur
- Moulovoi Mujahidulislam, Zafor Mia, son of Abdus Salam Miah, of Village- Baksi, Seikhmati Union Parishad, Upozilla :Najirpur, Dist. : Pirojpur

- AshimMistri, Teacher, Baksi S.M DarusSunnatDakhi Madrasah.

- BELA vs. Bangladesh and others Writ Petition No. 11594 of 2006 (Pollution caused by a polythene factory at Keranigonj).[22]

A Writ was filed against the establishment and operation of a Plastic & Polythene Recycling Factory named Hafsa Enterprise. After hearing the Petitioner, the Court issued a Rule Nisi calling upon the respondents to show cause as to why the establishment and operation of the Hafsa Enterprise without obtaining any environmental clearance certificate and adopting pollution fighting devices being violate of the provisions of the Bangladesh Environment the Environment Conservation Rules, 1997[23], the Factories Act, 1965 and the Factories Rules, 1979 and threatening the fundamental rights of the villagers as guaranteed under Articles 31 and 32 of the Constitution shall not be declared to be illegal[24], without lawful authority and having no legal effect and why the respondents shall not be directed to take effective remedial measures to prevent the unauthorized and unlawful activities of respondent No. 9 as sanctioned and required under the applicable laws.

Pending hearing of the Rule, the Court also passed an interim order of injunction restraining the owner of the factory from continuing with his polythene recycling operations in the name of Hafsa Enterprise (Plastic & Polythene Recycling Factory) situated and operating in village Kamarta, under Keranigongupazila, Dhaka.

- In the Writ petition No:1613 of 2014, the Hon'ble Court held that "We have perused the writ petition, affidavit-in-opposition and supplementary affidavit thereto and considered the submissions of the learned Advocates.

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[22] BELA vs. Bangladesh and others Writ Petition No. 11594 of 2006 (Pollution caused by a polythene factory at Keranigonj).

[23] Environment Conservation Rules, 1997

[24] Factories Act, 1965 and the Factories Rules, 1979 and threatening the fundamental rights of the villagers as guaranteed under Articles 31 and 32 of the Constitution shall not be declared to be illegal

It appears that the Daily Prothom Alo on 02.06.2014 reported the Sylhet Agricultural University by cutting hill/tilas are constructing their hostel for 500 students. From the report it further revealed that the university authority declared the tila as the reserved tilas for rare species of trees in the year 2009 and the university also established "Agro-Forest Germ Plasam Centre" on 07.07.2009 on the said tilas wherein the students of the Department of Agro Forestry and Environmental Science as joint venture project with the Hamdard Laboratory planted 300 rare species trees. It is very clear from the law that for the purpose of greater national interest the environmental authority can issue clearance certificate for cutting the hill/tilas.

Considering all the aforesaid facts and circumstances we think that it will be fit and proper if we direct the Department of Environment to dispose of the application of the university, if any, for according permission for cutting hill/tilas for construction of the hostel in the name of Bangabandhu Sheikh Mujibur Rahman which is within the master plan of the university and approved by ECNEC within a short period and the university authority as per permission of the environmental authority will construct their building. Accordingly, the Director General of the Environment is hereby directed to dispose of the application of the University authority if any, within 15 (fifteen) days from the date of receipt of this judgment and the University authority will construct their building after according permission of the department of environment.

Accordingly, the Rule is disposed of."

- In a writ petition filed by Human Rights and Peace for Bangladesh(HRPB) being Writ petition No:6969 of 2016[25], The Hon'ble Court held that the life of human being is dependent on drugs and medicine as they save life from being decayed and death. It is so pertinent and necessary to life that it has become a basic need of people around the globe. It is the common responsibility of all to keep the people's health safe and sound within everybody's means. But as per the reports of the dailies, some drugs manufactures have made the life of common people uneasy and have brought sufferings to the life of the common people due to gain in inconsiderate profit, only by producing less quality

[25] Human Rights and Peace for Bangladesh(HRPB) being Writ petition No:6969 of 2016

drugs/medicine ignoring the GMP policies. Hence, the common people suffer a lot, which severe impact on public health, which can not be allowed by this Court. In every moment the life of the citizen are depending on medicine available in the market but due to some inconsiderate manufacturers of drugs/medicine without following the GMP guideline caused the suffering for people. It is necessary to stop production of antibiotic/drugs/medicine which are producing violating the GMP guideline in order to save the health of the citizen, otherwise the people will suffer a lot, which would have a severe bad impact on the life of the citizen and it violates the fundamental rights guaranteed by he Constitution of Bangladesh. IN the report there is specific allegation against the respondent Nos. 12, 20 and 21 along with Globe Laboratories, Jalpha Laboratories, Medico Pharmaceuticals, Rid Pharmaceuticals, Kafma and Star Pharmaceuticals Ltd. for production of medicine illegally and those industries have to be closed down. Under these circumstances they should be dealt with in accordance with law. The respondent Nos.6 and 7 are to take legal steps against them for their criminal offence under provision of law. The respondent Nos. 20 and 15 made submission and they have GMP certificate but it is controversial because in the report it was not revealed that they are following GMP rules. So the respondent No.1 is directed to form a committee consisting of 5 members, one member from the expert committee, If any application is filed by respondent No.15 and 20 or any Pharmaceuticals Industries for GMP license, the respondent No.4 will send it to the committee and after submitting the report if it is positive the respondent No.1 is at liberty to issue GMP license otherwise they should not issue license.

CHAPTEER-6

RECENT DEVELOPMENT OF THE CONCEPT OF RIGHT TO LIFE IN BANGLADESH

6.1 Recent Development of the concept of right to life in Bangladesh:

In Bangladesh very recently the Honorable High Court Division of the Supreme Court of Bangladesh pronounces a land mark judgment in writ petition no 13979 of 2016. The Honorable of Court in its judgment brought a very lively term stating all the river vessels of Bangladesh are to be considered as of having life and created as living beings. In this judgment, the concept of long awaited expression of right to life has been made and acknowledged. The concept of right to life got a new dimension in Bangladesh. Through the judgment, the broad range of right to life has been come to light.

6.2 Findings:

By carrying out the research, it has been very much clear to me that the application and enforcement of right to life is highly satisfactory in India than Bangladesh. The concept of right to life even took a turn from India to our country in the late 80s.

In law and legal fraternity of Bangladesh and India, the concept of PIL and right to life is well - understood but in the mind of the rank and file, the flash and concept of right to life is hardly been found.

I also found that the socio-economic status of the country is a significant factor to make help enforce the spirit of right to life.

With much emphasis I feel like to mention that a growing tendency of non-obeying tendency of laws and wrong doing trends in the mind of mass people of Bangladesh is more particularly responsible passively for not being able to be as faster as India in ensuring the right to life.

In Bangladesh, to common people, PIL indicates litigations for poor community; but the very application of PIL is skyrocketing and it is for all.

But I realized that the condition of PIL has been a little bit better in Bangladesh now.

After the absolute enforcement of right to life, quality life, healthy and reasonable happy life will be possible in Bangladesh.

No telling to say that mass awareness on the concept of right to life can make help us to reach a better footing in future to enforce right to life in Bangladesh.

6.3 Recommendations:

1. From my point of view, it is beyond question or doubt that without having united and untired efforts of the govt. machineries to protect and enforce the right to life in Bangladesh will seem to be day dream and as such concerted efforts can bring to light our opted trigger of enforcement of right to life through public interest litigation.
2. From the research point of view and through analysis of my research monogram what I feel like to recommend is that Mass media, law enforcement agencies, social workers , all state machineries , political parties and intellectuals , professionals of every four walls of Bangladesh coming into an unique platform and standing at a point can , need and should utter the voice and take vow to enforce and protect the spirit of the right to life for every citizens in Bangladesh .
3. I firmly believe and have reason to believe that The Executives department of the state must be determined and dedicated to remain unchanged the spirit of the Constitution of

Bangladesh to ensure and enforce the right to life as guaranteed by article 32 of the constitution; and other constitutional rights of the citizens by earnest trying.

4. Apart from this, I would like to say and urge the concerned that awareness about the scope of right to life must get escalated and then the judicial decisions and judgments should have to be executed in time with care and responsibility.
5. There is no denying fact that those who plead for enforcement of right to life in the legal fraternity have to put up with untold pains and threats from the interested parties and even from the government and as such my whole-hearted recommendation to the concerned to ensure the best security of those pleaders.
6. Furthermore, I think systematic, tooth & nail efforts of rank and file will, carry into effect of enforcement and protection of right to life at the same time bring to light a wider window to count down our evil thoughts, deeds and so on from our behavior.
7. It is highly expected that law enforcing agencies will stick to gun to maintain, respect and bear the spirit of article 32 – the right to life of the citizens of Bangladesh.

6.4 Conclusions:

The concept of right to life is widely being dealt with by professionals, judges and the resource persons in Bangladesh and India bit by bit. Until and unless the broaden idea will knock at the conscious mind of the judges, advocates and stake holders, the judicial decisions centering this may become slow down. It is worth stating that the comparison in respect of booming the span of enforcing right to life between Bangladesh and India expressed and disclosed certain limitations and hopes too to find the way outs.

Importantly it can be said that a lion share of public interest litigation can be invoked only by the term right to life. Whatever we think in nature of PIL is also to be considered for protection of right to life. As many as we can identify the deadlocks and latches of the enforcement of right to life we will be able to dream a lot to gear up the wheel of acceleration of the PIL. There is a good sign that many learned friends are working on PIL now a day.

We can, need and should come forward for bringing a rhythm in the development of PIL sector.

At the bottom line of my research, I would like to convene to all to be open minded and dedicated enough to snatch the crown of success stories in Bangladesh.

More specifically, one more issue I prefer to mention here that all the limitations, barriers and mal-practice in connection with PIL should be washed away in no time . I strongly believe that this research, findings and analysis of the legal analytical issues and terms made me enriched much than that I was earlier. To wrap up, I feel like to utter that paddling on the bicycle requires a good balancing capacity and stopping the paddling may result imbalance like as in legal profession we should not stop learning and researching which may put a full stop in our life and profession.

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