



## Public Interest Litigation for the protection of vulnerable segment of the society and the achievement of social justice for them: Bangladesh Perspective

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### ABSTRACT

The phrase 'Public Interest Litigation', commonly known as PIL, is a relatively recent phenomenon in our judicial system. PIL refers to situations in which concerned people or groups approach the court in good faith for the benefit of the general public. How indigent and helpless people can get help in court through PIL and at the same time to ensure that no one is deprived of justice irrespective of his lack of qualifications, ability and financial conditions is the main focus of this article. It is a method for bringing societal anomalies to the notice of the court in order to obtain effective remedies for the most vulnerable sections of the society. Attempts have been made in this paper to investigate the factors that may give rise to public interest litigation. It has also been tried to develop a comprehensive idea for understanding the fact that public interest litigation is necessary to guarantee equal justice for all and prevent the infringement of human rights.

**Keywords:** Aggrieved person, Locus standi, Violation of rights, Vulnerable section of the society, Implementation.

### 1. INTRODUCTION:

Public Interest Litigation is a legal mechanism that addresses a broad spectrum of matters, encompassing but not limited to poverty, police brutality, illegal detention, environmental and health-related issues, the entitlements of women and children, and other human rights issues (Md. Idrisur Rahman vs. Shahid Uddin Ahmed and others, 1999). The scope of this subject matter is open to continuous evolution and expansion. From at least two points of view, this is a significant new turn of events that has taken place. For the first time in history, the courts are taking an interest in issues of public importance. This goes above and beyond what courts usually do, which is to settle disputes between private parties. The second aspect pertains to the adoption of a public

law perspective toward the principles of standing, process, and remedies, with the aim of enabling individuals to achieve public objectives via the legal system. The theoretical and practical manifestations of PIL represent a deviation from the customary legal principles that underpin our common law-based legal framework. It's not a revolution because it does not aim to overthrow the existing legal system as a whole in the end. However, this is more than just an exercise in playing around with the system's parameters. When it comes to protecting the welfare of the general public, it overthrows the conventional method and welcomes in a brand-new set of guiding principles and operational processes. Therefore, PIL represents an important deviation from conventional thinking

on both the theoretical and practical dimensions. In Bangladesh, the development of PIL corresponded with the restoration of democracy. Since 1992, Bangladesh has made a number of efforts to initiate the practice of PIL (Sara Hossain, S Malik and Bushra Musa, 1997). In the beginning, finding a solution to the threshold issue was challenging. Various individuals and organizations in Bangladesh have expressed their apprehension regarding several issues. However, due to the consistent efforts of social activists, judges with a progressive mindset were able to interpret the constitution in a more liberal sense through a number of court rulings. When the case was ultimately successful in 1996, the Supreme Court decided that not only is PIL legal within the parameters of the constitution, but also that the constitution requires the employment of a PIL approach (Dr. Mohiuddin Farooque v. Bangladesh, 1997).

## 2. Method of the Study

Right to litigate is an important issue for the people to ensure their fundamental as well as statutory rights enshrined in the law. Public interest litigation aims to establish the rights of the people, and if the rule of law fails through the violation of that right, the court has to remedy it through a public interest litigation. Public interest litigation plays an important role in protecting the human rights of disadvantaged and backward people, ensuring good governance and accountability of the government. This research is conducted on the basis of secondary data and are collected from various journals, books, e-books, Court decisions i.e., cases, reports, journals, research papers, legal reports, newspaper articles, international legal instruments, and government statistics, etc.

## 3. Concept of Public Interest:

It is by no means simple to define the concepts of 'public' and 'interest'. There is a lot of scope for misunderstandings and conflicting concepts when they are combined to make the term 'public interest.' Generally, the word 'public' refers to the citizens of a country or region. The phrase can be employed to denote either the entirety of the members of a community or portions of community members, as well as any division or class within said community (Tatem Steam Navigation Co. vs. Inland Revenue Commissioners, 1941).

Due to its ambiguous nature, it is essential to utilize it solely within its intended context. The term 'interest' denotes a legal right, ownership or a portion in something that makes one objectively concerned with it. The concept encompasses a variety of arrangements involving different combinations of entitlements, advantages, powers and, immunities etc. (Bearman's Ltd v. Metropolitan Police, 1961). For a variety of reasons, it is difficult to define the phrase 'public interest', which is made up of the phrases "public" and "interest." The phrase is used with various interpretations and points of view in a number of academic disciplines, including political science, economics, and law. Again, it depends on the user and the intended use; everyone utilizes it, whether they are democratic or autocratic (A Downs, 1962). Since the concept of public interest is a recent addition to our legal system and a still developing trend, especially in Bangladesh, it has not yet been possible to devise a precise and complete definition of the word 'public interest' in this context. Justice C.J. Mahajan of India said in the case of State of Bihar v. Kameshwar, 1952 that the concept of "public interest" cannot be defined precisely, it has no fixed meaning, rather it is expansive and varies from country to country and the term may have different interpretations in different countries. Thus, the concept of 'public interest' has no pre-defined scope or boundary, within which only a matter can be considered to be of public interest. The context and circumstances of each case determine whether its content is considered to be in the public interest. But basically, 'public interest' refers to the common rights of common citizens and this interest is an interest in which a particular nation or group is assumed to have a stake. Whenever a matter is claimed to be in the public interest before the court, the court will exercise its discretion to determine whether the public interest is involved at all. Whenever a conscious person or organization conducts a case in the public interest and not out of any personal interest, vested interest or group interest, but for bona fide purposes, then it falls under the category of public interest litigation. An Indian court also expressed the opinion that public interest is any act that is beneficial to the public (Baburam Verma v. Uttar Pradesh, 1971). In addition, the term "public interest" refers to

the sum of all societal interests that have been balanced in favor of the greater good (F Raymond Marks, Kirk Leswing and Barbara A Fortin sky, 1972). Some idealists believe that the public interest is the path of action that society as a whole should take, regardless of whether any particular person actually demands it (John Rawls, 1971). Therefore, the term captures the traditional and well-established method that both the English and Indian sub-continental courts have used (DC Jain (1986). There are several more accepted meanings for the term 'public interest.' It frequently has connections to the interests of the nation, and national security. It has also been pointed out that the community's interests include maintaining public decent, behavior, order, and security will come under the purview of 'public interest.' (Jesingbhai v. Emperor, 1950).

#### 4. Meaning of PIL

There is no ambiguity in the definition of PIL, which is 'Public Interest Litigation'. The first concept of PIL in the United States began in the 19th century, i.e., around 1860, through the 'legal aid movement'. In India, PIL is known as 'Social Action Litigation'. PIL is a legal proceeding through which constitutionally recognized fundamental rights of the public or a large section of the public are enforced by filing a suit in a court of law to protect the interests of the public or any section thereof. In *People's Union of Democratic Rights v. Union of India*, 1982 when the notion of PIL was only beginning to take form, Bhagwati J., one of the pioneers of PIL in India, stated that... "Public interest litigation is essentially a cooperative effort by the petitioner, the State or public authority, and the Court to secure observance of the constitutional or legal rights, benefits, and privileges accorded to the most vulnerable segment of the community and to achieve social justice for them." In *People's Union for Democratic Rights v. Ministry of Home Affairs*, 1985, Kirpal J. said that, "as I understand the phrase 'Public Interest Litigation', it means nothing more than what it states namely it is litigation in the interest of the public. Public interest litigation is not that type of litigation which is meant to satisfy the curiosity of the people, but it is a litigation which is instituted with a desire that the court would be able to give effective relief to the whole or a section of the society."

Basically, PIL is a litigation that safeguards the public interests and protects the public or a segment thereof from different injuries and it can be clarified through some examples-in 1992, a journalist named Borhan Kabir gave an excellent report in the daily Ajkar paper. The subject of the report was how toxic ingredients in marketed paracetamol syrup are endangering the lives of thousands of children. Based on this report, a public interest litigation was filed in the High Court to save the lives of many children. The High Court ruled against the government in the case. But before the case was settled, the case stopped when various brands of poisonous syrup were withdrawn from the market on the orders of the government. A partial victory of the public interest litigation was achieved at that time. Many children's lives were saved from the poisonous syrup (*Syed Borhan Kabir v. Bangladesh and others*, 1993). Another remarkable example of public interest litigation is the FAP 20 case in the environmental field. In that case, the court drew attention to the potential adverse effects on the environment of a particular area as a result of a controversial flood control project. Public interest litigation is the most useful approach for seeking court intervention against violations of environmental rights. In case of environmental disaster, the entire population of the area suffers, not just a single individual. Besides, the court's self-imposed jurisdiction is a well-established feature of public interest litigation. If by any means the Judge comes to know of any incident which has resulted in or is causing violation of public interest, he may himself initiate a case against the offending authority. For example, *State v. Deputy Commissioner, Satkhira and others* where a High Court Division judge came to know about Nazrul Islam's detention without trial for 12 years through a newspaper and on his own motion issued a ruling for his release. Collectively, the rights of helpless or disadvantaged people can be enforced through public interest litigation. A case of slum eviction without notice and without provision of alternative resettlement was held illegal in *Law and Arbitration Center v Government of Bangladesh*, 1999. Therefore, PIL is a litigation that seeks to provide justice, especially social justice, to an individual, group, or any segment of the community

that otherwise would be unable to file a suit before the court due to personal deficiencies, economic or social deprivation, or state oppression.

### **5.1 Scope of Public Interest Litigation:**

The context and circumstances of each case determine whether its content is in the public interest or not. Thus, the concept of PIL has not pre-defined scope or boundary, within which only a subject matter can be considered to be concerned with public interest. Public interest litigation may be filed in the following certain cases potentially, namely:

- a. When individuals living nearby are impacted by air pollution caused by a factory or other industrial operation.
- b. Where the passengers are faced inconvenience by any street light in any area / road.
- c. Where sound pollution happened due to play loud music at night in some banquet halls.
- d. Where the contamination of the environment is being caused by certain construction enterprises cutting down trees.
- e. Where poor people are affected due to the arbitrary decisions of the government .
- f. Where child labor and forced labor happens.
- g. When sexual harassment adversely affects working women's rights.
- h. Where workers are depriving from minimum wages, leaves and other benefits as well as violating the labor laws by the employer.
- i. Where the environment and biodiversity are in critical condition due to human actions.
- j. Where legal rights are violated in police station like police harassment in registering any case, premature release, death in police station etc.

### **5.2 Features of PIL:**

1. PIL is a strategic weapon in providing legal aid that helps in bringing justice to the poor people.
2. PIL is entirely distinct from regular suit in which one side claims compensation while the other opposes it.
3. Normally, people fight one another for their rights, but issues pertaining to the public interest are brought before the court with the intention of defending and advancing the public in-

terest.

4. The goal of public interest litigation is to guarantee that the legal and constitutional rights of a significant number of individuals who are underprivileged, uneducated, or socially or economically backward are protected.
5. To protect the constitutional or legal rights, benefits, and privileges granted to the weaker segments of society and to achieve social justice for them, public interest litigation combines the efforts of the petitioner, the state or public authorities, and the Courts.
6. PIL is held in order to uphold public rights and interests, address grievances raised by the public, and fulfill public obligations.
7. The role of the court in public interest cases is more beneficial than in general cases.
8. In dispute resolution in PIL, there is no decision on individual rights as in ordinary litigation.

### **6 Identifying the 'public interest' in a PIL Case:**

To accomplish collective justice through PIL, the case must involve a rationally determinable public interest that is accorded due acknowledgment and deliberate preference. Apparently, an ideal case involves three stages; namely-

- a. The public interest comes first, followed by individual interests, group interests, and special interests. In other words, the public interest dominates free competition between diverse interests (Frank Shipping Ltd. V. Bangladesh, 1998).
- b. It is the judge's discretion to determine what constitutes public interest. This is primarily a question of fact that is determined on a case-by-case basis;
- c. The judge exercises his or her discretion cautiously and not irrationally or capriciously. Public interest is a nebulous and fluid idea which varies depending on the nature of the issue. However, there may be a lot of allegations of ambiguity regarding the PIL and it may be contested by the following several ways.

**First,** in the majority of instances, we know immediately if an issue is of public concern or not when we face it. It is evident that the unrestricted import and distribution of radioactive milk is contrary to the welfare of the general public, and does not necessitate any specialized le-

gal knowledge to acknowledge this fact. In other words, in a good scenario, the aspect of public interest is identified and assessed practically. **Second**, India and Pakistan have already acquired a substantial corpus of PIL case law. We must also include the rising number of Bangladeshi instances. Now we have a substantial number of resolved instances that courts may reference when evaluating public interest factors in the same circumstances. **Third**, proof of public knowledge and response, notably in the form of public demonstrations and media coverage, is a strong indicator to the court that the issue at hand is of public importance. A problem, however, may not be of public interest just because people are concerned about it. **Fourth**, the court can establish its own criteria for considering PIL cases. (Sangeeta Ahuja, 1997) In fact, rigorously defining actions and topics as matters of public interest will hinder the public's interest and impede the development of PIL in the future. The public interest can only be effectively served if the conception is flexible enough to adapt to the changing needs of time and society.

### **7.1 The distinction between PIL and conventional litigation:**

The following are some of the ways in which PIL varies from traditional litigation:

**First**, PIL serves people in general or a specific segment of the population. The primary objective is to better society as a whole, and therefore its scope must be public instead of personal. The following are instances that demonstrate -

- a) When the matter at hand affects the entire public or entire community, as in the case of the formal appointment of an incompetent government officer;
- b) If the problem is one that affects a vulnerable population group, like evicting slum dwellers without providing them with alternative housing;
- c) When a problem affects one or more people, but the conduct is so terrible or severe that it shocks society as a whole, such when a young girl is raped while in police custody.

**Second**, the preceding conditions make the court open to applications from any individual or organization. In other words, the concept of PIL implies a relaxation of the limitations pertain-

ing to standing. This relates to cases started on their own initiative, in which the judge participates as a concerned party, are related to this. **Third**, the court adopts a non-adversarial approach as opposed to an adversarial litigation approach. This covers the consideration of both procedural and relief-granting factors. Hence, it is within the purview of the court to regard applications as writ petitions, grant compensation, and observe the execution of its judgments and directives. In brief, PIL is a form of legal action that places the public interest above all other interests in order to achieve social and collective justice. This type of litigation involves the court's willingness to overlook the limitations of the adversarial litigation model. PIL refers to the legal action taken by individuals or organizations who are motivated by a sense of social responsibility to seek the assistance of the court for the betterment of the general public or a specific underprivileged portion of the society. Such legal action is not pursued for any personal, or group interest, but rather for the betterment of the entire community. The detection of harm to the public interest is dependent upon the infringement of constitutional or legal rights, benefits, or opportunities, or the breach of a constitutional or legal obligation or duty. PIL is deemed necessary when the law fails to provide protection to the public or a particular group thereof, due to factors such as lack of awareness, financial constraints, apprehension, or absence of concerted action.

### **7.2 Representative suits and PIL:**

Rule 8 of Order 1 of the Code of Civil Procedure, 1908 described the representative suit and stated that when several people possess a common interest in a single suit, one or more of those parties may, with the court's permission, bring a suit, be sued, or defend on behalf of or for the benefit of all parties thus interested. To be clear, a representative suit is not the same as a PIL because its main objective is not to safeguard the public or social interest, but rather to address group interests in order to stop numerous similar actions. Therefore, representative suit differs from PIL in the following ways:

**First**, a representative suit is filed and brought in the conventional adversarial proce-

cedure. It isn't intended to promote social contact or be inquisitive. Conversely, PIL introduces new techniques for adjudication and remedy issuance while reducing the adversarial process.

**Second,** the plaintiff in a representative suit is generally affected and other parties also have a grievance. Particularly in the traditional meaning, PIL petitions frequently include a petitioner who is not personally affected.

**Third,** representative suits can be initiated in cases where a large number of individuals are involved. This expression possesses a unique and specific connotation. One the one hand, 'many individuals' does not include everyone (*Gurushiddappa v. Gurushiddappa*). This rule does not apply when there is a threat to the public interest. However, this does not mean an infinite number of people; rather, the group being referred to must be appropriately defined. But, there is no constraint limiting the number of participants, and the exact figure need not be determinable (*Hasan v. Masoor, 1948*). Therefore, the court must use its discretion to determine what is or is not many in a given instance (*Narayanan v. Kurichithanam, 1959*).

**Fourth,** there seems to be room for launching PIL as representative suits where a sufficiently specified number of members of a society are aggrieved. However, representative actions do not bring remedies to the public and the unique remedies afforded by writ jurisdiction are unavailable.

### 7.3 Differences between PIL and Writ

On the face of it, writs and public interest litigations seem to be similar but there are some differences in the following ways-

a) PIL is a legal action taken in the interest of the public and the scope of rights in PIL and the interpretation of the locus standi (locus standi) have not been limited to individual interests alone. A person indirectly aggrieved can file a PIL although the case has to be filed in the form of a writ petition, it has been interpreted to compel the government to ensure the fundamental rights as well as the principles of good governance and has been accepted by the courts in many cases. Whereas, a writ is a legal order issued by a court or other competent authority, directing a person or entity to do a particular act which he is under obligation to do or refrain from doing something which he is under obligation not to do.

b) As per Article 102 of the Bangladesh Constitution, writs are issued by the High Court Division. However, neither a single article in the constitution nor any statute or Act define PIL. The court has to construe it to take the general public's intent into consideration.

c) PIL can be filed against the government, local authority, a public or private organization who are involved with the violation of people's rights. But a writ cannot be filed against an officer or employee working in a private organization; that is, if a private organization violates fundamental rights, then it will be a crime, and a writ cannot be filed. The case should be filed in the civil court.

d) Filing a writ is a costly, difficult, and time-consuming procedure. But PIL offers a simplified and inexpensive technique. Additionally, unlike with writs, the rule of locus standi, that is, the right to appear in court for an action is eased in PIL. The locus standi is adhered very rigorously in writs.

e) PIL is an application submitted by any citizen to alleviate any unwarranted distress or inconvenience experienced by the public at large, while writs are filed by individuals or organizations for benefit in their own cases.

f) There are several types of writs, such as habeas corpus (which orders the release of a person who is being detained illegally), mandamus (which orders a public official or government body to perform a duty), quo warranto (which questions the legality of an individual holding public office), certiorari (a process to seek judicial review of a decision of a lower court or government agency) and prohibition (directing a subordinate to stop doing something that the law prohibits). Whereas, PIL has no such kind of classifications as there are available in the writs.

g) Whereas the evidence in writs is subject to a strict examination, the evidence in PIL is more focused and doesn't entail as many technicalities. For instance, anyone, regardless of whether they have experienced harm or not, may file a PIL. Writ, however, can only be brought by the party who aggrieved personally.

h) The matter on which the action is sought is of public interest in PIL, and a judge's opinion and judgment are extremely important since they affect the welfare of the country. In Writ cases,

the focus is on matters of private interest, and the judges' role is limited to reviewing the available evidence.

### **8.1 Locus Standi of PIL Petitioner:**

In the adversarial method of the administration of justice, judges are viewed as neutral arbiters or umpires, not as activists. They are not required to start a case or make a decision on its behalf until someone has been wronged or feels that their rights are in danger. To put it another way, in Anglo-Saxon jurisprudence, a person with locus standi to file a suit or action can seek remedy from a court of law; nevertheless, he cannot do so unless he is affected by a wrong or if someone is threatening to take away his legal rights. Thus, only the aggrieved party may file a suit in private disputes. When the interest of society or the public at large is concerned, the petitioner must have a grievance distinct from the private interests. This simple rule is founded on several fundamental jurisprudential principles. The first is to prevent multiple processes and the second is that the affected individual understands his own situation best. This rigorous rule of standing is founded in the laissez-faire philosophy of the state, which holds that the state's primary duties are to protect the nation from external aggression and to uphold internal law and order, with little to no regard for the welfare of its citizens. For instance, Article 226 of the Indian Constitution states that the High Court may issue relevant directives or orders to uphold fundamental rights upon the petition of a party who has been aggrieved. Writ jurisdiction is guaranteed by Article 102 of the Bangladesh Constitution, which also guarantees immediate access to the High Court Division for those who have been aggrieved. When no other equally effective legal remedy is available, this article gives the chance to petition the High Court Division for directives and orders for the enforcement of fundamental rights. One of the fundamental rights is the ability to move to the High Court Division (HCD) in order to enforce one's fundamental rights under Article 44(1). The concept is exemplified in the case of *Jobon Nahar and others v. Bangladesh and others*, 1997, where the court determined that even though the petitioner's application was denied by the Court of Settlement due to a statute of limitations, he

could still move the HCD because the right to enforce a fundamental right is a fundamental right. Article 102(2) covers five different types of writs. Remedies in the nature of prohibition and mandamus are awarded under clause 2(a)(i); remedies in the nature of certiorari are granted under clause 2(a)(ii); remedies in the nature of habeas corpus are addressed under paragraph 2(b)(i); and remedies in the nature of quo warranto are addressed under clause 2(b)(ii). Granting writs of mandamus, certiorari, and prohibition 'on the application of any person aggrieved' is stipulated in Article 102(2)(a). This rule is relaxed only in the case of quo warranto and the writ of habeas corpus. However, there are two primary types for the sake of our ongoing discussion. The petitioner must fall into the first category of "person aggrieved" under clauses 1 and 2(a). Article 2(b) circumstances fall into the second category, to which anyone, aggrieved or not, may apply.

### **8.2 Arguments in favor of public interest standing:**

The liberal interpretation of the constitution which helped public interest lawsuits to flourish. The Bangladeshi Constitution requires the pursuit of social justice and places a high priority on the welfare of the nation's citizens, so any analysis of a specific constitutional provision must be done within the context of the entire document while abiding by the rules of PIL. In line with this liberal view of constitutional interpretation, the petitioner's locus standi is the most crucial question to be clarified. The only obstacle to the liberal interpretation is the phrase "any person aggrieved" in Article 102 clauses 1 and 2(a) of the Constitution of Bangladesh. It has been noted that the phrase "person aggrieved" is not defined in the constitution. (Mahmudul, 1995). Despite how inconvenient and ineffectual the term "person aggrieved" may be in relation to Article 102 of the Constitution, it is not a term determined by the constitution itself (Syed Ishtiaq Ahmed, 1996). Generally, the term 'person aggrieved' was commonly used when dealing with the writ of certiorari. Therefore, when it applied to the other writs provided for in the constitution, it is challenging to establish a single determinable meaning. The criterion is inconsistent even when applied to similar documents. It has been contended repeatedly

that being “personally, directly, or principally aggrieved” is not required under the Constitution (Syed Ishtiaq Ahmed, 1993). The wording ‘application by the aggrieved’ should read “application of” rather than “application by” the applicant. Additionally, the usage of the term ‘any person’ in the constitution is separate and distinct from the term ‘the person’ (M Amir-ul Islam, 1996). This type of novel argument suggests that the term ‘any individual’ ought to be construed independently of the term “aggrieved.” As per Article 153(3) of the Constitution, in case of any discrepancy between the Bangla and English versions of the document, the Bangla version shall be deemed authoritative. The term utilized in the Bangla interpretation is “sangkhudha,” which bears a closer resemblance to the concept of “concern” rather than “aggrieved” (Dr Mohiuddin Farooque v. Bangladesh, 1997). However, two features of the law of standing have been emphasized throughout all of these philosophical and technical discussions. First, the court should follow the mandates and obligations set forth in the constitution rather than relying on inherited standards. Second, these constitutional clauses suggest liberal rather than strict standards of interpretation. Since the term “person aggrieved” is not defined in the constitution, courts are therefore free to interpret it in a way that is consistent with the societal and collective principles of justice as outlined in the constitution, rather than rigidly adhering to customary norms.

### **8.3 Extension of the Concept of Locus Standi**

Since Bangladesh inherited the British Common Law genre from colonial sources, the procedural complexities of this legal system have also remained an inherent feature of the country’s legal system. A reading of the history of the common law legal system reveals that the common law judges have from the very beginning, shown a very conservative attitude in taking up a case. Although this conservatism has gradually relaxed over time, its influence has never completely disappeared in many common law judicial systems. Governmental activities expanded in the welfare economy that the UK embraced, along with the number of cases of power abuse by government employees, which occasionally had a large negative impact on the public. Therefore, the English

courts believed that, given the altered circumstances, it was necessary to relax the standing requirement in order to make it easier for people to challenge the illegal actions of public officials. The petitioner in Kazi Moklesur Rahman v. Bangladesh, also known as the Beru Bari case, was an advocate who contested the validity of the Delhi Treaty of 1974, which established the demarcation of the land boundary between Bangladesh and India, long before this wave of liberalization of the rule of locus standi to enable public interest litigations reached Bangladesh. The petitioner’s locus standi was questioned in that instance. In this case it was held that, “It seems to us that the question of locus standi is one of discretion, which the court exercises after giving careful consideration to the facts and circumstances of each case. It does not involve the court’s jurisdiction to hear a person, but rather the person’s competency to claim a hearing.” In the Flood Action Plan (FAP) case, which was brought by Dr. Mohiuddin Faruk, the founding secretary of BELA, in 1996, the question of locus standi was ultimately resolved by the Appellate Division. It was decided that any member of the public who suffers a common wrong, injury, or invasion of fundamental rights of a group of people, or any citizen or indigenous association that espouses such a cause, has locus standi (Dr Mohiuddin Farooque v. Bangladesh, 1997). In the case of ETV Ltd. v. Dr. Chowdhury Mahmood Hasan, 2002 it was decided that, a court must intervene to prevent the subversion of the rule of law, even though other competitors for broadcasting licenses did not contest the granting of such a license to ETV Ltd., the Appellate Division held that the petitioners, as aware members of society, have sufficient interest to challenge the public wrong committed by the respondents in the performance of their public duty. This is vitiated by non-transparency and mala fide due to their abuse of power by total disregard of the law. Since locus standi has been liberalized, public interest litigation has a great chance of improving the lives of marginalized and oppressed groups of people by relieving their suffering and bringing the constitutional guarantees of fundamental rights to pass. However, there is also a risk of overburdening the High Court Division, which is already overworked and has cases that take years to re-



solve, and placing excessive stress on the public that is involved in legal proceedings. If the court is watchful from the start and carefully considers the petitioner's sincerity in seeking relief through public interest litigation, this crisis can be avoided. It is imperative for the Appellate Division to promptly resolve this matter in order to deter individuals from inundating the premises of this court with superfluous public interest litigations. The Appellate Division should also provide guidance on preventing the abuse of the court's jurisdiction through the use of public interest litigations, as exemplified by the Indian Supreme Court in the case of BALCO Employees Union vs. Union of India, 2001. This case involved the imposition of a requirement for the petitioner to provide security to compensate the opposing party in the event of the dismissal of their case.

### **9.1 New Rules of Public Interest Standing:**

There exist two types of standing emerged gradually in Bangladesh through a series of instances relevant to the public interest:

#### **1. Public interest representative standing:**

The petitioner represents a person or group of people who, due to helplessness, incapability, or economic incapacity, are unable to apply to the court for remedy.

#### **2. Citizen standing:**

A violation of public responsibility that violates the collective right of the general public.

### **9.2 Public interest representative standing:**

It will be convenient for us to understand this matter through examples of cases. In the case of Bangladesh Retired Government Employees Welfare Association v. Bangladesh, 1994 also known as 'Welfare Association case,' where retired government employees' group challenged a discriminatory pension provision in the Welfare Association case. The government invoked the well-established theory that a group cannot act in a writ on behalf of its members. Remarkably, the case was strong for the co-applicants who were personally harmed, even with the difficulty in admitting the association as a party. The petitioners included the Association's President and Vice President, both of whom were former government

workers. The government relied on a range of established subcontinental authorities, as evidenced by the well-known cases like Dada Match Workers Union v. Government of Bangladesh, 1977 and Sangbad Patra case, 1991. The petitioners referred to the Indian PIL case, DS Nakara and others v. Union of India, 1983 in which a society represented a significant number of pensioners. With respect to the cases concerning representative standing, the court acknowledged the preceding authorities as having established a prevailing principle. But the court went on to develop a public interest exemption and give standing using two broad tests. The first test is that the topic must be of public interest rather than private interest. The judge contends that the constitution is not a static constitution but rather a dynamic instrument that may be read and applied to ever-changing socio-economic conditions. The court ought to construe the constitution in a way that advances economic and social justice. Thus, it is improper to deny a party's agent the right to represent them in court when they are unable to appear due to financial hardship or other circumstances. The responsibility of the court is also determined in this case through the following significant speech... "As the Court exists to safeguard the rights and interests of all people, it is the responsibility of the judiciary to interpret the constitution in a way that satisfies the socio-economic needs of those who are unable to seek the assistance of the court because of poverty or other conditions. If a person continues to suffer and a fundamental right is not respected, the court will not have fulfilled its constitutional obligation. Therefore, it is necessary to avoid the "pedantic" and "lexicographic" interpretations of the term "person aggrieved" if there is no conflict with a specific constitutional provision." The second requirement is that an organization may represent this interest in court in public interest litigation provided that it protects the welfare and common interests of its members. The reason for this is the notion that every member needs to show up and turn in a different writ. Logically, locus standi will be awarded to the petitioner as an exception to the rule if the tests outlined above are positive. In this case, Naimuddin Ahmed J. declined to take into account the reference of Sangbad pa-

tra case, asserting that the facts presented in Sangbad patra case and the Welfare Association case are not similar, hence rendering the application of the Sangbad patra case principle unnecessary. The differentiation between the two instances resides in the observation that locus standi encompasses elements of both factual and legal inquiries. The court possesses the authority to exercise its discretion in granting standing, with due regard to the specific circumstances presented in each case. As such, a group of wealthy newspaper owners is not on the same level as an elderly middle-class pensioner group.

### 9.3 Citizen standing:

A comprehensive understanding of the concept of citizen standing may be achieved by examining the following case references. In the case of Anwar Hossain Khan v. Speaker of Bangladesh Sangsad Bhavan and others, 1985 also known as Parliament Boycott case, involved a legal petition for a writ of mandamus filed by an advocate who sought to safeguard public interests. The petition was brought about by the consistent non-attendance of opposition members of parliament during legislative sessions. He asserted that the mass absence of the Members of Parliament is in violation of the constitution, and as such, they are obligated to come back in Parliament and reimburse any remuneration and additional benefits received during their illegal absence. The individual who submitted the petition was a citizen and a legal voter. He said that, the elected members in Parliament serve as representatives of the entire nation. Therefore, any violation or transgression of constitutional law by a member of Parliament is subject to scrutiny by any member of the country. The counterparty asserted that their standing as a "person aggrieved" under Article 102 was not met by the individual in question. In this case, Qazi Shafi Uddin J. employed a liberal approach in interpreting the constitution and the concept of people's authority in a liberal manner, which is a positive development of PIL. He emphasized the fact that the powers of the Republic belong to the people, as stated in the preamble and Art.7 of the Constitution. This authority must be exercised in accordance with the constitution. If there is a violation, any citizen may oppose it, since he, together with all other citizens, is a source

of authority. In accordance with the preamble, the people of Bangladesh are charged with safeguarding, protecting, and defending the constitution. In another instance, Abu Bakar Siddique v. Justice Shahabuddin Ahmed and others, 1996, involved a concerned citizen objecting to the former Chief Justice Shahabuddin Ahmed's assumption of the presidency. The citizen contended that a retired judge is not entitled to hold any position that provides financial benefits while serving the Republic. There was a debate on the standing of the applicant. The definition of "person aggrieved" was first widened in this instance by Md. Mozammel Hoque J. He declared: "A person who is aggrieved may file an application under Article 102(2) of the Constitution. It does not, however, stipulate that someone must be personally aggrieved. The application of Article 102 would be more limited if the constitution allowed for personal grievance only." (Md. Mozammel Hoque J., 1985). In response to the petitioner's claim that the word "aggrieved" has several connotations, the court agreed. Thus, a grievance may be social, political, economic, mental, constitutional, or personal. Those who are struggling in whatever way are protected and supported under Article 102 of the Constitution. When deciding who had standing, the court took into consideration the particulars of the case and highlighted how important the concerns were. Head of state and emblem of unity in the country is the President. Each and every Bangladeshi citizen will be affected if someone who is unfit under the constitution is elected president. It was, therefore, unquestionably a crucial constitutional issue. After considering the importance of the petition, the court issued the following ruling: "Following the aforesaid principle enunciated by the Supreme Court we hold that the present writ petition is maintainable since several constitutional question of great public importance having far-reaching consequences are involved in the present case." Therefore, it appears from this ruling that standing should not be required in circumstances of constitutional violations involving the general public. This is an expansive idea, and the judge's discretion in evaluating whether or not a constitutional breach has occurred seems to be the only clear limitation.

### 10.1 Determination of Locus Standi under

### **the New Principles**

As the PIL has liberalized standing requirements, this does not mean that the court will automatically grant standing in every case without considering relevant factors. We find some key facts from the different case rulings that the court must take into account the following issues:

#### **10.2 Differentiating between a public and a private issue**

The initial subject to be determined by the court pertains to the classification of the cause as either private or public in nature. In order for an individual cause to be advocated, it is necessary for the petitioner to feel personally aggrieved and for their own interests to be impacted. In the event that an individual engages in a public endeavor that pertains to public misconduct or harm, it is not necessary for them to have a personal connection or be directly impacted. So, it is private law, not public law, that created the "person aggrieved" rule. Remarking on the FAP case, Latifur Rahman J. explains that, "based on the idea that rights and remedies are related, only the person whose own right is infringed is qualified to seek redress, the conventional norms requiring the petitioner to be personally aggrieved were established. The good and well-being of the people, particularly the less fortunate members of society, will, in many situations, be ignored if this theory is rigorously applied to public law." (Latifur Rahman J., 1997). Hence, the conventional perspective continues to hold true, maintain validity, and demonstrate efficacy in relation to matters concerning individual rights and infringements thereof. However, its applicability does not extend to public rights.

#### **10.3 Presence of 'wrong', 'injury' or 'violation.'**

The mere existence of a public cause is not sufficient to initiate legal proceedings, unless there is a demonstrable damage, harm, or breach of a constitutional provision or statutory law. This inquiry pertains to the extent to which the concept of 'public cause' encompasses solely rights that are pre-established and readily ascertainable. Numerous instances exist wherein a violation or breach occurs, resulting in evident harm or detriment to the general public, yet the corresponding right is dispersed or sparse-

ly distributed. The court appropriately emphasized the significance of the violation, breach, wrongdoing, or harm rather than focusing just on the right itself (Mustafa Kamal J., 1997). Another significant point is that public interest standing is not restricted to the constitutional rights only but it also covers statutory rights. "The use of PILs should not be limited to cases involving explicit violations of fundamental rights. Socio-economic rights are undergoing tremendous transformation in this day of technological, scientific, economic, and industrial expansion. Since new rights are being established that require collective defense, we must take action to safeguard all of the statutory, fundamental, and constitutional rights that are envisioned in the four corners of our constitution." (Latifur Rahman J., 1997)

#### **10.4 The sufficient interest of the applicant**

Since the existence of a public cause and the establishment of a violation determine the applicant's eligibility for a hearing, the court carefully considers this "cause." Thus, it will be determined case-by-case whether or not the petitioner has "sufficient interest." Just demonstrating a common interest with the public is sufficient to establish citizen standing. But when it comes to standing in the representative public interest, the petitioner must show that his concern is genuine and not illusory in order to successfully argue on behalf of a marginalized group in the society. In the case of Saiful Islam Dilder v. Bangladesh, 1998 it was held that, the mere fact of holding the position of Secretary-General or being a member of a Human Rights Organization does not necessarily establish a substantial interest in the case. In cases where a petitioner fails to provide evidence demonstrating their consistent efforts to seek legal remedies for a specific section or group of individuals who are unable to access the court due to their extreme poverty, lack of education, and social disadvantages, and where the petitioner or their organization cannot demonstrate their contribution towards achieving justice or upholding human rights in the relevant field, they cannot be considered a "person aggrieved" as defined in Article 102(1) of the Constitution of the People's Republic of Bangladesh. This is due to their lack of sufficient interest in the matter at hand.

In the instance of *SP Gupta and others v. Union of India and others, 1982*, the court must decide each case what constitutes 'sufficient interest' to grant public standing. To define 'sufficient interest', the court cannot set a hard and fast rule or formula, it depends upon the discretion of the court. There will inevitably be countless situations that cannot be contained in a strict mold or procrustean formula in a modern complex society that is attempting to transform its social and economic structure and provide social justice to the vulnerable by establishing new social, collective "diffuse" rights and interests and placing new obligations on the State and other public authorities. A judge who understands the constitution and has the right social viewpoint will be able to determine whether a public person bringing a matter before the court has sufficient interest to start the action in a way that is consistent with the goals of the constitution.

#### **10.5 Bona fide intention of the petitioner**

The court usually allows the aggrieved party to appear and argue their case. In matters involving public interest standing, the court will want to know why the affected party has not yet filed a lawsuit. In this situation, it's possible for a person possessing sufficient interest to successfully cross the stage. The respondent may, however, raise reasonable doubts about the petitioner's good faith by contesting the claim on the basis of the circumstances in the case. In PIL, an understanding of the petitioner's intent is crucial because it is the court's most effective weapon against meddling interlopers. In every case, the High Court Division will apply specific standards of care. In order to accomplish this, the court must determine whether the applicant is genuinely interested in the subject and is not doing so to gain publicity for himself or to create a simple sensation, whether he is acting in good faith, whether granting him standing is in the public interest, and whether or not he is acting as a side effect to further a questionable objective, like serving a foreign government (Mustafa Kamal J, 1997). Therefore, a petitioner must possess good intentions when beginning a Public Interest Litigation (PIL) case, just like it is required in regular or traditional proceedings.

#### **11. Boundaries that PIL is not allowed to cross:**

A public interest problem alone does not always constitute a strong PIL case. Because PIL is essentially litigation, it must operate within certain parameters.

**First,** the court cannot move on with a PIL case unless certain prerequisites are met, as it is the case in any legal proceeding. The following are some key points:

a. There must be a breach of constitutional or legal obligations, as well as a violation of any rights, privileges, or entitlements.

b. The courts are hesitant to take on any activities that the judicial system is not intended to do. Therefore, the courts cannot complete the very technical task of producing a list of medications that ought to be prohibited.

c. As a general rule, the court will not consider a petition of PIL where another effective and sufficient remedy is available, unless it can be demonstrated that the alternative remedy is ineffective.

**Second,** the courts must uphold the doctrine of separation of powers, or judicial respect for the constitutional arrangement of authority. This self-imposed limitation prevents the courts from doing a lot of things, even in PIL cases, such as-

a. The president cannot be ordered by the court to create "public policy,"

b. The legislative cannot be pushed into passing legislation.

c. The judiciary cannot take over government operations. Only in the most extreme and exceptional circumstances, if there are no other options at all, can ongoing surveillance or monitoring of public entities be conducted for a short length of time.

d. If the government is already handling a situation, the court cannot mandate a parallel investigation unless it is very certain that the statutory body is not a functioning entity. However, it has been established that in spite of the constitutional division of authority, the court must take action to maintain social justice when it is convinced that other government branches are not operating effectively.

**Third,** the petitioner's bona fide intents are being investigated by the court and found questionable, then petition for PIL will not be al-

lowd. PIL would not be filed on matters that served private interests or political objectives.

### **12. Limitation in implementation of PIL:**

As a result of the provisions of Article 102 of the Constitution of Bangladesh and the precedents of the country and abroad, the judges of the Supreme Court of Bangladesh have been maintaining a conservative attitude in the interpretation of locus standi i.e., the aggrieved person for a long time, which was a major obstacle in the case of public interest litigation. Public interest litigation is an effective measure to solve the problems of the collective public, but its expected result depends on its proper implementation. In implementation of PIL, the court can direct, not compel, any authority to comply with any order. Again, if the order is not followed, the court can do nothing but punish the Supreme Court for contempt. Apart from this, due to the efforts of the interested parties and the non-cooperation of the administration, the prohibitory orders are not being implemented. Bangladesh National Women Lawyers Association filed a writ petition in public interest to prevent sexual harassment. On May 14, 2009, the High Court formulated a policy to prevent sexual harassment and ordered the National Parliament to abide by this policy until a law against it is made. The judgment of the High Court has not yet been implemented. The President of 'Human Rights and Peace for Bangladesh,' said that, we have filed near about 300 writ petitions in the High Court Division on several points of public interest including prevention of food adulteration, maintenance of food quality, establishment of food court, proper equipment for post-earthquake rescue operations, removal of sacrificial waste, removal of Hazaribagh tannery, supply of clean water to Dhaka city, proper enforcement of Dhaka tenancy law, prevention of death in police custody, rehabilitation of beggars, rehabilitation of prostitutes, survey of Cox's Bazar and Kuakata beach area and orders for its conservation etc. After the final hearing, the High Court Division (HCD) passed a judgment ordering the formation of food courts and appointment of food experts in each district. But unfortunately, there is no progress in its implementation. The High Court ordered the procurement of equip-

ment for post-earthquake rescue operations. Although the committee was formed after the High Court verdict, no equipment has been purchased yet. The HCD gave a judgment to save the four rivers Buriganga, Shitalakshya, Turag and Balu in Dhaka. Also ordered to shift all tannery industries from Hazaribagh to Savar industrial area to protect the environment and save Buriganga. The judgment of the High Court has not yet been implemented fully. The High Court gave some directions for establishing a complaint center and installing CCTV to stop passenger harassment at the airport but the judgment has not been implemented till now. All historical places including the site of Bangabandhu's 7 March speech at Suhrawardy Udyan and the surrender site of the Pakistani army must be preserved. Even though such a judgment has been announced by the HCD, but the implementation of that judgment is still pending (Monzil Morshed, 2021). In addition, a Division Bench of the HCD ruled in a suo moto rule and said that speedy steps should be taken to limit the speed of all motor vehicles according to the speed limit specified in the Eighth Schedule of Section 85 of the Motor Vehicles Ordinance, 1953. Violation of speed limit laws and driving beyond the speed limit shall be punishable under Section 142 of the Motor Vehicles Ordinance. But the implementation of that judgment is also far away. In this way, because the judgment given by the HCD has not been implemented for a long time, a negative perception has been created about the government among the common people. The government has to prove not by words but by deeds that they are interested in implementing the judgments provided on public interest issues. Besides, the government needs to look for alternatives. In particular, the government should create a separate cell to implement the high court judgments. So that the cell can work to check which of the judgments given in public interest are not being implemented.

### **13. Conclusion**

Public interest litigation can play the most effective role in establishing the rights of the poor, illiterate, underprivileged and other disadvantaged sections of the society. Rule of law, fundamental human rights, equality and justice-based society

are constitutional rights for all in a democratic state system. Establishing this constitutional right of an individual or a group should be the object of litigation and for this reason, without taking public interest cases into political consideration, with the intention of strengthening the rule of law, it is necessary to continue the democratic process and ensure the fundamental as well as statutory rights of citizens by implementing the judgments of public interest litigations properly.

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