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Development and Application of Public Interest Litigation (Pil): Bangladesh Perspective

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DEVELOPMENT AND APPLICATION OF PUBLIC INTEREST LITIGATION (PIL): BANGLADESH PERSPECTIVE

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SUBMITTED BY

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Dedicated
To
My Parents
Late Md. Nurul Islam
and
Late Professor Khaleda Islam

CANDIDATE'S DECLARATION

I do hereby declare that, the research work submitted as a thesis entitled *"Development and Application of Public Interest Litigation (PIL): Bangladesh Perspective"* in the Department of Law, University of Rajshahi, Bangladesh for the Degree of Master of Philosophy is the result of my own investigation. The thesis or part of it has not been submitted to any other University or institution for any degree.

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CERTIFICATION

We certify that the thesis entitled *"Development and Application of Public Interest Litigation (PIL): Bangladesh Perspective"* submitted by Abantee Nurul, M.Phil. Fellow, Roll No.13101, Session-2013-14, Department of Law, University of Rajshahi, Bangladesh, is our Fellow. She has conducted and completed her research work under our keen supervision. We have gone through the draft and final version of the thesis and approved it for submission. Her work is an original piece, creative in nature and product of a dedicated scholar. This thesis has not been submitted earlier in any part or full for any degree, diploma or fellowship to any University or Institution.

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Abantee Nurul

ABSTRACT

This thesis is about the development and application of Public Interest Litigation (PIL) in Bangladesh from a constitutional perspective. To establish a democratic society free from exploitation guaranteeing the fundamental rights to be enforced is our constitutional commitment. This thesis analyses how PIL become an important component and effective part and process of the Bangladeshi legal system to establish rule of law and ensure access to justice, legal remedies and protection of basic human and fundamental rights and thus become a magnificent instrument to fulfil our constitutional commitment.

In Bangladesh, PIL has been initiated in 1974 with *Barubari case*. But this initiation got a severe blow in martial law regimes in 1975 and 1982. After the brutal assassination of the Father of the Nation Bangabandhu Sheikh Mujibur Rahaman and his family members on 15th August 1975, the constitution was mostly suspended till 1986 and the judiciary could not act properly. But after the martial law regimes and the fall of autocracy in 1990, the development of PIL got acceleration. The Supreme Court began to reinterpret the Constitution in favour of PIL and gradually the concept of PIL started to take a shape. The judiciary with its extraordinary and mindful interpretation of PIL jurisprudence and the public spirited citizens and the right based organizations with their tremendous and outstanding effort established the collective justice principle of the constitution which not only inspires but mandates a PIL approach.

This thesis also discusses the concept and development of PILs in other foreign jurisdiction such as USA, UK, India and Pakistan.

However, this thesis explores the application of PIL in Bangladesh. It analyses that how PIL has been applied in various cases of the violation of fundamental rights of the citizens or against the action or inaction of the government to perform its legal and statutory duties to protect and ensure citizen's constitutional and human rights or in cases of abuse of power by the executive. This study also focuses on judicial interventions made through PILs into those matters where the administrative action caused discrepancy with the constitution. This thesis also analyses the application of PIL in shaping the institutions and policies of the government.

The instant thesis also analyses the role of the judiciary and the NOGs in developing and applying PIL in Bangladesh.

It also analyses the problems the PIL is facing in Bangladesh. It is found that the progress or the condition of implementation of judgments of PIL is not satisfactory in Bangladesh. Since the implementation of judgments and rulings of the PIL cases are largely depends upon the government machineries, it is really very difficult for PIL to proceed with the implementation of the same, if the government is deliberately unwilling to its implementation. Besides, the deep rooted culture of impunity, fluctuation of Benches, over burden of court and its inability in monitoring, elitist nature of PIL, limitation of information etc. create serious impediment to get the best result of PIL. This theses also analyses some ways which could mitigate the problems PIL faces in Bangladesh.

CONTENTS

ABBREVIATIONS

AD	Appellate Division
AIR	All India Reporter
All	Allahabad
All ER	All England Law Reports
ASK	Ain o Salish Kendra
ACC	Anti-Corruption Commission
ACLU	American Civil Liberties Union
BCR	Bangladesh Case Reports
BELA	Bangladesh Environmental Lawyers
BLAST	Bangladesh Legal Aid and Services
BLC	Bangladesh Law Chronicles
BLD	Bangladesh Legal Decisions
BLT	Bangladesh Law Times
BGMEA	Bangladesh Garment Manufacturers and Exporters Association
BNWLA	Bangladesh National Women Lawyers Association
BSCIC	Bangladesh Small and Cottage Industries Corporation
CEC	Chief Election Commissioner
ChD	Chancery Division
CriLJ	Criminal Law Journal
CRL	Commonwealth Law Report
CEDAW	The Convention on the Elimination of all Forms of Discrimination Against Women
DLR	Dhaka Law Reports
ESCR	Economic, Social and Cultural Rights
ECA	Ecologically Critical Area
FAP	Flood Action Plan
HC	High Court
HCD	High Court Division
HRPB	Human Rights and Peace for Bangladesh
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
J.	Justice
LNJ	Lawyer and Jurists
LJ	Law Journal
NGO	Non Governmental Organisation
NAACP	The National Association for the Advancement of Colored People
PIL	Public Interest Litigation
PLD	All Pakistan Legal Decisions
QB	Queen's Bench
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reports
Spl	Special
W.P	Writ Petition

CHAPTER 1
INTRODUCTION

1.1 Introduction

Rule of law is the basis of a democratic society and is closely related with the issues of access to law and justice, principle of equality before law and equal protection of law. To establish a democratic society free from exploitation guaranteeing the fundamental rights to be enforced is our constitutional commitment. Public Interest Litigation (PIL) is an important component of our legal system to establish rule of law, to ensure access to justice and to protect and thus is a magnificent instrument to fulfill our constitutional obligation. This important tool works for the under privileged, oppressed and poor mass to vindicate their constitutional and legal rights and makes social changes through judicial activism. Generally PIL indicates the litigation in public interest and is necessarily taken for the public purpose. *P.N Bhagwati* J. held that PIL is to brought in public interest, specially to promote and vindicate the constitutional or legal rights of poor, ignorant or in a socially or economically backward people.[1]

In PIL, it is not necessary that the person who is the victim of violation of his or her right should personally approach the court. PIL empowers the public spirited citizen or organization to act against the public wrong or injury. The strategy of public interest litigation is to bring justice within the reach of poor and disadvantaged classes of the community.[2] In such type of legal action the claimant brings the litigation not for his/her private interest in the subject matter of the case but bring the claim on behalf of the whole community and or a sector of the community against the wrongful action or inaction of the government or public authorities resulted in violation of their legal and constitutional rights.

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[1] People's Union for Democratic Right (PUDR) and others v Union of India AIR (1982) SC 1473-1477.

[2] Bihar Legal Support Society v C.J of India (1986) (4) SCC 767.

In Bangladesh, PIL jurisprudence has been developed and in course of time a good number of PILs have been filed to secure people's rights. Here it was attempted for the first time in *Kazi Mokhlesure Rahman vs. Bangladesh*[3] which is famously known as *Berubari Case*. The petitioner was an advocate and he challenged the legality of the *India-Bangladesh Land Boundary Agreement-1974* executed between India and Bangladesh for demarcation of land boundary between these two countries. In this case petitioner's *Locus Standi* or standing was under question. But the Appellate Division of the Supreme Court of Bangladesh allowed his standing stating that the petitioner pointed his fingered to a question which affected a constitutional issue of a grave importance containing a threat to fundamental rights that pervades and extended to the entire territory of Bangladesh.

It is said that in this case the court went to very close to the doctrine of Public Interest Litigation (PIL).[4] But later, the time was not in favor of PIL. Judges were rigid in question of standing and many attempts to seek relief through PIL had been failed. But the legal and social activists were relentless in giving efforts and enabled the progressive minded judges to interpret the constitution in line with the public intent.

Finally in 1996, the Supreme Court was convinced that our constitution mandates a PIL approach and it paved the way for PIL within the writ jurisdiction of the High Court Division of the Supreme Court of Bangladesh. In *FAP 20* case i.e. *Dr. Mohiuddin Faruque v Bangladesh and others*[5]the Appellate Division interpreted the term *"Person Aggrieved"* widely and allowed the individuals and agencies, who are *pro bono public*, to take the cases for protection of fundamental rights on behalf of the poor, under privileged and marginalized citizens of the country. After this historic development, a good number of PILs have been generated a great flow. Nowadays PIL become a familiar and popular instrument to seek remedy against the violation of the constitution rights. The subject matters of

[3] 26 DRL(AD) 44

[4] Syed Ishtiaq Ahmed (1993), "An expanding frontier of judicial review-Public Interest Litigation" vol.45 DLR Journal, p. 36-45.

[5] (1997) 17 BLD (AD) 1

PIL cover a wide range. In Bangladesh PILs have been filed in the issues of illegal arrest and detention and torture, right to life, police atrocities, environmental and consumers matters, right to livelihood and shelter, medical treatment and health rights, child right, women rights, minority and indigenous peoples' rights, prisoners' right , right to equal protection of law, worker's right etc. Some of those have great success but the progress of some of those are not satisfactory.

This study intends to analyze the development and application of Public Interest Litigation (PIL) in Bangladesh basing upon an issue-based examination of landmark cases, judgments and rulings. This thesis also intends to discuss the challenging factors that have been pivotal in the implementation mechanism of judgments and rulings of PIL cases. Finally, this research aims to end up with a set of suggestions to overcome the different challenges PIL is still facing in Bangladesh.

1.2 Statement of the Problems

In Bangladesh, PIL has been developed as a very important and effective tool for ensuring people's rights and for protecting public interest by judicial intervention to any unlawful or unconstitutional executive action or inaction. But in Bangladesh, PIL faces many challenges. It appears that most of the PIL cases filed in Bangladesh focused on economic social and cultural rights. But major issues like the violation of civil and political rights and the deep rooted corruption and poverty are overlooked and not taken seriously by PIL initiators. Moreover, most of the PIL initiators are politically motivated. So it often seems that PIL undermines the much-needed social change, rather it focuses on the political motivation of the initiators. Sometimes few of the litigants file PILs irrespective of merits for gaining overnight popularity. Sometimes vested interested groups and individuals use this avenue for their ugly private interests.

There is another big problem PIL faces in Bangladesh which is related with the implementation of PIL judgment. Though many PILs have been filed in Bangladesh in last two decades, number of judgments in PIL cases and its implementation is not so satisfactory. Since the rulings and judgments of PIL cases

are given against the state or the government agencies whose' action or inaction is the case of grievance, the implementation of those rulings and judgments are largely depend upon the government machineries. Often it seems that the government has lack of political will to implement the PIL judgments which involves the policy issues of the government. It is also the executive's tendency to avoid, refute and pervert PIL decisions particularly those that displease it or impose financial burdens on it. Sometimes it grapes the common excuse of lack of resources and economic crises for non-compliance of the Court's Order. In addition, the deep rooted culture of impunity is another great challenge for implementing the judgments and orders obtains in PIL cases. Moreover in most of the cases the follow up is also very poor. The lack of adequate judicial capacity to follow up the implementation of promising court's decisions is actually a major problem in the implementation mechanism.

Another problem is long pendency of the PIL cases. In last two decades many PILs have been filed, but a large number is still pending before the court for final hearing. Petitioner's reluctance in completing final hearing of the PIL cases causes the pendency of those for long time. Sometimes Government's political interest and view create hindrance towards final hearing of the cases. Moreover the High Court Division faces excessive workloads that constitute a reason for consuming of huge time to settle the PIL cases.

1.3 Justification of the Study

In Bangladesh, although the constitution commits equality before law and equal enjoyment of fundamental rights by all citizens but most of the people have no or less access to judiciary. Poor and marginalized people are suffering from deprivation of fundamental and human rights but they don't have enough money and knowledge to file a case. PIL opens a new horizon to protect the fundamental rights of people who are poor, ignorant or in socially/economically disadvantaged position. It is recognized as an effective tool for judicial response and subsequent actions of the government to the violation of fundamental and human rights of the powerless, poor, marginalized and vulnerable section of the population. It enables

public- spirited individuals, groups and conscious citizens to litigate in the interest of poor and disadvantaged section of the population. Through the PIL, not only the individuals but also the groups of people get the remedies.

In Bangladesh, PIL has been developed as component of the legal system and successfully applied in various cases of violation of constitutional and legal rights of the people and thus contributed a lot in the judicial enforcement of fundamental and human rights of the people in this country. We need to know the how it developed as a legal instrument for the poor and disempowered to vindicate their rights and challenge the violation or denial of their rights. It is also need to know that how it contributed in the legal system and in the movement of social changes by enabling the judiciary to intervene in the issues of constitutional and legal rights violation.

Besides, it is also very much essential to understand the scope of application of PILs in Bangladesh. Because without clear knowledge regarding the scope of application, PIL could not be properly applied *in different incidents of violation of fundamental and legal rights of the citizens as well as in enforcement of the same.* It is also important to understand the problems faces by PILs during its application.

The journey of PIL doesn't come to the end only with the development and smooth application of it, but the implementation of the judgments obtained in PIL cases are the most vital part of its journey. Without the implementation of the judgments and orders, the achievement of PILs will be frustrated. There are many factors which are pivotal in implementation process of PIL judgments and orders. The lack of political will of the government and the resources, adverse political reality, or dynamics of socio-economic crisis are creating hindrance to PIL to proceed in the right track. So it is also important to understand the real situation of implementation of PIL judgments and orders in Bangladesh.

This research work focuses on the development and application of PIL as an effective tool to enforce and ensure the constitutional and human rights of the citizens of Bangladesh. It also focuses on the progresses and challenges PIL is

experiencing in Bangladesh including the experiences in implementation of judgments and orders. Such type of comprehensive research work is very helpful to understand how PIL can be used for the protection and promotion of fundamental and human rights and to determine the useful strategies to overcome the difficulties and challenges which create hindrances to PIL for ensuring justice to all. This systematic research work is also helpful for the government, judiciary and the right groups / NGOs in strengthen their cooperation and social commitment towards the current PIL movement in Bangladesh to bring the social changes and uphold human rights.

1.4 Objectives of the Study

The present study mainly aims to show that how the violation of constitutional and legal rights can be redressed and how the constitutional commitments can be fulfilled through the application of PILs in Bangladesh. It also aims to ascertain the progresses of PIL and to identify the challenges PIL is experiencing in Bangladesh including the experiences in implementation of judgments and orders obtained in PIL cases. It also intends to analyze the role of Judiciary and the NGOs in developing the PIL jurisprudence and in reforming the social order and the executive's behavior in Bangladesh. Finally this study intends to make certain suggestions to determine useful strategies to overcome the challenges PIL is straggling with and to expedite the implementation of PIL judgments.

1.5 Scope and Limitations

In general, PIL indicate a petition in public interest in the nature of writ under article 102 of the Constitution of Bangladesh. Development of PIL in Bangladesh so far has revolved around this constitutional jurisdiction. But PIL is not confined only within the constitutional jurisdiction. There is also scope for PIL in Civil and Criminal Courts of lower judiciary. This research work only concentrates on the constitutional scope of PIL i.e. under article 102 of the constitution. So the whole research on the development and application of PIL in Bangladesh will be carried out in respect of constitutional scope.

1.6 Research Methodology

The study is mainly qualitative in nature and thus a descriptive one. This study depends on both the primary and secondary sources of data.

Primary Source

It is carried out through the analysis of the Decisions and Orders of the Court and given in the PIL cases of Bangladesh and other countries such as USA, UK, India and Pakistan. It is also based on the analysis of different case documents including petitions, fact-finding reports, government's compliances in response of the Court's orders and other relevant documents used in the PIL cases for making comprehensive assessment of the PIL strategies and the government responses.

Secondary Source

This study carried out through the analysis of books and publications, news reports, national and international journals and reports of different organizations and other available materials on PIL. It is also relied on the literary review of the published interviews of the prominent judges of this sub-continent who are the pioneers of PIL and initiated PIL in this sub-continent. It's also based on the published interviews of the eminent lawyers who are engaged in filing and conducting PILs in Bangladesh. This research work also carried out through published interviews of the employees of NGOs which have a long track in filing and conducting PILs in High Court Division of the Supreme Court and play important role in law and policy reform through PIL.

Experience of mine has also been applied to carry out the thesis since I have a long track of experience as a Public Interest Litigation Lawyer and I have conducted many cases in the interest of public before the High Court Division of the Supreme Court of Bangladesh.

1.7 Literature Review

In a research work, review of literature is a necessary part for finding out the gapes of the knowledge in the proposed filed of the study. In case of Public Interest Litigation (PIL), very limited works have been conducted in Bangladesh though it is a high profile topic due to its importance. In conducting this research work, I have gathered information from books and scholar's articles written on PIL and other issues relevant with PIL. I have also visited the office of legal aid and human rights organization such as ASK, BLAST, BELA, BNWLA etc. for collecting information regarding the PIL cases filed by those organizations. Additionally, I analyzed the annual reports, research works and statistics of the said organizations in respect of cases and incidents of human rights violation.

It is important to mention about some of the books and documents which are noteworthy and I have used frequently in conducting this research work. These are reviewed below:

Islam, Mahmudul (2017); "*Constitutional law of Bangladesh*".[6] To discuss the development of the constitutional laws in Bangladesh, the author attempted this book. The main objective of this book is to review the basic structure of the constitution and interpret the constitutional laws of Bangladesh in the light of the high ideals envisioned by the framers of the Constitution. In this book, the author discussed the development of the constitutional laws of Bangladesh basing on the decisions of the Supreme Court of Bangladesh in different cases of constitutional matters.

Ahmed, Naim (1999), *"Public Interest Litigation: Constitutional Issues and Remedies*".[7] This book dealt with the concept and the theoretical approaches of PIL. The author also focused on the development of PIL by discussing it's emerge in different jurisdictions such as USA, UK, Indian and Pakistan. It also dealt with the initial experience of Bangladesh in respect of PIL. In this book, the author

[6] Islam, Mahmudul (2017), "Constitutional Law of Bangladesh", 3rd ed. Dhaka, Mullick Brothers.

[7] Ahmed, Naim (1999), "Public Interest Litigation: constitutional Issues and Remedies", Dhaka, Bangladesh Legal Aid and Services Trust (BLAST).

aimed to discuss the constitutional mandate of PIL, the development of the concept of Locus Standi and the judicial activism in respect of PIL in Bangladesh.

Hossain, Sara, S. Malik, and Bushra Musa, (eds.) (1997) "*Public Interest Litigation in South Asia: Rights in Search of Remedies*".[8] This book provided some presentations of eminent jurists and lawyers of South Asia, presented in a workshop held in Dhaka in 1992. This book reviewed the movements for legal aid and the protection of legal rights, legal development and national experience of public interest litigation in Bangladesh, Pakistan, India, Nepal and Sri Lanka

Ahuja, Sangeeta (1997) "*People, Law and Justice: Casebook on Public Interest Litigation, Vol. 1 and 2*".[9] These books are compilation of all issue-based reported and unreported PILs of India from 1979 to 1994.

Bakshi, P.M (1998) "*Public Interest Litigation*".[10] In this book the author discussed the scope of application of PIL in different issues in India such as environmental issue, labour rights issue, child rights issue, arrest and detention issue etc. In this book he discussed issue-based PIL cases of India.

Narayana, P.S (2001) "*Public Interest Litigation*".[11]This book discussed at length public interest litigation in general. The author discussed the concept of PIL and its differences from the general suit. He also described the development of *Locus Standi* in India. He also described the interrelation of PIL and Human Rights.

Wadehra, B L (2009) "*Public Interest Litigation: A Handbook with Model PIL Forma*".[12]In this book the author discussed the basic concepts, scope and

[8] Hossain, Sara, S. Malik and Bushra Musa (eds.) (1997), "Public Interest Litigation in South Asia: Rights in Search of Remedies", Dhaka, University Press Ltd.

[9] Ahuja, Sangeeta (1997), "People, Law and Justice: Casebook on Public Interest Litigation", vol.1 and 2, New Delhi, Orient Longman Limited.

[10] Bakshi, P.M (1998), "Public Interest Litigation", New Delhi, Ashoka Law House.

[11] Narayana, P.S (2001), "Public Interest Litigation" 2nd ed. Hyderabad, Asia Law House.

[12] Wadehra, B.L (2009), "Public Interest Litigation: A Handbook with Model PIL Forma", Delhi, Universal Law Publishing Co. Pvt. Ltd.

development of PIL in India. He also described the important cases along with the glossary of legal terms and also provided samples of PIL petitions.

Chakraborty, R (2015) "*Law Relating To Public Interest Litigation*".[13] This book analyzed the issue-based PILs in India. The author discussed cases on the Bhopal Gas Tragedy case, Bonded Labour, Bofurs Guns , conditional order for removal of nuisance Disabled rights, economic policies of state , encroachment on public places, environment, Narmada Bachao Andolan, insult to National Flag, poverty, protection of women against sexual harassment at workplace, public health, railway administration, train schedule management etc. He also aimed to discuss the Locus Standi and doctrine of PIL and constitutional remedies in India as well as in Pakistan and Uganda.

Ain o Salish Kendra (ASK) (2012) *"Jonosarthe Mamla"*.[14]This book highlighted the development of PIL in Bangladesh. Simultaneously, this book contained various important interviews of prominent judges and PIL lawyers. This publication also analyzed some significant issue-based PILs of Bangladesh as well as neighboring countries like India and Pakistan.

Rao, Mamta (2015) "*Public Interest Litigation, Legal Aid and LokAdalat*".[15]The author discussed the role of the judiciary a protector of individual's right through PIL and additionally addressed the rampant misuse of PIL. She incorporated recent judicial decisions of PIL, legal aid and Lok Adalats of India. She also explained the dynamics and trends of PILs and its relation with the legal aid and Lok Adalat in India.

[13] Chakraborty, R (2015), "Law Relating to Public Interest Litigation", New Delhi, Kamal Publishers.

[14] Ain o Salish Kendra (ASK) (2012), "Jonosartho Mamla" (Public Interest Litigation) 4th ed. Dhaka, Ain o Salish Kendra (ASK).

[15] Rao, Mamta (2015); "Public Interest Litigation, Legal Aid and LokAdalat", 4th ed. Laknow, Eastern Book Company.

Haque, Quazi Reza-Ul (1999) "*Preventive Detention Legislation and Judicial Intervention in Bangladesh*".[16] This book discusses on the preventive detention laws and its impact over the fundamental rights of the citizens in Bangladesh. The author also described the conflicts between the Constitutional guarantee of fundamental rights and the Special Power Act 1974 which provides the provision of preventive detention.

Morshid, Manzill (2017) "*Judgment on Public Interest Litigation*".[17] This book is a compilation of judgments obtained in the PIL cases filed by the Human Rights and Peace for Bangladesh (HRPB) on various issues such as environmental, women rights, conservation of historical places, safe food etc.

All these books contain lots of information which demonstrated to step forward for obtaining the goal of the thesis. But no one of these books discussed particularly the recent development of PIL or the issue-based application of PILs in Bangladesh. These books neither focus on the progress and the challenges which PIL is experiencing in Bangladesh including the challenges in implementation of PIL judgments and orders nor determine the useful strategies to overcome the challenges PIL are straggling with in Bangladesh and to expedite the implementation of PIL judgments. Due to these gapes in the said books, this research work is planed which has been conducted methodologically. The instant research work along with the findings and the suggestions will help to fill up the gapes mentioned above. This research will help the people to understand the theory behind the PIL and enable them to use it for the society at large as well as for the underprivileged of the society in Bangladesh, who for a variety of reasons including illiteracy and poverty, cannot approach the courts themselves.

[16] Haque, Quazi Reza-Ul (1999), "Preventive Detention Legislation and Judicial Intervention in Bangladesh", Dhaka, BishwaShahittyaBhavan.

[17] Morshid, Manzill (2017), "Judgment on Public Interest Litigation", Dhaka.Hakkani Publisher.

1.8 Chapter Outline of the Thesis

This thesis contains seven chapters namely Introduction, Concept and Origin of PIL, Development of PIL in Indian Sub- continent, Development of PIL in Bangladesh: Struggle and Achievement, Application of PIL in Bangladesh, Role of Judiciary and NGOs in the field of PIL and Conclusion respectively.

The first chapter aims to introduce the subject matter of the thesis, statement of problems, methodology, objective of the thesis, justification of the thesis, scope and limitation of the thesis, literatures reviewed chapter Outline and conclusion.

The second chapter deals with definition of PIL and origination of PIL in USA and UK.

The third chapter deals with the development and present situation PIL cases in Indian Sub-continent with the special reference to India and Pakistan.

The fourth chapter specially focuses on the initiatives and the development of PIL in Bangladesh.

The fifth chapter focuses how PIL has been applied in different cases of violation of constitutional and legal rights of the citizens of Bangladesh. This chapter contains issue-based discussions of cases which show the scope of application of PIL in securing the constitutional and human rights of the people of Bangladesh through judicial intervention in different issues. This chapter also discusses influences of PIL in reforming the laws and policies in Bangladesh.

The sixth chapter analyzes the role and contribution of the judiciary and the NGOs in the development and application of PIL jurisprudence in Bangladesh.

The seventh chapter deals with the findings of the research and suggestions for overcome the difficulties found.

1.9 Conclusion

Over the years, Public Interest Litigation (PIL) has emerged as an effective tool for seeking judicial response and subsequent action from the government against the violation of constitutional and human rights especially of the poor, powerless and vulnerable section of the society. It has also appeared as an effective tool to ensure accountability of the government and public agencies towards the issues related with public importance. There are some PILs, in which visible and significant changes have been achieved or remedies sought for have been guaranteed. But on the other hand, there are many PILs in which the achievement is not so satisfactory. In many cases, the government has not implemented the judgments and orders of the court and thus frustrated the achievement of PIL. Nevertheless, PIL undoubtedly has become a strong and effective means for realizing constitutional rights and for protecting public interest. In these circumstances, this comprehensive research work has been done. This comprehensive study has focused on the development and application of PIL in Bangladesh as well as on the challenges PIL is still experiencing and some ways to overcome these challenges.

CHAPTER 2

CONCEPT AND ORIGIN OF PUBLIC INTEREST LITIGATION (PIL)

2.1 Introduction

PIL is different from the general litigation in definition, in concept, in origin and in approach. This chapter attempts to discuss about the definition and concept of the PIL, its differences from the general litigation and its basic elements. In addition, this chapter also focuses on its origination in USA and subsequent expansion and development in UK.

2.2 Definition and Features of Public Interest Litigation (PIL)

The Expression "Public Interest Litigation", caries two parts. One is "Public Interest" and another is "Litigation". To understand Public Interest Litigation it is necessary to know that what is public interest and what is litigation.

2.2.1 Public Interest

The expression "Public Interest" has no specific definition. It varies with the time, state and needs of the societies.

Generally the public Interest can be described as an interest which a certain group of people or citizens are presumed to share.

Black's Law Dictionary (sixth Edition), defines Public Interest in such way that Public Interest is something in which, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected and does not mean anything so narrow as mere curiosity, or as the interest of the particular localities.

As per *Law Lexicon 1997 Edn.* the "Public Interest" means those interests which concern the public at large.

In Public Interest, there must be commonality of interest. While a special interest promotes some part of the public, it means this interest ultimately serves the ends of the whole public.[18]

2.2.2 Litigation

Another part of PIL is "Litigation". It means the process of settling legal disputes in a court of law under appropriate procedures.

According to the *Black's law dictionary* "litigation" means a contest in a court of justice, for the purpose of enforcing a right.

More elaborately we can say that "litigation" is a legal action begins in a Court of law for enforcement a right or seeking a remedy.

2.2.3 Definition of Public Interest Litigation (PIL)

From the above discussion on "public interest" and "litigation" it can logically be said that when a legal action is initiated in the interest of public it is called Public Interest Litigation (PIL). In such litigation the interest of the public is given priority over all other interests with an aim to ensure collective justice. PIL must be filed for the redress of the common grievance and for the enforcement of common interest, not for the private grievance and interest of the petitioner. Even if the petitioner is interested in the matter, it must be the interest which he / she shares with other members of the public. The relief, if granted, must benefits large section of the society not a handful of individuals.

[18] Ibid 7, p. 53-54.

2.3 Differences from General Litigation

There are some features of PIL which make it different from the ordinary litigation. The features are as follows:

a) In a PIL, some action or inaction by the state or its agencies must cause the deprivation or violation of a right which affects the large number of people.
b) The petition is to be filed before an appropriate court for ensuring the right or for the redressal of the denial or wrong.
c) Any public spirited person or an association of persons or organization acting bonafide on behalf of those injured people can file this petition.
d) The court adopts a non-adversarial approach.

Generally, in a private litigation, there must be disputes between the parties and only the affected one can file the case. But in a PIL, there is no private dispute between two parties. In it, a solo individual or a group of individual or an organization sought against the state or public authority for their commission or omission resulting in violation or deprivation of a right of the people or a section of the people which causes a common injury to them. The procedures of the ordinary litigation are followed here.

Another difference from ordinary litigation is that the court allows PIL with a meager evidence, perhaps newspaper clippings or not even that.

Thus PIL is separate and distinct from ordinary litigation

2.4 PIL must be filed in Public Interest

PIL is to be used as an effective instrument for delivering social justice to citizens. It should be aimed to redress the genuine public wrong or public injury not the private injury.

Any public spirited person or association or group of such persons who have no personal interest in the matter acting bonafide can file PIL. It is not necessary that the petitioner should be personally aggrieved. The rule of *locus*

standi is relaxed in the matters of PIL. No busybody or interloper or someone who has personal or publicity interest to serve, can file PIL. No one can use PIL as a means of satisfy his or her personal interest.

PIL is to be filed on behalf of a person or a group of persons or community who are not able to enforce their fundamental rights due to poverty or their disadvancement.

Finally, it can be described from the above discussion that PIL is a type of litigation where the interest of the public is the priority and which is filed to ensure the collective justice. When conscious citizens or organizations act bonafidely before the court for the interest of the public in general or a disadvantaged or under-privileged segment of the society, it is termed as Public Interest Litigation (PIL).

2.5 Origination of PIL

The development of Public Interest Litigation in different jurisdiction is not same as because the constitutional culture and historical experiences of the people in various jurisdiction are different. The term "Public Interest Litigation" was firstly used in USA. Later on it influenced the legal Jurisdiction of UK. In course of time the other countries followed the experience of USA and England in respect of PIL. In this chapter, the aim has been taken to discuss on the origination of PIL in USA and its subsequent expansion in UK.

2.5.1 Origination of PIL: USA

When the question comes that where the concept of PIL originated, the name of the United States comes first. In USA, it is called Public Interest Law. In USA the Public Interest Litigation law started to blossom with the legal aid movement began in the 1870s.[19] By the first half of the century, many lawyers started to turn their firms as legal aid firms with the commitment to serve the people and they were professionals with independent office, salaried staffs and full

[19] Ibid 8, p. 6

time devotion. In 1876, the first legal aid office was established in the New York City.

Besides, the formation of American Civil Liberties Union (ACLU) and the National Association for the Advancement of Colored People / Legal Defense and Education Fund (NAACP/LDF) were the most significant institutional reform to step ahead towards Public Interest Law. During the World War-I, America was riveted by the fear that the Communist Revolution of Russia could be spread in United States. Driven with this thinking, in November 1919 and January 1920 the then Attorney General Mitchell Palmer began rounding up and deporting so-called radicals. This drive was known as *"Palmer's Raids"*. Thousands of people were arrested without warrant and were brutally tortured in horrible conditions.

In these circumstances of grave abuse of civil liberties, a small group of people took a stand to protect that liberties and thus the American Civil Liberties Union (ACLU) born. With the help of a network of volunteer lawyers, ACLU acted as a watchdog of governmental corruption and abuse of power.

2.5.1.1 NAACP's Activism and Civil Rights Movements

The another organization is National Association for the Advancement of Colored People / Legal Defense and Education Fund (NAACP) which played a vital role in initiating public interest litigation through the law firms in America. The NAACP was incepted more than one hundred years ago with the mission to ensure social equality.

In 1948, due to the pressure created by the NAACP, the then President Harry Truman was bound to sign an "Executive Order" to ban discrimination by the federal government. By this Order, the equality in treatment and opportunity for all persons in the armed services regardless to race, color, religion or national origin was ensured. At that time NAACP simultaneously took the strategy to challenge various inequalities through litigation.

A great success came in 1954 with the landmark case of *Brown v Board of Education of Topeka*[20]filed by NAACP. In that case the racial segregation in education and employment and housing based on the "separate but equal" notion was declared as unequal and thus rejected.

The Brown's case decision accelerated the civil rights movement of the 1950s and 60s and eventually the Civil Rights Act of 1964, the Voting rights Act of 1965 and the Fair Housing Act of 1968 had been enacted. During this period NAACP with the help of the civil rights workers filed huge number of cases challenging the discriminations in public accommodations, housing, employment, voting due to which gradually the segregation in public facilities had been eliminated.

In 1963, another very important case for public interest law was filed namely *NAACP v Button.*[21] The history of the case in short is that Virginia had enacted law prohibiting some "improper solicitation of any legal or professional business". In 1956, Virginia by passing "Chapter 33" imposed this prohibition to the organizations like NAACP. At that time NAACP was engaged in holding series of meetings with parents of the discriminated school students of Virginian so that it could file litigations against the discrimination claimed by the parents.

Button (plaintiff) brought suit in Virginia State Court against the NAACP alleging that that NAACP's such type of activity was the violation of "Chapter 33". The Virginia's Highest Court held that this type activity of NAACP's Virginia Branch was illegal as it was the violation of "Chapter 33". NAACP knocked the door of the Supreme Court of United States and the Supreme Court reversed the judgment of the Highest Court of Virginia. The Supreme Court of United States held that the activities of the NAACP was not the violation of the constitution since the activities of NAACP were the modes of expression and association which were protected by the constitution.

[20] (1954) 347 US 483
[21] (1963) 371 U.S. 415

After the landmark decision in this case, a new door was opened for the activists to go to the court with PIL matter and to use PIL as one of the strategies of the greater movement of the social reform. Thus NAACP became a precursor of modern PIL firms whose main focus was to achieve social reform through strategic cases.

2.5.1.2 Exercise of Epistolary Jurisdiction by the Court of USA

Another very important case of the similar time should be mentioned here since it established the fundamental right of a citizen to be represented by an attorney during trial though he / she doesn't has money. It was the *Gideon v Wainuwright*[22] case. This case had also influenced a lot to form the basis of the concept of the PIL in USA. The facts of the case were that in Florida, one Clearance Earl Gideon was arrested in charge of burglary. Gideon appeared before the Florida Trial Court without any counsel since he was too poor to appoint a counsel. He informed the court of his poverty and prayed to appoint a counsel for him. But the Florida Trial Court refused to do so and sentenced him five years imprisonment. Gideon sent a hand writing to the Supreme Court of United States informing about the refusal by the Florida Trial Court to appoint counsel for his defense contrary to the Constitution. The letter was treated as petition and allowed by the Supreme Court of the United States and the court held that it's the duty of the state to provide a counsel to a citizen who could not appoint an attorney due to his poverty. This decision created a history by the Supreme Court of United States by relaxing its procedural law.

Thus the American Supreme Court gradually began to liberalize the strict rules to the appropriate cases for changing the social, economic and political environment of America.

[22] (1963) 372 US 335

2.5.1.3 Holding Broader View of Standing

Another step was taken in 1970 in case namely *Association of Data processing Service Organizations v Camp*[23] where the court extended the boundary of judicial protection of rights and interests by allowing more people to fight against administrative agencies. The case (Data Processing) was a competitor's suit seeking judicial review of an administrative rule promulgated by the Comptroller of the Currency. On October 1966, the Comptroller passed an administrative rule authorizing the national banks to make data processing services available to other banks and bank's customers as incident to their banking services. The petitioner was a seller of data processing to businesses generally. Due to this rule he fell into the loss in business and filed the-suit challenging the said administrative rule of the comptroller. The United States District Court for the District of Minnesota refused to entertain the case on the ground that since the injury or the loss of the petitioner occurred due to competition and not due to the invasion of a legal right, he had no *locus standi* to file the case.

The Supreme Court reversed the said judgment of the District Court and allowed the case of the petitioner as the petitioner satisfied the impugned action had caused him "injury in fact" and the claim sought was arguable under the Administrative Procedural Act and the judicial review was not precluded by the Congress.

Thus the decision taken in the Data Association's case is very significant since in it the judicial protection was broaden from mere' legal injury.

In USA, 1960s and 1970s are the founding decades of PIL. Due to the efforts of the young lawyers, leaders of the Bar, and the private foundations such as Ford Foundation, Legal Defense Fundetc. a new model of institution i:e the 'non-profit law firm' was established to advocate on behalf of disadvantaged and underrepresented individuals and groups and to eliminate huge discriminations and inequalities from the American society. These firms provided legal representation

[23] (1970) 397 U.S 150

for environmental improvement, consumer fairness, antipoverty initiatives and women's rights. These "Public Interest Firms" were financially supported by different sources other than the clients and were exempted from the taxes and recognized as charitable organizations. At that time, Law school clinics were started to run the *pro bono* programs. Simultaneously, the government also came forward with a people oriented view. During this period the Legal Service Corporation Act was passed and Legal Service Corporation was established by the Congress. Under the Legal Service Corporation, Legal Service Offices and Legal Service Backup Centers were founded.

Thus PIL started its journey to become a part of the U.S legal system.

2.5.1.4 Barriers of Advancement of PIL in USA

The journey of PIL in America was not so smooth. The PIL movement faced a serious impediment in America. Some vested interested groups and several liberal academics critiqued the capability, effectiveness, and equity of the law firms which were engaged in conducting PIL. They saw public interest law as an obstacle for the administrative process and incapable to solve the problems.

During the same period, the first "conservative" public interest law firms were set up by the conservative groups and the Internal Revenue Service of the Federal Government permitted these firms to qualify as nonprofit tax exempted entities and allowed them to use the "public interest law firm's" name. These conservative firms challenged the progressive tenor of the public interest brand.[24]

But in spite of those difficulties, PIL sustained in America and crossed the boundary to the other countries. Now a day's the public interest firms are very popular due to their flawless effort and contribution and there is a continuous stream of PIL cases in USA. Thus the legal system of America received the Public interest law as its permanent fixture.

[24] Louise G. Trubek (2011), "Public Interest Law: Facing the Problems of Maturity", vol. 33 University of Arkansas, Little Rock Law Review, p. 417.

2.5.2 Development of PIL in UK: Story of Evaluation of *Locus Standi*

The development of Public Interest Litigation in England is mainly the story of the development of the rule of *Locus Standi.* Earlier in England, the traditional rule was followed which did not allow a person to invoke a writ jurisdiction, who had not suffer a *"legal injury"* by himself as a consequence of violation of his legal right. In 1880, Lord Justice James in *Ex parte Sidebotham* case held that the "aggrieved person" must be a man against whom a decision has been pronounced which wrongly affected or deprived him of something,.[25]

This doctrine of *Locus Standi* was strictly followed in England which was totally against the concept of Public Interest Litigation.

2.5.2.1 Lord Denning: A Great Contributor in Liberalizing the Standing Rule

But gradually the judiciary of UK started to liberalize the strict principal of standing rule. Lord Denning played the most vital role to change the strict principal of the *Locus Standi.*[26] In 1957, many traders including a jellied eel trader and a newspaper vendor applied to the Borough Council for a license of a pitch in a street. Borough council granted the license to the newspaper vendor and refused the other applications. The jellied eel trader went to the Thames Magistrate's Court regarding the refusal and the court awarded the pitch to the jellied eel seller. The newspaper vendor applied for the quashment of the order passed by the magistrate. Then the question arose that the newspaper vendor had no *Locus Standi* to come to the court since he was not a party in the magistrate's court. Lord Denning held that the newspaper vendor had the *Locus Standi* since he was aggrieved by the order of the magistrate and quashed the order of the magistrate and awarded him the pitch.[27]

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[25] (1880) 14 Ch.D 458. Also see Ibid 8, p.110.

[26] Ibid 12, p.151.

[27] R v Thames Magistrates' Court, Ex parte Greenbaum (1957) 55 LGR 129.

In *R v Paddington Valuation Officer, ex-parte Peachey Property Corporation Ltd.*[28]

case Lord Denning directly hit the restricted approach of *Locus Standi*. In this case a rate payer challenged the property valuation list of an area alleging that the list was not properly made as because the property was not rated property. But he failed to show that his property was rated wrongly. His standing was questioned since he was not aggrieved directly. But Lord Denning stood in favor of his *Locus Standi* and held that a ratepayer or other person is entitled to come to the court, if finds his name included in a valuation list which is invalid.

Blackburn's series cases also contributed a lot in relaxing standing rule in England. By 1970s, Mr. Raymond Blackburn, once a Member of Parliament filed a series of cases involving the general public's issues rather than his own. These cases included *R v Commissioner of Police, ex parte Blackburn (1968) 2 QB 118; Blackburn v Attorney General (1971) 1 WLR 1037; R v Police Commissioner, ex parte Blackburn, (1973) QB 241; R v Greater London Council, ex parte Blackburn, (1976) 1 WLR 550.*[29] Lord Denning had played a positive role in these cases and it was established by these cases that anyone having a "sufficient interest" in the matter acquires *Locus Standi.*

But while the positive change of strict principle of *Locus Standi* was gradually happening, some decisions had been delivered by the English court which was reverse to this positivity. It happened as because till then no specific meaning of the terms "person aggrieved" and "sufficient interest" was adopted by the English Law. The different courts in UK started to give different explanations of those phrases depending on the facts and circumstances of each case.

[28] (1966) 1 QB 380 (400)

[29] Ibid 7. p.110

2.5.2.2 Amendment of Order 53 Rule 3(5) of Rules of Supreme Court and its Impact

Some legal change had been come in 1977-81 in UK. In 1977, amendment of the Order 53 rule 3(5) of the Rules of the Supreme Court had been done incorporating the provision that the applicant must have a "sufficient interest" in the matter of the application. Later on in 1981, this provision of Order 53 was reproduced by incorporating it in section 31(3) of the Supreme Court Act, 1981. The said section prohibited the court to grant judicial review sought by a person who has not sufficient interest in the matter to which the application relates.

After a year of the said legal change in the Supreme Court Act, 1981, the English court a new liberal rule of standing in R v Inland Revenue Commissioners (IRC), ex parte National Federation of Self-employed and Small Businesses Ltd *[1982] AC 617.* The fact of this case in brief was that a tax exoneration arrangement had been occurred between the Inland Revenue and casual print-workers though the print-workers registered for tax purposes. A pressure group challenged the legality of this tax exoneration arrangement. Although the challenge ultimately failed, Lord Diplock held that if a pressure group or even a single public-spirited taxpayer should not be is prevented to bring an important matter before the court due to the outdated technical rules of [standing].

2.5.2.3 Application of Liberalized Impression of "Sufficient Interest"

After that IRC case, the situation in England was gradually started to change and court was lenient to accept the liberal approach of the "sufficient interest". In this enabling situation many public spirited persons, who were not personally aggrieved, brought public interest cases before the court. For example *R v Secretary of state for the Environment ex parte Greenpeace Ltd*[30]case. In this case the Greenpeace, being an environmental pressure group, sought against the decision of the Inspectorate of Pollution to discharge radioactive waste from a nuclear plant which could affect the people of a particular locality. 2500 supporters

[30] (1994) 4 All ER 329

of the petitioner were also living that area. In this case, the standing of Greenpeace as petitioner, was allowed by justifying that it has the support of 400,000 people across the UK, hence it is eligible to seek a judicial review on behalf of all those concerned with the matter.

In 1994, the English court recognised that if the legal interest of a person is not directly affected but he is a public spirited citizen and not a "meddlesome busybody", he may be allowed to seek judicial review in cases of serious issue of public importance.[31]

Thus, the strict principle of standing has been liberalized by the court of England and in recent time a considerable number of public interest litigation (PIL) have been brought by the public spirited individuals before the court.

2.6 Conclusion

After a long historical journey thus PIL successfully become a permanent feature of the legal system of USA and UK influenced the other jurisdictions including the countries of the Indian Sub-continent to adopt the same in their legal system.

[31] R v Secretary of State for Foreign and Commonwealth Affairs, ex parte Lord Rees-Mogg (1994) Q.B. 55

CHAPTER 3

DEVELOPMENT OF PIL IN INDIAN SUB-CONTINENT

3.1 Introduction

The Development of PIL in USA and UK influenced different jurisdictions including the countries like India and Pakistan. Following the examples of USA and UK, PIL become the permanent feature of their legal system and now a days it become one of the significant tools to seek judicial remedies in case of the violation of rights of the poor, ignorant and under privileged . This chapter discusses on the development of PIL in the two neighboring countries i: e India and Pakistan.

3.2 Development of PIL in India

3.2.1 Constitutionality of PIL in India

Indian constitution, adopted in 1950, gives power to the Supreme Court and the High Courts of India to issue writs in nature of habeas corpus, mandamus, certiorari, prohibition and *quo warranto*. Generally in India, any public spirited citizen can move or approach the court in the interests of the public or public welfare by filing a petition in the Supreme Court under the Article 32 and in the High Court under Article 226 of the constitution.

3.2.2 PIL and the History of Standing: a Interweaved Matter

Prior to 1980s, a person who's right was not affected could not knock the door of the Indian courts on behalf of the affected or aggrieved persons or party. In *Calcutta Gas Co. Ltd v State of West Bengal*,[32] the Supreme Court of India held that a person will acquired the *Locus Standi* only when his personal or individual right is violated or is threatened to be violated.

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[32] (1962) AIR SC 1044, (1962) SCR Supl. (3) 1

But gradually the Indian Supreme Court realized the necessity for making the standing rule flexible by interpreting the term "person aggrieved" in a lenient approach and in late 1980s, a significant improvement had been come with the concept of *locus sandi*. Justice P N Bhagwati and Justice V R Krishna Iyer, by their splendid efforts, broadened the concept of *locus standi* and helped to transform the Apex Court of India into a Supreme Court for all Indians.

In *Fertilizer Corporation Kamgar Union v Union of India,*[33] Justice Bhagwati and Justice Krishna Iyer held that *Locus Standi* must be liberalized to allow public- spirited citizens or organisations to promote justice in its triune facets.

Thus the Indian court slowly started to relax the strict rule of standing.

3.2.3 Exercise of Epistolary Jurisdiction by Relaxing the Rule of Standing

Sunil Batra case

As a part of its liberalized approach to PIL, Indian Supreme Court exercised epistolary jurisdiction in many cases by treating letters as petitions written by the persons who were not actually the aggrieved one. The Indian Supreme Court exercised this jurisdiction for the first time in 1980s in *Sunil Batra v Delhi Administration.*[34] In this case, the petitioner, a convict of death sentence, wrote a letter to the court alleging that other prisoners were subjected to torture by a jail warder to extract money from the victims through their visiting relations. The court treated the letter as a petition of a *habeas corpus* proceeding and issued notice to the State and the concerned officials. It also appointed amicus curiae and authorized them to visit the prison, meet the prisoners, examine relevant documents and interview necessary witnesses so that they could produce information before the court about the circumstances and the scenario of events.

[33] (1981) AIR SC 344
[34] (1980)AIR SC 1579

Later on Indian Supreme Court frequently exercised this jurisdiction.

3.3 Most Significant Case in History of PIL in India

SP Gupta and Others v Union of India and others

In India, the most important development of standing rule had been gained and the bud of PIL had been fully blossomed in *SP Gupta and Others v Union of India and others.*[35]In this case Bhagwati J. said that when a poor, helpless or disadvantaged class of people cannot go to the court to vindicate their fundamental rights, any member of the public can maintain an application before the court on behalf of them.

All the other judges who were the parts of the case agreed with the observation delivered by Bhagawati J.

In this case, Bhagawati J. discussed the concept, scope and strategies of PIL elaborately and encouraged the public spirited citizens to seek judicial remedy to ensure the rights of the people who are unable to go to the court for the violation of their legal and constitutional rights. Above all, this judgment created a path for the poor, ignorant, disadvantaged to articulate their grievances in the court and seek remedies for their grievances.

3.4 Series of Cases Entertained by Relaxing the Rule of Standing

After the landmark decision in SP Gupta[36] case, a series of PILs had been filed where the Indian court gave observations by relaxing the rule of standing. Some of those are

[35] (1982) AIR SC 149
[36] (1982)AIR SC 149

State of H.P v Parent of a Student of Medical College[37]

In this case, the court held that if a poor , disadvantaged person or group of person or a part of the society, who are not capable to come to the court, write a letter to ensure their fundamental rights, the Supreme Court or High Court is bound to treat the letter as writ petition.

In this case, the court considered the acceptance of a letter by the Supreme Court as an innovative strategy for the purpose of providing easy access to justice to the weaker section of the society and also considered it as a powerful tool in the hand of the public spirited citizens and the social action groups to combat the exploitations and injustice to the poor, ignorant and

Shri Sachidan and Pandey and another v The State of West Bengal and others[38]

In this case, Khalid, J. observed that when basic human rights are in attack or when there are complaints of such acts, the superior courts can overlook the procedural restraints and hear such petitions.

Shivajirao Nilangekar Patil v Mahesh Madhav Gosavi[39]

Sometimes, the Indian courts walked too far for the sake of the social justice and this case is the example of that. In this case, the court took initiatives considering the case filed in public interest though it was not, but filed for private interest.

In this case, the court delivered the judgment holding that though the case was moved for private interest but when any allegation had been brought against the conduct of the examiner of the Bombay University in case of a highest medical degrees, an inquiry should be made considering the matter as public interest and

[37] (1985) AIR SC 910
[38] (1987) (2) SCC 295
[39] (1987) AIR SC 294

such an inquiry cannot be avoided if it is necessary and essential for the administration of justice.

Thus with the passage of time the standing rule in India has been relaxed in matter of PIL and as a result any public spirited citizen or any social action group of India can now move before the Apex Court of India for legal remedies to secure the public interest. Nowadays PIL is sufficiently contributing to secure the rights of the citizens of India.

3.5 Development of PIL in Pakistan

3.5.1 Restrictive View and Slow Development

In Pakistan PIL had been developed very slowly. The courts in Pakistan initially followed the restrictive traditional rule of standing like the Indian judges.

In *Tariq Transport Company, Lahore v Sargodha Bhera Bus Service* case it was held that a person without having direct personal interest in the subject matter, cannot invoke the extra-ordinary jurisdiction of the court. [40]

Restrictive view was also taken in *Mian Fazal Din v Lahore Improvement Trust, Lahore and Another.*[41] It was held by the Supreme Court of Pakistan that though it is not necessary to consider a right as sufficient from a strict juristic sense to maintain a proceeding, it is necessary for the applicant to disclose that he had a personal interest in the omission or commission of the authority.

3.5.2 Public Oriented Tune of the Constitution

The Constitution of Pakistan 1973 took a public oriented view in respect of interference of the Supreme Court in the matter of public importance. The Article 184 (3) and the Article 199 of the said constitution gives the wide power to the Supreme Court and the High court respectively to enforce fundamental rights,

[40] (1958) PLD SC 437
[41] (1969) PLD SC 223

ensure compliance with the rule of law and provide access to justice to all citizens, irrespective of any consideration of wealth or social status.[42]

The power under Article 184 (3) is the original jurisdiction of the Supreme Court. But the power under the said Article 199 is confined only to the enforcement of fundamental rights and to the action of public importance.

3.5.3 Extension of Scope of the Fundamental Rights

The constitution of 1973 was in abeyance from 1977 until 1985. But after that period the constitution was reinstated and the thinking was began that how the ignorant, poor, disadvantaged population of Pakistan could be ensured the access to justice and how their fundamental rights enshrined therein could be effectively enforced. From that view the Pakistani judiciary felt the necessity of PIL and started to give the sincere effort to gain the objective of enforcement of fundamental rights.

Benazir Bhutto v Federation of Pakistan and another

It is the famous case namely *Benazir Bhutto v Federation of Pakistan and another*[43]where the Supreme Court of Pakistan by interpreting the constitution dynamically extended the scope of fundamental rights and observed that in case violation of fundamental rights of a poor, disadvantaged or ignorant person or a class or a group of persons, the traditional rule of *locus standi* can be dispensed with, and the procedure of public interest litigation can be followed.

Thus the Supreme Court of Pakistan took a public oriented view and opened a door for the public spirited citizens or organizations to come to the court in case of violation of fundamental rights of a person or a group of people, who are unable to go to the court due to their social and economic disadvantage. Thus the Supreme Judiciary of Pakistan created the path for the poor, ignorant and disadvantaged people towards the access to justice.

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[42] Ibid 13, p-275.

[43] (1988) PLD SC 416

3.5.4 Exercise of Epistolary Jurisdiction by Relaxing the Standing Rule

Dharshan Masih's case[44]

The judgment of Benazir Bhutto case created a positive impact on the Pakistani judiciary to entertain the PIL by expanding the scope for the court to exercise its jurisdiction. In this case, he Chief Justice of Pakistan exercised his *Suo Moto* power. This was the first instance of converting a letter revealing violations of fundamental rights into a petition under Article 184 (3) of the Constitution. In 1988, one Darshan Masih and 20 others sent a telegram to the then Chief Justice to save them from abduction by brick kiln owners. The court entertained the telegram as a petition and acted upon it.

Within a few years of Dharshan Masih's case, a number of remarkable PIL cases had been decided by exercising *suo moto* power and epistolary jurisdiction.

Thus, the constitutional provisions and the good examples by the superior court of Pakistan contributed to start the process of PIL in Pakistan.

3.6 Conclusion

Thus, the Public Interest Litigation (PIL) developed in the neighboring countries like India and Pakistan with the help of the conscious and scholar judges. They interpreted the constitution in their own contextual and social settings and created the space for the poor, ignorant, unprivileged and disadvantaged people of the society to knock the door of the judiciary and sought for their rights through PIL. The public spirited citizens and the social action groups also contributed a lot to establish the PIL in these two countries. Now a days the conscious citizens or a social action and human rights bodies are frequently filing a huge number of PILs in different subject matters to secure the rights of the people particularly who are poor and socially and economically disadvantaged in position.

[44] Darshan Masih v State (1990) PLD SC 513

CHAPTER 4

DEVELOPMENT OF PIL IN BANGLADESH: STRUGGLE AND ACHIEVEMENT

4.1 Introduction

At present, PIL is a well-known phenomenon in Bangladesh. Nowadays, the judiciary entertains a good number of PILs in different subject matters every year. Relentless effort of the judiciary mingled with the public spirited citizens and the social action and human rights groups established the PIL as a tool for bringing the social changes in Bangladesh. But this development has not come in Bangladesh so easily or within a short time. After a long struggle, the PIL has been established as an avenue for the poor and disadvantaged through which they can reach the judiciary not only to seek remedy for the violation of their constitutional and legal rights but also to ensure the same. This chapter is about the history of the development of PIL in Bangladesh.

4.2 PIL and the Constitutional Obligation in Bangladesh

The essence of PIL is found in the constitution of Bangladesh. After obtaining the independence through glorious liberation war in 1971, Bangladesh adopted its written constitution declaring the nationalism, socialism, democracy and secularism as the fundamental principles of the republic. The article 102 of the Bangladesh's constitution gives the power to the hand of the High Court Division to act for ensuring equality and justice to the citizens and thus to act for the social change. The constitution provides that the High Court Division of the Supreme Court of Bangladesh can act under the article 102 (1) of the constitution for enforcement of the fundamental rights guaranteed under this constitution on application of any person aggrieved. Sub-clause (i) of clause (a) of sub-article (2) of article 102 provides remedies under the jurisdiction of writs of *prohibition* and *mandamus*. Sub-clause (ii) of clause (a) of the same article provides remedy under

the writ of *certiorari*. Sub-clause (i) of clause (b) of the sub-article (2) of article 102 provides remedy under *habeas corpus* and sub-clause (ii) is for remedy under writ of *quo warranto*.

Article 102 thus provides remedies for the violation of fundamental rights. But the jurisdiction under this Article can be invoked only when an equal efficacious remedy or forum is not available in law to shout against such violation. It is thus manifestly intended to expand available remedies and cannot be construed restrictively.[45]

Though judicially unenforceable, but it is very much pertinent to discuss about the preamble of the constitution, article 7 and the fundamental principles of state policies to understand the philosophy of the article 102. Article 102 is not an isolated article. It is a part of overall objective and purpose of the constitution. It is inseparably linked with the preamble, article 7 and the fundamental principle of state policies.

The preamble of the constitution spells out the philosophy and the objectives of the constitution. It declares the people to be the source of power and pledged that the nationalism, socialism, democracy and secularism shall be the fundamental principles of the constitution. It also declares about an exploitation free socialist society with the rule of law, fundamental human rights and freedom, equality and justice for the citizens.

Article 7 of this constitution provides that the power of the republic is in the hand of the people. It also provides that the constitution is the supreme law of the Republic, and the other laws which are inconsistent with this Constitution would be void.

The fundamental principles of the state policies articulate the concept of the welfare state. These policies are described in article 8 to article 25 of the constitution.

[45] M. Amir-ul-Islam, "A Review of Public Interest Litigation Experience in South Asia", Sara Hossain, S. Malik and Bushra Musa (eds.) *Public Interest Litigation in South Asia : Rights in Search of Remedies*, Dhaka, University Press Ltd. p-66.

So, it is clear from the contents of the preamble, the article 7 and the fundamental principles of state policies that the intension of the framers of the constitution was to attain a socialistic society through democratic means where ultimate power belongs to the people. So there is no doubt that in constitution, priority has been given to the collective rights and interest of the people and when the state violates the collective right and the interest of the people, judicial intervention lies under article 102. Thus, the seed of PIL has been rooted in the constitution of Bangladesh.

4.3 First Initiative of PIL in the Light of the Constitution

Berubari Case

Kazi Mukhlesur Rahman v Bangladesh and others [46] is famously known as *"Berubari Case"*. Though the case had been failed from the aspect of the subject matter and the claim, but the case was the first attempt in Bangladesh where a strong flavor of PIL had been found and the question of standing raised.

The brief of the case is that the Nehru-Noon Treaty 1958 entered between India and Pakistan declared the "Berubari (Southern half of the South Berubari Union No.12 and adjacent enclaves)" as integral part of the then East Pakistan. After 1971, the said "Berubari" became the part of Bangladesh as per the article 2(a) of the constitution. But in 1974, Bangladesh and India entered into a treaty called "*India-Bangladesh Land Boundary Agreement-1974*" regarding the land-boundary demarcation between the two countries where it was stated that retention of India would be continued in southern half of the South Berubari Union No.12 and adjacent enclaves. In exchange Bangladesh would retain Dahagramand Angarpota enclaves.

Kazi Mukhlesur Rahman, an advocate, challenged illegality of the *India-Bangladesh Land Boundary Agreement-1974*. The treaty was challenged on the ground that since the treaty involved cession of territory and in that case of cession of territory, amendment of article 2(a) of the constitution by dint of the power

[46] Ibid 3

given under article 142 was needed to execute the treaty. But without doing so, the executive head of the authority entered into the treaty without lawful authority. The petitioner also claimed that if this cession would be executed without having proper amendment of the constitution then it would cause violation of his fundamental rights namely to move freely throughout the territory of Bangladesh, to reside and settle in any place therein and as well as his right to franchise.

On the other hand, the question was raised from the opposite that the petitioner had no *locus standi* as he was not a resident of Berubari and as such he was not personally aggrieved.

The High Court Division refused the petitioner's standing and rejected the petition. However, the petitioner preferred an appeal before the Appellate Division and the Appellate Division rejected the case on the ground of being pre-mature. But the judgment of the Appellate Division created a great impact on the history of constitutional law and judicial review of Bangladesh. The great achievement of this case was the liberalized explanation of *locus standi* by the court. The respondents raised the question of *locus standi* of the petitioner. But the Appellate Division decided the rule of standing as a matter of discretion of the court and even though Kazi Mukhlesur Rahman was not a resident of Berubari, the Appellate Division gave him the Standing because he raised a constitutional issue of grave importance.

Though the appeal was not fully allowed, but the Appellate Division directed the government to amend the article 2(a) relating to state territory and the government soon amended the constitution.[47]

4.4 Obstacles Faced by PIL during Martial Law Period

Unfortunately the bud of PIL which was started to blossom in *Berubari* case got a severe blow in 1975 due to the imposition of martial law. The heinous and brutal assassination of the Father of the Nation Bangabandhu Sheikh Mujibur Rahman and his family members on the 15th August, 1975 and the formation of an

[47] The Constitution (3rd Amendment) Act (LCCIV of 1974)

undemocratic party through the 4th amendment of the constitution in 1975 seriously impeded the democracy in the country. Moreover, in most of the martial law time, the Constitution was suspended and the suspension continued till 1986. The Judiciary could not function properly. People could not go to the court to ensure their fundamental rights and thus the achievement of *Berubari* case was remained almost unfruitful during the martial law period from the PIL viewpoint. However, in this time of the martial law periods some significant cases had been moved where the question of standing was discussed in an old traditional way.

Mazharul Huq alias Mazharul Huq Chowdhury v Returning Officer and others

In *Mazharul Huq alias Mazharul Huq Chowdhury v Returning Officer and others*[48] case, the question of standing had been raised. The brief fact of this case is that one returning officer declared the only contesting candidate as chairman of a Union Parishad since the other contesting candidate died in an accident before poll. The petitioner, being a voter, challenged the declaration of the returning officer on the ground that the election should be stopped when there was only one candidate in the field. In this case the Appellate Division held that a voter, is not an "aggrieved" person and has no *locus standi* to move the High Court Division in its Writ Jurisdiction under article 102(2) of the Constitution.

Dada Match Workers Union v Bangladesh and others

Another important case is *Dada Match Workers Union v Bangladesh and others*. In this case question raised that whether a workers union can move before the court on behalf of its members under article 102 of the constitution or not. The Appellate Division held the old theory of standing rule. According to the court only and aggrieved person can make an application for an order of certiorari and no one can make it on behalf of the public and for an order of mandamus, the

[48] 27 DLR (AD) 11

applicant must show that there resides in himself a legal right to the performance of the legal duty by the party against whom the mandamus sought.[49]

It also held that the expression "person aggrieved" contemplated a person directly affected by the impugned action. Such relief cannot be asked for by person in his representative capacity.

Mohammad Gias Uddin Bhuyan v Bangladesh

Following the traditional view, the question of standing was discussed in *Mohammad Gias Uddin Bhuyan v Bangladesh* case. In this case, an advocate filled an application under article 102 of the constitution for a declaration that Government's Notification issued on April 25, 1979 giving effect to the Law Reform Ordinance 1978 was without lawful authority as because the Ordinance ultravires the constitution. F. Munim CJ, rejecting the *locus standi* of the applicant, held that as an individual or even as an advocate the applicant could not claim to have any vested right in ensuring the conformity of any piece of legislation with the constitution because it could not be shown that by divergence between the law and the constitution if any, his right had been specifically affected.[50]

And thus, on the ground the application was rejected.

4.5 Situation after the Martial Law

In 1986, the martial law regime came to an end and the Supreme Court stared to exercise its power under article 102 of the constitution and a series of cases in different issues had been filed and decided which influenced the rule of standing in Bangladesh. Some of those were not directly related with the social justice concept but with the power debate or unauthorized holding of office or infringement of contract by the government etc. Some of those cases helped to expand the boundary of PIL but some of those created obstacles for the PIL concept. There are some cases discussed below

[49] (1977) 29 DLR AD) 189
[50] (1981) 1 BCR (AD) 81

8th Amendment case

The case *Anwar Hossain Chowdhury v Bangladesh*[51] is famously known as "8th amendment" case. In 1988, the parliament amended the article 100 of the constitution and thus set up six permanent Benches of the High Court Division outside the capital Dhaka particularly in Rangpur, Sylhet, Barisal, Jessore, Chittangong and Comilla and authorized the president to fix by noticing the territorial jurisdiction of those permanent Benches. But it is beyond the power of parliament to amend the constitution to decentralize the High Court Division permanently. The petitioner Mr. Anwar Hossain Chowdhury successfully challenged the 8th amendment of the constitution. The Appellate Division of the Supreme Court of Bangladesh consisting of four Judges declared the impugned 8th amendment of the constitution as void and ultra vires by majority of 3: 1 on the ground that the basic structure cannot be altered by political majority.

In this case, for the first time in Bangladesh, the Appellate Division has declared an amendment passed by the parliament as void and imposed limitation on its amending power.

This case was significant because it was not related with the social justice matter but related with the power debate. But in this case, the judges by interpreting the constitution progressively and dynamically established the philosophy of the constitution, and created a pavement to the public spirited people to come to the court with the application under Article 102 for the enforcement of constitutional law and the court started to function on the issues of public importance.

Taltotal Sweeper Colony Case

At that time Bangladesh Judiciary also started to intervene into the matter of fundamental principles of the state policies particularly the housing right of the citizen. In 1989, the Dhaka Municipal Corporation evicted one Gias Uddin along with other slum dwellers from Taltola Sweeper Colony, Gulshan, Dhaka. Gias

[51](1989) BLD (AD) (Special) 1

Uddin as petitioner filed *Gias Uddin v Dhaka Municipal Corporation*[52] case against the forceful eviction and the court granted stay order against the eviction operation. Later in two cases[53] the High Court Division declared that eviction of slum dwellers without prior rehabilitation or alternative arrangement is illegal.

Sangbadpatra Case

Bangladesh Sangbadpatra Parishad v Government of People's Republic of Bangladesh[54] was the very important case in the PIL sector of Bangladesh though it was not itself a PIL. Because for the first time the term "PIL" was directly used in it. In this case, the association of newspaper owners challenged an award declared by the statutory wage board. The association brought this writ petition on behalf of its members. The High Court held that the association itself is not an "aggrieved person" but the owners and the employees of newspapers are the aggrieved person. So the association itself has no *locus standi* in invoking the writ jurisdiction under Article 102 of the constitution.

On appeal, the Appellate Division upheld the finding of the High Court Division.[55]

In appeal though the standing of the petitioner was refused, but another significant point of view was discussed in this case. Mustafa Kamal J. observed in the appeal that since the petitioner is not backing the case of a downtrodden or deprived section of the community who is not able to spend money to establish its fundamental rights, it is not one of *pro bono publicio* but in interest of its own members.

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[52] (1997) 17 BLD (HCD) 577

[53] Ain o Salish Kendra (ASK) and others v Bangladesh and others (1999), 19 BLD 488, Modhumala v Bangladesh and others (2001) 53 DLR 540.

[54] Bangladesh Sangbadpatra Parishad (BSP) v The Government of People's Republic of Bangladesh and others. (1991) 43 DLR 424.

[55] (1992) 12 BLD (AD) 153

This case is very much significant because though the appeal failed but the Apex Court through its observation left its door open through PIL for those who are disabled or disadvantaged. But later, the decision of this *Sangbadpatra case* created a huge disturbance for PIL.

Syed Mahbub Ali and others v Ministry of Law and others

However the impact of the *Sangbadpatra case* was unfavorable for the development of PIL standing. After this case the High Court Division again started to exercise conservative view regarding the standing rule.

In *Syed Mahbub Ali and Others v Ministry of Law and others*[56]case, certain members of the Bar challenged the promotion of the subordinate court's judges without any consultation with the Supreme Court. Grabbing the view of the *Sangbadpatra* case's decision, the court said that the petitioners may represent the Bar elsewhere but not in writ jurisdiction.[57]

Raufique (Md.) Hossain v Speaker, Bangladesh Parliament and others

In *Raufique (Md.) Hossain v Speaker, Bangladesh Parliament and others*[58]case, the fact is that the opposition members resigned from the parliament *en masse*. The petitioner filed this case as a conscious citizen claiming the attempt to resign is anti-constitution. In this case the Court re-iterated the basic view of the *Sangbadpatra case* and held that the applicant must be a "person aggrieved" and the meaning of the term must be restrictively defined as has been traditionally established over the year.

[56] Writ Petition No. 4036 of 1992 (Unreported)
[57] Ibid 7, p.127.
[58] (1995) 47 DLR 361

4.6 Starting of a New Era

Dr. Mohiuddin Farooque v Bangladesh[59]

The Article 102 of the constitution contains the term "person aggrieved". But it has not defined the said expression nor has it mentioned the term as "personally aggrieved person". So the question regarding standing was yet to be solved until it was resolved in the famous *FAP-20* case.

After disastrous flood in 1987 and 1988, the Bangladesh Government took a five year action plan (1990-1995) for flood control and started to build dam under the plan. The first phase of the plan had been started from Tangail District without any assessment of socio-economic and environmental impact. This project adversely affected a millions of people of Tangail. It caused displacement to the people by unlawful acquisition of land, regular drought and water-logging in that locality, damage to the soil, destruction of natural habitats of fisheries, flora and fauna of that locality. Dr. Mohiuddin Farooque, the then General Secretary of Bangladesh Environmental Lawyers Association (BELA) filed a writ petition and challenged the validity of the project in the High Court Division of the Supreme Court of Bangladesh. Being influenced by the Sangbadpatra case's decision the High Court Division held that the petitioner is not an aggrieved person and he has no *locus standi* to file the instant application under article 102 of the Constitution in the relation to the relives prayed for and on this ground the court summarily rejected the application.[60]

But finally the question of standing solved when Dr. Mohiuddin Farooque preferred an appeal against this judgment passed by the High Court Division. In the appeal, the Appellate Division allowed the standing of appellant and observed that

[59] Ibid 5

[60] Dr. Mohiuddin Farooque v Bangladesh (Writ Petition 998 of 1994)

> The expression "any person aggrieved" is not confined to individual affected persons only but it extends to the people in general, as a collective and consolidated personality. If an applicant bonafide espouses a public cause in the public interest he acquires the competency to claim a hearing from the Court.[61]

In this case, thus the court liberally gave a wider meaning of the expression "person aggrieve" and solved the long term problem regarding the standing in PIL. In this case the court not only allowed the standing of public spirited citizen but also the recognized the standing of public oriented organization. As a consequence, a good number of PILs have been filed by public spirited citizens as well as organizations which generated a great flow in the last two decades.

4.7 Check and Balance in Allowing Standing

In *Dr. Mohiuddin Farooque v Bangladesh*[62] *case,* the Appellate Division gave observation that the High Court Division has to exercise some rules of caution in each case. The court should be confirmed that the applicant is, in fact, espousing a public cause, not an private interest for generating some publicity for himself or to create mere public sensation or he is not a busybody or interloper.

Keeping this observation in mind both the Appellate Division and the High Court Division of Bangladesh exercised the liberalized interpretation of the expression of "person aggrieved" very cautiously. *Saiful Islam Dilder v Bangladesh*[63] is a good instance of that. In this case the petitioner was the secretary general of an organization namely Bangladesh Human Rights Commission (BHRC) and challenged the expected handover of Anup Chettia, a leader of United Liberation Front of Assam (ULFA) to the Indian authority. But the High Court refused his standing stating that the petitioner was not espousing any right of the downtrodden. Anup Chettia was not such espouse person who could not advocate for his right. Moreover, there was no long truck history of the petitioner to seek relief for the poor, under privileged and the marginalized people or the section of people who could not vindicate their rights due to their social and economic

[61] Ibid 5

[62] Ibid 5

[63] (1998) 50 DLR (HCD) 318

situation. Furthermore, the petitioner could not show that there was any violation of constitution or law by the government.

In *BRAC v Professor Mozaffar Ahmed* [64]case, the Appellate Division did not find the petitioner to be an aggrieved person as there was nothing in the writ petition to show that the writ petitioner moved in the High Court Division for and on behalf of himself as also other less fortunate persons of the society who have no sources or means to invoke the writ jurisdiction, though the writ petitioner was seeking remedy against an alleged public wrong or injury.[65]

4.8 New Guideline by the Appellate Division

After the decision of *FAP-20* case, a large number of PILs have been filed. Many public spirited citizens and organizations have been allowed standing and many have been refused. Some of them came with the issues of public importance but some of them took PIL as a means of gaining overnight popularity without any concern of merits of the case as PIL. In this context, recently in *National Board of Revenue v Abu Saeed Khan*[66] case, the Appellate Division has given a new guideline settling that who could file PIL and defining the periphery within which the High Court Division should extend its discretionary jurisdiction in entertaining PIL. The Appellate Division directed to follow the points given below before entertaining a PIL

1. Fitness of petitioner to file PIL.
2. Cause of the absence of affected party before it .
3. Petition is filed to represent wealthy person would not be entertained.
4. The expression "person aggrieved" used in Article 102 (1) means not any person who is not personally aggrieved but one whose heart bleeds for the less fortunate fellow beings for a wrong done by any person or authority in connection with the affairs of the Republic or a Statutory Public Authority.

[64] (2002) 54 DLR (AD) 36
[65] Ibid 6, p-848.
[66] 18 BLC (AD) 116

5. A busybody shall not be entertained.
6. The court must be aware about the publicity interest litigation or private interest litigation.
7. Only a public spirited person or organization should be allowed to file PIL. The Court should also guard that its processes are not abused by any person.
8. A PIL must be initiated for the benefit of the poor or for those people who are incapable to come to the court.
9. Court will not entertain any petition which challenges the policy matter of the government, development works being implemented by the government, order of promotion or transfer of public servants, imposition of taxes by the competent authority.
10. PIL can be moved to protect basic human rights of the disadvantaged citizens.

4.9 Exercise of Epistolary Jurisdiction

Another remarkable development in respect of PIL in Bangladesh is exercise of epistolary jurisdiction by the Supreme Court of Bangladesh. Generally in Bangladesh a writ starts with a formal application or petition. But in epistolary jurisdiction the court can take a letter or telegram as a writ petition and can take necessary steps basing upon it. In such latter the sender usually writes the grievances or the information about the public wrong done or going to be done and seek the interference of the court. The constitution of Bangladesh has created such scope and the Supreme Court of Bangladesh (High court Division) Rules 1973 allowed the constitutional courts to treat a letter or news report as writ petition. Article 102 does not prescribe any specific form of "application" or any definition of "application". So a letter can be treated as a petition in proper circumstances. The Rule 10 of Chapter XIA of the Supreme Court (High Court Division) Rules 1973 provides that a Motion Bench with the jurisdiction to deal with writ matter can entertain a letter or a published news report as writ petition which reveals that a public wrong of grave nature has occurred or is occurring or is going to occur and the bench may issue Rule Nisi upon such person(s) or Public Authority in such

term as it considers appropriate.[67] In case of letter, it must be signed by any person with his address and sent to the Chief Justice or any other Judge or the Court or Registrar.

Dr. Faustina Pereira v The State

In Bangladesh, the High Court Division for the first time exercised this jurisdiction in *Dr. Faustina Pereira v The State*[68] *case,* Advocate Dr. Fastina Pereira on behalf of a human rights and legal aid organization, sent a letter to the then Chief Justice of Bangladesh to take step against the illegal detention of 29 foreign nationals in Dhaka central jail who were incarcerated there for years together after serving out their terms of sentence. The Honorable Chief Justice directed the High Court Division to treat the letter as a case petition and to take appropriate step in the matter and a Division Bench of the High Court Division issued *"Suo Moto"* Rule in Criminal Misc. Case No. 2737 of 2001. After hearing the rule in 2001, the court directed the authorities concerned to release not only the 29 foreign nationals detained in the Dhaka central jail but also 822 such detainees from different jails of Bangladesh who were languishing after serving out their term of sentence.

Thus in Bangladesh, another pavement has been created for the poor and disadvantaged to get access to the judiciary through exercise of epistolary jurisdiction and thus, the concept of social justice for all has been made more effective.

4.10 Issuance of *Suo Moto* Rule by the Court

The judges' initiative in starting a proceeding by acting *Suo Moto* is another outstanding development in respect of PIL in Bangladesh. It is a special power of the Supreme Court of Bangladesh to initiate a hearing by itself. In case of serious grievance, court can be activated by itself and can start a legal proceeding, there is no need to file petition by anyone. By such action, the court can take

[67]Inserted in 2012

[68](2001) 53 DLR 414

cognizance of a newspaper report or the information he or she has come to know through any other means. Mostly the court applies *suo moto* power in case of abuse of power by the executive, violation of human and fundamental rights and in public interest.

The constitution of Bangladesh has guaranteed some fundamental rights to the citizen and the High Court Division can proceed by its own initiative under article 102 of the constitution in case of violation of those fundamental rights or any public wrong. Moreover the Supreme Court of Bangladesh (High court Division) Rules 1973 allowed the constitutional courts to issue *Suo Moto Rule* under article 102 of the constitution taking consideration of a news report or letter where information of public wrong is described.

The High Court of Bangladesh is also empowered to issue *Suo Moto Rule* under section 491 of Code of Criminal Procedure 1898.

State v Deputy Commissioner,-Satkhira

In Bangladesh, the first instance of *Suo Moto* initiative has been taken by the High Court Division in the *State v Deputy Commissioner, Satkhira*[69] case. In this case, through a newspaper report, the court came to know about an unlawful detention of a person named Nazrul Islam for 12 years. Taking a news report in cognizance, a Bench of the High Court Division issued *suo moto* rule to the Deputy Commissioner, the Superintendent of Police and the Jailor of Satkhira district to show cause as to why the person named Nazrul Islam had been detained in jail and directed them to produce him before the court. The detenu , produced before the court with chains on both his legs, had been arrested in his 12 years age and there were 12 cases filed against him in between 1977 (when he was 8 years old) to 1983. Amongst 12 cases, 11 were in charge of robbery and the other case was under arms act. All other accused were acquitted, but Nazrul was detained for 12 years.

[69] (1993) 45 DLR 643

After hearing the victim Nazrul, the respondents and the amicus curiae the court found the callousness, corruption, vindictiveness of the authority and inhuman and mindless prosecution of a young boy at the instance of some interested quarters. Finally, the court declared the detention and all the proceedings against Nazrul illegal and void and directed the Deputy Commissioner and the Jail authority, Stakhira to set him at liberty forthwith.

This case is a significant example of the judicial activism in Bangladesh and encouraged the other judges to active themselves in cases of severe violation of fundamental human rights. Now the High Court Division exercises this power of issuance *Suo Moto* rule under article 102 of the constitution and the Code of Criminal Procedure 1898 in different instances of violation of human and fundamental rights and the abuse of power by the executives.

4.11 Conclusion

Thus, gradually the concept of PIL took a shape in Bangladesh. The judiciary with their extraordinary and mindful interpretation of PIL jurisprudence and the public spirited citizens and the right based organizations with their tremendous and outstanding effort created the scope for filing PIL within the limit of the constitution and thus the PIL developed as a permanent feature of the legal system of Bangladesh.

CHAPTER 5
APPLICATION OF PIL IN BANGLADESH

5.1 Introduction

In Bangladesh, a significant number of PILs have been filed since the 1990s by the public spirited citizens and the right based organizations in different issues and our higher judiciary, from their pro public commitment, intervened in different incidents of violation of fundamental rights of the citizen and entertained the matters for ensuring the same.

The constitution of Bangladesh guarantees some fundamental rights to the citizens in which some include the civil and political rights and some include the economic, social and cultural rights. PIL has been applied in Bangladesh for securing and ensuring both the civil and political and economic, social and cultural rights of the citizens. It has been applied in case of violation of those rights occurred by the action or inaction of the government. Judicial interventions through PIL also pursued into the matters where the administrative action caused discrepancy with constitution. For example, cases have been filed in respect of the 5^{th}, 7^{th}, 8^{th}, 13^{th} and 16^{th} amendment of the constitution. Through PILs, the abuse of power by the executive has also been challenged. Moreover, PILs have also been filed for shaping the policy of the government.

The discussion on the application of PIL in Bangladesh should be made elaborately. It is also necessary to discuss the issues PIL covers in Bangladesh. From this perspective, this chapter carries the discussion focusing on the issues or subject matters in which PIL has been applied or can be applied in Bangladesh.

5.2 Right to Life and Liberty: Unlawful and Arbitrary Arrest, Detention, Torture and Extrajudicial Killing Perspective

In Bangladesh, citizen's "right to life" faces challenges from many directions including the unlawful and arbitrary arrest, detention and abuse of power by the law enforcing agencies particularly by torture in remand and killing in the name of cross fire or encounter. It's a common practice irrespective of the forms of government. The successive governments are indifferent to stop this problem.

Section 54 and 167 of the Code of Criminal Procedure (CrPC) 1898 gives huge power to the police to arrest without warrant and take the detenu in remand. Moreover, as per section 3 of the Special Powers Act 1974, the government may detained a person to prevent him from doing prejudicial act. It is the common practice in Bangladesh that the police often misuse the power given in the said Acts.

The constitution of Bangladesh has adopted the provisions against the unlawful arrest, detention and torture to the citizens. Article 31 and 32 of the constitution deals with the right to life and liberty of the citizens. Article 31 provides that every person shall be treated in accordance with law and Article 32 provides that no person shall be deprived of life or personal liberty except in accordance with law. Article 33 provides provision of safeguards regarding arrest and detention. As per this article, a person cannot be detained without the information of the cause of arrest, he has the right to consult and defend by a prosecutor of his choice. He must be produced before the magistrate within 24 hours of arrest and he shall not be detained beyond 24 hours without the authority of the government. Article 35(5) of the constitution provides the safeguard from torture, cruel and inhuman treatment. But in spite of these constitutional provisions, the unlawful arrests, detentions, torture and extrajudicial killings by the law enforcing agencies by misusing the power are alarmingly occurring. These unlawful arrest, detention, torture and extrajudicial killing of the citizens by the law enforcing agencies have been challenged through PIL. BLAST, ASK and

others v Bangladesh and others[70] case is one of the instances where unlawful arrest and torture in police custody had been impugned. The case brief is that a university student named Shamim Reza Ruble was picked up by Detective Branch (DB) of Police from in front of his house and brutally tortured to death in their custody on the same day he picked up. This incident created a huge agitation in public and the media covered this news with a big attention. As a result, a judicial commission headed by Justice Habibur Rahman was formed to investigate into the matter. This commission submitted a report with recommendations including the recommendation to stop the torture in police remand. In this incident, BLAST, Ain o Salish Kendra (ASK), Shonmilito Shamajik Andolon and other four individuals filed a writ petition in the High Court Division challenging the misuse of power by the police in arresting without warrant under section 54 and taking the accused into remand (police custody) under 167 of CrPC 1898. The petitioners also challenged the consistency of Section 54 and Section 167 of the CrPC 1898 with the constitution. In their submission, the petitioners referred the unpublished report of the Habibur Rahman's Commission and the Guidelines[71] given by the Indian Supreme Court regarding the police custody.

In its judgment, the High Court Division observed that Sections 54 and 167 of the CrPC 1898 are not fully consistent with provisions of the constitution guaranteed the fundamental rights. From this view point the court gave some comprehensive set of recommendations to remove the inconsistencies by making necessary amendments of Section 54 and 167 of the CrPC 1898 along with the Police Act 1861, The Penal Code, 1860 and the Evidence Act 1872 and directed the government to accept the recommendations within six months. It also issued fifteen directions with regard to exercise of powers of arrest and remand.[72]

[70] (2003) 55 DLR 363
[71] (1977) AIR SC 610
[72] Ibid 70

Subsequent to the judgment passed by the High Court Division, the government filed an appeal [73] before the Appellate Division and after hearing both the parties the Appellate Division dismissed the appeal with the following guidelines to be followed by the police during the exercise of provisions of Section 54 and 167 of the CrPC 1898.

a) A law enforcement officer after arresting any person shall immediately prepare a memorandum of arrest having the signature of the arrestee with the date and time of arrest.
b) Police must inform the relative of the arrestee or a friend about such arrest and the place of custody within 12 hours of the arrest.
c) An entry must be made in the diary stating the ground(s) of arrest , the name and address of the informant or the complainant , the name and address of the relative or friend to whom the information is given.
d) Case must be registered before seeking detention of the arrested person.
e) Arrest under section 54 of the Code is prohibited for detention under section 3 of the Special Powers Act, 1974.
f) Law enforcing officer must disclose his identity by showing identity card to the arrestee.
g) In case of finding any injury mark on the arrestee during arrest' law enforcing officer must keep a record the reasons of such injury.
h) If the person is arrested from outside of his residence or business place, police shall inform the nearest relation of the arrestee about the arrest within 12 (twelve) hours.
i) The arrestee must be allowed to consult a lawyer of his choice.

The government has filed a review petition against the judgment passed by the Appellate Division. The hearing of the Review is ongoing.

[73] (2017) 69 DLR AD 63

Another instance of PIL filed against arbitrary arrest and detention is *ASK and others v Government and others.*[74]In 2004, the government started wholesale and arbitrary arrest and detention in so called plea of preventing the opposition's conspiracy of unseat the government. The police mindlessly started to arrest mass people under section 86 and 100 of the Dhaka Metropolitan Police Ordinance 1976 and more than 7000 people were arrested at that time. Some of them were sentenced without producing before the court and some of them were shown arrested in different cases filed earlier. Ain o Salish Kendra (ASK) along with the other human rights organizations filed a writ petition challenging the unlawful and arbitrary arrest of the mass people by the law enforcing agencies under section 86 and 100 of the Dhaka Metropolitan Police Ordinance 1976 and stated that this unlawful and arbitrary wholesale arrest of the mass people is violation of the fundamental rights of equality before law, equal protection of law, protection of right to life and personal liberty , protection in respect of trial and punishment and freedom of movement which are guaranteed under the Article 27,31,32, 35 and 36 of the constitution respectively. The petitioners also asked for a declaration that the provisions of the Section 86 of this Ordinance is ultra vires of the constitution.

After hearing both the parties, the court issued *Rule Nisi* and directed the respondents to release the detainees and with this direction the purpose to release the detainees were served. But the misuse of power by the police in unlawful and arbitrary arrest is unredressed since the case is still pending for final hearing.

In *Bilkis Aktar Hossain v Bangladesh*[75] case, unlawful preventive detention of a person under Special Powers Act, 1974 was challenged. In the original constitution of 1972, there was no provision for preventive detention. In 1973, by the second amendment of the constitution, in the Article 33, the provision for preventive detention has been inserted and subsequent to this amendment, legislature has been enacted containing the provisions of preventive detention. The Special Powers Act, 1974 is the only legislature which contains provisions for preventive detention. In this Act, the executive is authorized to detain a person not

[74] Writ petition No. 2191 of 2004

[75] (1997) 17 BLD (HCD) 344

for any prejudicial act he has already committed but for such prejudicial act which is apprehended to be committed by him. A detention order may be given to a person without any trial by the court. It depends on the suspicion of the executive about a person that he may do any act prejudicial in nature.

The fact of the case is that, on 2nd March 1997, BNP leader Dr. Khondokar Mosharaf Hossain was arrested without warrant. He was sent to Dhaka Central Jail but he was uninformed about his preventive detention. On 28th March 1997, he was informed about his detention under section 3(2) of the Special Powers Act, 1974 for alleged delivering of provocating speech in a public gathering due to which his followers vandalized the vehicles and endangered the life of the people in Dhaka city. There was also allegation of financing in subversive activities and engagement in conspiracy to destruct the energy and the economic sector of Bangladesh. Bilkis Akter Hossain, his wife, filed a writ petition against this detention of Dr. Mosharaf on the grounds that this detention order constituted the violation of his fundamental rights guaranteed under the constitution particularly the right to life and liberty, freedom of movement and freedom of thought, conscience and speech. Moreover, it was argued that being alleged to be a terrorist leader he was defamed. The petitioner also claimed compensation for this defamation.

After hearing both the parties, the court found that the detention order was politically motivated and as such the same was invalid and without lawful authority. The court also found that during the detention, the detenu was subjected to defamation and his political image got damage. He also suffered physically and mentally. In the judgment the court held that the detention was illegal and awarded compensation of one lakh taka to the detenu.

The order of compensation for the illegal detention created a significant effect on Public Interest Litigation (PIL) filed against the illegal detention. Later in several cases of illegal detention, the court gave the order for compensation.

Extra Judicial Killing also challenged by filing PIL. In *ASK and others v Bangladesh and others*[76] case, the petitioners challenged the extrajudicial killing by the law enforcing agencies in the name of crossfire or encounter. In cases of such crossfire, people often die under the custody of the law enforcing agencies though in every case the law enforcing agencies tell a common story of gunfight with the miscreants and self-defense of the law enforcers. But there is allegation that the incidents of killings in the name of cross fires are staged by them.

The Constitution of Bangladesh provide equal protection of law under article 27. Article 31 of the constitution provides that no action detrimental to the life, liberty, body reputation or property of any person shall be taken except in accordance with law. Article 32 of the constitution provides protection of life and personal liberty save in accordance with law. These rights are inalienable and nobody has the right to violate those. But it's a matter of great sorrow that the law enforcement agencies continuously violating the supreme law of the state i.e. the constitution by misusing their power. Culture of non-accountability and impunity is one of basic causes of such misuse of power by the law enforcers since 2004. As per the statistical reports of Ain o Salish Kendra (ASK) from 2004 to 2010, 1166 persons were subjected to extrajudicial killing by the law enforcing agencies.[77] This organization also claims that 1736 person have been extra judicially killed in between 2013 to 2019.[78]

Ain o Salish Kendra (ASK) along with other human rights organizations filed this writ petition against abusive extra-judicial killings by the Police and Rapid Action Battalion (RAB) in the name of cross-fire / encounter by violating fundamental rights guaranteed by the constitution of Bangladesh. In this case, the petitioners submitted the several years' statistics of extrajudicial killings by the law enforcing agencies and their fact finding reports in incidents of such killings along with the petition.

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[76] Writ Petition No. 4152 of 2009

[77] Abu Obaidur Rahman (2012), " Jonosartho Mamla" (Public Interest Litigation)4th ed. Dhaka, Ain o Salish Kendra (ASK), p. 301

[78] Ain o Salish Kendra (ASK) (2013-2019). Statistical Report on Death by Law Enforcing Agencies. http://www.askbd.org/ask/

After initial hearing, the court issued a *Rule Nisi* calling upon the respondents to show cause as to why the extra-judicial killing in the name of cross-fire / encounter by the law enforcing agencies should not be declared to be illegal and why departmental and criminal actions should not be taken against the persons responsible for such killing. No reply has been submitted yet on behalf of the respondents. The case is pending for final hearing.

5.3 Right to Life: Right to Livelihood and Shelter Perspective

Generally right to life means right to survive. But in modern time the concept of right to life has been changed. In *Munn v People of Illinois* Field J. explained the concept of term "life" as something more than animal mere existence.[79]

In Bangladesh, the court also expanded the meaning of the right to life. The court gave observations in different cases that right to life includes so many things to enjoy life with its full measure along with right to livelihood and shelter, though the constitution doesn't traditionally incorporate the right to livelihood and shelter as fundamental right rather a basic necessity and fundamental principle of the state polices. In Bangladesh the state policies cannot be enforced in court. But the High Court Division applied its conscience in interpreting the fundamental right namely "right to life" and included the right to shelter and livelihood in it and opened the door for the people to go to the court for ensuring the same.

Bangladesh is a most densely populated country. High population growth created a wide landlessness in the rural area. In addition, the natural disaster, unemployment or less income opportunities, unstable condition of rural agricultural sector etc. make the rural people extremely poor and compel them to migrate in the urban areas in search of income. Having nowhere else to go, these migrated rural poor people routinely turns to the slums and thus squatter settlement for shelters grew up in the public and private land.

[79] (1877) 94 US 113

Slum residents are deprived of basic amenities like water, electricity, and gas. High population density and unhealthy conditions make their lives miserable.

But the slum dwellers provide essential service to the urban people and economy in many ways. They contribute in GDP by functioning both in the formal and informal sectors for example as major work force in the readymade garment sector, domestic help, transportation etc.

But these urban poor are always neglected and never get proper attention in the government's development projects. Rather they often face the eviction either by the government authorities or by the private concerns. The eviction process often includes demolition of houses, physical and mental abuse of the slum dwellers. In most of the cases, they are not even served any prior notice of evection from the concerned authorities. The eviction makes the urban poor homeless with loss of their household belongings, businesses , shops and employment opportunities thus makes them deprive of their shelter and livelihoods.

The slum dwellers who are deprived of all basic needs, don't have enough knowledge and money to file a case and bear the cost of the litigation. In this situation, some human rights and legal aid organizations come forward to help the slum dwellers to ensure and secure their right to livelihood and shelter by filing PILs. For example, *Aino Salish Kendra (ASK) and others v Bangladesh and others*[80]case.

In 1999, the Ministry of Home Affairs demolished the slums in the Dhaka city namely *Balmat Basti, Railway Barrak* and *TTpara Basti* and evicted a large number slum dwellers without prior notice required by law and initiative of rehabilitation or alternative accommodation. As a consequence, a thousands of people became homeless with all others obvious stigmas. Three human rights and legal aid organization namely Ain o Salish Kendra (ASK), Odhikar and Bangladesh Legal Aid and Services Trust (BLAST) along with the two evicted

[80] (1999)19 BLD 488

slum dwellers filed a PIL before the High Court Division challenging this wholesale eviction of the slum dwellers.

The petitioners submitted that the wholesale demolition was the violation of the fundamental rights regardlng right to equality before law, right to protection of law and right to life and liberty guaranteed under the article 27, 31 and 32 of the constitution. The eviction was also the contrary to the Article 11, 15 and 19 which speak of democracy and human rights, basic needs and livelihoods and fundamental principles of state policies.

The petitioners further submitted that the wholesale eviction of the slum dwellers was also contrary to the National Housing policy, 1993, as it recognized the necessity for slum improvement and prevention of slum eviction without proper rehabilitation.

In its judgment, the High Court Division opined that slum dwellers right to life, shelter and livelihood are in consonance with the fundamental principles of state policies and it is the responsibility of the state to improve the standard of living of the people including shelter, food, medicine, education etc. and to secure the social welfare by realizing of fundamental rights to life and livelihood. The court recognized that the slum dwellers contribute to the national economy by engaging themselves as day labourers, rickshaw pullers, garment workers, handicrafts workers and as house maid etc. and they should be rehabilitated as far as possible in the spirits of our constitutional commitments.

Referring to an Indian case *Olga Tellis -v- Bombay Municipal Corporation*[81] the High Court Division observed that though constitutional directive was not judicially enforceable but the right to life includes the right not to be deprived of a livelihood.

[81] (1985) 3 S.C.C. 454

Our High Court Division also made several recommendations for the government to rehabilitate the slum dwellers which are as follows:

1. The government should develop a master guidelines, or pilot projects, for resettlement of the slum dwellers;
2. The plan should allow evictions to occur in phases and according to a person's ability to find alternative accommodation;
3. Reasonable notice is to be given before eviction;
4. The government should clear up slums beside the railway lines and roads, but resettle these slum dwellers.[82]

However, the court recommended the government to rehabilitate the slum dwellers but it did not made any direction that slum should not be evicted.

In Kalam and others v Bangladesh and others[83]case, the reflection of the judgment in *Ain o Salish Kendra Case*is found. The petitioners filed this PIL challenging the eviction threat of a slum in Dhaka city without prior notice. In this case the High Court citing the *Ain o Salish Kendra Case* ordered to stop the eviction process and allowed the slum dwellers to continue residing in that slum. The Court held that all citizens are equal in the eye of law and therefore the slum dwellers should not be deprived of life including food, shelter, health-care, education and which is fundamental in nature.

The reflection of above discussed view of the court was also found in the case of *Aleya Begum v Bangladesh*[84] and *Modhumala v Bangladesh and others.*[85]In Aleya Begum's case the High Court held that no one should be evicted without his or her will and in Modhumala's case the High Court held that before eviction prior notice within a reasonable time is must and without any rehabilitation, eviction of slum dwellers is unlawful.

[82] Ibid 80
[83] (2001) 21 BLD 446
[84] (2001) 53 DLR 63
[85] (2001) 53 DLR 540

In *Bangladesh Society for Enforcement of Human Rights (BSEHR) v Bangladesh*[86] case, the High Court also extended its hand to secure the right to shelter and livelihood of the sex workers in Bangladesh. In 1999, one day in the month of July, police raided the Nimtoli and Tanbazar brothels of Narayangonj at mid night. They forcefully entered into the rooms of the residents of the brothels and without giving any time dragged the sex workers and their children onto the street and started to beat. Police forcefully pushed the sex workers and their children into some waiting buses and took them different vagrant homes and government shelters in excuse of their rehabilitation. In the vagrant homes, they were denied to meet their family members.

The Bangladesh Society for Enforcement of Human Rights (BSEHR) filed writ a petition challenging the wholesale and forcible eviction, unlawful arrest and detention of women sex workers and their children. The petitioner submitted that this forcible eviction, arrest and detention of the sex workers in the vagrant home were violative with the right to equality before law, equal protection of law and right to life and liberty including livelihood guaranteed under articles 27, 31 and 32 of the Constitution of Bangladesh.

Relaying on the judgments of the slum eviction cases, the court held that the wholesale and forcible eviction and taking away and detention of the sex workers had been done without lawful authority and violated their right to life and livelihood and also the right to privacy in particular right against the forcible search and seize of houses.

The court declared that the wholesale eviction of sex workers from Tanbazar and Nimtoli had deprived them of their livelihood, and right to life .

Thus, the court expanded the definition of right to life by included the right to livelihood and shelter in its periphery and helped the poor people to vindicate their right to livelihood and shelter as right to life.

[86] (2001) 53 DLR 1

PIL has some success in the pending cases also. In some pending cases, the court issued orders of stay and status quo against the eviction process till disposal of the rule and thus it has been possible to stop the eviction processes of the slum dwellers for the time being. For example in *ASK and others v Bangladesh and others*[87] case, a notice has been served by a government authority to the 1, 00,000 dwellers of *Korail Basti* in Dhaka city asking them to vacate the slum. The notice contained threat of forceful eviction in case of failure to comply the notice by the slum dwellers. Ain o Salish Kendra (ASK) along with slum dwellers filed a writ petition against the threat of eviction. After the primary hearing of the petition, the High Court Division issued a *Rule Nisi* and stayed the notice till disposal of the case. Subsequently the government gave up the eviction process in *Korail basti*. The case is now pending for final hearing.

Following this way i.e. by obtaining the order of stay of eviction drives from the court, the thousands inhabitants of *Kallayanpur Pora basti, Mohakhali Sattola basti* along with some other slums are continuing their living and livelihood in the slums.

5.4 Prisoner's Right

The condition of the prisons and their inmates in Bangladesh are deplorable with over-crowding, poor hygienic condition. Furthermore, there are thousands of prisoners languishing in jails without trail for a long time. Some others are languishing after serving out their terms of conviction. In such deplorable situation of the prisoners the human rights organizations have come forwarded to ensure the rights of the prisoners by filing PILs.

In *Salma Sobhan v Bangladesh and others,*[88] *Ain o Salish Kendra (ASK) v Bangladesh and others*[89] *and Ain o Salish Kendra (ASK) v Bangladesh and others*[90]cases, the petitioners challenged the continuous use of bar fetter to

[87] Writ Petition No. 9763 of 2008
[88] Writ Petition No. 2678 of 1997 (unreported)
[89] (2007)27 BLD 584
[90] Writ Petition No.3421 of 2001

prisoners. These cases were the pioneer cases by which the irregularities of prison administration and the violation of rights of the prisoners have been challenged.

According to the Rule 718 of Jail Code, the jail authority may apply link fetter, bar fetter and cross-bar fetter to the prisoners and as per the Rule 719, jail authority may continuously impose link fetter and bar fetter for the maximum period of 7 day and in case of cross-bar fetter the maximum period of continuous imposition is two hundred and forty hours. Moreover the Rule 720 provides that if it is necessary to impose fetter to a prisoner again then there must be a ten days gap between the previous imposition and the later imposition.

In *Salma Sobhan v Bangladesh and others*[91] case, the brief story is that Raju Ahmed Pannu, a convicted prisoner was continuously restrained in bar fetter for 33 months. The petitioner, being the then executive director of a human rights organization Ain o Salish Kendra (ASK) filed a writ petition challenging the illegal use of bar fetter to Pannu. High Court directed the jail authority to make Pannu free from bar fetter and after 3 years he has been freed from bar fetter as per the court's verdict.

The brief history of the case namely *Ain o Salish Kendra (ASK) v Bangladesh and others*[92] is that the Fazlu alias Hafizur Rahman was a convicted for imprisonment of 18 years in two cases. He was found in continuous bar fetter for 33 months from his date of his conviction. He requested the jail authority several times to free him from bar fetter but the jail authority refused his prayer showing the lam excuse that many cases were pending against him.

Ain o Salish Kendra (ASK) also intervened into the matter and filed the writ petition against the use of bar fetter for a continuous period of 33 months on Hafizur and subsequently he was freed from bar fetters by court's order.

[91] Ibid 88
[92] Ibid 89

The fact of *Ain o Salish Kendra (ASK) v Bangladesh and others*[93]case is that a person named Shahin was arrested in 2000 and at that time jail authority continuously restrained him in bar fetter for 18 months in excuse of security of the prison.

Ain o Salish Kendra (ASK) filed writ petition against this incident and the High Court directed the jail authority to make him free from bar fetter.

In all these three cases, Ain o Salish Kendra (ASK)questioned the constitutionality of imposition of bar fetters (a punishment for prison offences as provided by Section 46 of the Prisons Act, 1894) for the breach of fundamental rights guaranteed in articles 27, 31 and 35(5) of the Constitution.

In Writ Petition No. 2852 of 1997[94] (Hafizur Rahman's case), the high court held the use of bar fetter according to law does not amount to an infringement of the fundamental right and it completely ignored the impact of the Constitution's article 35(5) on the consequences of bar fetters. But Hafizur was freed from bar fatter.

Against this judgment, Ain o Salish Kendra has preferred an appeal before the Appellate Division and the appeal is now pending for hearing.

PIL has also been filed in the issue of lunatic prisoners. In *Ain o Salish Kendra (ASK) and others v Bangladesh and others*[95] case, the petitioner filed the application challenging the unlawful detention of undetermined number of mentally disordered (mostly lunatics) persons in various jails of Bangladesh simply for loitering with a mentally disordered condition.

At the time of the filing this writ the petition the Lunacy Act, 1912 (repealed in 2018 by The Mental Health Act 2018) was in force and the petitioner showed in the petition that as per the provisions of the Lunacy Act, 1912, the

[93] Ibid 90
[94] Ibid 89
[95] Writ Petition No. 4269 of 2005

government has the obligation to refer the mentally disordered prisoners to the asylum for medical treatment.

The Mental Health Act, 2018 also contains the right of such persons suffering with mental disorder. As per the Section 17 of the said Act, the representative of the authorized local government organization of the area concerned shall send the mentally disordered person, who is guardianless or adressless, to the nearest mental hospital. If any person appears as dangerous due to his mental disorder, police officer having the territorial jurisdiction shall take him to his own custody and sent him to nearest mental hospital.

But the government's concerned authorities have failed to ensure the rights of the lunatic prisoners as per law, and in consequence, a large number of mentally handicapped persons are detained in jail without any allegation instead of getting treatment in an asylum or mental hospital. As a result, their mental health condition are deteriorating day by day. This is clear violation of their fundamental rights guaranteed under the Constitution of Bangladesh.

After a primarily hearing of the case, the court issued a *Rule Nisi* and directed the Inspector General of Prison to submit a report before the court about the mentally disordered persons detained in different jails and the jail authority submitted the same before the court. The hearing of the case has been finished long before but judgment is yet to be given.

PIL has been brought in the issues of prison condition and *Ani o Salish Kendra (ASK) v Bangladesh and others*[96] case is a good instance of that. In Bangladesh, there are 68 jails amongst which 13 are central jails and 55 are district jail. But all of those are overcrowded. The prison population is more than 2 times over than actual capacity. Moreover, the standard of hygiene and sanitation is very low in jails. Medical facilities are very poor inside the jails.

[96] Writ Petition No. 3679 of 2001

The situation was almost same in 2001 when the above mentioned case was filed. The petition was filed with the aim to ensure the decent environment of the jails, the accountability of the jail authorities and the rights of the prisoners. The petitioners submitted in the case that the Jail Code contains the provisions of adequate space and standard food for the prisoners (Rule 1179, 1181, 1092-1147). This Code also provides the provisions of safe drinking water and hygienic safety for the prisoners (Rule 1206, 1208, 1210). But the jail authority is indifferent to comply with those provisions of law and their non-compliance of the said provisions is the violation of the fundamental rights of the prisoners.

After hearing the parties, the High Court Division issued Rule Nisi calling upon the respondent to show cause as to why they should not be directed to take necessary steps for the development of the prisons condition and the fundamental rights of the prisoners consistent with the national and international laws. A long time has been passed but the final hearing of the case is yet to be held.

5.5 Women's Right

Public Interest Litigation (PIL) has been used as a strong strategic tool for upholding women's Right in Bangladesh Our constitution guarantees equal rights of women with men [art. 28(2)],. But the socio-cultural of Bangladesh and values not only treat women differently, but also influence policy making initiatives thereby creating different legal standards for men and women. Despite the fact that the constitution states in unequivocal terms that there shall be no discrimination on the basis of race, religion, ethnicity or sex, there exists blatant discrimination against women in the sphere of personal law. State's failure to intervene in order to redress these inequalities or discriminations is sought to be justified on the grounds of religion, culture and tradition. This has reinforced women's invisibility and oppression and badly affected the rights of the women in public spheres. Women are prevented from exercising their rights in the public spheres from fear of repercussion in their private lives. They forge their right to education, health, work and also to economic well-beings because of the repressive conditions in which they live. Most of them even denied effective participation in the social

developmental and political process of the country. Women carry double burden of poverty which gives birth of high range of violence against women. Deep-rooted prejudice and social attitudes make crimes against women difficult to control. Poverty, discriminatory attitude, legal and institutional barriers, social stereotyping, cultural norms and the lack of knowledge cause less access to justice to women.

In this circumstance, PIL is the very useful device to protect and ensure the rights of women. In Bangladesh many PILs have been filed to secure the rights of the women.

Mohammad Tayeeb and another v Bangladesh and others[97] case is one of the landmark case in the PILs history of Bangladesh. Through this PIL, torture to the women in the name of *Fatwa* has been addressed. In 2001, a news report has been published in the *Bangla Bazar Patrika*, a national newspaper, stating that a resident of Naogaon District out of anger uttered "*talaq*" to his wife but continued their conjugal life. But the local influential persons imposed *fatwa* of *hilla marriage* (interim marriage) upon the couple and forced the wife to marry another man. The ruling of this fatwa ran contrary to section 7(6) of the Muslim Family Laws Ordinance 1961, which does not require an intervening marriage in such a situation. Ain o Shalish Kendra (ASK) and Dr. Kamal Hossain were added as intervenors in the case and assisted the court for ends of justice,

After this above mentioned incident came to light by way of the news-report, a High Court Division Bench of the Supreme Court issued a *Suo Moto Rule* and later, in its judgment, the High Court declared all fatwas, including the instant one, to be unauthorized and illegal.[98] The court also made some recommendations helpful for curbing the fatwa violence and misuse of religion.

After this judgment, the government was unwilling to file appeal but two individuals namely Mufti Mohammad Tayeeb and Moulana Abul Kalam filed two appeals separately as third parties.

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[97] (2015) 23 BLT (AD) 10 .

[98] Editor, The daily Banglabazar Patrika v Deputy Commissioner, Nagaon 21 BLD (HDC) 45

After hearing the *Ulema Karims*, the *Amicus Curiae* and the learned senior advocates, the Appellate Division allowed the appeal partly in 2011.[99] But in this judgment, significant opinions have been given by the court in respect of banning all kind of fatwas and of issuance of *Suo Moto Rule* by the High Court.

In respect of the question that whether issuance of all kind of *fatwas* is illegal or not, the Appellate Division held that Fatwa may be issued only in religious matters and it must only be issued by educated persons. Fatwa is just an advice and it may be accepted voluntarily not by force and it is not binding to anyone. Coercion or undue influence in any form to pressure an individual to accept a *fatwa* is forbidden.

The Court also strictly prohibited imposition of any physical or mental punishment in pursuance to *fatwa* and declared it as punishable offence.

Another objection was raised in this appeal that since the Article 102 (2) requires application to pass an order by the High Court, the issuance of the *Suo Moto Rule* by the High Court Division instant case was misconceived without entertaining an application.

A.B.M Khairul Haque C.J held that in case of infringement the fundamental rights of a citizen the High Court Division has power to issue a Suo Moto Rule by taking cognizance of a newspaper report, postcard, or other written material.

After the judgment, the incidents of *fatwa* have been drastically reduced.

Another instance of PIL for securing women's rights is *BLAST and others v Bangladesh and others*[100]case, where a very inhuman and disgraceful violation of women right has been addressed. The petitioners filed the case challenging the use of unscientific *two finger test* for rape victim as it is violative of fundamental rights as guaranteed under articles 27, 28, 31, 32 and 35(5) of the Constitution. Generally, the two finger test is employed by a doctor to examine the survivor's

[99] Ibid 97

[100] Writ Petition No.10663 of 2013

history of sexual intercourse. This is an unscientific test and has no forensic value. Rather it could cause additional pain and mimic the original act of sexual violence, leading to re-experience, re-traumatization and re-victimization to the survivor. This test is also ineffective in case of a married woman victim. Moreover, the practice disgraces the unmarried woman by portraying her as being immoral if the result of the "two-finger test" indicates that the individual is sexually active.

This practice of two finger test was continued for years in Bangladesh. Finally in 2018, the High Court delivered its verdict banning the controversial use of "two-finger test" conducted for the rape victims to prove the rape. The High Court declared that the test is unscientific and has no evidential value and legal merit. The court also directed the government to issue a circular regarding this order and the lower court judges and investigation officer of the rape cases will follow that.

It also asked the lawyers not to ask any such question to the rape victims during the trial proceedings so that their dignity is hampered.

Another instance is *Naripokkho and others v Bangladesh and others*[101] case. In this case, another serious refusal to the rape victims has been addressed. The fact of the case is that after completion of work while a woman of 21 years from the Garo community was waiting for bus stop at night, she was forced to get into a microbus by two boys and raped by them along with three others inside the microbus and dumped from the vehicle after one and half hours at around 10.45 pm. At around 4.00 am she went to different police stations to file complain but everywhere she was refused on the ground that the occurrence took place within the jurisdiction of another police station. Finally, she was successful to lodge her complaint with *Vatara* Police Station at around 12.30 pm after waiting for three hours there and her medical examination was conducted after more than 24 hours of the incident. This incident occasioned widespread protest by the cross-section citizens and the right groups in demand of safe environment for women and girls, particularly the working women, especially the women from the ethnic

[101] Writ Petition No. 5541 of 2015

community. The petitioners moved before the High Court against the delay of police in taking of her complaint which violated her fundamental rights to equal protection under the law.

In its judgments, the High Court held that the police's refusal and delay to lodge FIR is violation of Section 154 of the Code of the Criminal Procedure (CrPC), 1898 and the delay in medical examination of a rape victim is violation of the Section 32 of the Nari o Shishu Nirjatan Daman Ain, 2000.

The court observed that the existing procedural framework to ensure effective protection of the victims of rape, sexual violence or other gender based violence are not adequate. In this context, in order to fulfill the gap, the court issued 18 directives in form of guidelines for the protection of the rape victims and asked the authorities to follow the guidelines until the specific law is made.

BNWLA v Bangladesh and others[102]case is another landmark case in the history of women rights of Bangladesh. This writ petition was filed in the context of non-existence of legislative provisions to address sexual harassment of women and girl in work places and educational institutions. Before 2009, there was no legislation to establish formal structure to make complain against the sexual harassment in workplaces and educational institution. Women suffered in silence and quailed to raise their voice against such harassment in workplaces and educational institutions for not having any place to seek relief. In this circumstances, the women and human rights organization began to shout focusing the acuteness of the problem and highlighting how the sexual harassment was taking place in different organizations and institutions. Different newspapers started to bring out the stories of educational institutional campuses stating that in the absence of any formal structure of complaint hearing, many students keep incidents of sexual harassment to themselves out of the necessity to avoid social stigma. But the situation remained the same. In this context one women rights organization namely "Bangladesh National Women Lawyers Association (BNWLA)" brought this writ petition addressing the failure of the government to

[102] (2009)14 BLC 694

adopt guidelines, or policy or enact proper legislations for protecting and safeguarding the rights of the women and girl from sexual harassment at work places, educational institutions and other places. The organization also prayed for direction upon the respondents to take immediate steps for formulation of guidelines or the enactment of proper legislation to address sexual harassment.

After hearing of the case, the High Court delivered the milestone judgment in 2009 observing that due to inadequacy of safeguards, sexual abuse and harassment of women at work places and educational institutions are taking place, and the constitutional mandate to build up a society with the enabling environment of gender equality and free from gender discrimination are being undermined every day in every sphere of life. In this context the High Court issued certain directives in the form of guidelines and directed to follow and observe at all work places and educational institutions till adequate and effective legislation is made in this field.

Advocate Salauddin Dolon v Bangladesh and others[103] case is another instance of PIL against sexual harassment to women. The petitioner moved the case with a news item published in a daily newspaper stating that in an open meeting, the Upazila Primary Education Officer scolded the Headmistress of a Primary School by uttering the word, "prostitute" as she did not covered her head by scarf. It was learnt that the said Upazila Education Officer directed all female teachers to attend school wearing henceforth a scarf. When fifty female teachers present there protested, the Education Officer, pointing at the Headmistress of a Government Primary School, declared her as prostitute. She could not tolerate the shock and became fainted there.

In its judgment, the High Court Division observed that in the absence of any legal sanction, attempts to coerce or impose a dress code on women clearly amounts to a form of sexual harassment.

[103] (2011) 63 DLR 80

The court directed the Ministry of Education to ensure that the women working in different education institutions under it both in public and private sectors are not subjected to similar harassment by their superior and others, to ensure that the women working in educational institutions under in both public and private sectors are not subjected to wearing veil or covering their head against their will and that it is their choice to do or not to do so. The court also directed the said ministry to implement the Sexual Harassment Prevention Guidelines formulated by the High Court in all educational institutions under it both in private and public sectors and to report through the Registrar of the Supreme Court about the action taken in these regard.

PIL has been filed for ensuring the equality and women's empowerment. *Shamima Sultana Sheema and others v Bangladesh and others*[104] case is a good instance of it. The Constitution of Bangladesh provides equal opportunities for women to participate in politics and public life. Bangladesh Government also assures reserved seats for women in parliament and in local government by passing legislation and encourages women's increased participation in the political sphere to accomplish the gender equality. But the government, by its actions, sometimes creates discrimination to the women.

In 2002, the petitioner along with nine other women were directly elected by the voters in the reserved seats of ward commissioner in Khulna City Corporation Election. In the same year, the Ministry Local Government, Rural Development and Cooperative (LGRD) issued a circular outlining distinctions between the duties and functions of the commissioners elected from general seats and reserved seats. This circular gave the authority to the ward commissioners elected from general seats to issue certificates of birth, death, succession, nationality and character; to form and preside over law and order committees in each ward; and to assist the City Corporation in conducting all types of counting including census counts. The circular undermined the women ward commissioners and deprived them from exercising certain authorities in their respective wards. The women ward commissioners complained about the discrimination but failed to

[104] (2006) 14 BLT (HCD) 33

secure support from both the central government and the City Corporation. The women ward commissioners then knock the door of the High Court as their last resort and filed a writ petition challenging the discriminatory provisions of the LGRD's circular. Ain o Salish Kendra (ASK) and Bangladesh Mohila Porishad intervened into the matter. The petitioners and the intervenors argued that this circular created distinction and gender discrimination between general and reserved seats which violated Article 28 of the constitution.

In its judgment, the court declared the circular unconstitutional as being violative to the fundamental rights of equality and non-discrimination. The court also held that our constitution ensures the equal right of the man and woman and as such the duties and the responsibilities of the ward commissioners of general seats and women reserved seats must be equal and same.

5.6 Child Rights

In Bangladesh, though the constitution and several laws guaranteed various rights for the children, a large number of children are deprived of their basic human rights due to poverty, unacceptable health, nutrition and education as well as social conditions. Moreover children are subjected to severe forms of violence both physical and mental at home, in the work place, in institutions and other public places. The violence against children irrespective of age, sex and class increasing in an alarming rate. Many efforts made by government and non-government organizations in ensuring the rights of the children but a society free from torture and violence to the children remains far away.

In Bangladesh, many PILs have been filed to ensure the rights of the children. *BLAST and ASK v Bangladesh and others*[105] case is an example for PIL in child rights. This case was filed against the imposition of corporal punishment to the children in the educational institutions which resulted in the incidents of death in way of suicide as well as severe injury to several children.

[105] (2011) 63 DLR 643

The High Court delivered its judgment in 2011, declaring the corporal punishment as violative of the fundamental rights of the children as guaranteed under the article 27, 31 32 and 35(5) of the constitution.

The court also directed the Ministry of Education to define the imposition of corporal punishment upon any students as 'misconduct'.

As an impact of this judgment, the government has formulated a policy prohibiting the corporal punishment in the educational institutions. Now the corporal punishment in the educational institutions has been drastically reduced and the guardians and teachers are much more aware than before.

In *Ain o Salish Kendra (ASK) and another v Bangladesh and others*[106] case, engagement of children in the unhygienic condition of *Biri* factories has been challenged. Though Bangladesh adopted the law prohibiting the child labour, because of the extreme poverty, the children of Bangladesh are forced to engage in works in different sectors especially in the informal sector. Many children work in hazardous condition in *Biri* (local tobacco product) factories. In 2003, a news report had been published in the Daily Ittefaq that there were 25000 child workers aged between 4 to 14 years in the *Biri* factories situated in Haragach, Rangpur and they worked under unhealthy and unhygienic condition risking their lives. In same year, the daily Prothom Alo also published a report speaking of 10000 child workers of *Haragach Biri* factories who lost their childhood. Another report was published in 2004 in the Daily Jugantar stating that 15000 child workers were carrying on work within the *Biri* factories of Haragach, Rangpur in inhuman condition. Following thse news reports, Ain o Salish Kendra (ASK) and *Aparajeyo Bangladesh* filed a writ petition challenging the failure of the government to comply with the provisions of labour law in ensuring the healthy, hygienic and safe working place for the workers of the *Biri* factories resulting in tuberculosis, jaundice, bronchitis, kidney infection, skin and eye diseases to the workers including the 25000 child workers.

[106] (2011) 63 DLR 95

The petitioners revealed that the air inside the factories was full of tobacco dust which caused high level nicotine in the blood system of the workers. About 30 *Biri* workers including 7 child workers died due to TB, bronchitis and different chest diseases in Rangpur in between 1999 to 2004.

The petition also exposed the exploitation of the *Biri* factory workers. It was found that a *Biri* worker earned 13.50 Tk. for preparing one thousand *Biri*. During hearing it was exposed that the parents living under the poverty line forced the children to work in the *Biri* factories for their livelihood and increase of income. They had no choice but to engage their children in such hazardous work due to extreme poverty.

In 2010, the High Court Division delivered its judgment directing the government to ensure compulsory education for the children employed in *Biri* factories by giving financial benefits to their families and to amend Bangladesh Labour Law, 2006 to include adequate deterrent punishment for the employers for violating legal requirements regarding the child labour and the safe and healthy environment in the workplace and also directed them to fix a reasonable remuneration for the *Biri* factory workers.

The High Court also directed the employers of factories to ensure healthy environment in the factories and provide adequate medical facilities and medical insurance to all employees.

Though the judgment is very positive but the situation remains the same. News reports[107] published in 2018 revealed that about 50 to 70 percent labour force in the *Biri* factories is children and the environment of the factories is still unhealthy and unsafe. The air inside the factories is heavily polluted and filled with tobacco powder and dust. Most of the labour including the children are suffering from bronchitis, asthma etc.

[107] The Independent (publish on 19.08.2019), "Abject poverty forces children to work in bidi factories"http://www.theindependentbd.com/arcprint/details/162869/2018-08-19 also see The Financial Express (published on 18.04.2018) in " 50-70 pc labourers are in bidi industry are children".https://thefinancialexpress.com.bd/trade/50-70pc-of-labourers-in-bidi-industry-are-children-1524026347

Another PIL in child rights issue is *Bangladesh Legal Aid and Services Trust (BLAST) and another v Bangladesh and others*[108] case where the petitioners challenged the death sentence of an accused which was given to him at his minor stage. The fact is that a 16 years minor boy namely Sukur Ali was convicted under section 6(2) of the Women and Children Repression Prevention (Special) Act, 1995 for murder after rape and awarded capital punishment by the trial court. The sentence was upheld by both the High Court Division and the Appellate Division. During the commission of the crime Sukur Ali was only 14 years old.

Section 6 (2) of *Nari-O-Shishu Nirjatan Daman* (Bishesh Bidhan) Ain, 1995, carried solitary provision of death sentence to the convict for killing any woman or child after rape. This section contained no other alternative punishment. So this section leaved no scope for the court to think about alternative conviction if it seemed fit to it and thus the section curtailed the discretionary power of the court. This *Nari-O-Shishu Nirjatan Daman* (Bishesh Bidhan) Ain, 1995, had been replaced by *Nari-O-Shishu Nirjatan Daman Ain, 2000.* The said Act of 2000 contains the provision of death sentence with an alternative punishment of life-term imprisonment for the same crime mentioned in section 6(2) of the Act of 1995. So a dilemma occurred after the replacement of the Act of 1995. Due to the saving clause provided under section 34 (2) of *Nari-O-Shishu Nirjatan Daman Ain, 2000* to protect the proceedings pending under the Act of 1995, the laws of 1995 and 2000 were running together containing the said difference in punishment for the same crime until the Appellate Division delivered its judgment in this case.

BLAST and the convicted Sukur Ali challenged the constitutionality of the Section 6(2) of the Women and Children Repression Prevention (Special) Act, 1995.The petitioners argued the case relying on the combined reading of article 26, 27, 31, 32 and 35 (5) of the Constitution. It was submitted that mandatory and solitary death penalty restricts the exercise of discretionary power of the judiciary and thus the section 6(2) is violative to the Part VI of the Constitution.

[108] 30 BLD (HCD) 194

In 2005, High Court delivered its judgment declaring that the section 6(2) of the *Nari-O-Shishu Nirjatan Daman* (Bishesh Bidhan) Ain, 1995 is ultra vires the constitution. It held in its judgment that-

> ...any provision of law which provides a mandatory death penalty cannot be in accordance with the Constitution as it curtails the court's discretion to adjudicate on all issues brought before it, including imposition of an alternative sanction upon the accused found guilty of any offence under any law.[109]

The High Court was pleased to stay the execution of the death sentence of Shukur Ali for two months and allow him to file an appeal before the Appellate Division and gave a certificate to that effect.

Subsequently, the petitioners filed an appeal and the Appellate Division allowed the appeal partly. Appellate Division declared that Sub-sections (2) and (4) of section 6 of the *Nari-O-Shishu Nirjatan Daman* (Bishesh Bidhan) Ain, 1995, sub-sections (2) and (3) of section 34 of the *Nari-O-Shishu Nirjatan Daman Ain, 2000* and section 303 of Penal Code,1860 ultra vires the Constitution.

The court also held that despite repeal of the Act of 1995, the pending cases and pending appeals may be held under the repealed Act, while dealing with the question of sentence, the alternative sentences provided in the corresponding offences prescribed in the *Nari-O-Shishu Nirjatan Daman Ain, 2000* shall be followed.

But the court did not review the sentence of Shukur Ali stating that there was no ground to commute Shukur Ali's sentence.

BLAST and Shukur Ali filed Review[110] petition against the judgment of the appeal especially in respect of the sentence of Shukur Ali. In Review, the petitioner submitted that since Shukur Ali was only 14 years old at the time of occurrence and was only 16 during the trial and therefore he was a minor and the section 6(2) and 6(4) of the Act, 1995 and Section 34(2) and 34(3) of the Act of 2000 have been declared ultra vires to the constitution, the question of imposition of death

[109] Ibid 108
[110] (2015) 4 LNJ AD 314 (Civil Review Petition No.76 of 2015)

sentence prescribed in respect of those offences in the Act, 1995 should not be arisen. Appellate Division reviewed the sentence and commuted the death sentence in life imprisonment considering his age at the time of occurrence and trial, non-involvement in prior criminal activity and long term incarceration in condemned cell.[111]

Bangladesh Legal Aid and Services Trust (BLAST) and another v Bangladesh and others[112] case is also filed against incarceration of the juvenile prisoners with the adults. In 2007, a news report was published in the Daily Star revealing that 420 juvenile prisoners were together with the adults prisoners in different jails across the country while the three Correctional Homes having accommodation capacity for 700 children had only 200 inmates. BLAST, along with Ain o Salish Kendra (ASK), filed a writ petition challenging the detention of 420 juvenile prisoners alongside adults in different jails.

The petitioners submitted that incarceration of juvenile prisoners together with adults violates Sections 48 and 55 of the Children Act, 1974,[113] Rule 962 of the Jail Code; and the fundamental right guaranteed under Article 31 of the Constitution.

High Court issued *Rule Nisi* calling upon the respondents to show cause as to why the detention of the 420 juvenile prisoners alongside with the adults should not be declared illegal and without any lawful authority and directed the Ministry of Home Affairs, Ministry of Social Welfare, Department of Social Services and Inspector General of Prisons to transfer juveniles to correctional centres.

[111] Ibid 110

[112] Writ Petition No.6373 of 2007

[113] Was in force during the filing of the writ petition. Repealed by the Children Act 2013

5.7 Worker's right: Work Place Safety Perspective

Work place safety is a fundamental right of the workers. The Bangladesh Labour Act, 2006 is the main labour legislation of the country. This Act contains the provisions related to the safety of the workers as well as the workplaces along with the other rights of the workers. Before enacting the Labour Act, 2006, the matters related to workplace safety were regulated by the Factories Act, 1965 and the Factories Rules, 1979. The Labour Act, 2006 consolidated 25 laws including these two and extended the scope of the legal protection relating to workers safety than before.

Besides, there are some other laws such as the Fire Prevention and Extinguishing Act, 2003, Bangladesh National Building Code, 2006, Bangladesh Labour Welfare Foundation Act, 2006, and Bangladesh Ship Recycling Act, 2018contain the provisions related to workplace and health safety of the workers. But in spite of these updated Acts which fulfilled most of the international standards, Bangladeshi workers often face safety problems as before.

PIL have been filed in different times to monitor the implementation of the safety measures as per laws and ensure the state's accountability towards the labour rights in particularly the worker's safety.

In *Salma Sobhan, Executive Director, Ain o Salish Kendra (ASK) v Bangladesh and others*[114] case, the petitioner challenged the failure of the respondents to protect the workers of the garments factories of Bangladesh from of fire incident and accident in the workplaces. The petitioner filed this case basing on the news reports published in several incidents of fire and accident occurred due to non-compliance of laws regarding safety measures and caused high number of death to the workers in the respondent-garments factories. It was submitted that within last few years about 134 workers died and thousands got injury due to more than 55 fire accidents took place in different garments factories across the country. In few factories, the petitioner's organization conducted investigation and found

[114] Writ Petition No. 6970 of 1997, Judgment delivered on 31 May 2001

that these accidents occurred due to failure of the factory managements to comply with the laws related with the safety measures of the work places. The failure of the government authorities particularly the Chief Inspector of the Factories and the Director General of the Fire Service and Civil Defense to ensure the compliance of the laws regarding the fire and other safeties in the garments factories was also found during investigation.

It was found that in most of the fire incidents the main exits of the factories were closed during the occurrence of the accidents. There were no free passage ways for escape in case of fire. No fire alarm or emergency exist in case of fire was found in the factories. Fire buckets and portable fire extinguishers were not maintained in those factories. There was no trained officer assigned for the proper maintenance and upkeep of fire-fighting equipment. All these constituted violation of Factories Act 1965 and the Factories Rule 1979.

In its judgment, the High Court accepted the petitioner's findings regarding the negligence and trend of violating the laws by the owners and the government authorities concerned and expressed that the death and the injuries of the fire victims in the garment factories could have been avoided if the authorities concerned had performed their statutory duties to ensure the safety measures in the garment factories.

The Court proposed to form an Inspection Committee for regular weekly inspections in the factories and to set another committee by the government at the national level to supervise the compliance of laws by the factory owners.

The Bangladesh Garment Manufacturers and Exporters Association (BGMEA) preferred appeal in the Appellate Division against this judgment. The appeal is now pending for hearing.

Another case is *Md. Kamal Hossain and v Bangladesh and others.*[115] The fact is that in 2005, a 9 storied factory building was collapsed at Savar resulting in death of 69 workers and injuries to 89 workers. This building was owned by Spectrum Sweaters Ltd and was used for the Spectrum garment factory. Investigation found that the building collapsed due to bursting of the boiler. Moreover, the building was designed for 4-storeyed but the construction was done for 9- storied, and the quality of concrete and other construction materials was poor. Four injured workers along with the human rights organizations such as ASK, BLAST and others filed this PIL against the failure of the concerned authorities to comply the construction laws and to undertake adequate and effective rescue efforts which constituted violations of the fundamental rights of the workers guaranteed under Article 27, 31 and 32 of the Constitution.

After a primary hearing, the court issued a *Rule Nisi* upon the respondents and directed them to submit reports before the court on legality of the construction of the building, ownership of the land and safety conditions of the building. The final hearing of the case is now ongoing.

Another case is *Ain o Salish Kendra and others v Bangladesh and others.*[116] The fact of the case is that fire was caught in a 4-storied building, used as the factory of KTS Textile and Garments, at the BSCIC Industrial Area in Chittagong. workers died in this fire incident. The building was dark, overcrowded and the corridors and stairways were cluttered with piles of raw materials, finished garments and machineries. The fire was caused due to electric short circuit and spread through the fabric and began to rage uncontrollably after igniting chemicals contained in drums kept by the stairs.

The company had no fire alarm though this was mandatory under the Factories Act. At the time of fire it was ordered by the management to lock the main entrance and exit of the build to prevent the stealing of fabrics. Having no other alternative way to escape, the workers were burnt to death.

[115] Writ petition No. 3566 of 2005

[116] Writ Petition No.2019 of 2006

The petitioners submitted that the respondents were failed to ensure the compliance of the fire safety measures in the factory as well as the measures relating to the health and safety of the workers. They also failed to prosecute the persons responsible for the death and the injury of the workers. All their failures were total violation of the fundamental rights of equality before law, protection of law and right to life guaranteed under the Article 27, 31 and 32 of the Constitution.

After perusing the petition and hearing the parties, the High Court Division issued a *Rule Nisi* upon the respondents and directed the concerned authorities to submit an investigation report regarding the cause of fire and the safety measures adopted by them and a report regarding complete account of compensation paid to the victims. The court also directed them to ensure medical treatment to the victims.

In this case, the court gave an observation that a National Committee should be formed as per the directives earlier given in *Writ Petition No. 6070 of 1997*[117] to monitor compliance of laws by garments factories .

In another case namely *Ain o Salish Kendra (ASK) and others v Bangladesh and others*[118] case, the petitioners moved an petition in the incident of devastating fire caught at a garment building namely Tazreen Fashion Factory at Ashulia, Savar, causing death to 112 workers and injuries to more than 200 workers there. It was found that violating the regulations, inflammable raw materials were stored on the ground floor where the fire started, and thus, the fire spread quickly, trapping workers on the floors above. At that time the exits was blocked. As a result death caused to the workers. Many also died or injured when leaping out of windows to escape the fire.

In this case the High Court issued *Rule Nisi* upon the and directed the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) to submit a report on compliance by garment factories with relevant safety laws and regulations.

[117] Ibid 114

[118] Writ Petition No. 15693 of 2012

Direction was also made to the government to explain steps taken for implementing the High Court's directives issued in 2001 in *Writ Petition No. 6070/1997*[119]in respect of safety and security of garment workers. The case is pending for final hearing.

In *Ain o Salish Kendra (ASK) and others v Bangladesh and others*[120]case, a petition was filed after the world witnessed the worst industrial disaster took place in Bangladesh. In 2013, an eight-storied building called the Rana Plaza at Savar collapsed due to structural failure in particular after developing cracks, causing death to at least 1135 persons and injury to more than 2500 persons and countless others remaining trapped in the wreckage. The building contained clothing factories, a bank, apartments, and several shops. The owners of the building were warned about a crack, and the shops and the bank on the lower floors were immediately closed after this warning. But the garment owners, ignoring the warring, compelled the workers to work in that unsafe building and it collapsed. Investigation revealed that the nine-storied building was built on swampy ground and it had the permission for six stories, the rest three floors were illegally built. Moreover, the building was built by using sub-standard materials and it was weak enough to stand up with the heavy-weight generators, chillers and boilers placed on the rooftop. At the time of accident the huge stacks of raw materials and finished items and the housing of more than 3500 workers at a time mounted the pressure on the weak foundations. At last the worst occurred finally when the six generators on the roof of the building started off due to load-shedding. They created massive shakes, which spread the crack on to other areas of the building and finally the building collapsed with the unfortunate poor workers.

A Division Bench of the High Court issued *Rule Nisi* upon the respondents to show cause as to why the victims should not be compensated and why legal action should not be taken against the persons involved. Apart from this, the court directed the Bangladesh Bank to imposing restrictions on withdrawal or transfer of

[119] Ibid 114
[120] Writ Petition No. 4390 of 2013

money by the owners of Rana Plaza and owners of the five RMG factories located there.

The Court also ordered the Inspector General of Police to submit a report on the legal steps taken by the government in respect of the collapse of Spectrum building in 2005, Phoenix building in 1997 and the fire incident in Tazreen Fashions Ltd in 2013.

5.8 Right to Life and Health: Right to Medical Treatment Perspective

Right to health is one of the basic parts of right to life. Without ensuring the right to health none cannot enjoy his or her right to life peacefully. Health and treatment are such basic needs that they cannot be excluded from the essential preconditions of a secured human life.

The constitution of Bangladesh recognizes right to health as fundamental necessity of every citizen. Article 15 of the constitution provides that it to be a fundamental principle of State Policy to improve the standard of living of the people including the basic necessities of life such as food, clothing, shelter, education and medical care.

Albeit the constitution considers the right to health as fundamental principles of state policies and it cannot be judicially enforceable, the modern interpretation of constitutional jurisprudence gives the constitutional sanction in favour of right to health as a fundamental right under the coverage of right to life guaranteed Article 32 of the constitution. It has been observed in a number of PILs that the right to life has already been construed in a wider sense to include right to health.

In *Dr. M. Farooque v Bangladesh and others*[121] case the High Court held that right to life under Articles 31 and 32 of the constitution not only means protection of life and limbs necessary for full enjoyment of life, but also includes

[121] (1996) 48 DLR 438

protection of health and normal longevity of an ordinary human being from manmade hazards unless that threat is justified by law. So if anybody in Bangladesh is deprived in enjoying his or her right to health which ultimately violating his right to life, he or she can go to the court under the Article 32 of the constitution in order to enforce his or her right. Apart from this, in case of inequality and discrimination or negligence in enjoying the health right, citizen can get the coverage of the Article 27 and 28 of the constitution.

In *Prof. Nurul Islam v Bangladesh and others*[122] case, the petitioner filed the case to ensure the enforcement of Section 3 of the *Tamakjato Shamogri Biponon Niontroner Jonno Pronito Ain,* 1988 which provides that all tobacco products and advertisements should have a statutory warning on the injurious effects of tobacco, in easily readable Bengali language.

The petitioner submitted that violating the conditions of section 3 of the said Act, the tobacco related companies were advertising their products in different spheres of media such as newspapers, magazines, television, radio, billboards and were sponsoring various kinds of cultural and sports programme. The petitioner also submitted that the State was violating the fundamental right to life by not protecting the health of its people. In judgment it was held by the High Court that right to life means right to sound mind and health and the state has a duty to protect the ordinary human beings from ill effect of tobacco related products. The Court also observed that all kind of advertisements of cigarette and cigarette related products are detrimental to life and body of the people and violation of the fundamental right to life and as such advertisements of tobacco related products are to be stopped.

In *Ain o Salish Kendra (ASK) v Bangladesh and others*[123] case, the petitioner challenged the failure of the government's concerned authorities to monitor the private clinics and diagnostic centres under the Medical Practice and Private Clinics and Laboratories (Regulations) Ordinance, 1982 and to prevent the medical negligence by those private clinics and diagnostic centres. The petitioner's

[122] 52 DLR (HDC) 413
[123] Writ Petition No. 624 of 2006

argument is that due to absence of proper monitoring the mushrooming private clinics and diagnostic centres are involved in various fraudulent and irregular practices resulting death and dangerous health difficulties to many people.

In this case the High Court issued a *Rule Nisi* calling upon the respondents to show cause as to why their failure to ensure compliance with the Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance, 1982 should not be declared illegal and without lawful authority and violation of fundamental rights under Article 27, 31, 32 of the Constitution Simultaneously, the court directed the Director General of Health to ensure compliance of the above-mentioned Ordinance.

In *Advocate Julhas Uddin Ahmed and others v Bangladesh and others*[124]case, the petitioners filed the writ petition challenging the insertion of service of Medical Centers, Dental Clinics, Pathological Laboratories and specialist doctors in the Schedule of the Value Added Tax (VAT) Act, 1991 as taxable services. The petitioners submitted that due to the said insertion, the medical centres, clinics, dental clinics and the pathologies were charging citizens Value Added Tax (VAT) for taking healthcare services. Moreover, the health service consumers were being overcharged for adequate treatment as a result of the application of VAT.

The petitioners also submitted that such type of insertion resulted in imposition of VAT upon the citizens for getting the medial treatment was a denial of state's primary duty as asserted in the Article 18 of the constitution to improve the public health and also beyond the scope of the fundamental principles of state polices and fundamental right guaranteed under Article 32 of the constitution.

In its judgment, the High Court held that imposition of VAT on citizens for providing health services is illegal. The High Court had also declared that the provisions of VAT Act 1991 for realizing VAT from patients for making any prescription or conducting pathological tests is the illegal and unconstitutional.

[124] Writ Petition No.1190 of 2009

The Government filed appeal before the Appellate Division of the Supreme Court against the judgment and the Appellate Division upheld the judgment of the High court Division holding "illegal" the realization of money as Value Added Tax from the patients for prescription and diagnosis.

5.9 Right to Life and Health: Right to Unadulterated Food Perspective

In Country like Bangladesh, adulteration of food with toxic chemicals is a common scenario and great threat to the public health. Culture of impunity, deep-rooted corruption and greed make the unscrupulous businessmen to be daring to adulterate foods without any fare of punishment. All most all basic food items are being adulterated unscrupulously with hazardous chemicals. Those toxic chemicals are not only damaging the major human organs like liver, kidney, and heart etc. but also are affecting children's mental and physical growth. These adulterated foods causing fatal diseases like cancer, hepatitis B, kidney diseases etc. to millions of peoples every year in Bangladesh. Not only are the foodstuffs, the life-saving medicines also being adulterated.

The Penal Code of 1860 made food adulteration punishable under Sections 272-276. But the implementation ratio of the punishment and the monitoring of compliance of the said laws is very poor. The government agencies have failed to impact visibly and the food adulteration become endemic in Bangladesh due to government agencies' indifference towards the issue over the past decade. In this circumstances human rights organizations, public spirited persons and the High Court itself intervened into the instances of adulteration of food in different times.

In *Dr. Mohiuddin Farooque v Bangladesh*[125] case, the petitioner moved the application for preventing the import and sale of milk powder containing radiation levels above the approved limit.

[125] (1996) 48 DLR (HCD) 438

The fact of the case in short is that the Danish Condensed Milk Bangladesh Ltd. had imported several consignments of skimmed milk into Bangladesh and after testing the radioactivity, the Radiation Testing Laboratory (RTL) of the Bangladesh Atomic Energy Commission found that in one of the consignments the radiation level was much higher than Government-mandated levels. Following the test result, the Collector of Customs ordered for reshipment of the consignment back to the Netherlands because it was unfit for human consumption. But shortly after the initial testing, the Atomic Energy Commission performed more tests on the consignment and had mixed results regarding the radiation level. However, the Atomic Energy Commission ultimately decided the consignment did not have to be reshipped. The Petitioner filed the case against such decision.

In its judgment, the High Court interpreted the Article 31 and 32 of the constitution stating the right to health as a part of right to life. The court held that no one has the right to endanger the life of the people, which includes their health, and normal longevity of an ordinary healthy person by marketing in the country any food item injurious to the health of the people. The court opined that the right to life under Article 31 and 32 of the Constitution not only means protection of life and limbs necessary for full enjoyment of life but also includes, amongst others, the protection of health and normal longevity of an ordinary human being. Thus the court recognized the right to health is a right to life and enforceable by the court.

In *BLAST and another v Bangladesh*[126] case, the petitioners alleged that though *Iodine Deficiency Diseases Prevention Act, 1989* requires that salt must be proportionately iodized before supply and sale in the market in order to combat iodine deficiency diseases such as goitre and cretinism amongst adults and children, but the manufacturers have failed to maintain the proportion of iodine in the salt and the government has failed to check and test the samples regularly to ensure the proportion of iodine in salt.

[126] (2005) 25 BLD (HCD) 82

The petitioners submitted that it is necessary to compel the respondents to perform their respective functions properly and meticulously and the defaulter companies should be prosecuted as per law.

The High Court delivered its judgment holding the respondents liable for their failure and directed the Ministry of Health and other relevant government bodies to perform their respective functions as per the provisions of the Iodine Deficiency Diseases Prevention Act, 1989 and the Rules 1994 to ensure the compliance of the said law to iodize salt before production and marketing for consumption of the people and to prosecute the violators as per law. The court further directed the respondents to prevent the unregistered manufacturers from producing, marketing and selling salt.

In 2009, another case of adulterated food was filed by Human Rights and Peace for Bangladesh (HRPB), a lawyer's organization. The case namely *Human Rights and Peace for Bangladesh (HRPB) v Bangladesh*[127] was filed for directions to the government to set up *Pure Food Courts* as mandated by section 41 of the Pure Food Ordinance 1959 (now repealed), and to appoint a *Public Food Analyst* as per the section 4 of the same Act.

The petitioner submitted that though it is the constitutional and statutory duty of the state to take initiatives under the Pure Food Ordinance, 1959 to prevent the food adulteration and to secure the life and health of the public, but the state has been failed to take such initiatives.

The High Court in its judgment directed the Government to establish *Pure Food Court* and to appoint *Public Food Analyst and Inspector* in every district within two years from the date of receiving the order.

Subsequently *Pure Food Courts* have reportedly been formally established in some districts following the Law Ministry's published gazette notification in this regard.

[127] Writ Petition No.324 of 2009

5.10 Environmental Right

Despite having a good number of legislations containing the provisions for conservation of environment, Bangladesh is one of the most environmentally vulnerable countries due to the non-implementation of laws and proper monitoring by the concerned authorities. As a result severe air, water, soil and noise pollution are threatening human health, ecosystem and economic growth of Bangladesh. In Bangladesh, air pollution is caused due to burning of woods and fossil fuels, industrialization associated with motorization, construction works and open dumping garbage. The water pollution is caused due to industrialization and use of chemicals in agricultural field. Besides, arsenic pollutes the underground water of Bangladesh. Use of chemicals in agricultural fields also causes soil pollution.

Environmental degradation of Bangladesh is also caused due to poverty, over-population and lack of awareness among the people and is also manifested by unplanned urbanization and human settlement, harmful development project without environmental concerns, deforestation, destruction of wetlands, land degradation, soil erosion and natural calamities. These happen due to faulty policy priorities and approaches and of course poor governance that also accounts for non-implementation of environmental laws. The environment of Bangladesh is also victim of climate change which already caused rising sea levels and changing weather patterns resulting displacement of millions of people and sharp reduction of crop yields.

Right to safe environment is a right to life. Keeping this thought in mind, the judiciary of Bangladesh has intervened in many issued related with environmental concerns.

In 1994, a case was filed by BELA namely *Dr. Mohiuddin Farooque v. Bangladesh and others*[128] challenging the severe pollution of air, water, soil and the environment by 903 industries. These were the industries of tanneries, iron and steel paper and pulp, distilleries, fertilizer, sugar mills, insecticide and pesticide

[128] Writ Petition No. 891 of 1994

industries, chemical industries, cement, pharmaceuticals, textile, rubber and plastic, tyre and tube and jute. These industries were identified as polluters by the Ministry of Local Government, Rural Development and Cooperatives (LGRDC) vide Gazette notification dated 7 August 1986 and as per the said notification, the Department of Environment (DoE), the Ministry of Environment and Forests (MoEF) and the Ministry of Industries were responsible to ensure to take the appropriate pollution control measures by those industries. But unfortunately, no measure was taken till the filing of the above writ and their failure increased the number of polluter industries up to 1176.

The High Court delivered its judgment directing the Director 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 court further directed the respondents to report to the court after six months about the compliance of the court's order.

In *Dr. Mohiuddin Farooque v Bangladesh*[129] case, the Appellate Division of the Supreme Court of Bangladesh paved the way for public interest litigation by liberally interpreting the terms "person aggrieved" as anyone who, despite not being personally affected, has sufficient interest in the subject matter. The petition was filed before the High Court Division challenging the legality of the experimental project of the Flood Action Plan (FAP) in Tangail. The project had been started in Tangail without any assessment of socio-economic and environmental impact. This project adversely affected a millions of people of Tangail. It caused displacement to the people by unlawful acquisition of land, regular drought and water-logging in that locality, damage to the soil, destruction of natural habitats of fisheries, flora and fauna. In addition, the regular water-logging and drainage problem polluted the water of that area which caused a severe threat to the health and the sanitation situation of the people of that locality. The High Court Division refused the *locus standi* of the petitioner and rejected the application. Subsequently, the petitioner preferred an appeal.

[129] (1997) 17 BLD (AD) 1

In judgment, the Appellate Division found it impractical to stop the work of the project, but ordered the respondents to comply with the law on drainage and resettlement of displaced persons and not to implement the scheme with impunity. Following the court verdict, the government reformed the project, doing away with the initial scheme, and also introduced environmental impact assessment plan consulting the local people.

In *BELA and others v Bangladesh and others*[130]case, the petitioners moved the case impugning the failure of the respondents along with NIKO Resources (Bangladesh) Limited to adopt proper safety measures for preventing the severe blow outs in Tengratila Gas Field, Chhatak, Sunamgonj which caused huge damage of public and private properties and environmental degradation of this locality.

After a hering, the High Court Division found NIKO responsible for the gas blowout and passed its judgment in 2010 and directed NIKO to pay the compensation money for the damage of gas blowout.[131]

A very remarkable achievement against wetland grabbing and creation of unauthorized township was gained in another case namely *Ain o Salish Kendra (ASK) and others v Bangladesh and others.*[132] In this case BELA and ASK along with other six right groups challenged the legality of an approval of housing project namely "Ashiyan City" which had been proposed to be developed by Ashiyan Lands Development Limited (a private housing company) in the mouzas of Uttar Khan, Dakkhin Khan, Barua and Bauthar (low agricultural lands and wetlands) of Dhaka City.

The petitioners submitted that the company had filled up 230.46 acres of low-lying area including wetlands, rural poor folks homesteads, graveyards, crop fields and the Ashkona-Kaola canal for its so-called housing project although it could only give information about lands measuring 43.11 acres and had no valid

[130]Writ Petition No. 6911 of 2005
[131] Ibid 130
[132] Writ Petition No.17182 of 2012

and conclusive approval. They further submitted that the company had violated the Land Holding (Limitation) Order 1972, which does not allow anyone in Bangladesh to hold more than 33 acres of land. The limit is 20 acres in case of agricultural land.But the clearance had been given on 43.11 acres of land for its residential project.

After hearing both the parties, a Larger Bench of the High Court Division declared *Ashiyan City Housing Project* illegal by a majority decision. Later, the managing director of the housing project filed a petition with the High Court seeking a review of the High Court's verdict that declared it illegal. The court accepted the review application and scrapped its previous verdict and declared the project legal.

The writ petitioners filed Leave to Appeal before the Appellate Division and the Appellate Division ordered to stop all the activities of Ashiyan City by staying the High Court's order that scrapped its previous verdict declaring the housing project in the capital's Uttara area illegal.

The court also instructed the State and the rights bodies to file a regular appeal. Subsequently the appeal was filed and now is pending for hearing.

In 2009, the High Court Division, in another landmark case[133] ordered the government to form a *"National River Conservation Commission (NRCC)"* consisting of concerned experts. The writ petition is a continuing mandamus, and court preserved the power to monitor the implementation of its decision and give necessary directions when required. The petitioner moved the case challenging the failure of the respondents to protect the rivers namely, Buriganga, Turag, Balu and Shitalakkha from illegal encroachments by earth filling and unauthorized construction. They also failed to prevent dumping industrial and human pollutants in the rivers.

[133]Human Rights and Peace for Bangladesh v Bangladesh (2009) (XVII) BLT (HCD) 455

The High Court passed its judgment with a number of directives on the government. It directed the government to accurately demarcate the boundaries of the ecologically threatened Buriganga, Turag, Shitalakhha and Balu rivers, which circle the capital Dhaka. The court directed the deputy commissioners of Dhaka, Narayanganj, Gazipur and Munshiganj to demarcate the river boundaries after carrying out Cadestral Surveys. It also ordered the environment secretary to declare the four rivers "ecologically critical zones". The court further ordered the continued demolition of illegal structures encroaching the four rivers and also asked to build walkways, plant trees and dredge the rivers and their sources.

5.11 Religious and Ethnic Minority's Right

Secularism is the basic principal of the constitution of Bangladesh and it guarantees the freedom of religion by which it gives equal rights to all citizens irrespective of religion. But in spite of these constitutional promises, the religious and ethnic minorities are the most persecuted and oppressed people in Bangladesh. They have been constantly denied their rights. Since 1947, after the partition of Indian subcontinent, Bangladeshi minority communities have been suffered a systematic ethnic cleansing cycle that has dropped their population from 23% (in 1951) to 9% (in 2017). In past few years they repeatedly faced looting and burning of households, destruction of temples and religious idols, murder, rape, forced religious conversion, illegal occupation of property, extortion, threats to family structures and other soft and hard intimidations which forced this population across the border.[134] Their right to freedom of expression is also denied in different times. The raise and strengthening of communal forces in the society often instigated by and used for political ends. But unfortunately these incidents of oppression of the religious minorities often go unpunished as political influential give baking to the perpetrators. Rather is some cases complaints against perpetrators instigates more violence. Unfortunately the state agencies have failed to protect the religious

[134] Barua and S Arun Jyoti (2017), "Minority Youth: towards inclusive and diverse societies" in 10th session, Human Rights Council (HRC)/ Forum on Minority Issues.
https://www.ohchr.org/Documents/HRBodies/HRCouncil/MinorityIssues/Session10/Item5/AdditionalStatements/item5%20-%20Bangladesh%20Minority%20Council%20.pdf

minorities from violation of their rights. Rather lack of accountability and transparency of the state mechanism made the situation worse.

PIL against the attack in the year of 2001

Following the 1st October 2001 election, incidents of extensive violence against Hindus in Bangladesh had been occurred in numerous districts across Bangladesh. Traditionally the Hindu voters are thought of hardcore supporter of Bangladesh Awami League. It was that perception that was precipitated the worst example of electoral violence as well as the violence against the Hindus. Bangladesh Nationalist Party (BNP) and their alliance Jamaat-E-Islam launched the brutal revenge attack after winning the election in 2001. An investigation conducted over two years by a Judicial Commission blamed on supporters of the ruling alliance (BNP-Jamaat alliance) at the time, led by the Bangladesh Nationalist Party for the violence.[135]Between 15 September and 1 October, 2001, about 330 incidents of rape, gang rape, killing, physical abuse, damage of property, bomb explosions, arson and extortion to the Hindu community were reported.[136]

Ain o Salish Kendra (ASK) filed a writ petition[137] challenging the inaction of the government to protect the Hindu community from such brutal attack. The petitioners submitted that the failure of the government to provide security to the Hindu community is violation of Articles 27, 28, 31, 32, 35 and 42 of the Constitution.

After primarily hearing of the parties, the High Court asked the Secretary of the Home Ministry and the Inspector General of Police to intimate the court regarding the measures taken against the perpetrators. The case is still pending for final hearing.

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[135] BBC news (published on 02.12.2011 online) under title "Bangladesh 'persecution' panel reports on 2001 violence". https://www.bbc.com/news/world-asia-15987644

[136] Ain o Salish Kendra (ASK) (2012). Annual Report.

[137] Ain o Salish Kendra (ASK) v Bangladesh and Others Writ Petition No.6556 of 2001

After 8 years of the case above mentioned, an inquiry report of a Judicial Commission was submitted to the court in another writ petition filed in the same issue. In 2009, the High Court ordered the government to form a commission and launch an inquiry into the violence after the 2001 general elections. This order was given in *Writ Petition No. 749 of 2009* filed by an organization namely Human Rights and Peace for Bangladesh. Subsequently the government formed a three-member commission to probe into the matter.

The Commission submitted the probe report to the Home Ministry in 2011. In 2014, after getting the probe report from the government, the High Court Division directed the government to immediately take appropriate legal action against the people responsible for atrocities and offences took place after the 2001 general election across the country. The court also asked the government to submit compliance report to the court.[138]

PIL against the attack in the year of 2004

Ahmadiyya community is heterodox religious group who considers itself as a part of the larger Muslim world. The Ahmadiyyas had been living and peacefully professing their beliefs in Bangladesh without any hindrance since 1912. But in 2004 the Ahmadiyya community was targeted to unprecedented violence and intimidation in Bangladesh. Extremist Muslim groups, backed by *Islamic Okye Jote*, one of the partners in the then *BNP-Jamaat* alliance government and *'Khatme Nabuwwat'* had organized mass political rallies calling for an official declaration that *Ahmadiyyas* are not Muslims and for a ban on their publications and missionary activities. They attacked and looted the *Ahmadiyya* mosques and houses, beat or killed individuals of *Ahmadiyya* community. They had been denied access to schools and sources of livelihood. At one stage, attacks to *Ahmadiyya* Mosques was continued for five weeks.

[138] The Daily Star (published on 10 .04. 2014) under title "High Court orders action against 2001 post polls offenders". https://www.thedailystar.net/hc-orders-action-against-2001-post-polls-offenders-19582

In this context, the then *BNP-Jamaat* alliance government imposed a ban on *Ahmadiyya*'s publication as well as sale, distribution and preservation of the same in response of this upraising anti-*Ahmadiyya* protest. The banning was imposed one day prior to the deadline given by Islamist groups.

A. K. Rezaul Karim, a member of the *Ahmaddiya Muslim Jamat Bangladesh* along with Ain o Salish Kendra (ASK), BLAST, *Kormojibi Nari, Jatiya Ainjibi Parishad, Nijera Kori Sammilita Samajik Andolon,* and *Odhikar* moved a writ petition[139] before High Court Division impugning the banning order imposed by the government upon Ahmadiyya's publication and its sale, distribution and preservation.

In response of this writ petition, the High Court Division stayed the operation of the impugned order of banning the publication and issued order to restrain the respondents from taking any further action to seize the publication of *Ahmadiyya*'s in question. The case is still pending for final hearing.

PIL against the attacks in the year of 2013

In 2013, Bangladesh witnessed a brutal wave of attacks on the houses, temples and businesses of panicked and devastated Hindu communities. On February 28, 2013, the International Crimes Tribunal (ICT) pronounced capital punishment to Delwar Hossain Sayeedi (Vice President of *Jamaat-e-Islami*) for his crimes against humanity during the 1971 War of Independence. Following the sentence, activists of *Jamaat-e-Islami* and its student wing, *Islami Chhatra Shibir*, attacked the Hindus in different parts of the country. Hindu properties were looted, houses and businesses were burnt to ashes, and temples were desecrated and set on fire. According to one estimate, 72 people and 8 policemen lost their lives in ensuing chaos.[140]

[139] A.K Rezaul Karim and others v Bangladesh and others Writ Petition No.7031 of 2004
[140] Ain o Salish Kendra (ASK) (2013). Annual Report

ASK along with BLAST, ALRD, *Samprodayikota O Jangibad Birodhi Mancha* and three individual moved before the High Court Division by filed a *writ petition*[141] against the government, charging it with failure to protect the persons and properties of its citizens, particularly Hindus.

The petitioners submitted that the failure of the government to protect the religious minority communities from violences and persistent attacks constituted the violation of the fundamental rights of the citizens guaranteed under Article 27, 28,31, 32 and 35 of the constitution.

In response to this writ petition, the High Court issued Rule Nisi upon the respondents and directed the government to form a committee to investigate the incidents of attacks allegedly by the *Jamaat-Shibir* and supporters after the pronouncement of judgment against Delwar Hossain Sayeedi by International Crimes Tribunal in February, 2013. In addition, it set 30 April 2013 as the deadline for receiving a report on what the government had done to protect the victims involved in the incidents. The government, though, failed to comply with the directive. The case is now pending for hearing.

Intervention through PIL in ethnic minority's right issue

The higher judiciary intervened not only in the incidents of violence against the religious minorities but also in the incidents of violence against the ethnic minority. In *Ain o Shalish Kendra (ASK) and others v Bangladesh and others*[142]case, ASK along with other organizations and Santal co-petitioners challenged the participation of the police in attacking and set fire to the houses of the Santal Community of Gobindaganj of Gaibandha District, under the leadership of local Parliament Member (MP), Union Parishad Chairman and Rangpur Sugar Mill's Authority resulted in death and assault of Santal people. The attack was took place due to a land dispute between the Santal people of that locality and the Rangpur Sugar Mill. The Miscreants also torched and evicted about 2500 houses of the Santal people of that locality in presence of the law enforcing agencies. Instead

[141] Ain o Salish Kendra (ASK) and others v Bangladesh and others Writ Petition 3561 of 2013
[142] Writ Petition No.14402 of 2016

of protecting them, police charged bullet to the Santal villagers. Three Santal men died and many others were injured as they protested the eviction, carried out by the police, RAB and BGB members with an assistance of local Bangalis, allegedly loyal to the local lawmaker. Another dead body of a Santal villager was found later. But the local police station refused to take allegation against the MP, Union Parishad Chairman and other people.

High Court issued *Rule Nisi* and directed the local police to record the case against the MP, Chairman and other people. The court also directed the Police Bureau of Investigation (PBI) respondents to investigate the matter and the Chief Judicial Magistrate, Gaibandha to investigate about the involvement of the police in setting fire in Santal houses.

In pursuance to the High Court's Order, the Deputy Inspector General (DIG) of Police of Rangpur Range and a three-member probe committee led by Additional DIG submitted the reports to the court which revealed that two policemen were involved in setting fire to the Santal's houses. Several other people who were involved in the same offence could not be identified. However these two policemen were suspended and departmental proceedings has been started, the report said.

Judicial probe committee also submitted report before the court which revealed that some policemen were involved in the said incident in Gaibandha.

After getting the report, the Court ordered the government to withdraw Gaibandha's Superintendent of Police (SP) over the incident of arson in Santal villages during an eviction drive. It also instructed withdrawal of all police personnel on duty there that day. The case is awaiting for final hearing.

5.12 Institutional and Legal Reform

PIL plays a significant role to bring the institutional and policy reform in Bangladesh. Many PILs have been filed either to reconstruct or reform the institutions or to influence the policy. A great example of institutional reform through PIL is *Masdar Hossain and others v Bangladesh and others.*[143] This case is famously known as *Masdar Hossain case* and concerned with the separation of judiciary from the executive in Bangladesh. Masdar Hossain, a lower court judge, along with other 441 judges of the lower court to move a writ petition before the High Court Division of the Supreme Court of Bangladesh asking for an order for the separation of the judiciary from the executive as required in Article 22 of the Constitution. The petitioners stood on the ground that inclusion of judicial service in the name of BCS (judicial) under the Bangladesh Civil Service (re-organization) Order 1980 ultra vires the constitution. They also claimed that since the judges of the subordinate judiciary are the presiding judges of the courts, they are not subject to the jurisdiction of the Administrative Tribunal.

In 1997, The High Court Division (HCD) delivered its historic judgments with 12 directives including the directive to the government to separate the judiciary from the executive within eight weeks. The government filed appeal against this judgment. In 1999 the Appellate Division passed its judgment directing the government to implement its 12 point directives, including formation of the separate Judicial Service Commission (JSC) for appointment, promotion and transfer of the members of the judiciary.[144] In 2007, the separation of judiciary has been executed.

PILs have been filed for ensuring the structural separation of judiciary from the executive. In *Bangladesh Legal Aid Services and Trust v Bangladesh and others*[145]the petitioner challenged the failure of the respondents to set up courts and tribunals in Ranhgamati, Bandarban and Khagrachari in accordance with the provisions of the Chittagong Hill Tracts Regulation (Amendment) Act, 2003 and

[143] 18 BLD 558
[144] *Secretary, Ministry of Finance v Masdar Hossain* (1999) 52 DLR (AD) 82
[145] (2009) 61 DLR109

the Suppression of Violence against Women and Children Act, 2000. Before 2003, the Chittagong Hill Tracts (CHT) districts were regulated by the Chittagong Hill Tracts Regulation, 1900, and the Deputy Commissioner of Chittagong had jurisdiction to adjudicate civil and criminal disputes there. In 2003, the said Regulations were amended to set up the Civil Courts, Sessions Courts and Suppression of Violence against Women and Children Tribunals in each of the three districts. The amendment was to be effected by gazette notification, but no such notification was published for three years.

In its judgment, the High Court Division directed the respondents to set up the Civil Courts, Sessions Courts and Suppression of Violence against Women and Children Tribunals in each of the three districts within one year from the date of the order.

PIL have also influenced the policy reform. In recent times, PILs have been brought by both organisations and individuals challenging the vires of legislation including constitutional amendments which contributed a lot in the legal and policy reform as well as the institutional reform also.

For instance in *Khondhker Delwar Hossain v Bangladesh Italian Marble Works Ltd and others*[146] case, the Appellate Division by its historic judgment cancelled the Constitution's 5th Amendment that had legitimized past martial law regimes and made basic changes to the state principles. Earlier the Constitution (Fifth Amendment) Act, 1979 validated all amendments, additions, modifications, substitutions and omissions made in the constitution during the period between 15 August 1975 and 9 April 1979 by the Martial Law Authorities. The said verdict invalidated Proclamation Orders issued by the Chief Martial Law Administrator between 1975 and 1979. With this judgment, the court restored all the four fundamental state principles stipulated in the country's original 1972 Constitution with modifications. In this judgment, the court prohibited Martial Law entirely and spelled out warning so that no one can promulgate Martial Law in the future. However, the court declared that "*Bismillahir Rahmanir Rahim*"

[146] (2010) 62 DLR (AD) 298

introduced through the 5th amendment would remain in the preambles of the Constitution as an introductory remark, not as part of the Constitution.

Earlier in 2005 by the High Court Division in *Bangladesh Italian Marble Works Ltd v Bangladesh*[147] case declared the 5th amendment unconstitutional.

The 8th amendment of the constitution has been successfully challenged in *Anwar Hossain Chowdhury v Bangladesh.*[148] In 1988, the parliament amended the Article 100 of the constitution and thus set up six permanent Benches of the High Court Division outside the capital particularly in Rangpur, Sylhet, Barisal, Jessore, Chittangong and Comilla and authorized the president to fix by noticing the territorial jurisdiction of those permanent Benches. But it is beyond the power of parliament to amend the basic structure of the constitution by decentralizing the High Court permanently. The Appellate Division of the Supreme Court of Bangladesh consisting of four Judges declared the impugned 8th amendment of the constitution as void and ultra vires by majority of 3: 1 on the ground that the basic structure cannot be altered by political majority.

In this case, for the first time in Bangladesh, the Appellate Division has declared an amendment passed by the parliament as void and imposed limitation on its amending power.

The Constitution (Thirteenth Amendment) Act, 1996 introduced a non-party Caretaker Government (CtG) system to give all possible aid and assistance to the Election Commission as an interim government, for holding the general election. In *Abdul Mannan Khan v Bangladesh*[149] case, the Appellate Division of the Supreme Court of Bangladesh declared the Caretaker Government provision and therefore the 13th Amendment unconstitutional, on the grounds that it violated the basic structure of the Constitution, namely democracy, because the interim government was an unelected one. In this respect the Appellate Division held that:

[147] (2006) BLT (Special) (HCD) 1
[148] (1989) BLD (AD) (Special) 1
[149] 64 DLR (AD) 169

> [...] the basic constituent of our Constitution is the administration of the Republic through their elected representatives. These two integral parts of the Constitution form a basic element, which must be preserved and cannot be altered. The Parliament has power to amend the Constitution but such power is subject to certain limitation, which is apparent from a reading of the preamble. The broad contours of the basic elements and fundamental features of the Constitution are delineated in the preamble.[150]

But the Court also held that the Caretaker Government provision should be kept in place for the next two parliamentary elections in order to maintain peace and stability in the country.

In Asaduzzaman Siddiqui v Bangladesh[151] *case,* the High Court Division declared the sixteenth amendment of the constitution unconstitutional. The Constitution (Sixteenth Amendment) Act, 2014 gave power to the parliament to remove superior court judges if allegations of incapability or misconduct against them are proved. Before this amendment the President had the power to remove a justice upon the recommendation of the Supreme Judicial Council composed of the Chief Justice and the two most senior judges of the Appellate Division. This amendment was challenged due to its inharmoniousness with the notions of judicial independence and separation of powers. The Appellate Division upheld the HCD's decision in *Government of Bangladesh and others v Advocate Asaduzzaman Siddiqui and others.*[152]

5.13 Conclusion

Apart from the cases discussed above, a considerable number of variety PILs have been disposed of. Some of those have been reported, some are not. At the same time, many PILs in different issues are still pending before the court. However, the above discussion on the various subject matter of PILs shows that with increasing application, PIL gained maturity in Bangladesh. Here PIL has been applied for vindicating the rights of the poor, oppressed, disadvantaged and marginalized people for attaining the social justice as well for establishing the democracy and rule of law in the society. The application of PIL in various issues

[150] Ibid 149

[151] Writ Petition No. 9989 of 2014, judgment May 5, 2016

[152] (2017) 5 CLR (AD) 214

established that PIL has never been only about giving relief to the most deprived, it has always also been concerned about the protection of wider constitutional and legal rights of the citizens. It has been effectively used in this country to deter privileged people from indulging in violations of legal rules or 'to conscientise the system of governance' by upholding fundamental constitutional principles. The concept has been established with the gradual application of PIL in Bangladesh that it does not necessarily need to be brought by or on behalf of a desperately poor section of the public. It can be resorted to by any person, even a member of the privileged elite, whose heart bleeds at seeing an onslaught of the constitution or the law

CHAPTER 6
ROLE OF JUDICIARY AND NGOS IN THE FIELD OF PIL IN BANGLADESH

6.1 Introduction

The Supreme Court of Bangladesh is the guardian of the constitution and the High Court Division has constitutional obligation to enforce fundamental rights when any infringement is made. Following these constitutional mandates, our higher judiciary entertains PIL cases to redress the violation of fundamental rights and to protect the same. The role of the Supreme Court in introducing, developing and applying PIL in Bangladesh is momentous. The wise and judicious use of constitutional powers by the Supreme Court through PIL made ita brand litigation in Bangladesh.

Additionally, the role of the NGOs to make the PIL advance in Bangladesh is tremendous. Still they are doing a great job to secure the rights of the disadvantaged people through PIL. They are acting as watch dog of the rights of the poor. It is indisputable that NGOs are the primary initiators of PILs in Bangladesh.

This chapter focuses the role of both the judiciary and the NGOs in developing and applying PIL in Bangladesh.

6.2 The Role of Judiciary

In Bangladesh, the judiciary contributed a lot to realize the fundamental rights of the citizens. Bangladesh Judiciary played a vital role in promoting social change by securing the fundamental and human rights through PIL. The progressive outlook of the judiciary towards public interest litigation has enabled the judiciary to play a dynamic role in facilitating and promoting social change by overcoming the earlier inhibitions which had constrained its role. Judiciary's rights-friendly interpretations of the Constitution contributed a lot in implementing the economic and social and cultural rights of the citizens.

The responsibility for effective execution of constitutional and legislative mandates clearly lies upon the executive. In our country, whenever the executive fails of defaults to perform their legal and constitutional duties resulting in violation of fundamental and human rights of the citizens, courts and judges come forward to redress the violations of rights involved in such failures or defaults. In many cases of failure by the duly authorized constitutional officers to discharge their constitutional and legal obligations, our judiciary issues directions to them to discharge their duties expeditiously.

Different types of challenges have been come before our judiciary through different types of issues, among others, of gender justice, child rights, bonded labour and other labour rights, industrial safety, religious and ethnic minority rights, forcible eviction of slum dwellers, prisoner's rights, medical rights, different forms of environmental degradation, misuse of power by the state agencies etc. and the judiciary has dealt with these issues from the right-friendly perspective.

The first instance of PIL in Bangladesh is *Berubari Case*[153] and our judiciary demonstrated that much judiciousness in this case by accepting the stance of liberalized *locus standi*. In this case, the court went very close to the doctrine of public interest litigation. In respect of this judiciousness A.T.M Afzal CJ opined

[153] Ibid 3

that our Supreme Court took much liberal approach regarding the question of locus standi at a time when the doctrine of public interest litigation or class action was yet to take roots in the Indian Jurisdiction.[154]

After 1974, the impact of "Berubari" Case decision had been found in some Indian cases including the famous case of *S.P Gupta v President of India.*[155]

But unfortunately the bud of PIL which was started to blossom in *Berubari* case got a severe blow in 1975 due to the imposition of martial law. The heinous and brutal assassination of the Father of the Nation Bangabandhu Sheikh Mujibur Rahman with his family members, and formation of an undemocratic party through the 4th amendment of the constitution in 1975 seriously impeded the democracy in the country. Martial law regimes in 1975 and 1982 created a serious threat to the constitution and the law and order situation of the country. In most of the martial law time, the constitution was suspended. The Judiciary could not functioned and contributed properly towards citizen's interest and right. People could not go to the court to ensure their fundamental rights and thus the achievement of *Berubari* case was remained almost unfruitful during the martial law period from the PIL viewpoint.

But after a long walk through a muddy way, the judiciary of Bangladesh had finally been paved in its fullest perfection with the greatest contribution to PIL through *FAP 20*[156] case by giving a liberal and wider meaning of the expression "person aggrieve" and solved the long term problem regarding the standing in PIL. In this case the court not only allowed the standing of public spirited citizen but also the standing of public oriented organization and thus made the way for the public spirited persons and the organizations to seek judicial remedy on behalf of the poor. Now a day's public spirited citizens as well as organizations bring PILs in different issues of violation of fundamental rights and human rights.

[154] Ibid 5
[155] Ibid 35
[156] Ibid 5

In many cases, our judiciary showed judicial attitude towards the "Fundamental Principles of State Policy" which embody some socio-economic rights. These principles have been declared judicially non-enforceable but nonetheless fundamental in governance and law-making by the state and in the interpretation of the constitution and other laws. For example, right to livelihood, shelter, right to health, environment etc. are not traditionally mention as fundamental rights in our constitution, rather a basic necessity and fundamental principal of the state polices. But the court assuming its social engineering role, interpreted the fundamental principal of state policies in consonance with the fundamental rights and expanded the scope of fundamental rights as well as the scope of PIL cases. In many cases, the court asserted that right to live in a decent environment is inclusive in the right to life under articles 31 and 32 of the Bangladesh Constitution. The court also asserted that the state is bound to protect the health and longevity of the people living in the country.[157] The judiciary also exercised their expanded interpretation of right to life in other traditional PILs. A broader sense of right to life has been applied in the subsequent decisions concerning livelihood and shelter of vulnerable sections of society as slum-dwellers or sex-workers. In cases of eviction of the poor slum dwellers, the superior judiciary declared that the right to livelihood and shelter is consonance with the right to life.[158] It also declared that deprivation of livelihood constitutes deprivation of right to life.[159]

Another contribution of the judiciary is to award compensation in PIL cases. In many PIL cases, the court awarded compensation to the victim for the wrong done to him. This is an exception of the general rule of compensation that a money claim has to be agitated in a suit to be *instituted* in a lowest grade competent to try it. In *BLAST v Bangladesh*[160]case, the High Court Division held that the court can award compensation in case of violation fundamental rights of an individual has been infringed due to abuse of power by police under section 54 and

[157] Ibid 125

[158] Ibid 80

[159] Ibid 86

[160] Ibid 70

167 of the Code of Criminal Procedure (CrPC) 1898. The court awarded compensation where it found the detention of citizens to be completely without ant basis on record or the result of utter negligence.[161] In *Shahanewas v Bangladesh and others*[162] the detenue was held in custody in place of an absconded convict with mela fide intension. The court ordered an award of twenty thousand Taka to be realized from the respondent No. 4, ASI, who was in charge of the Police outpost where the wrong was done.

Passing an order of investigative commission in PIL is another contribution of our judiciary. In many cases, our judiciary ordered to form investigative commissions for caring out inquiry and submit reports in different violation issues which to some extent established a fact finding mechanism. For instance, in 2009, the High Court ordered the government to form a commission and launch an inquiry into the violence after the 2001 general elections.[163]Subsequently the government formed a three-member commission to probe into the matter. The inquiry commission found that more than 25,000 people including 25 former ministers and MPs of the BNP-Jamaat-led alliance were connected with the attacks.

The judges initiative in starting a PIL proceeding by acting *Suo Moto* is another outstanding contribution in development and application of PIL in Bangladesh.It is a special power of the Supreme Court of Bangladesh to initiate a hearing by itself by taking cognizance of a newspaper report or the information he or she come to know through any other means. The constitution of Bangladesh has guaranteed some fundamental rights to the citizen and the High Court Division can proceed by its own initiative under article 102 of the constitution in case of violation of those fundamental rights or any public wrong. Moreover, the Supreme Court of Bangladesh (High court Division) Rules 1973 allowed the constitutional courts to issue *Suo Moto Rule* under Article 102 of the constitution taking consideration of a news report or letter where information of public wrong is

[161] Ibid 75

[162] (1998) 50 DLR 633

[163] Human Rights and Peace for Bangladesh v Bangladesh and others, Writ Petition No. 749 of 2009

described. In Bangladesh the judges applied *Suo Moto* power mostly in case of abuse of power by the executive, violation of human and fundamental rights and in public interest. The first instance of *Suo Moto* initiative had been taken by the High Court Division in the *State v. Deputy Commissioner, Satkhira*[164] In this case, the court came to know about an unlawful detention of a person named Nazrul Islam for 12 years through a newspaper report. Taking cognizance to the news report, a Bench of the High Court Division directed the Deputy Commissioner and the Superintendent of Police and the Jailor of Satkhira district to produce Nazrul before the court and found that the callousness, corruption, vindictiveness of the authority concerned and inhuman and mindless prosecution of Nazrul at the instance of some interested quarters. The court declared the detention and all the case proceedings against Nazrul illegal and directed the respondents to set him at liberty forthwith. Later on the High Court Division exercised this power of issuance *Suo Moto Rule*under Article 102 of the constitution in different instance of violation of human and fundamental rights and the abuse of power by the executives.

Another remarkable contribution of judiciary in respect of PIL in Bangladesh is exercise of epistolary jurisdiction by the Supreme Court of Bangladesh. By exercising the epistolary jurisdiction, the court can take a letter or telegram as a writ petition and take necessary steps basing upon it. The constitution of Bangladesh has created the scope and the Supreme Court of Bangladesh (High court Division) Rules 1973 allowed the constitutional courts to treat a letter or news report as writ petition.

In Bangladesh, the High Court Division once exercised this jurisdiction in *Dr. Faustina Pereira v The State*[165] *case.* Advocate Dr. Fastina Pereira, on behalf of a human rights organization, sent a letter to the then Chief Justice of Bangladesh praying for taking appropriate step against the illegal detention of 29 foreign nationals in Dhaka Central Jail for years together after serving out their terms of sentence. The Chief Justice sent the letter to the High Court Division with a

[164] Ibid 69
[165] Ibid 68

direction for taking appropriate step in the matter and a Division Bench of the High Court Division issued *"Suomoto"* Rule in this respect. Thus the judiciary created another pavement for the poor and disadvantaged to access to justice in Bangladesh through exercise of epistolary jurisdiction and made the concept of liberty and social justice for all more effective.

The judiciary of Bangladesh also played and continues to play a significant role in legal and policy reform. For example, observing the non-existence of law to effectively and efficiently prevent and punish sexual harassment of women, the court came up with clear guidelines in the 'nature of law' to be followed by the employers of the workplaces and educational institutions in preventing and punishing sexual harassment of women until "effective legislation" is adopted.[166] The Supreme Court developed legal amulet against misuses of arresting power of the police and of the discretion of the magistrates to remand (send back) the arrestees to the police custody.[167]

Our judiciary also acted on the post-verdict reluctance of the respondents to act according to the verdicts obtained in PIL cases through the technic of continuous *mandamus*.

A good example of this is *Human Right and Peace for Bangladesh v Bangladesh and others.*[168]The court declared this writ petition as a continuing mandamus, keeping the power to monitor the implementation of its decision and give necessary directions when required and this activism of the court prompted the string of the government drives regarding the protection of four rivers surrounding the Dhaka metropolis that are allegedly the most polluted rivers in the world.

[166] Ibid 102
[167] Ibid 70
[168] Ibid 133

6.3 Role of NGOs

It is undeniable that the legal aid and human rights based NGOs of Bangladesh initiated the PILs in this country. They gave a tremendous efforts to secure the rights of the disadvantaged people through PIL. They act as watch dog of the rights of the poor. In Bangladesh, most of the PIL cases have been brought by a few NGOs which deal with PILs such as Ain o Salish Kendra (ASK), Bangladesh Environmental Lawyers Association (BELA), Bangladesh Legal Aid and Services Trust (BLAST), Bangladesh Women Lawyers Association (BNWLA) etc. They file PILs individually or sometime jointly as strategy. Those NGOs have great contribution in developing and applying the PIL jurisprudence in Bangladesh. These NGOs are still working hard to secure citizen's legal, constitutional and human rights by utilizing this tool and try to give a new shape and popularize this among people.

Public interest litigation got great fillip with the emergence of Bangladesh Environmental Lawyers Association (BELA) which was established in 1992 with a group of lawyers with the broad objective to promote environmental justice and to contribute in the development of sound environmental jurisprudence. BELA, founded by Dr. Mohiuddin Farooque, has paved the way for environmental legal activism in this country and become the pioneer of public interest litigation in Bangladesh.

BELA started as an advocacy group of young lawyers with a mission to develop legal techniques and strategies to protect the environment and defend rights of communities dependent on nature and natural resources. It has created awareness amongst the major actors and the common people about their environmental rights and duties by adopting various means. Indeed, the continued activism of BELA towards environmental justice is one of the central features of Bangladeshi PIL jurisprudence.

BELA has filed its first PIL in 1994. In a *case* [169]filed by BELA, the High Court Division prohibited environmental pollution during Dhaka City Corporation election in 1994. In a commendable anti-vehicle-pollution decision in *Dr. Mohiuddin Farooque v Bangladesh*[170] case, the court issued eight-point directive to improve the condition of air pollution of Dhaka city.

At the instance of BELA, the High Court Division in 1996 also directed the government to take measures to prevent import of contaminated foods from abroad.[171]

Before the *FAP-20* case, the decision of *Sangbadpatra case*[172] that to invoke the jurisdiction of article 102 of the constitution, one must be aggrieve personally, created a huge hindrance in the development of PIL in Bangladesh. Finally, after a long fought jurisprudential battle by BELA, PIL in Bangladesh was formally accepted in 1996 in *Dr. Mohiuddin Farooque v Bangladesh*[173] case *(FAP-20 case),* and BELA, as an environmental organization, was allowed the standing to challenge an ongoing flood control program of government. In this case, the Appellate Division has opened standing to any person or public spirited organization to litigate when a public wrong or injury or infraction of a fundamental right affects an indeterminate number of people.

Later, court has dealt a good number of environmental related PIL cases for the conservation and development of the environment and environmental jurisprudence in Bangladesh, and BELA played the leading role in this process.

Due to BELA's continuous legal advocacy, the courts exercised its powers and functions depending upon the constitution, treated environmental issues as fundamental rights conferred by part –III of the constitution of the People's Republic of Bangladesh.

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[169] Bangladesh Environmental Lawyers Association (BELA) v Bangladesh and others(1995) 47 DLR 235

[170] (2003)55 DLR (HDC) 613

[171] Ibid 125

[172] Ibid 54

[173] Ibid 5

Since its inception, BELA filed more than 250 PILs in environmental issues and these cases involve a wide range of issues including river pollution, industrial pollution, vehicular pollution, labor welfare, compensation for losses inflicted by development projects, encroachment and derogation of important wetlands, relocation of industries, prevention of hill cutting, conservation of forests, defending forest rights, fishermen's rights & farmers rights amongst others.[174] Many of those are still pending for decision.

Another national legal aid and human rights organization Ain o Salish Kendra (ASK) has also a great contribution in PILs of Bangladesh. It basically provides legal and social support to the disempowered, particularly women, working children and workers. Its goal is to create a society based on equality, social and gender justice and rule of law. It acts to create an environment for accountability and transparency of governance institutions. For this purposes, ASK undertakes strategic litigation, or public interest litigation, as a key part of its legal advocacy for law and policy reforms to ensure effective legal protection of rights of the poor and disadvantaged people. Its public interest litigation has made a national impact. It has a separate unit for identifying PIL issues, filing and conducting PILs, networking with other organizations, groups, civil society and the individuals and implementing PIL judgments and orders obtained by it in different cases.

In 1997, the then executive director of ASK, Salma Sobhan filed a writ petition before the High Court Division, challenging the prolonged confinement of a prisoner namely Raju in bar-fetters for 33 months.[175] The use of bar-fetter by the jail authority was also challenged on the ground that it is an inhuman and degrading punishment and violates the fundamental right to life and liberty, and also constitutional safeguards against torture and degrading punishment. It can be considered the first PIL of ASK. In the next couple of years, ASK filed several PILs in different issues and achieved a significant number of judgments and rulings through its PILs that improved the human rights situation to a great extent.

[174] BELA website http://www.belabangla.org/public-interest-litigation-pil/

[175] Ibid 88

ASK has a great contribution in securing the right to livelihood and shelter of the slum dwellers in Bangladesh by using the PIL as legal tool. Though the right to shelter is not a fundamental right but it is placed in fundamental principal of state policies, however ASK convinced the court that it is one of the basic parts of right to life and thus made the judiciary enable to intervene into the issues of forced eviction of the slum dwellers. *Ain o Salish Kendra (ASK) and others v Bangladesh and others*[176] *case* is the milestone case in the legal history of Bangladesh in which the court for the first time dealt with the economic and social issue like forced eviction, linked with the development. In this case, the court stated the state's obligation towards to denial of human rights in particular to right to shelter and livelihood.

This case was filed in 1999 in the instance of wholesale demolition of slums in the Dhaka city namely *Balmat Basti, Railway Barrak* and *TTpara Basti* and eviction of a large number slum dwellers without prior notice required by law and initiative of rehabilitation or alternative accommodation. This demolition was carried out by the Ministry of Home Affairs.

In its judgment, the High Court opined that slum dwellers right to life, living shelter and livelihood are in consonance with the fundamental state policy and state has the responsibility to ensure the right to shelter to its citizen. Later on ASK filed many cases in instances of slum eviction in Dhaka City and got injunction orders over the eviction processes and thus protected the thousands slum dwellers from the most inhuman situation of being deprived of livelihood and shelter.

ASK's PIL played a vital role to protect the citizens particularly the women from physical and mental torture in the name of *Fatwa and shalish*. In *Fatwa case,*[177] ASK intervened into the matter and persistently assisted the court against such arbitrary, unlawful practice towards the women.

[176] Ibid 80
[177] Ibid 97

ASK also played a vital role in ensuring women's empowerment and equality. In *Shamima Sultana Sheema and others v Bangladesh and others*[178]case, ASK intervened into the matter and submitted the basic arguments of the case. In judgment, the court affirmed the equal rights and status of men and women and hold that they are all born with their basic rights. The judgment represented a victory for the women moment as a whole.

Due to joint effort of ASK and BLAST, in *Corporal Punishment case*[179] the court absolutely prohibited corporal punishment in the educational institutions. Before the disposal of the case, the government adopted "Guidelines for the Prohibition of Physical and Mental Punishment of the Students of Educational Institutions, 2010". Thus ASK along with the other organizations brought end to the physical and mental torture and cruelty to the children in the educational institutions.

ASK also challenged that misuse of power by the law enforcing agencies. The judgment of *Section 54 case*,[180] filed by BLAST, ASK and some other organizations, sets a limit of do's and don'ts for the law enforcement agencies. The directives given in the judgments describe the standard regarding the conduct of a law enforcing officer regarding arrest and interrogation. After this judgment, arrest under section 54 of CrPC has been drastically reduced as an impact of the case by ASK jointly with the other organizations.

ASK also played a vital role in securing the fundamental and legal rights of the religious and ethnic minority. The cases like *Ahmedia Muslim Jamat*[181] have protected the rights of the minority and freedom of conscience and expression as well. In 2001, 2004, 2012, 2013 2014, 2015, 2016, ASK intervened into the incidents of serious attack on religious minority and ethnic minority and thus through its PILs, ASK has contributed to extend the constitutional shield where the

[178] Ibid 104
[179] Ibid 105
[180] Ibid 70
[181] Ibid 139

regular law enforcement mechanism fails to safeguard a vulnerable group of minority people in Bangladesh.

ASK has introduced a fact-finding mechanism in its PIL cases by using its own fact finding reports (Organization's own investigation unit and staff lawyers conduct on-site fact finding in case of violations) and in different cases, the fact-finding reports of ASK have been accepted with credibility by the courts.

Since 1997, ASK has filed many (more than 150) PILs in different issues including right to life, right to free from torture , unlawful detention and arbitrary arrest, right to liberty, right to freedom of expression and conscience , right to shelter and livelihood, environmental right, right to religious and ethnic minority, right to institutional accountability, right to access to justice right to non-discrimination, women right, child right, workers' right and work place safety, prisoners' right and prison condition, right to health and proper treatment, right of persons with disabilities, equal employment right etc.

BLAST is another major organization who deals with PIL in Bangladesh. As a matter of policy and basic mandate, BLAST works to ensure an equitable, fair and accessible legal system by which the economically disadvantaged and vulnerable segments of the society, especially women, men children, can enforce and enjoy their fundamental rights to life, liberty and property. Simultaneously, the organization works for protecting the other fundamental as well as social and economic rights of the indigent people in particular. For this purpose BLAST undertakes strategic litigation or public interest litigation, as a key part of its advocacy for law and policy reforms to ensure effective legal protection of rights of the citizens.

Since 1996, BLAST moved 82 public interest litigation petitions in the Supreme Court of Bangladesh.[182]

[182] BLAST website https://www.blast.org.bd/whatwedo/our-programmes/public-interest-litigation-pil

In the course of time, BLAST filed PIL cases challenging arbitrary arrests and unreasonable police remand, delays in trials of under-trial prisoners, incarceration of children in prisons, continued detention of foreigners who have overstayed their sentence in prisons. It also filed PIL for securing consumer safety and health rights, seeking protection of workers' rights for safety in the workplace. BLAST has also challenged gender discrimination in public employment, failure of state authorities to ensure safety and security of women through taking action against extra-judicial penalties by informal village tribunals, the forceful eviction slum dwellers all over the country.

BLAST has a significant contribution in institutional reform particularly in structural separation of the courts from the executive in the Chittagong Hill Tracts. *BLAST v Bangladesh and others ('CHT Courts' case)*[183]case was filed to set up Courts and Tribunals in accordance with the provisions of the Chittagong Hill Tracts Regulation (Amendment) Act, 2003 and the Suppression of Violence against Women and Children Act, 2000 in the three districts of Chittagong Hill Tracts (CHT), Rangamati, Khagrachari and Bandarban. In Judgment, the court directed the government to establish District Judge and Joint District Judge Courts, also to operate as Sessions Courts and Suppression of Violence against Women and Children Tribunals in the three hill districts within one year.

In *BLAST v Bangladesh and others* ('Gram Parishad Ain, 2003' Case)[184]case, *the constitutionality of the Gram Sharker Ain, 2003* (Act VI of 2003), in particular Section 3 and 4(4) of the said Act has been challenged on the ground that the Act replaced the *"Gram Parishad"* (Village Parishad), an elected body, established under the Local Government (Village Government), 1997 by the "Gram Sarkar" formed with nominated members selected by the Upazila Nirbahi Officer (UNO). The High Court declared the *Gram Sarkar Ain, 2003* unconstitutional.

[183] Ibid 145

[184] *Bangladesh Legal Aid and Services Trust (BLAST) v Bangladesh and others*(2008) 60 DLR 234

BLAST also filed PIL to bring legal reform in Bangladesh. *In Bangladesh Legal Aid and Services Trust (BLAST) and another v Bangladesh and others*[185] case, BLAST challenged the Section 6 (2) of *Nari-O-ShishuNirjatan* (Bishesh Bidhan) Ain, 1995, carried solitary provision of death sentence to the convicts for killing any woman or child after rape. This section contained no other alternative punishment. So this section leaved no scope for the court to think about alternative conviction if it seemed fit to it and thus the section curtailed the discretionary power of the court. Moreover, the *Nari-O-Shishu Nirjatan Daman (Bishesh Bidhan) Ain, 1995*, had been replaced by *Nari-O-Shishu Nirjatan Daman Ain, 2000* containing provision of death sentence with an alternative punishment of life-term imprisonment for the same crime described under the Act of 1995. But a dilemma occurred due to the saving clause of the section 34 (2) of *Nari-O-Shishu Nirjatan Daman Ain, 2000* to protect the proceedings pending under the Act of 1995, the laws of 1995 and 2000 started to run together containing the different punishment for the same crime.

In 2005, High Court delivered its judgment[186] declaring that the section 6(2) of the *Nari-O-Shishu Nirjatan Daman (Bishesh Bidhan) Ain, 1995* is ultra vires the Constitution.

In an appeal, the Appellate Division declared Sub-sections (2) and (4) of section 6 of the *Nari-O-ShishuNirjatan Daman (Bishesh Bidhan) Ain, 1995*, sub-sections (2) and (3) of section 34 of the *Nari-O-ShishuNirjatan* Daman Ain, 2000 and section 303 of Penal Code are ultravires the Constitution.[187]

Bangladesh National Women Lawyers' Association (BNWLA) has also filed many public interest litigations (PIL) before the High Court Division to redress the grievances of the deprived sections of the people particularly the women and children. Since its inception, BNWLA is fighting for ensuring the access to justice of the women and children, the most vulnerable section of the society like us.

[185] Ibid 108
[186] Ibid 108
[187] CIVIL APPEAL NO.116 OF 2010

BNWLA has played a tremendous role in shaping the policy on sexual harassment in the educational institutions and work places in Bangladesh by using PIL.[188]BNWLA filed writ petition in the context of non-existence of legislative provisions to address sexual harassment of women and girl children in work places and educational institutions. Women suffered in silence and quailed to raiser their voice against such harassment in workplace and educational institution for not having any place to seek relief. BNWLA filed this writ petition addressing the failure of the government to adopt guidelines, or policy or enact proper legislations to for protecting and safeguarding the rights of the women and girl children from sexual harassment at work place, educational institutions/universities and other places. This organization also prayed for direction upon the respondents to take immediate steps for the formulation guidelines or the enactment of proper legislation to address sexual harassment.

After hearing of the case, the High Court delivered the landmark judgment in 2009 with certain directives in the form of guidelines and directed to follow and observe at all work places and educational institutions till adequate and effective legislation is made in this field. The court also declared the judgment mandamus in nature. In pursuance to this judgment, now all most all the educational institutions formed "Sexual Harassment Prevention Committee".

Applying the judgment obtained in the BNWLA's case, several PILs such as *Shirajul Islam Chawdhury and others v Jahangirnagar University and others*[189] and *Ain o Salish Kendra (ASK) v Jahangirnagar and others*[190]etc. have been filed to ensure the compliance of the provisions of the Sexual Harassment Prevention Guidelines in different educational institutions. In both the cases, the court compelled the university authority to comply with the provisions of the said sexual harassment prevention guidelines.

[188] Ibid 102
[189] Writ Petition No.9414 of 2009
[190] Writ Petition No.146 of 2010

The above mentioned NGOs are the leading organizations who deal with PILs for a long time. Sometimes, these organizations file PILs jointly as strategy. Sometimes they walk individually.

All these above mentioned NGOs also do the Policy Advocacy with the Judgment of PILs. They always keep pressure on the government to implement the judgments obtained in the PIL cases. They also monitor the implementation of ad-interim orders of the court since the ad-interim orders sometimes serve the purpose to a considerable extent.

In recent time, another organization namely Human Rights and Peace for Bangladesh (HRPB) is giving its relentless effort to address public interest issues before the High Court Division. Within few years, it has filed 212 PILs in different issues and obtained 70 judgments in PILs filed by it. It has a good contributed in environmental rights issues.

Very recently, in a revolutionary judgment, the High Court Division (HCD) of the Supreme Court of Bangladesh declared that the river Turag and all other rivers flowing throughout the country are *"living entities"* with legal personalities. In this judgment the court recognized the National River Conservation Commission (NRCC) of Bangladesh as a legal guardian for all the rivers including the Turag and conferred responsibilities upon the NRCC for the protection, conservation, development of the rivers by saving them from pollution and encroachment. The Court delivered this judgment in response to a public interest litigation filed by the *Human Rights and Peace for Bangladesh (HRPB)*[191] in the incident of grabbing of river Turag. In its judgment, the court declared the Precautionary Principle as well as the Polluters' Pay Principle as the part of the laws of this country. It directed the Election Commission to disqualify the people responsible for river grabbing and pollution from running for public office. The HC also directed Bangladesh bank to issue a circular prohibiting any bank loan to the grabbers and polluters.

[191] Human Right and Peace For Bangladesh (HRPB) vs Bangladesh and Others , Writ Petition No. 13989 of 2016

6.4 Conclusion

After the judgment of FAP-20 case, in Bangladesh, PIL became a familiar action for seeking relief from the Apex court in case of violation of constitutional and legal rights of the citizens specially the poor, vulnerable, marginalized and disadvantaged people. Nowadays good number of PILs have been filed in different issues. This could be happened due to the combined effort of the judiciary and the NGOs, who played role as vanguard to develop PIL jurisprudence and apply the same in Bangladesh. As per Constitution, Supreme Court is the guardian of the Constitution and HCD has constitutional obligation to enforce fundamental rights when any infringement is made. The higher judiciary now follows its constitutional mandates by using the avenue of PIL while the NGOs use PILs as a very important strategic tool to secure the constitutional and legal rights of the citizens. The persistent collective effort of judiciary and the people oriented NGOs made the PIL as an established feature in our legal system.

CHAPTER 7
GENERAL CONCLUSION

7.1 Introduction

It is apparent from the analysis of PIL cases of Bangladesh that though PIL has been recognized as a very important and effective tool for ensuring people's rights and for protecting public interest through judicial intervention to any unlawful or unconstitutional executive action or inaction, but there are some practical problems faced by PIL in Bangladesh. Despite the increasing number of PILs in various issues, it is still struggling to establish the public interest and to redress the public grievance in reality. It is necessary to have an understanding of the problems and hindrance PIL is fighting with. It is also necessary to find some ways to mitigate the problems. This chapter focuses on the problems PIL is struggling with and the suggestions to mitigate those problems.

7.2 Findings of the Research

From the discussion of the previous chapters, some problems have been spotted in respect of application of PIL and its implementation in Bangladesh .These are-

Government's Lack of Willing in Implementation

Over the years a huge number of PILs in different issues have been filed in Bangladesh and many positive judgments and orders have been achieved for securing the interests and rights of the public. But it should be in mind that the purpose to protect and promote human rights cannot be achieved only by filing and getting judgments and interim orders in PILs but the implementation of judgments and orders is the integral part of reaching the goal.

The most important problem exists with the PIL in Bangladesh is that the progress or the condition of implementation of judgments of PIL is not so satisfactory. Since the rulings and judgments of PIL cases are given against the state or the agencies whose' action or inaction is the case of grievance, the implementation of those rulings and judgments are largely depends upon the government machineries. All PILs involve some policy issues and require government's responsive engagement. In this context, it is really very difficult for Public Interest Litigation, even though those have obtained the judgments as expected, to proceed with the implementation of the same, if the government is deliberately unwilling to its implementation. In Bangladesh, often it seems that, there is a lack of political will of the government to implement the PIL judgments which involves the policy issues of the government. In addition, government is also very much unwilling to follow the court's orders given in the PILs which involve the civil and political rights of the citizens. Even it is also very much non-cooperative in completing the hearing of the PILs include the civil and political rights. For example, in 2009 the High Court Division issued a *Suo Moto Rule*[192] in the incident of cross fire of two brothers named Lutfar Khalashia and Khairu Khalashi in Madaripur. Court directed the government to submit a report in this incident of crossfire. But till today no report has been produced before the court.

Another instance is *ASK and others v Bangladesh and others*[193]case. This case was filed against the persistent abuse of power and authority by the law enforcing agencies resulting extra-judicial killing in the name of cross-fire/encounter. But albeit the petitioner tried hard and sole and 11 years have been passed but the case could not be heard for a single days due to unwillingness of the government.

[192] State v Mejor Kazi Wahiduzzaman, Suo Moto Rule No. 24727 of 2009

[193]Ibid 76

It has been taken 18 years to finish the case against the abuse of police powers to arrest without warrant under Section 54 of the Code of Criminal Procedure (CrPC), 1898 and the abuse of powers regarding taking the accused into remand (police custody) under Section 167 of the CrPC.[194]

It is also the executive's tendency to avoid, refute and pervert PIL decisions particularly those that displease it or impose financial burdens on it. Moreover, lack of resources, coupled with economic crises are constant obstacles and often offer common excuse for the government for non-compliance of the Court's Order.

Impunity

Besides, the deep rooted culture of impunity is another great challenge for implementing the judgments and orders obtain in PILs. Reluctance of the government in upholding the rule of law empowers individuals, including some corrupted government officials, to commit human rights violations continuously with impunity though the Court directs to take effective and necessary measures to stop the violation. For example, following the 1st October 2001 election, incidents of extensive violence against Hindus in Bangladesh had been occurred in numerous districts across Bangladesh. Ain o Salish Kendra (ASK) filed a writ petition[195] challenging the inaction of the government to protect the Hindu community from such brutal attack. After primary hearing of the parties, the High Court directed the Home Secretary and the Inspector General of Police to submit a report regarding the measures taken against the perpetrators and the reported exodus of the Hindus by 15 January, 2002. The Government submitted a brief reply several months later. No further report has been given and in the meantime 19 years have been passed and the case is still awaiting final hearing.

Due to failure of the government to prosecute the perpetrators of the previous attacks and to protect the religious communities from violation of their human rights, repeated attacks in 2012, 2013, 2014, 2015, 2016 and 2017 happened upon them.

[194] Ibid 70
[195] Ibid 135

Hindrance in Holding Final Hearing

Though a huge number of PILs have been filed in Bangladesh but few of them have been disposed in a reasonable time. A large number of PILs are still pending before the court for final hearing. For example, Bangladesh has witnessed several devastating industrial disasters including fire incidents in the garment factories and collapse of garment buildings in different times such as *Spectrum Garment* building collapsed incident, *KTS Garments* building fire incident, *Tazreen Garment* building fire incident, *Rana Plaza* building collapsed incident etc. which resulted in deaths and injuries to thousands garment works. Those accidents were took place due to negligence of the authority to ensure workplace safety particularly the fire and building safety. In last two decades, several PILs have been filed in those incidents by different right groups (first PIL was filed in 1997) and rules have been obtained. But still those cases are awaiting for final hearing in High Court Division[196] (one is pending before the Appellate Division).[197]

It appears from the different instances that sometimes the petitioners are interested to file PILs and to obtain rules and ad-interim orders rather to complete the final hearing of those cases which cause the pendency of the PILs. Moreover, in most of the cases they are unwilling to follow up the same. Thus, the main objective of filing those PILs become frustrated.

Sometimes government's political interest and view create hindrance towards final hearing of the cases. Rush of the cases in the court and procedural lengthiness are also responsible for this situation.

[196] For details see ref. 115,116,118,120
[197] Ibid 114

Reconstitution of Benches, Over Burden of Court and Inability in Monitoring

Since the Chief Justice of Bangladesh has the discretionary power to constitute of the Benches of the Supreme Court, he can reconstitutes the benches at any time and thus the Benches of the Supreme Court are not permanent and as a consequence, the fate of the PIL cases fluctuates with the fluctuation of the Benches. For instance, *Ain o Salish Kendra (ASK) and others V Bangladesh and others*[198]case has been filed challenging the unlawful detention of undetermined number of mentally disordered (mostly lunatics) persons in various jails of Bangladesh without any allegation . The hearing of the case has been finished long before but the case is still awaiting for judgment as because one of the concerned judges (who heard the matter) has been elevated in the Appellate Division and the concerned Bench has been reconstructed with new jurisdiction.

Fluctuation of Benches also impeded to the progress of PIL proceedings since the level of expertise and sensitization of all judges are not the same and they are not equally convinced with the application of PILs.

Additional problem is that the High Court Division is the sole authority under the constitution to deal with the PIL matters along with the other applications under article 102 of the constitution. In this context, as the only centralized forum, the writ Benches of High Court Division face excessive workload which constitutes a log-jam of cases and that causes consumption of huge time to settle the PIL cases.

Another problem is though our courts apply a recent technique to hold the judicial supervision by issuing time-bound reportage directives, but its inability to engage public officials in the court-directed reform activities, to strongly monitor PIL decisions or to apply the contempt jurisprudence to ensure executive compliance has made the PIL's optimal performance poor. The lack of adequate

[198] Ibid 95

judicial capacity to ensure the promising court decisions is actually a major problem of implementation of the PIL judgments and orders in Bangladesh.

Beyond the Reach of the Poor and Disadvantaged

Still PIL is in the hand of the elite class of the country such as elite individuals, associations of elite individuals, political pressure groups such as lawyers' bodies, civil society representatives, and nongovernmental organizations. Yet it is far beyond the reach of the poor and disadvantaged groups of the society. Lack of knowledge and information, procedural lengthiness, expensive litigation process and other circumstances such as political threat or threat by the local influential persons, inability to come to the High Court etc. make them absent in filing PILs and therefore create absence of real victim litigants and thus sometimes undermine the actual victims and their grievances.

Narrow Down of Focus

It is apparent that most of the PIL cases have been filed in Bangladesh focusing on economic social and cultural rights. But the violation of civil and political rights of the citizens, deep rooted corruption and poverty, existing in the society from the very beginning, are unfortunately overlooked and not taken seriously by PIL initiators. There is no major and mentionable achievement through PIL in the field of structural reforms concerning public institutions; for example, prisons, hospitals, and so on. Thus, a portion of issues is still remain unaddressed by PIL.

Political Involvement of the Initiators

In reality, individuals from elite class, associations of elitist individuals, political pressure groups such as lawyers' bodies, civil society representatives, and nongovernmental organizations are in the center of the movement of social change through PILs and most of them are politically motivated. So, it often seems that PIL undermines the much-needed social change and empowerment of the disadvantaged, rather it focuses on the political motivation of the initiators. For

example, filling of most of the constitutional amendment cases have been driven by the political motivation of the petitioners.

Lack of Information

Sometimes it is cumbersome to continue a PIL because the public spirited individuals or the right groups or the NGOs cannot gather the required information by their own finance or capacity. In addition, the Government agencies are often remiss in producing relevant materials and information to assist the court in ensuring justice.

Limitation of Right Groups

The right groups or the NGOs file PILs as strategic part of their organization's mandate and as part of their job descriptions. Moreover, their limited resources and internal agenda-setting interests in addition to other apparent and hidden external factors such as government interference make their willingness to file PILs limited.

Publicity Interest Litigation

A segment of lawyers takes this as a means of gaining overnight popularity by filing PIL irrespective of merits. Sometimes vested interested groups and individuals use this avenue for their ugly private interests.

7.3 Suggestions

A sets of suggestions, some of which are also available in other foreign jurisdictions could be made to mitigate the above mentioned problems PIL faces in Bangladesh. These are:

Establishment of Separate and Permanent PIL Bench

Countries like Bangladesh it is little bit difficult to think that our conscious individuals, rights-advocacy lawyers and organizations, financial resources for litigation, and enforcement agencies will work together to bring the social change

through PIL. It it's the judiciary to take the leadership to create and keep the support structure for PIL. But our available writ benches of High Court Division is already overburdened with the regular writ cases and PILs causes more load to them. As a result, this excessive workloads of the writ benches of HCD constitutes a log-jam of cases which causes consumption of huge time to settle the PIL cases. In this context, separate and permanent PIL benches to deal only with PIL matters may be established and judges with sensitivity and a deep understanding of PIL may be appointed in this particular bench. This could reduce the workload of the regular writ benches. Since it would be a permanent bench, there would be no fear of fluctuation of the benches which creates harm to the PIL cases. Sometimes, it appear that the changing of jurisdiction of benches also creates harm to the implementation of verdict and ad-interim orders it pronounced in PILs. So, making a separate and permanent bench would be greatly prolific for more structured execution of PIL. Moreover, it would be easy for the separate bench to monitor the implementation of judgments and orders obtained in the PIL cases.

Imposition of Cost

The publicity seeker litigants who file PILs, irrespective of merit, only to gain overnight publicity, the busy bodies and the vested interested groups who use PILs in their private interest should be given huge cost by the court for misusing the PIL and for wasting of court's time.

Establishment of Fact-Finding Commission

Sometimes it is difficult for the public-spirited persons or NGOs to collect the required information by their own financing and capacity. Following the example of India, the Supreme Court of Bangladesh can form fact-finding commission composed of relevant experts. It would work to find out the information financed by the government. The district judges, journalists, lawyers, mental health professionals, bureaucrats and the expert bodies may be appointed as commissioners. It would help to expedite the proceeding of PIL by supplying required information.

Implementation of verdict and the orders of PIL cases is a great challenge in Bangladesh. In most cases, follow up is poor. The court can also assign the fact-finding committee to follow up the post-verdict implementation.

Establishment of Green Bench

Long ago our neighboring country Indian Supreme Court introduced a very pragmatic bench namely "Green Bench" to deal with the environmental issues. Different countries of the world have introduced such specialized Bench. Examples include the High Court of Kenya, the Supreme Court and Administrative Courts of Thailand, as well as courts in Sweden, Netherlands, Finland, Belgium and Greece. [199] In Uganda, environmental cases can be moved before the Chief Justice of the Supreme Court. Following these examples the Supreme Court of Bangladesh can establish a Green Bench to deal with the PILs on environmental issues.

Increase the Practice of Epistolary Jurisdiction

In Bangladesh, there are many factors such as financial inability to initiate a case,inability to come to the High Court to file a PIL case , political threat or threat by the influential etc. due to which the poor and disadvantaged people including the real victims are absent in filing PILs. The PILs are still in the hand of the elites which sometimes undermines the actual victims and their grievances.

To make the access to justice easy and available to the poor and ignorant people or to the people who are not in position to come to the court to file a PIL such as the prisoners, patients etc. the judiciary has to increase the exercise of epistolary jurisdiction. Courts have to entertain more and more letters or other form of epistle as writ petition for facilitating access to justice to those people so that they can vindicate their right and get redress for their violation or denial of justice by their own initiative without depending any elites.

[199] George (Rock) Pring and Catherine (Kitty) Pring with an Introduction by Lalanath de Silva "Green Justice : Creating and Improving Environmental Courts and Tribunals", Washington DC, The Access Initiative.

Enhance the Focus

In Bangladesh, "development" is happening very fast. But without ensuring the rule of law, accountability and good governance, the development will not be effective. It should be kept in mind that to enjoy the economic, social and cultural rights, it is necessary to ensure the civil and political rights of the citizens and without eradicating the deep rooted corruption, the benefits of developments and ESCR rights will not reach to the door of the poor. So, to bring the social justice in every sense, the PIL initiators need to file more PIL cases focusing the civil and political rights of the citizens and the corruption in the government's self-structure.

PIL in Lower Judiciary

There are some scope in Bangladeshi laws to file PILs in Lower Judiciary particularly under the Code of Civil Procedure (C.P.C) 1908, the Code of Criminal procedure (CrPC) 1898, The Penal Code (P.C) 1860, Labour Act, 2006, Consumer Rights Protection Act, 2009 etc. Exercise of PIL in lower judiciary as per laws will reduce the excessive workloads of High Court Division and will ensure the decentralization of access to justice across the country. Moreover, it will ensure evidence-based justice.

NGOs Initiatives to Pursue Advocacy and Sensitize the Government Agencies

Government should be equally interested in ensuring justice so that the ignorant, the poor, the deprived of justice get the relief according to the constitution. Without government's effective engagement, execution of the judgments and orders will be frustrated. But often it appears that the government plays tricky game to avoid the implementation of PIL judgments and orders. It is the NGOs who can play a vital role to pursue persistent advocacy with the government to make the government sensitize to lend the helping hand in case of genuine PIL by implementing the judgments and orders or by bringing required information and relevant materials to the notice of the court for the ends of justice.

In addition, the NGOs, who deal with PILs, can organize training and workshop for the young motivated lawyers to share the mechanism and strategy of PIL so that the young lawyers can engage them with PIL and be a part of the movement for social change.

Academic Institutions' Initiative

Despite having all the necessary requirements, PIL spectrum will not be successful if we fail to promote human resources to renovate themselves into public-spirited force. From that perception, the legal educational institutions can play a vital role to create public spirited mind by providing a PIL favored curriculum and also by arranging workshops, seminars on PIL amongst the students and faculties.

7.4 Conclusion

Development of PIL in Bangladesh is a blessing. In Bangladesh, PIL influenced the social ordering and the executive's behavior. For example, the environmental law of Bangladesh is gradually taking a pro-people shape because of persistent hammering by the environmental right groups and individuals through PIL. PIL attracted some measure of legislative-executive activism such as it helped to reduce the mass arrest. It also helped to stop the eviction of the thousands of slum dwellers until those cases are disposed of or procured a government promise not to throw people on the streets without providing them with suitable shelter elsewhere.

Bangladesh Judiciary played a vital role in promoting social change by securing the fundamental and human rights through PIL. The progressive outlook of the judiciary towards public interest litigation has enabled the judiciary to play a dynamic role in facilitating and promoting social change by overcoming the earlier inhibitions which had constrained its role. Judiciary's rights-friendly interpretations of the constitution contributed a lot in implementing the economic and social and cultural rights of the citizens. Now the judiciary acts like an

institution not only providing relief to citizens through the avenue of PIL but also attempting policy reform which the state must follow.

But there is something more to realize. In Bangladesh, there are some PILs, in which visible and significant changes have been achieved or remedy sought for has been guaranteed by the Hon'ble Court and implemented by the concerned authorities. On the other hand, there are a good number of PILs in which the progress or condition of the implementation is not satisfactory. This is because the legislature is unwilling to take remedial measures and the executive is unwilling even to enforce the existing laws.

It is proven that public spirited citizen or organization or the judiciary cannot act isolated and get satisfactory achievement in PILs rather only the combined effort of the conscious citizen, the judiciary and the government can ensure the fundamental and legal and human right of the disadvantaged and deprived segment of the society and give them the justice. All PILs involve some policy issues which require government's responsive engagement. In this context, it is really very difficult for PIL, even though those have obtained the judgment as expected, to proceed with the implementation of the same, if the government is deliberately unwilling to its implementation. This challenge has to be faced with new strategies. Improvement of pressure building mechanism should be the area of concentration. Moreover, the recommendations, which are made in this instant research work should be taken into notice and should be applied to mitigate the problems faced by PIL in Bangladesh.

In this context, it can be said that, in Bangladesh, still PIL has a long way to go before becoming a well-established participatory method of justice delivery. But we should continue our movement for a society where fundamental human rights will amply be treasured, judiciary to play its utmost roles and PIL to become a key instrument for realizing fundamental rights and protecting public interest.

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