



# **SonargaonUniversity(SU)**

## **ResearchMonograph**

**On**

### **“Public interest Litigation in Bangladesh: Tool for Justice or Judicial Populism”**

**Research Monograph Submitted for the partial fulfillment of the award of the degree**

**in**

**LL.B(Hon’s)**

**Department of Law**

**SonargaonUniversity(SU)**

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Subject: Submission of Research Monograph on “**Public interest Litigation in Bangladesh: Tool for Justice or Judicial Populism**”

Dear Sir,

This is a great pleasure to submit the Research Monograph on “**Public interest Litigation in Bangladesh: Tool for Justice or Judicial Populism**” as a partial requirement for the fulfillment of my LL.B course under the Department of Law of the Sonargaon University (SU).

I have given due efforts to make this Research Monograph as fruitful one and to make it as informative as possible. I hope that this paper will not be the formality of academic course completion rather it will be a source of information for other purpose on this topic.

Yours sincerely

.....

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## Declaration

I do hereby declare that the Research Monograph Title “**Public interest Litigation in Bangladesh: Tool for Justice or Judicial Populism**” prepared solely by me and which has been submitted to the department of Law, Sonargaon University (SU) for achieving the LL.B (Hon’s) Degree. This is an original work of mine. No part of this research, in any way of or in from, has been submitted to any University or Institution for any Degree, Diploma or for other similar purposes.

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## **Supervisor Certificate**

This is to certify that the work presented in this dissertation is based on the work, carried out by the author herself under my supervision in Department of Law, Sonargaon University (SU).

It is also certifying that the work presented here is original and suitable for submission as the style and contents, for fulfillment of LL.B. program.

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## Acknowledgement

**\*In the name of Allah, the Beneficent, the Merciful".** Praise by Allah & thanks to Allah for patronizing me to finish this Research Monograph. I am very happy to finish it. It is a great Research of my life. It is a long cherished hope of my life to become a great lawyer. That's why I have admitted in the Department of Law in Sonargaon University (SU) to fulfill my dream. But through my whole study life in this field, I did not get much more opportunities to examine and show my knowledge and skill in this wide field. Lastly I have got a great chance to make my study meaningful when I got the chance to prepare a Research Monograph on **Public interest Litigation in Bangladesh: Tool for Justice or Judicial Populism**

I acknowledge my grateful to respected course teacher **Joydeep Chowdhury** for instructing me how to prepare a Research Monograph and his famous Books lectures on this subject help me to complete my task sincerely.

I am also thankful to my classmates they help me to complete the Research Monograph. I am extremely paying my solitude to all the authors and writers whose works help me to draft this original Research Monograph.

I give in deed thanks to everyone who inspired us to write this Research Monograph.

Thank you

**Uzzal Baidya**

## **Abstract**

Public Interest Litigation (PIL) has emerged as a significant mechanism for advancing constitutional rights, ensuring governmental accountability, and promoting social justice in Bangladesh. Through PIL, courts have addressed issues ranging from environmental protection and human rights to administrative transparency and the protection of marginalized communities. However, the expanding role of the judiciary in public affairs has also generated debate regarding the boundaries of judicial intervention. Critics argue that excessive reliance on PIL may encourage judicial activism and lead to judicial populism, where courts venture into policy-making domains traditionally reserved for elected institutions. This thesis examines the development, legal foundations, and impact of PIL in Bangladesh, assessing whether it primarily serves as a tool for justice or contributes to judicial overreach. By analyzing landmark cases, constitutional provisions, and scholarly perspectives, the study evaluates the effectiveness of PIL in strengthening the rule of law while considering concerns about democratic accountability and separation of powers. The research concludes that while PIL remains an essential instrument for protecting public interests and fundamental rights, its legitimacy depends on maintaining a careful balance between judicial intervention and institutional restraint.

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# CHAPTER ONE: INTRODUCTION

## 1.1 Introduction

Public Interest Litigation (PIL) has emerged as one of the most significant judicial mechanisms for promoting access to justice and protecting fundamental rights in modern constitutional democracies. Unlike traditional litigation, which is initiated by individuals seeking remedies for personal grievances, PIL allows courts to address matters affecting the public interest, particularly where disadvantaged or marginalized groups are unable to seek legal redress themselves. Through PIL, courts may intervene to protect constitutional rights, ensure governmental accountability, and advance social justice.

In Bangladesh, the development of PIL has transformed the traditional concept of locus standi and expanded the role of the judiciary in addressing issues of public concern. The recognition of PIL by the higher judiciary, particularly through landmark judicial decisions, has enabled individuals, organizations, and civil society groups to seek remedies on behalf of affected communities. Consequently, PIL has been used to address environmental degradation, human rights violations, labor rights, gender discrimination, and administrative irregularities.

Despite its positive contributions, PIL has also generated significant debate. While supporters view PIL as a powerful instrument for ensuring justice and protecting constitutional rights, critics argue that excessive judicial intervention through PIL may undermine the principle of separation of powers and encourage judicial populism. This thesis examines whether PIL in Bangladesh primarily functions as a tool for justice or whether it has evolved into a form of judicial populism that extends judicial authority beyond constitutional limits.

## 1.2 Background of the Study

The concept of Public Interest Litigation originated in the United States during the 1960s and was later developed extensively in India through judicial innovation. Indian courts relaxed traditional standing requirements to allow public-spirited individuals and organizations to seek

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<sup>1</sup> Constitution of the People's Republic of Bangladesh 1972, arts 44 and 102.

<sup>2</sup> *Dr Mohiuddin Farooque v Bangladesh* 48 DLR (AD) (1996) 438.

remedies for the protection of fundamental rights and social welfare. The success of PIL in India significantly influenced neighboring jurisdictions, including Bangladesh.

In Bangladesh, PIL gained constitutional legitimacy through judicial interpretation rather than explicit constitutional recognition. Initially, Bangladeshi courts followed a restrictive approach to locus standi, limiting access to those directly affected by a legal wrong. However, this position changed significantly with the landmark decision in *Dr Mohiuddin Farooque v Bangladesh*, where the Appellate Division broadened the concept of an "aggrieved person" and recognized the standing of public-spirited organizations to bring actions concerning public injury.

Since then, PIL has become an important tool for addressing environmental protection, public health, consumer rights, governance issues, and the enforcement of fundamental rights. Organizations such as the Bangladesh Environmental Lawyers Association (BELA) and Ain o Salish Kendra (ASK) have played a crucial role in initiating PIL cases that have contributed to legal and social reforms. At the same time, concerns have emerged regarding judicial activism and the increasing involvement of courts in matters traditionally reserved for the executive and legislative branches. These developments provide the context for examining the contemporary role of PIL in Bangladesh.

### **1.3 Statement of the Problem**

Public Interest Litigation has significantly expanded access to justice in Bangladesh by enabling courts to address issues affecting the public at large. Through PIL, the judiciary has protected environmental rights, promoted governmental accountability, and safeguarded the interests of vulnerable groups. However, the increasing use of PIL has raised concerns regarding the proper limits of judicial power.

Critics argue that some judicial decisions delivered through PIL have extended beyond constitutional interpretation and entered areas of public policy traditionally reserved for elected institutions. Such interventions may create tensions with the principle of separation of powers and potentially weaken democratic accountability. Furthermore, the absence of comprehensive legislative guidelines governing PIL may result in inconsistent judicial approaches and uncertainty regarding the scope of judicial intervention.

Therefore, a critical examination is necessary to determine whether PIL in Bangladesh primarily serves as a mechanism for justice and rights protection or whether it contributes to judicial populism by expanding judicial authority beyond its constitutional role.

## **1.6 Significance of the Study**

This study is significant because it contributes to the growing body of literature concerning constitutional governance, judicial review, and access to justice in Bangladesh. It provides an assessment of how PIL has influenced the protection of fundamental rights and promoted social justice.

The findings of this research may be useful to legal scholars, judges, lawyers, policymakers, civil society organizations, and students interested in constitutional law and human rights. Furthermore, the study may assist in developing legal and policy reforms aimed at ensuring that PIL remains an effective mechanism for public interest protection while respecting democratic principles and institutional balance.

## **1.4 Research Questions**

The study seeks to answer the following questions:

1. What is the legal foundation of Public Interest Litigation in Bangladesh?
2. How has PIL contributed to the protection of fundamental rights and access to justice?
3. To what extent has the judiciary expanded standing rules through PIL?
4. Has PIL in Bangladesh resulted in judicial activism or judicial populism?
5. What are the implications of PIL for separation of powers and democratic governance?

## **1.5 Objectives of the Study**

### **General Objective**

To critically evaluate the role of Public Interest Litigation in Bangladesh and determine whether it functions primarily as a tool for justice or a manifestation of judicial populism.

### **Specific Objectives**

1. To examine the constitutional and legal basis of PIL in Bangladesh.
2. To analyze the evolution and development of PIL through judicial decisions.
3. To assess the contribution of PIL to the protection of fundamental rights and social justice.
4. To evaluate the role of judicial activism in PIL jurisprudence.
5. To examine criticisms relating to judicial overreach and judicial populism.
6. To propose recommendations for improving the effectiveness and accountability of PIL.

## **1.5 Scope and Limitations of the Study**

### **Scope of the Study**

This study focuses on the development and application of Public Interest Litigation in Bangladesh. It examines the constitutional provisions, judicial decisions, and legal principles that have shaped PIL jurisprudence. Particular attention is given to the role of PIL in environmental protection, human rights enforcement, access to justice, and judicial accountability. The study also explores the relationship between PIL, judicial activism, and judicial populism.

### **Limitations of the Study**

The study is primarily doctrinal in nature and relies on constitutional provisions, judicial decisions, books, journal articles, and secondary sources. Due to time and resource constraints, extensive empirical research involving interviews or surveys has not been conducted. Additionally, some recent developments may not be fully reflected due to limitations in available published materials. Despite these limitations, the study seeks to provide a comprehensive analysis of PIL in Bangladesh.

## **1.8 Methodology of the Study**

This study adopts a qualitative and doctrinal research approach to examine the role of Public Interest Litigation (PIL) in Bangladesh and to assess whether it functions as a tool for justice or promotes judicial populism. The research is primarily based on the analysis of legal principles, constitutional provisions, judicial decisions, and scholarly literature relating to PIL.

The study relies on both primary and secondary sources of data. Primary sources include the Constitution of the People's Republic of Bangladesh, relevant statutes, and landmark decisions of the Supreme Court of Bangladesh concerning Public Interest Litigation. Particular attention is given to judicial interpretations of Articles 27, 31, 32, 44, and 102 of the Constitution, which provide the legal foundation for PIL in Bangladesh.

Secondary sources include books, academic journals, law reports, research articles, government publications, reports of non-governmental organizations, and other relevant legal materials. These sources are used to examine the historical development, theoretical foundations, practical applications, and criticisms of PIL.

In addition to doctrinal analysis, the study employs an analytical approach to evaluate the impact of PIL on access to justice, protection of fundamental rights, judicial accountability, and constitutional governance. A limited comparative analysis of PIL practices in India and Pakistan is also undertaken to provide a broader regional perspective and to identify similarities and differences in judicial approaches.

The collected information is critically examined to determine the effectiveness of PIL in advancing public interest objectives while maintaining an appropriate balance between judicial intervention and the constitutional principle of separation of powers.

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<sup>3</sup> S P Sathe, *Judicial Activism in India* (Oxford University Press 2002) 182.

<sup>4</sup> *Dr Mohiuddin Farooque v Bangladesh* 48 DLR (AD) (1996) 438.

<sup>5</sup> Constitution of the People's Republic of Bangladesh 1972, art 102.



## **CHAPTER TWO:**

### **CONCEPTUAL AND THEORETICAL FRAMEWORK**

#### **2.1 Introduction**

Public Interest Litigation (PIL) has become an important instrument for protecting fundamental rights and promoting social justice in many constitutional democracies. The concept has evolved beyond traditional litigation by allowing public-spirited individuals and organizations to seek judicial remedies on behalf of those who are unable to access the courts. In Bangladesh, PIL has significantly influenced constitutional jurisprudence and expanded the role of the judiciary in addressing issues of public concern. This chapter discusses the conceptual foundations of PIL, the related concepts of judicial activism, judicial restraint, and judicial populism, and the theoretical frameworks that guide the analysis of PIL in Bangladesh.

#### **2.2 Meaning and Nature of Public Interest Litigation**

##### **Meaning of Public Interest Litigation**

Public Interest Litigation (PIL) refers to legal action initiated in a court of law for the protection and enforcement of public rights and interests. Unlike traditional litigation, which is filed by an individual seeking remedies for personal grievances, PIL is brought for the benefit of the public or a section of society whose rights have been violated. It enables public-spirited individuals, social organizations, and non-governmental organizations to seek judicial intervention on matters affecting the community at large, particularly disadvantaged and vulnerable groups.

In Bangladesh, PIL is mainly exercised through Article 102 of the Constitution, which empowers the High Court Division to enforce fundamental rights and review unlawful actions of public authorities. The recognition of PIL was significantly expanded through the landmark case of *Dr. Mohiuddin Farooque v. Bangladesh* (1997), where the Supreme Court broadened the concept of an “aggrieved person” to include individuals and organizations acting in the public interest.

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<sup>6</sup> S P Sathe, *Judicial Activism in India* (Oxford University Press 2002) 182.

<sup>7</sup> Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company 1980) 122.

<sup>8</sup> S P Sathe, *Judicial Activism in India* (Oxford University Press 2002) 185.

<sup>9</sup> *Dr Mohiuddin Farooque v Bangladesh* 48 DLR (AD) (1996) 438.

## **Nature of Public Interest Litigation**

The nature of Public Interest Litigation can be understood through the following characteristics:

1. **Public-Oriented:** PIL aims to protect public rights and welfare rather than private interests.
2. **Relaxed Rule of Locus Standi:** Any public-spirited person or organization may file a case on behalf of affected individuals or communities.
3. **Social Justice Mechanism:** It promotes justice for marginalized and disadvantaged groups who may lack access to legal remedies.
4. **Constitutional Remedy:** PIL serves as a means of enforcing fundamental rights and ensuring compliance with constitutional principles.
5. **Judicial Activism:** It allows courts to play an active role in addressing issues of public concern and governmental accountability.
6. **Preventive and Remedial:** PIL can both prevent violations of public rights and provide remedies for existing injustices.

Therefore, Public Interest Litigation is a powerful legal instrument that strengthens access to justice, protects public welfare, and promotes the rule of law in Bangladesh

## **2.3 Historical Development of PIL**

### **(a) Public Interest Litigation in the United States**

The concept of Public Interest Litigation (PIL) originated in the United States during the 1960s as a means of protecting the rights of disadvantaged groups and promoting social reform. American courts allowed public-interest lawyers and organizations to bring cases concerning civil rights, environmental protection, consumer welfare, and governmental accountability. The PIL movement in the United States was closely associated with the efforts of legal aid societies and public-interest law firms that sought to use litigation as a tool for social change. Although the traditional doctrine of standing required a direct personal interest, courts gradually adopted a more flexible approach in cases involving significant public concerns.

### **(b) Public Interest Litigation in India**

India played a pioneering role in developing PIL as a powerful instrument of social justice. During the late 1970s and early 1980s, the Supreme Court of India expanded the concept of locus standi, allowing public-spirited individuals and organizations to file petitions on behalf of poor and marginalized people. Judicial leaders such as Justice P. N. Bhagwati and Justice V. R. Krishna Iyer were instrumental in promoting PIL. Indian courts addressed issues relating to bonded labor, prison conditions, environmental protection, child labor, and human rights through

PIL. The Indian model significantly influenced the development of PIL in many South Asian countries, including Bangladesh.

### **(c) Public Interest Litigation in Bangladesh**

The concept of PIL in Bangladesh developed under the influence of the Indian judicial system and constitutional principles. Initially, the courts followed a strict interpretation of the term “aggrieved person” under Article 102 of the Constitution, limiting access to judicial remedies. However, a significant breakthrough occurred in the landmark case of *Dr. Mohiuddin Farooque v. Bangladesh* (1997), popularly known as the FAP 20 Case. In this case, the Appellate Division broadened the interpretation of locus standi and recognized the right of public-spirited individuals and organizations to bring actions in the public interest.

Since then, PIL has become an important mechanism for protecting fundamental rights, environmental conservation, consumer rights, labor welfare, and governmental accountability. The judiciary of Bangladesh has increasingly used PIL to uphold constitutional values and promote social justice, making it a vital component of the country's legal system.

### **2.4 Concepts of Judicial Activism**

Judicial activism refers to a judicial philosophy in which courts adopt an active role in interpreting constitutional and legal provisions to protect rights and promote justice. Activist judges often interpret laws broadly to address social problems and ensure that constitutional principles remain effective in changing circumstances.

Judicial activism is particularly evident in PIL cases, where courts may issue directives, formulate guidelines, or compel public authorities to fulfill constitutional obligations. Proponents argue that judicial activism is necessary when the executive or legislature fails to protect constitutional rights or address public grievances.

In Bangladesh, judicial activism has contributed significantly to the expansion of PIL and the enforcement of fundamental rights. Through innovative interpretations of constitutional provisions, the judiciary has enhanced environmental protection, promoted good governance, and strengthened human rights protections.

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<sup>10</sup> Bradley C Canon, ‘Defining the Dimensions of Judicial Activism’ (1983) 66 *Judicature* 236.

<sup>11</sup> Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012) 721.

<sup>12</sup> J A G Griffith, *The Politics of the Judiciary* (5th edn, Fontana Press 1997) 291.

<sup>13</sup> Aharon Barak, *The Judge in a Democracy* (Princeton University Press 2006) 269.

## 2.5 Concepts of Judicial Restraint

Judicial restraint is a legal philosophy that emphasizes limited judicial intervention in matters traditionally within the authority of the legislature and executive. Judges who follow this approach generally avoid creating new legal principles or interfering with policy decisions unless constitutional violations are clearly established.

The doctrine of judicial restraint is closely linked to democratic governance and the principle of separation of powers. It recognizes that elected representatives possess greater democratic legitimacy in making policy choices. Accordingly, courts should exercise caution when reviewing governmental actions and avoid substituting their own preferences for those of elected institutions.

Supporters of judicial restraint argue that excessive judicial intervention may undermine democratic accountability and institutional balance. In the context of PIL, judicial restraint serves as an important safeguard against judicial overreach and the inappropriate expansion of judicial authority.

## 2.6 Judicial Populism: Meaning and Characteristics Meaning of Judicial Populism

Judicial Populism refers to a judicial approach in which courts make decisions that are strongly influenced by public opinion, popular demands, or social sentiments rather than being guided solely by established legal principles and constitutional mandates. It occurs when judges seek to address issues that attract significant public attention and support, often presenting themselves as protectors of the people's interests against perceived failures of the executive or legislative branches.

In the context of Public Interest Litigation (PIL), judicial populism is often associated with extensive judicial intervention in matters of public concern. While such intervention may promote justice and protect fundamental rights, critics argue that excessive reliance on popular expectations can lead courts beyond their constitutional role and result in judicial overreach. Therefore, judicial populism remains a controversial concept, lying at the intersection of judicial activism and democratic governance.

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<sup>14</sup> Ran Hirschl, *Towards Juristocracy* (Harvard University Press 2004) 221.

<sup>15</sup> Richard Bellamy, *Political Constitutionalism* (Cambridge University Press 2007) 144.

## **Characteristics of Judicial Populism :**

### **1 Public-Oriented Decision Making**

Courts may give considerable weight to public sentiment and societal expectations when resolving disputes involving matters of public importance.

### **2 Expansion of Judicial Power**

Judges may broaden the scope of judicial authority by intervening in areas traditionally reserved for the executive or legislature.

### **3 Use of Public Interest Litigation (PIL)**

Judicial populism is frequently associated with PIL, where courts actively address social, economic, and environmental issues affecting the public.

### **4 Focus on Social Justice**

Judicial decisions often aim to protect vulnerable groups, promote equality, and advance public welfare.

### **5 Judicial Intervention in Policy Matters**

Courts may issue directives or guidelines on matters of governance and public administration when governmental action is considered inadequate.

### **6 Media and Public Attention**

Judicial populist decisions often receive significant media coverage and public approval because they address highly visible social concerns.

### **7 Potential Risk of Judicial Overreach**

Excessive intervention may blur the constitutional boundaries between the judiciary, legislature, and executive, raising concerns about the separation of powers.

## **8 Emphasis on Immediate Public Interest**

Judicial populism tends to prioritize pressing public concerns and societal demands, sometimes at the expense of long-term institutional considerations.

### **2.7 Theoretical Framework**

The present study is guided by several legal and constitutional theories that help explain the role and significance of Public Interest Litigation in Bangladesh. These theories provide a framework for evaluating whether PIL promotes justice or contributes to judicial populism.

#### **2.7.1 Access to Justice Theory**

Access to Justice Theory emphasizes that all individuals should have meaningful opportunities to seek legal remedies and enforce their rights. The theory recognizes that economic, social, and procedural barriers often prevent vulnerable groups from accessing the legal system.

PIL directly supports this theory by allowing public-spirited individuals and organizations to represent disadvantaged communities. Through the relaxation of standing rules, PIL enables courts to hear cases involving environmental protection, human rights, and social welfare that might otherwise remain unaddressed.

The theory is particularly relevant in Bangladesh, where poverty, illiteracy, and limited legal awareness often restrict access to formal justice mechanisms. PIL therefore serves as an important tool for reducing these barriers and ensuring broader access to constitutional remedies.

#### **2.7.2 Rule of Law Theory**

The Rule of Law Theory asserts that all persons and institutions, including government authorities, are subject to and accountable under the law. It requires fairness, equality, legal certainty, and protection against arbitrary exercise of power.

PIL strengthens the rule of law by enabling judicial review of governmental actions and ensuring compliance with constitutional principles. Through PIL, courts can hold public authorities accountable for unlawful conduct and protect fundamental rights against administrative abuse.

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<sup>16</sup> Mauro Cappelletti and Bryant Garth, *Access to Justice* (Sijthoff and Noordhoff 1978) 8.

<sup>17</sup> Constitution of the People's Republic of Bangladesh 1972, art 44.

<sup>18</sup> A V Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959) 188.

<sup>19</sup> Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012) 59.

In Bangladesh, PIL has frequently been used to challenge illegal governmental actions and promote transparency and accountability. Consequently, the rule of law provides an important theoretical basis for understanding the significance of PIL.

### **2.7.3 Separation of Powers Theory**

The Separation of Powers Theory advocates the division of governmental authority among the legislative, executive, and judicial branches. The theory seeks to prevent the concentration of power and to maintain institutional balance through checks and balances.

PIL raises important questions concerning the separation of powers because judicial intervention may sometimes extend into areas traditionally reserved for elected institutions. While courts play an essential role in enforcing constitutional rights, excessive intervention may create tensions with democratic governance.

This theory is therefore highly relevant to the present study, as it provides a framework for assessing whether PIL in Bangladesh remains within constitutional limits or contributes to judicial overreach and judicial populism.

### **2.7.4 Judicial Activism Theory**

Judicial Activism Theory supports an active role for courts in protecting constitutional rights and advancing social justice. According to this theory, courts should not remain passive when other branches of government fail to fulfill their constitutional obligations.

PIL represents one of the most important manifestations of judicial activism because it enables courts to address public grievances, protect vulnerable groups, and ensure governmental accountability. However, Judicial Activism Theory also recognizes the need to maintain constitutional boundaries and avoid unnecessary interference in policy-making.

This theory is particularly relevant to the present study because it helps explain both the achievements and controversies associated with PIL in Bangladesh. It provides a useful framework for evaluating whether judicial intervention through PIL has strengthened justice or encouraged judicial populism.

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<sup>20</sup> Montesquieu, *The Spirit of Laws* (first published 1748, Hafner Press 1949) bk XI.

<sup>21</sup> Constitution of the People's Republic of Bangladesh 1972, arts 55, 65 and 94.

<sup>22</sup> Christopher Wolfe, *The Rise of Modern Judicial Review* (Basic Books 1986) 95.

<sup>23</sup> S P Sathe, *Judicial Activism in India* (Oxford University Press 2002) 242

## **CHAPTER THREE:**

### **CONSTITUTIONAL AND LEGAL BASIS OF PIL IN BANGLADESH**

#### **3.1 Introduction**

Public Interest Litigation (PIL) in Bangladesh has evolved primarily through constitutional interpretation and judicial innovation. Although the Constitution of Bangladesh does not expressly use the term "Public Interest Litigation," various constitutional provisions provide the legal foundation for judicial intervention in matters affecting public rights and interests. Through the exercise of judicial review and writ jurisdiction, the Supreme Court of Bangladesh has gradually expanded access to justice by relaxing traditional procedural barriers and recognizing the standing of public-spirited individuals and organizations.

The constitutional basis of PIL is rooted in the principles of equality, rule of law, protection of fundamental rights, and judicial review. The Higher Judiciary, particularly the High Court Division and the Appellate Division of the Supreme Court, has played a crucial role in interpreting constitutional provisions to facilitate public interest actions. This chapter examines the constitutional and legal framework governing PIL in Bangladesh, with particular emphasis on Articles 27, 31, 32, 44, and 102 of the Constitution, the development of locus standi, and the landmark case of *Dr. Mohiuddin Farooque v. Bangladesh*.

#### **3.2 Constitutional Framework**

The Constitution of Bangladesh serves as the primary legal source for the development of Public Interest Litigation. Several constitutional provisions collectively establish the legal basis for the protection of public rights and judicial enforcement of fundamental rights. These provisions empower the courts to review governmental actions and provide remedies against constitutional violations.

##### **3.2.1 Article 27: Equality Before Law**

Article 27 of the Constitution provides that all citizens are equal before the law and are entitled to equal protection of the law. This provision embodies one of the fundamental principles of constitutional governance and forms the basis for challenging discriminatory actions by public authorities.

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<sup>24</sup> Constitution of the People's Republic of Bangladesh 1972.

<sup>25</sup> Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012) 715.

<sup>26</sup> Constitution of the People's Republic of Bangladesh 1972, art 27.



In the context of PIL, Article 27 enables courts to address situations where government actions or omissions disproportionately affect particular groups or communities. It promotes fairness, non-discrimination, and equal access to legal protection. Through PIL, courts can ensure that vulnerable and disadvantaged groups receive equal treatment under the law, thereby reinforcing constitutional guarantees of equality.

### **3.2.2 Article 31: Protection of Law**

Article 31 guarantees every citizen the right to protection of the law and ensures that no action affecting life, liberty, body, reputation, or property shall be taken except in accordance with law. This provision reflects the constitutional commitment to the rule of law and protection against arbitrary governmental action.

The significance of Article 31 in PIL lies in its broad scope. Courts have relied upon this provision to review administrative decisions and governmental conduct that threaten the rights and interests of citizens. Through PIL, individuals and organizations may challenge unlawful actions that affect public welfare and constitutional rights.

### **3.2.3 Article 32: Right to Life and Personal Liberty**

Article 32 provides that no person shall be deprived of life or personal liberty except in accordance with law. Judicial interpretation has expanded the meaning of the right to life beyond mere physical existence to include the right to live with dignity, access to a healthy environment, and other conditions necessary for human well-being.

This broad interpretation has significantly contributed to the development of PIL in Bangladesh. Environmental pollution, unsafe working conditions, threats to public health, and other issues affecting collective welfare have frequently been challenged through PIL by invoking Article 32. As a result, the provision has become one of the most important constitutional foundations for public interest litigation.

### **3.2.4 Article 44: Enforcement of Fundamental Rights**

Article 44 guarantees the right to move the High Court Division for the enforcement of fundamental rights. This provision ensures that constitutional rights are not merely theoretical but are supported by effective judicial remedies.

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<sup>27</sup> Constitution of the People's Republic of Bangladesh 1972, art 31.

<sup>28</sup> Constitution of the People's Republic of Bangladesh 1972, art 32

<sup>29</sup> *Dr Mohiuddin Farooque v Bangladesh* 48 DLR (AD) (1996) 438.

The significance of Article 44 for PIL is that it establishes the constitutional mechanism through which individuals and organizations may seek judicial protection against violations of fundamental rights. Without an effective enforcement mechanism, constitutional guarantees would have limited practical value. Therefore, Article 44 serves as a vital link between constitutional rights and judicial remedies.

### **3.2.5 Article 102: Writ Jurisdiction**

Article 102 is the most important constitutional provision for the development of PIL in Bangladesh. It empowers the High Court Division to issue constitutional remedies, including writs of Habeas Corpus, Mandamus, Certiorari, Prohibition, and Quo Warranto.

The broad language of Article 102 has enabled the judiciary to develop PIL jurisprudence through constitutional interpretation. Judicial recognition of public interest standing under Article 102 has allowed public-spirited individuals and organizations to seek remedies for matters affecting public rights and welfare.

The constitutional writ jurisdiction has therefore become the primary procedural mechanism through which PIL cases are initiated and adjudicated in Bangladesh.

#### **Constitution of Bangladesh**



#### **Article 102**



#### **Writ Jurisdiction**



#### **Public Interest Litigation**



#### **Protection of Rights**

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<sup>30</sup> Constitution of the People's Republic of Bangladesh 1972, art 44. <sup>31</sup> Constitution of the People's Republic of Bangladesh 1972, art 102 <sup>32</sup> Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012) 723.

## 3.2 Locus Standi and Its Expansion

### Meaning of Locus Standi

The term *locus standi* refers to the legal right or capacity of a person to bring a case before a court. Traditionally, under common law principles, only a person whose own legal rights had been directly affected by an act or decision could seek judicial remedy. This restrictive approach often prevented individuals and organizations from challenging actions that harmed the public interest, particularly where the affected persons were poor, disadvantaged, or unable to access the courts.

With the development of Public Interest Litigation (PIL), the concept of locus standi has undergone significant expansion. Courts have increasingly recognized that matters affecting the public at large require a more flexible approach to standing. Consequently, public-spirited individuals, journalists, lawyers, and social organizations have been permitted to initiate legal proceedings on behalf of those whose rights have been violated but who lack the means or ability to seek judicial relief themselves.

### Expansion of Locus Standi in Bangladesh

In Bangladesh, the traditional rule of standing was gradually relaxed through judicial interpretation. The judiciary recognized that strict adherence to the conventional doctrine could obstruct access to justice and undermine the protection of fundamental rights. As a result, the courts adopted a liberal approach, allowing persons with a genuine concern for public welfare to bring actions in matters involving public interest.

The expansion of locus standi has enabled the judiciary to address issues such as environmental degradation, human rights violations, unlawful governmental actions, and matters affecting vulnerable sections of society. This development has transformed PIL into an effective instrument for ensuring accountability and promoting social justice.

### Landmark Case: Bangladesh SangbadpatraParishad v. Bangladesh

The case of **Bangladesh SangbadpatraParishad v. Bangladesh** is an important example in the evolution of locus standi in Bangladesh. In this case, the Court considered the standing of an organization representing collective interests and acknowledged the importance of permitting representative bodies to seek judicial remedies in matters affecting broader public concerns.

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<sup>33</sup> *Dr Mohiuddin Farooque v Bangladesh* 48 DLR (AD) (1996) 438.

<sup>34</sup> M E Hossain, 'Public Interest Litigation in Bangladesh' (2003) 7 BLC Journal 45.

The decision reflected the judiciary's willingness to move beyond a narrow interpretation of standing and recognize that organizations acting in good faith for the protection of public rights may have sufficient interest to approach the courts. The case contributed to the gradual development of a more liberal doctrine of locus standi, which later became firmly established in PIL jurisprudence.

### **Significance of the Expansion of Locus Standi**

The expansion of locus standi has had profound implications for the administration of justice in Bangladesh. It has:

- Enhanced access to justice for disadvantaged and marginalized groups;
- Strengthened the enforcement of fundamental rights;
- Increased governmental accountability and transparency;
- Facilitated the growth and effectiveness of Public Interest Litigation;
- Enabled civil society organizations to participate in the protection of public interests.

### **3.3 The Landmark Turning Point: *Dr. MohiuddinFarooque v. Bangladesh***

The case of **Dr. MohiuddinFarooque v. Bangladesh** is widely regarded as the turning point in the development of Public Interest Litigation (PIL) in Bangladesh. The decision marked a significant departure from the traditional restrictive doctrine of *locus standi* and established the foundation for modern PIL jurisprudence in the country. Through this landmark judgment, the Appellate Division recognized the right of public-spirited individuals and organizations to seek judicial remedies in matters affecting the public interest.

#### **3.3.1 Facts of the Case**

Dr. MohiuddinFarooque, the Secretary General of the **Bangladesh Environmental Lawyers Association (BELA)**, filed a writ petition challenging a government-sponsored flood control and irrigation project known as the FAP-20 (Flood Action Plan) Project. The project was alleged to have adverse environmental, ecological, and socio-economic impacts on local communities, including displacement of people, destruction of agricultural land, and environmental degradation.

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<sup>35</sup> *Dr Mohiuddin Farooque v Bangladesh* 48 DLR (AD) (1996) 438.

<sup>36</sup> Syed Mahbub Murshed, *Public Interest Litigation in Bangladesh* (University Press Limited 2011) 53.

The petitioner was not personally affected by the project. Instead, he brought the petition on behalf of the affected inhabitants and in the interest of environmental protection and public welfare. The primary question was whether he possessed the legal standing (*locus standi*) to maintain the writ petition.

### 3.3.2 Issues Before the Court

The Court considered the following key issues:

1. Whether a person who is not directly affected by a governmental action can file a writ petition in the public interest.
2. Whether a public-spirited individual or organization has sufficient interest to challenge actions affecting a section of the public.
3. Whether the traditional doctrine of *locus standi* should be expanded in matters involving public rights and welfare.
4. Whether environmental and social concerns affecting a community constitute matters of public interest warranting judicial intervention.

### 3.3.3 Judgment

The Appellate Division adopted a liberal interpretation of Article 102 of the Constitution and held that the expression “person aggrieved” should not be interpreted narrowly. The Court ruled that where a matter involves public injury, public wrong, or violation of fundamental rights affecting a significant section of the community, a public-spirited individual or organization may have sufficient interest to approach the Court.

The Court recognized that many disadvantaged and vulnerable persons are unable to seek legal remedies themselves. Therefore, denying standing to individuals or organizations acting on their behalf would undermine access to justice and the protection of constitutional rights.

Accordingly, the Court allowed Dr. Mohiuddin Farooque to maintain the writ petition and thereby expanded the doctrine of *locus standi* in Bangladesh.

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<sup>37</sup> *Dr Mohiuddin Farooque v Bangladesh* 48 DLR (AD) (1996) 438, 458–460.

<sup>38</sup> Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012) 730.

<sup>39</sup> M E Hossain, ‘Public Interest Litigation in Bangladesh’ (2003) 7 BLC Journal 45.

<sup>40</sup> *Dr Mohiuddin Farooque v Bangladesh* 48 DLR (AD) (1996) 438.

### 3.3.4 Significance of the Case

The significance of *Dr. Mohiuddin Farooque v. Bangladesh* extends beyond the immediate facts of the dispute. The decision established the constitutional foundation for PIL in Bangladesh and fundamentally transformed the country's approach to access to justice.

First, the case expanded the doctrine of locus standi by recognizing the standing of public-spirited individuals and organizations. Second, it strengthened judicial protection of collective rights and environmental interests. Third, it facilitated greater participation by civil society organizations in constitutional litigation. Fourth, it aligned Bangladeshi constitutional jurisprudence with developments in other South Asian jurisdictions, particularly India.

Most importantly, the judgment demonstrated the judiciary's willingness to adopt a dynamic interpretation of constitutional provisions to address contemporary social challenges. Consequently, the decision remains one of the most influential constitutional judgments in Bangladesh and continues to shape PIL jurisprudence today.

### 3.4 Judicial Interpretation of Public Interest

The concept of "public interest" is not expressly defined in the Constitution or any statute of Bangladesh. As a result, its meaning and scope have largely been developed through judicial interpretation by the courts, particularly the High Court Division and the Appellate Division of the Supreme Court of Bangladesh. Through a series of landmark decisions, the judiciary has adopted a liberal approach to determining what constitutes public interest and who may bring an action to protect it.

Judicial interpretation of public interest in Bangladesh has been influenced by the need to ensure access to justice for disadvantaged and vulnerable groups who may be unable to approach the courts themselves. The courts have recognized that issues affecting a significant section of the population, public welfare, human rights, environmental protection, and governmental accountability fall within the scope of public interest. Consequently, the judiciary has expanded the traditional doctrine of locus standi by allowing public-spirited individuals, lawyers, journalists, and non-governmental organizations to file petitions on behalf of affected persons or communities.

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<sup>41</sup> Constitution of the People's Republic of Bangladesh 1972, art 102.

<sup>42</sup> Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012) 732.

<sup>43</sup> Syed Mahbub Murshed, *Public Interest Litigation in Bangladesh* (University Press Limited 2011) 67.

A landmark development occurred in the case of **Dr. Mohiuddin Farooque v. Bangladesh**, where the Court recognized that a person may have sufficient interest to bring a case concerning public welfare even if he or she is not personally affected. This decision significantly broadened access to constitutional remedies and laid the foundation for the growth of Public Interest Litigation (PIL) in Bangladesh.

Through judicial interpretation, public interest has come to include matters relating to:

- Protection of fundamental rights;
- Environmental conservation and ecological balance;
- Public health and safety;
- Rights of disadvantaged and marginalized communities;
- Governmental transparency and accountability;
- Protection of constitutional and legal obligations.

The judiciary has consistently emphasized that PIL should not be used for personal gain, political motives, or private disputes disguised as public causes. To maintain the integrity of the process, courts carefully examine whether a petition genuinely serves the public interest before granting relief.

Therefore, judicial interpretation has played a crucial role in defining and expanding the concept of public interest in Bangladesh. By adopting a flexible and purposive approach, the courts have transformed PIL into an effective mechanism for protecting collective rights, promoting social justice, and ensuring governmental accountability while safeguarding against abuse of the judicial process.

### **3.5 Procedural Aspects of Public Interest Litigation (PIL)**

The effectiveness of Public Interest Litigation (PIL) in Bangladesh largely depends on the procedural framework governing its institution and adjudication. Unlike ordinary litigation, PIL adopts a flexible approach to procedural requirements in order to facilitate access to justice and protect public interests. The judiciary has developed several procedural principles that enable public-spirited individuals and organizations to seek remedies for violations of constitutional and legal rights affecting the public at large.

#### **3.5.1 Filing of a PIL Petition**

A PIL is generally filed before the High Court Division of the Supreme Court of Bangladesh under Article 102 of the Constitution. The petition must clearly identify the public issue involved, the violation of constitutional or legal rights, and the relief sought from the Court. The petitioner is required to provide relevant facts, evidence, and legal grounds supporting the claim.

### 3.5.2 Locus Standi (Standing)

One of the distinctive procedural features of PIL is the relaxation of the traditional doctrine of *locus standi*. Following the landmark decision in *Dr. Mohiuddin Farooque v. Bangladesh*, public-spirited individuals, lawyers, journalists, and non-governmental organizations may file petitions on behalf of affected persons or communities where a matter involves public interest. The petitioner must demonstrate a genuine concern for the public welfare rather than a personal or private interest.

### 3.5.3 Nature of Evidence

In PIL proceedings, courts often adopt a flexible approach regarding evidence. Affidavits, reports, newspaper articles, government documents, expert opinions, and investigative findings may be considered when determining issues of public importance. This flexibility helps the Court address urgent matters affecting large segments of the population.

### 3.5.4 Judicial Notice and Fact-Finding

The Court may take judicial notice of matters of public importance and, where necessary, appoint commissions, experts, or independent bodies to investigate facts and submit reports. Such measures assist the Court in obtaining accurate information regarding complex social, environmental, or administrative issues.

### 3.5.5 Interim and Injunctive Relief

Where immediate intervention is necessary, the Court may issue interim orders, injunctions, or directions to prevent irreparable harm pending final adjudication. Such relief is particularly important in cases involving environmental degradation, human rights violations, unlawful governmental actions, or threats to public safety.

### 3.5.6 Issuance of Writs

Under Article 102 of the Constitution, the High Court Division may issue various constitutional writs, including:

- **Habeas Corpus** – to protect personal liberty and challenge unlawful detention.
- **Mandamus** – to compel public authorities to perform legal duties.
- **Certiorari** – to quash unlawful decisions or proceedings.
- **Prohibition** – to prevent authorities from acting beyond their jurisdiction.
- **Quo Warranto** – to challenge the legality of a person's claim to public office.

These writs serve as the principal remedies in PIL proceedings.



### **3.5.7 Hearing and Adjudication**

After examining the petition, the Court may issue a Rule Nisi requiring the respondents to show cause why the relief sought should not be granted. Following submissions from both parties and consideration of evidence, the Court delivers its judgment and may issue declarations, directions, or orders to protect public interests and enforce constitutional rights.

### **3.5.8 Enforcement of Court Orders**

The effectiveness of PIL depends upon the implementation of judicial decisions. Government authorities and public bodies are expected to comply with court directives. In cases of non-compliance, the Court may exercise its contempt jurisdiction to ensure enforcement of its orders.

## **3.6 Role of NGOs and Civil Society in Public Interest Litigation (PIL) in Bangladesh**

Non-governmental organizations (NGOs) and civil society organizations have played a pivotal role in the development and expansion of Public Interest Litigation (PIL) in Bangladesh. Since many disadvantaged and marginalized individuals lack the financial resources, legal knowledge, or social influence necessary to access the courts, NGOs often act as representatives of public interests and facilitate access to justice through strategic litigation.

One of the most significant contributions of civil society organizations has been the promotion of human rights, environmental protection, government accountability, and the enforcement of constitutional rights. Through PIL, these organizations have brought matters of public concern before the higher judiciary, enabling courts to address issues that might otherwise remain neglected by public authorities.

### **3.6.1 Bangladesh Environmental Lawyers Association (BELA)**

Bangladesh Environmental Lawyers Association has been one of the most influential organizations in the development of environmental PIL in Bangladesh. Established in 1992, BELA has used litigation as a tool to protect the environment and ensure sustainable development.

The organization has filed numerous PIL cases concerning:

- River pollution and encroachment.
- Illegal industrial activities.
- Environmental degradation caused by unplanned urbanization.
- Protection of wetlands, forests, and biodiversity.
- Enforcement of environmental laws and regulations.

BELA's contribution became particularly significant through the landmark case *Dr. Mohiuddin Farooque v. Bangladesh*, where the court expanded the doctrine of locus standi and recognized the standing of public-spirited organizations to bring cases on behalf of affected communities. This decision greatly strengthened the effectiveness of PIL in Bangladesh and opened the door for broader public participation in constitutional litigation.

Through its legal advocacy, BELA has transformed environmental protection from a policy concern into a constitutional and human rights issue, thereby enhancing judicial oversight of environmental governance.

### **3.6.2 Ain o Salish Kendra (ASK)**

Ain o Salish Kendra is one of Bangladesh's leading human rights organizations. Since its establishment in 1986, ASK has actively utilized PIL to address violations of fundamental rights and promote social justice.

The organization has been involved in litigation concerning:

- Extrajudicial killings and custodial violence.
- Women's rights and gender equality.
- Children's rights.
- Workers' rights and labor protections.
- Rights of minority and marginalized communities.
- Access to justice and legal aid.

ASK frequently files writ petitions before the High Court Division to challenge unlawful government actions and seek remedies for systemic human rights violations. Through its advocacy, the organization has contributed to the development of rights-based jurisprudence and strengthened judicial protection of constitutional guarantees.

### **3.6.3 Contribution of Civil Society to PIL**

Beyond BELA and ASK, various civil society groups, professional associations, journalists, academics, and human rights defenders have contributed to the growth of PIL in Bangladesh. Their involvement has produced several positive outcomes:

1. **Expansion of Access to Justice** – PIL enables representation of individuals and groups who may otherwise be unable to approach the courts.
2. **Strengthening Government Accountability** – NGOs monitor government actions and challenge unlawful decisions through judicial review.
3. **Protection of Fundamental Rights** – Civil society organizations use PIL to safeguard constitutional rights and human dignity.

## **CHAPTER FOUR:**

### **PIL AS A TOOL FOR JUSTICE**

#### **4.1 Introduction**

Public Interest Litigation (PIL) has emerged as one of the most significant judicial innovations in contemporary constitutional law, particularly in developing democracies where large segments of the population face barriers to accessing justice. Unlike traditional litigation, which focuses primarily on the rights and interests of individual parties, PIL seeks to protect collective interests and address issues affecting the public at large. It enables courts to intervene in matters concerning fundamental rights, social justice, environmental protection, and governmental accountability, thereby expanding the scope of judicial protection beyond conventional legal disputes.

In Bangladesh, PIL has played a transformative role in strengthening the enforcement of constitutional rights and promoting the rule of law. The development of PIL gained momentum through judicial recognition of a liberal approach to locus standi, allowing public-spirited individuals, organizations, and civil society groups to seek remedies on behalf of disadvantaged or affected communities. This departure from the traditional requirement of direct personal injury significantly enhanced access to justice for marginalized groups who often lack the resources, awareness, or legal capacity to approach the courts independently.

The constitutional foundation of PIL in Bangladesh is rooted primarily in Article 102 of the Constitution, which empowers the High Court Division to issue directions, orders, and writs for the enforcement of fundamental rights and the correction of unlawful actions by public authorities. Through this jurisdiction, the judiciary has addressed a wide range of public concerns, including environmental degradation, human rights violations, unlawful administrative actions, labor rights, and issues affecting vulnerable populations.

Supporters of PIL argue that it serves as an indispensable mechanism for achieving social justice and ensuring governmental accountability. By providing a platform through which public grievances can be judicially examined, PIL has contributed to the protection of constitutional values and the promotion of democratic governance. Courts have frequently used PIL to safeguard the interests of groups that would otherwise remain underrepresented within the legal system.

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<sup>44</sup> Constitution of the People's Republic of Bangladesh 1972, art 32.

<sup>45</sup> *Dr Mohiuddin Farooque v Bangladesh* 48 DLR (AD) (1996) 438.

## 4.2 Environmental Justice

Environmental justice has become one of the most significant areas in which Public Interest Litigation (PIL) has contributed to the protection of constitutional rights in Bangladesh. Rapid industrialization, urban expansion, river encroachment, and environmental degradation have created serious threats to public health, livelihoods, and ecological sustainability. In response to the failure of regulatory authorities to effectively enforce environmental laws, the judiciary has increasingly intervened through PIL to protect environmental rights and ensure governmental accountability.

A central actor in this development has been the Bangladesh Environmental Lawyers Association (BELA), which has utilized PIL as a strategic tool to address environmental harm and advocate for sustainable development. Since the 1990s, BELA has filed hundreds of environmental PIL cases involving river pollution, industrial contamination, wetland destruction, forest conservation, and protection of ecologically sensitive areas. Through these cases, environmental protection has been recognized as an integral component of the constitutional right to life.

### 4.2.1 River Pollution

River pollution is one of the most pressing environmental challenges in Bangladesh. Industrial waste, untreated sewage, and illegal encroachments have severely affected major rivers, threatening biodiversity, public health, and the livelihoods of river-dependent communities.

Through a series of PILs, BELA has sought judicial intervention against river pollution and encroachment. In *Dr. Mohiuddin Farooque v. Bangladesh*, the courts acknowledged the importance of environmental protection and broadened access to justice by recognizing the standing of public-interest litigants. This landmark decision enabled environmental organizations to bring actions on behalf of affected communities.<sup>2</sup>

Subsequent PILs filed by BELA addressed pollution of rivers such as the Buriganga, Turag, Shitalakhya, and other major waterways. Courts directed government agencies to identify polluters, remove illegal encroachments, demarcate river boundaries, and implement measures to prevent further environmental degradation.

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<sup>46</sup> *Dr Mohiuddin Farooque v Bangladesh* 48 DLR (AD) (1996) 438.

#### **4.2.2 Wetland Protection**

Wetlands play a crucial role in maintaining ecological balance, preserving biodiversity, and supporting fisheries and agriculture. However, many wetlands in Bangladesh have been subjected to illegal filling, land grabbing, and environmentally harmful development projects.

BELA has used PIL to challenge activities that threaten wetlands and water bodies. The organization has brought cases concerning the encroachment and degradation of ecologically important wetlands and rivers, arguing that such activities violate environmental laws and undermine the constitutional right to a healthy environment. Judicial interventions resulting from these PILs have contributed to increased governmental attention toward wetland conservation and sustainable resource management.

#### **4.2.3 Industrial Contamination**

Industrial pollution has emerged as a major source of environmental degradation in Bangladesh. Factories often discharge untreated waste into rivers and canals, causing severe contamination of water resources and endangering public health.

Through PIL, BELA has challenged industrial activities that violate environmental regulations. Notable cases involve pollution caused by factories discharging hazardous waste into rivers and water bodies. In several instances, the High Court directed government authorities to investigate pollution, monitor industrial compliance, and take preventive measures against environmentally harmful activities. Such judicial interventions have reinforced the principle that economic development must be balanced with environmental protection and public welfare.

#### **4.2.4 Role of Bangladesh Environmental Lawyers Association (BELA)**

The Bangladesh Environmental Lawyers Association (BELA) has been the leading force behind environmental PIL in Bangladesh. By combining legal advocacy with public awareness campaigns, BELA has transformed environmental concerns into issues of constitutional and human rights significance. The organization played a crucial role in securing judicial recognition of PIL and has filed more than 300 environmental cases addressing pollution, wetland destruction, river encroachment, deforestation, and ecological degradation.<sup>6</sup>

BELA's efforts have significantly contributed to the development of environmental jurisprudence in Bangladesh. Through strategic litigation, the organization has expanded the interpretation of

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<sup>47</sup> Syed Mahbub Murshed, *Public Interest Litigation in Bangladesh* (University Press Limited 2011) 82.

the right to life, strengthened environmental governance, and enhanced public participation in environmental decision-making. Consequently, PIL has become an effective mechanism for promoting environmental justice and protecting the interests of present and future generations.

### **4.3 Protection of Vulnerable Groups**

One of the most significant contributions of Public Interest Litigation (PIL) in Bangladesh has been the protection of vulnerable and marginalized groups whose rights are often overlooked within traditional legal frameworks. Through PIL, courts have addressed systemic inequalities and human rights violations affecting women, children, workers, and indigenous communities. By allowing public-spirited individuals and organizations to bring cases on behalf of disadvantaged groups, PIL has expanded access to justice and strengthened the enforcement of constitutional rights.

The judiciary has increasingly recognized that vulnerable groups face social, economic, and institutional barriers that limit their ability to seek legal remedies independently. Consequently, PIL has become an important mechanism for ensuring that constitutional guarantees of equality, dignity, and justice are effectively realized for those most in need of legal protection.

#### **4.3.1 Protection of Women's Rights**

PIL has played a vital role in advancing women's rights and addressing gender-based discrimination in Bangladesh. Human rights organizations and women's advocacy groups have frequently used PIL to challenge practices and policies that undermine gender equality and women's dignity.

Judicial interventions through PIL have addressed issues such as sexual harassment, violence against women, workplace discrimination, and the protection of women's constitutional rights. A notable example is the High Court's issuance of guidelines to prevent sexual harassment in educational institutions and workplaces in the absence of specific legislation. The Court emphasized that the constitutional guarantees of equality and dignity require effective protection against gender-based violence and harassment.

Through such interventions, PIL has contributed to the development of gender-sensitive jurisprudence and strengthened legal protections for women in both public and private spheres.

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<sup>48</sup> Constitution of the People's Republic of Bangladesh 1972, arts 27 and 28.

<sup>49</sup> Ain o Salish Kendra publications on women's rights litigation.

### **4.3.2 Protection of Children's Rights**

Children constitute another vulnerable group that has benefited significantly from PIL. Courts have entertained public interest petitions concerning child labor, child abuse, trafficking, juvenile justice, and access to education.

PIL has been used to challenge harmful practices affecting children's welfare and to ensure compliance with national and international obligations relating to child protection. Judicial decisions have emphasized the state's responsibility to safeguard children's rights and promote their best interests. In several cases, courts have directed government authorities to improve conditions in child detention facilities, prevent exploitation, and strengthen child protection mechanisms.

These interventions have reinforced the principle that children's rights are fundamental human rights deserving special constitutional protection.

### **4.3.3 Protection of Workers' Rights**

Workers, particularly those employed in low-income and hazardous sectors, often face difficulties in asserting their legal rights. PIL has served as an important tool for addressing labor-related issues affecting large groups of workers.

Following industrial accidents and workplace safety failures, public interest petitions have sought judicial intervention to ensure compliance with labor laws and occupational safety standards. Courts have examined issues concerning workplace safety, compensation for victims, and the accountability of employers and regulatory authorities.

PIL has also contributed to discussions regarding fair working conditions, labor rights, and the protection of workers employed in industries where legal enforcement mechanisms are weak. Through these cases, the judiciary has emphasized the constitutional obligation of the state to protect workers' welfare and human dignity.

## **4.5 Access to Justice for Marginalized Communities**

Access to justice is a fundamental component of the rule of law and an essential prerequisite for the protection of human rights. In Bangladesh, however, many marginalized communities face significant barriers in seeking legal remedies due to poverty, illiteracy, social exclusion, geographical isolation, and lack of legal awareness. Traditional litigation procedures often require direct personal standing, financial resources, and access to legal representation, making it difficult for disadvantaged groups to pursue their claims through the courts. Public Interest

Litigation (PIL) has emerged as an important mechanism for overcoming these barriers and expanding access to justice for vulnerable and marginalized populations.

The development of PIL in Bangladesh, particularly following the landmark decision in *Dr. Mohiuddin Farooque v. Bangladesh*, transformed the traditional concept of locus standi by allowing public-spirited individuals and organizations to bring actions on behalf of affected communities. This judicial innovation enabled courts to address issues affecting groups that were unable to approach the judiciary independently, thereby promoting substantive equality and social justice.

#### **4.5.1 Overcoming Procedural Barriers**

One of the most significant contributions of PIL has been the relaxation of strict procedural requirements that previously restricted access to the courts. Before the recognition of PIL, only individuals who could demonstrate direct personal injury were generally entitled to seek judicial remedies. The expansion of standing allowed NGOs, human rights organizations, and concerned citizens to represent the interests of disadvantaged communities whose rights were being violated.

As a result, issues affecting large groups of people, such as environmental degradation, labor exploitation, forced evictions, and human rights violations, could be brought before the courts even when the victims themselves lacked the capacity to initiate legal proceedings.

#### **4.5.2 Protection of Economically Disadvantaged Groups**

Poverty remains one of the greatest obstacles to accessing justice in Bangladesh. Many low-income individuals are unable to afford legal representation or bear the costs associated with litigation. Through PIL, courts have been able to address systemic issues affecting economically disadvantaged populations without requiring each affected individual to file separate lawsuits.

Public interest cases have highlighted concerns relating to housing, public health, labor conditions, environmental hazards, and access to basic services. By addressing these issues collectively, PIL has reduced procedural burdens and enabled broader judicial protection for disadvantaged groups.

#### **4.5.3 Representation Through Civil Society Organizations**

Civil society organizations have played a crucial role in facilitating access to justice through PIL. Organizations such as BELA, ASK, and BLAST have represented marginalized communities in cases involving human rights violations, environmental protection, labor rights, and discrimination.

These organizations possess the legal expertise, institutional resources, and advocacy capacity necessary to challenge unlawful governmental actions and seek remedies on behalf of affected



communities. Their participation has significantly expanded the reach of the judicial system and ensured that vulnerable populations are not excluded from legal protection.

#### **4.5.4 Protection of Rural and Socially Excluded Communities**

Many marginalized groups in Bangladesh reside in rural and remote areas where access to legal institutions is limited. Indigenous communities, landless populations, informal workers, and socially disadvantaged groups often encounter difficulties in asserting their rights before administrative authorities and courts.

PIL has enabled courts to examine issues affecting these communities and to provide remedies in situations involving land disputes, environmental harm, displacement, and discrimination. Judicial intervention has contributed to greater recognition of the rights and interests of groups that have historically remained underrepresented within formal legal processes.

#### **4.5.5 Strengthening Human Rights and Social Justice**

Beyond individual disputes, PIL has contributed to the broader objective of social justice by addressing structural inequalities and systemic rights violations. Courts have increasingly interpreted constitutional guarantees in a manner that protects vulnerable populations and promotes inclusive governance. Through PIL, judicial institutions have reinforced principles of equality, human dignity, and non-discrimination, thereby enhancing the practical realization of constitutional rights.

The ability of public-interest litigants to raise issues of collective concern has also increased public awareness of social injustices and encouraged governmental institutions to adopt more responsive policies toward marginalized groups.

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<sup>50</sup> *Dr Mohiuddin Farooque v Bangladesh* 48 DLR (AD) (1996) 438.

<sup>51</sup> Constitution of the People's Republic of Bangladesh 1972, arts 27, 31, 32 and 44.

<sup>52</sup> Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012) 721–740.

## **CHAPTER FIVE:**

## **PIL AND JUDICIAL POPULISM IN BANGLADESH**

### **5.1 Introduction**

Public Interest Litigation (PIL) has significantly transformed constitutional governance in Bangladesh by expanding access to justice and strengthening judicial protection of fundamental rights. Through PIL, courts have addressed environmental degradation, human rights violations, administrative failures, and matters affecting public welfare. However, the increasing role of the judiciary in public affairs has also generated debate regarding the proper limits of judicial power.

Supporters of PIL argue that judicial intervention is necessary when the executive and legislative branches fail to fulfill their constitutional responsibilities. Critics, on the other hand, contend that excessive judicial involvement in policy matters may undermine democratic governance and encourage judicial populism. This chapter examines the relationship between PIL, judicial activism, and judicial populism in Bangladesh and evaluates the implications of expanding judicial authority through public interest litigation.

### **5.2 Understanding Judicial Activism and Judicial Populism**

The concepts of judicial activism and judicial populism are central to understanding the contemporary role of courts in constitutional democracies. Although both concepts involve an active judiciary, they differ significantly in their objectives, methods, and implications for democratic governance. In the context of Public Interest Litigation (PIL) in Bangladesh, distinguishing between judicial activism and judicial populism is essential for evaluating whether judicial intervention has strengthened constitutional governance or expanded judicial authority beyond its legitimate boundaries.

#### **5.2.1 Judicial Activism**

Judicial activism refers to a proactive approach in which courts actively interpret constitutional and legal provisions to protect fundamental rights, promote justice, and ensure governmental accountability. Activist judges often adopt a broad and purposive interpretation of the Constitution, particularly when addressing issues involving human rights, social justice, and executive misconduct.

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<sup>53</sup> S P Sathe, *Judicial Activism in India* (Oxford University Press 2002) 242.

<sup>54</sup> Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012) 721

The concept emerged prominently in jurisdictions such as the United States and India, where courts played a significant role in expanding civil liberties and protecting disadvantaged groups. In Bangladesh, judicial activism has been closely associated with the development of Public Interest Litigation. Through PIL, the judiciary has broadened access to justice by relaxing traditional rules of locus standi and allowing public-spirited individuals and organizations to seek remedies on behalf of affected communities.

Supporters of judicial activism argue that it is necessary when executive and legislative institutions fail to fulfill their constitutional obligations. In such circumstances, courts act as guardians of the Constitution by protecting fundamental rights and preventing abuses of power. Judicial activism is therefore often viewed as a legitimate mechanism for strengthening the rule of law, constitutional supremacy, and democratic accountability.

Examples of judicial activism in Bangladesh include decisions concerning environmental protection, protection of women and children's rights, prevention of unlawful detention, and enforcement of constitutional guarantees. Through these interventions, courts have sought to address governance failures and protect vulnerable populations that might otherwise remain without effective legal remedies.

### **5.2.2 Judicial Populism**

Judicial populism refers to judicial behavior that is influenced primarily by popular opinion, media attention, or public sentiment rather than legal principles and constitutional limitations. It occurs when courts seek to satisfy public expectations through highly visible interventions in matters that may fall outside their traditional constitutional role.

Unlike judicial activism, which is generally grounded in constitutional interpretation, judicial populism may prioritize public approval over legal consistency. Critics argue that judicial populism risks transforming courts into political actors and may weaken the institutional balance between the judiciary, legislature, and executive.

The concept remains controversial because distinguishing between legitimate judicial intervention and excessive judicial expansion is often difficult. What one observer considers necessary judicial activism may be viewed by another as judicial populism.

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<sup>55</sup> Ran Hirschl, *Towards Juristocracy* (Harvard University Press 2004) 221.

<sup>56</sup> Richard Bellamy, *Political Constitutionalism* (Cambridge University Press 2007) 144.

### 5.2.3 Distinguishing Judicial Activism from Judicial Populism

Although the distinction between judicial activism and judicial populism is not always clear, several factors help differentiate the two concepts.

First, judicial activism is generally grounded in constitutional interpretation and the protection of legal rights, whereas judicial populism is often influenced by public opinion and societal pressures.

Second, judicial activism seeks to enforce constitutional norms when other branches fail to act, while judicial populism may involve courts assuming responsibilities that constitutionally belong to elected institutions.

Third, judicial activism remains connected to legal principles and judicial reasoning, whereas judicial populism may prioritize desirable social outcomes even when legal authority for such intervention is uncertain.

In practice, a single judicial decision may contain elements of both activism and populism. Consequently, the distinction often depends on the extent of judicial intervention, the constitutional basis of the decision, and its impact on institutional balance.

### 5.2.4 Judicial Activism and PIL in Bangladesh

The growth of PIL in Bangladesh has been closely associated with judicial activism. Through expansive interpretations of constitutional provisions, the judiciary has broadened access to justice and strengthened the enforcement of fundamental rights.

The landmark decision in *Dr. Mohiuddin Farooque v. Bangladesh* illustrates this trend. By relaxing the traditional doctrine of locus standi, the Appellate Division enabled public-spirited individuals and organizations to bring actions on behalf of affected communities. Similar judicial initiatives have facilitated interventions in environmental protection, labor rights, public health, and administrative accountability.

Many scholars view these developments as positive examples of judicial activism because they enhance constitutional governance and provide remedies where political institutions have failed to act effectively.

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<sup>58</sup> *Dr Mohiuddin Farooque v Bangladesh* 48 DLR (AD) (1996) 438.

<sup>59</sup> Syed Mahbub Murshed, *Public Interest Litigation in Bangladesh* (University Press Limited 2011) 94.

### **5.3 Expansion of Judicial Power Through PIL**

The development of Public Interest Litigation (PIL) in Bangladesh has significantly expanded the scope of judicial power, particularly through increased intervention in policy matters and enhanced administrative oversight. While originally conceived as a mechanism for ensuring access to justice and protecting fundamental rights, PIL has gradually evolved into a tool through which the judiciary engages with governance issues that were traditionally within the exclusive domain of the executive and legislative branches. This expansion has generated both appreciation for judicial responsiveness and concern regarding constitutional boundaries.

#### **5.3.1 Increasing Judicial Intervention in Policy Matters**

One of the most notable features of PIL in Bangladesh is the judiciary's growing involvement in matters that have clear policy implications. Through PIL proceedings, courts have addressed issues such as environmental regulation, urban planning, public health, labor standards, education policy, and administrative governance. In many instances, judicial decisions have not only interpreted the law but also directed how policies should be formulated, implemented, or restructured.

This trend has been particularly visible in environmental PIL cases, where courts have issued detailed directives concerning river protection, industrial regulation, and pollution control. For example, in cases brought by public interest litigants, courts have instructed government authorities to identify polluters, remove illegal encroachments, establish regulatory mechanisms, and implement long-term environmental management plans. While such directions are often justified on the basis of enforcing constitutional rights and statutory obligations, they effectively influence policy formulation and implementation.

Similarly, in cases involving public health and safety, courts have issued orders requiring improvements in infrastructure, enforcement of safety regulations, and compliance with administrative standards. These interventions demonstrate the judiciary's willingness to step beyond traditional adjudication and engage in governance-related decision-making when it perceives executive inaction or regulatory failure.

The justification for such intervention is often grounded in constitutional supremacy and the protection of fundamental rights under Articles 31 and 32 of the Constitution of Bangladesh. Where state authorities fail to perform their duties, courts have viewed themselves as constitutionally obligated to intervene to prevent rights violations and ensure lawful governance. However, critics argue that such involvement may blur the separation between judicial interpretation and policy formulation, raising concerns about democratic legitimacy.

### **5.3.2 Administrative Oversight Through Court Directives**

Another significant dimension of PIL is the judiciary's increasing role in supervising administrative actions through structured directives. In several PIL cases, courts have not limited themselves to declaring legal principles but have actively monitored administrative performance and directed public authorities to take specific actions within defined timeframes.

This form of judicial oversight is evident in cases involving environmental protection, public service delivery, labor rights enforcement, and human rights protection. Courts have directed government agencies to form committees, conduct investigations, submit compliance reports, and implement corrective measures. In some instances, continuing mandamus has been used, allowing courts to retain jurisdiction over a matter to ensure that their orders are properly implemented.

Such judicial supervision has been particularly prominent in environmental litigation, where implementation gaps and administrative inefficiencies have necessitated ongoing court involvement. Public interest organizations such as the Bangladesh Environmental Lawyers Association (BELA) have frequently sought judicial directions requiring regulatory authorities to take action against pollution and encroachment. As a result, courts have assumed a quasi-supervisory role over executive agencies in certain policy areas.

While administrative oversight through court directives has contributed to improved accountability and enforcement of laws, it has also raised concerns regarding institutional balance. Critics argue that sustained judicial monitoring of executive functions may lead to judicial overreach, as courts may lack the technical expertise and institutional capacity to manage complex administrative systems. Moreover, excessive judicial supervision may weaken the responsibility of executive agencies by shifting accountability from administrative institutions to the judiciary.

### **5.3.3 Implications of Judicial Expansion**

The expansion of judicial power through PIL reflects both the strengths and tensions of constitutional governance in Bangladesh. On one hand, it demonstrates the judiciary's responsiveness to governance failures and its commitment to protecting fundamental rights. On the other hand, it raises important questions regarding the limits of judicial authority and the proper role of courts in a democratic system.

The growing judicial involvement in policy matters and administrative oversight suggests a gradual transformation of the judiciary from a purely adjudicative body into an institution with quasi-governance functions. While this transformation has enabled courts to address urgent public concerns, it also necessitates careful consideration of judicial restraint to preserve institutional balance.

## **5.4 Criticisms of PIL**

Although Public Interest Litigation (PIL) has contributed significantly to the expansion of access to justice and the protection of constitutional rights in Bangladesh, it has also generated considerable criticism. These criticisms primarily focus on concerns relating to judicial overreach, politicization of the judiciary, and the inconsistent application of PIL principles. Such concerns highlight the tension between judicial activism and the doctrine of separation of powers in a constitutional democracy.

### **5.4.1 Judicial Overreach**

One of the most prominent criticisms of PIL is that it may lead to judicial overreach. Through PIL, courts sometimes move beyond their traditional adjudicative role of interpreting law and resolving disputes, and instead engage in functions that resemble policy formulation and administrative decision-making.

In Bangladesh, courts have occasionally issued detailed directives regarding environmental regulation, public administration, urban governance, and service delivery. While these interventions are often justified on the basis of enforcing fundamental rights and addressing administrative inaction, critics argue that such directions may encroach upon the domain of the executive branch. The executive is constitutionally responsible for implementing laws and formulating public policy, and excessive judicial intervention may undermine this institutional responsibility.

### **5.4.2 Encroachment upon Executive Functions**

Closely related to judicial overreach is the concern that PIL leads to encroachment upon executive functions. In several PIL cases, courts have directed government agencies to take specific actions, establish regulatory mechanisms, or implement administrative reforms. While such directions may be intended to ensure compliance with constitutional and statutory obligations, they may also blur the line between judicial interpretation and executive governance.

This encroachment may create institutional tension between the judiciary and the executive, particularly where courts are perceived to be supervising or managing administrative functions. Critics argue that such judicial involvement may weaken the autonomy of executive agencies and disrupt the balance of power among the branches of government.

### **5.4.3 Weakening Democratic Accountability**

Another significant criticism is that excessive reliance on PIL may weaken democratic accountability. In a constitutional democracy, policy decisions are expected to be made by elected representatives who are accountable to the (people) through democratic processes. When

courts engage in policymaking or issue detailed administrative instructions through PIL, decision-making authority may shift from elected bodies to unelected judges.

Critics argue that this shift may undermine the principle of democratic legitimacy, as judges are not directly accountable to the electorate. While judicial intervention may be necessary in cases of rights violations or administrative failure, excessive involvement in governance may reduce incentives for legislative and executive reform.

#### **5.4.4 Politicization of the Judiciary**

PIL has also been criticized for potentially contributing to the politicization of the judiciary. Since PIL cases often involve sensitive issues such as governance failures, corruption, human rights violations, and environmental disputes, they may attract political attention and public debate.

In such contexts, courts may be perceived as entering political controversies, particularly when decisions have implications for government policy or public administration. Critics argue that this may expose the judiciary to political pressure or influence, thereby affecting its perceived neutrality and independence.

Maintaining judicial impartiality is essential for sustaining public confidence in the legal system. However, involvement in politically charged PIL cases may create the perception that the judiciary is participating in policy or political debates rather than strictly adjudicating legal issues.

#### **5.4.5 Selective Intervention and Inconsistent Application**

Another important criticism of PIL is the issue of selective intervention and inconsistency in its application. There is no uniform standard governing when courts should accept PIL petitions or how far they should intervene in public interest matters. As a result, judicial responses may vary depending on the nature of the case, judicial discretion, or contextual factors.

This inconsistency may lead to unpredictability in PIL jurisprudence, making it difficult for litigants and public authorities to anticipate judicial behavior. In some cases, courts adopt a highly activist approach, while in others they exercise restraint, even when similar issues are raised. Critics argue that such variability undermines legal certainty and coherence in constitutional adjudication.



## 5.4 Case Studies Demonstrating Judicial Activism

Public Interest Litigation (PIL) in Bangladesh has, in several landmark instances, led the judiciary to adopt an assertive role that extends beyond traditional adjudication. In such cases, the Supreme Court has not only interpreted constitutional and statutory provisions but has also issued detailed directions that arguably resemble policy formulation. These decisions are often cited as examples of judicial activism, where the judiciary steps into governance-related domains to address regulatory gaps, administrative inertia, or violations of fundamental rights.

### ***Dr. Mohiuddin Farooque v. Bangladesh (1997)***

One of the most foundational cases in the development of PIL in Bangladesh is *Dr. Mohiuddin Farooque v. Bangladesh*. In this case, the Appellate Division of the Supreme Court significantly liberalized the doctrine of locus standi, allowing public-spirited individuals and organizations to bring petitions in matters of public interest.

While the immediate issue concerned environmental harm and administrative inaction, the Court's broader contribution was doctrinal rather than purely interpretive. By expanding access to the writ jurisdiction under Article 102 of the Constitution, the Court effectively reshaped procedural access to constitutional remedies. Critics argue that this expansion had quasi-legislative effects, as it altered the traditional boundaries of who may approach the Court, thereby influencing the structure of public law litigation in Bangladesh.

Supporters, however, view this as a necessary constitutional development to ensure access to justice in a context where affected communities often lack the capacity to litigate directly.

### **Environmental PILs and Judicial Environmental Governance**

Environmental litigation, particularly cases brought by organizations such as Bangladesh Environmental Lawyers Association, provides further examples of judicial activism. In several cases involving river encroachment, industrial pollution, and wetland degradation, the High Court Division issued detailed directives to government authorities.

These directives have included instructions to:

- identify and remove illegal structures from riverbanks,
- regulate industrial discharge into water bodies,
- establish environmental monitoring committees, and
- implement long-term conservation measures.

While these interventions were grounded in constitutional rights such as the right to life (Articles 31 and 32), critics argue that the judiciary effectively engaged in environmental policymaking. Rather than merely declaring legal violations, the Court often outlined administrative steps for enforcement agencies, thereby assuming a supervisory role over environmental governance.

Such judicial directions are frequently cited as examples of “policy substitution,” where courts fill governance gaps left by the executive, potentially blurring the separation of powers.

### **Sexual Harassment Guidelines Case (BNWLA Case)**

Another significant example of judicial activism is the case commonly referred to as the Sexual Harassment Guidelines case involving Bangladesh National Women Lawyers' Association. In this case, the High Court Division issued comprehensive guidelines to prevent sexual harassment in workplaces and educational institutions.

At the time of the decision, Bangladesh did not have specific legislation addressing sexual harassment. The Court therefore formulated a detailed regulatory framework, including definitions, complaint mechanisms, disciplinary procedures, and institutional responsibilities.

While this intervention was widely praised for addressing a critical gap in legal protection for women, it also raised concerns about judicial lawmaking. Critics argue that by creating binding guidelines with nationwide applicability, the Court effectively performed a legislative function, which traditionally falls within the domain of Parliament.

Nevertheless, the decision is often defended on the basis of constitutional necessity, as it provided immediate protection against gender-based violence in the absence of legislative action.

### **5.4.1 Continuing Mandamus and Administrative Supervision**

In several PIL matters, the Supreme Court has adopted the practice of continuing mandamus, retaining jurisdiction over cases to ensure compliance with its orders. This technique has been used particularly in environmental and governance-related litigation, where implementation requires sustained administrative action.

Through this mechanism, courts have required government agencies to submit periodic reports, implement specific directives, and demonstrate compliance over time. While this approach enhances accountability and ensures enforcement, it also places the judiciary in a supervisory role over the executive.

Critics argue that such sustained involvement may transform the judiciary into a quasi-administrative authority, raising concerns about institutional competence and constitutional boundaries.

#### **5.4.2 Evaluation of Judicial Activism in These Cases**

These case studies illustrate the dual nature of judicial activism in Bangladesh. On one hand, judicial intervention has addressed significant governance failures, protected fundamental rights, and filled legislative or administrative gaps. On the other hand, the extent of judicial involvement in policymaking, regulatory design, and administrative supervision has led to concerns about judicial overreach.

The central tension lies in determining when judicial intervention is a legitimate response to constitutional violations and when it crosses into policy formulation reserved for elected institutions. In Bangladesh, this boundary remains fluid, and PIL continues to operate as a dynamic but contested instrument of constitutional governance.

#### **5.5 Comparative Perspective: India, Pakistan, and Bangladesh**

A comparative analysis of Public Interest Litigation (PIL) in India, Pakistan, and Bangladesh reveals both shared origins and divergent trajectories in the development of judicial activism. Although all three jurisdictions belong to the common law tradition and share similar constitutional frameworks, the scope, intensity, and institutional acceptance of PIL vary significantly due to differences in judicial philosophy, political context, and governance structures.

##### **India: Expansive and Institutionalized PIL Jurisprudence**

India is widely regarded as the birthplace of modern Public Interest Litigation in South Asia. The Indian Supreme Court adopted a highly liberal approach to locus standi during the late 1970s and 1980s, particularly under the influence of judicial reformist judges such as P. N. Bhagwati and V. R. Krishna Iyer.

In India, PIL has evolved into a well-established constitutional mechanism used to address issues such as environmental protection, bonded labor, custodial violence, corruption, and social welfare. The Indian judiciary has not only entertained PILs but has also actively shaped policy outcomes through detailed monitoring orders, continuing mandamus, and structural injunctions.

However, Indian PIL jurisprudence has also faced criticism for judicial overreach, excessive policymaking, and “judicial governance,” where courts are perceived to be functioning as quasi-executive bodies. Despite these concerns, PIL remains an institutionalized and widely accepted feature of Indian constitutional law.

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<sup>61</sup> S P Sathe, *Judicial Activism in India* (Oxford University Press 2002) 187.

### **Pakistan: Restrained but Evolving PIL Framework**

In Pakistan, PIL developed later and in a more restrained form compared to India. The Supreme Court of Pakistan gradually expanded its constitutional jurisdiction under Article 184(3) of the Constitution, particularly in matters involving fundamental rights and public importance.

During periods of judicial activism, especially in the 2000s and 2010s, the Pakistani judiciary took a more interventionist role in governance, addressing corruption, electoral matters, and public accountability. However, the development of PIL in Pakistan has been inconsistent, often influenced by political instability and tensions between the judiciary and executive.

Unlike India, Pakistan has not developed a fully structured PIL doctrine with stable procedural norms. Judicial intervention tends to be case-specific and sometimes controversial, with debates surrounding judicial legitimacy and institutional balance.

### **Bangladesh: Rights-Based but Structurally Cautious PIL**

Bangladesh represents a middle path between the expansive Indian model and the more politically volatile Pakistani experience. PIL in Bangladesh has developed primarily through judicial interpretation of Article 102 of the Constitution, particularly following the landmark decision in *Dr. Mohiuddin Farooque v. Bangladesh*.

The judiciary in Bangladesh has adopted a liberal approach to standing and has actively engaged in environmental protection, human rights enforcement, and administrative accountability. Organizations such as Bangladesh Environmental Lawyers Association and Ain o Salish Kendra have played a significant role in advancing PIL jurisprudence.

However, compared to India, the Bangladeshi judiciary has generally been more cautious in institutionalizing structural remedies or long-term supervisory jurisdiction. While courts have issued policy-oriented directions in certain cases, PIL in Bangladesh remains relatively less systematized and more dependent on judicial discretion.

### **Comparative Analysis**

A comparative evaluation of PIL in the three jurisdictions reveals several key distinctions:

First, **scope of judicial activism** is broadest in India, moderate in Bangladesh, and fluctuating in Pakistan depending on political context.

Second, **institutionalization of PIL** is strongest in India, where procedural doctrines and jurisprudence are well developed. Bangladesh has developed PIL primarily through case law, while Pakistan's framework remains comparatively less structured.

Third, **judicial role in policymaking** is most pronounced in India, where courts frequently issue continuing mandamus and structural injunctions. In Bangladesh, such interventions exist but are more limited. Pakistan shows episodic judicial activism with varying intensity.

Fourth, **concerns of judicial overreach** are present in all three jurisdictions but are most debated in India due to the scale of judicial intervention. In Bangladesh, concerns exist but are balanced by the judiciary's relatively cautious approach. In Pakistan, concerns often relate to politicization and institutional instability.

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<sup>62</sup> Syed Mahbub Murshed, *Public Interest Litigation in Bangladesh* (University Press Limited 2011) 112.

<sup>62</sup> Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012) 739.

## **CHAPTER SIX:**

### **FINDINGS, ANALYSIS AND DISCUSSION**

#### **6.1 Introduction**

This chapter presents the major findings of the study on Public Interest Litigation (PIL) in Bangladesh and critically analyses its dual character as both a tool for justice and a potential source of judicial activism beyond traditional limits. Building on the doctrinal and case-based discussions in earlier chapters, this section synthesizes how PIL has functioned in practice, particularly in relation to access to justice, protection of fundamental rights, environmental governance, and governmental accountability.

The discussion also evaluates whether the expansion of PIL has strengthened constitutional governance or contributed to concerns of judicial populism and institutional imbalance. In doing so, the chapter draws upon comparative insights and doctrinal developments to assess the overall impact of PIL within the constitutional framework of Bangladesh.

#### **6.2 Major Findings**

The study identifies both the positive constitutional contributions of Public Interest Litigation (PIL) in Bangladesh and the concerns associated with its expanded judicial role. The findings suggest that PIL operates in a dual capacity—primarily as a tool for justice, while also raising questions regarding judicial activism and its potential drift toward judicial populism.

##### **6.2.1 PIL as a Tool for Justice**

A key finding of this research is that PIL has functioned as an effective mechanism for promoting justice within the constitutional framework of Bangladesh. By expanding judicial access and enabling collective grievances to be heard, PIL has strengthened the enforcement of fundamental rights and improved the responsiveness of the legal system.

##### **(a) Expanded Access to Courts**

PIL has significantly widened access to the judiciary by relaxing the traditional doctrine of locus standi. Following landmark judicial developments such as *Dr. Mohiuddin Farooque v. Bangladesh*, public-spirited individuals and organizations are now able to approach the courts on behalf of affected communities. This has reduced procedural barriers and ensured that disadvantaged groups, who are often unable to litigate independently, can still seek constitutional remedies through representative litigation. Organizations such as Bangladesh Environmental

Lawyers Association and Ain o Salish Kendra have played a central role in facilitating this expanded access.

### **(b) Strengthened Human Rights Protection**

The study finds that PIL has contributed significantly to strengthening human rights protection in Bangladesh. Courts have used PIL to address violations involving gender-based violence, unlawful detention, labor exploitation, child rights, and discrimination. Through purposive interpretation of constitutional provisions, particularly Articles 27, 31, and 32, the judiciary has reinforced the practical enforcement of fundamental rights, ensuring that constitutional guarantees are not merely theoretical but enforceable in practice.

### **(c) Improved Environmental Governance**

Another important finding is that PIL has enhanced environmental governance. Through environmental litigation, particularly cases initiated by organizations such as Bangladesh Environmental Lawyers Association, courts have intervened in matters involving river pollution, wetland destruction, industrial contamination, and illegal encroachment. Judicial directions have compelled administrative authorities to enforce environmental regulations, thereby improving compliance and strengthening ecological protection.

## **6.2.2 PIL as Judicial Populism**

Alongside its contributions to justice, the study also finds that PIL has raised concerns regarding judicial overreach and its potential evolution into judicial populism. This aspect reflects the expanding scope of judicial intervention in governance-related matters.

### **(a) Increased Judicial Intervention in Policy-Making**

The findings indicate that courts in Bangladesh have, in certain PIL cases, issued directives that extend beyond interpretation of law into areas that resemble policy formulation. These include directions relating to environmental regulation, administrative reform, public service delivery, and institutional governance. While such interventions are often justified as necessary to enforce constitutional rights, they may also place the judiciary in a position where it indirectly shapes public policy decisions.

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<sup>63</sup> *Dr Mohiuddin Farooque v Bangladesh* 48 DLR (AD) (1996) 438

<sup>64</sup> Constitution of the People's Republic of Bangladesh 1972, arts 27, 31, 32, 44 and 102.

## **(b) Potential Conflict with Separation of Powers**

A further finding is that the expansion of judicial involvement in policy and administrative matters raises concerns regarding the constitutional principle of separation of powers. By engaging in detailed supervisory directions and administrative oversight, the judiciary may appear to encroach upon functions traditionally assigned to the executive branch. This can create institutional tension and raise questions about democratic legitimacy, as policy-making is primarily the responsibility of elected bodies.

## **6.4 Discussion of Research Questions**

This section addresses the research questions formulated in Chapter One by synthesizing the findings and analysis of the study. The discussion evaluates the legal foundation, practical impact, and constitutional implications of Public Interest Litigation (PIL) in Bangladesh, particularly in relation to whether it functions as a tool for justice or tends toward judicial populism.

### **6.4.1 What is the legal foundation of PIL in Bangladesh?**

The legal foundation of PIL in Bangladesh is primarily derived from Article 102 of the Constitution of the People's Republic of Bangladesh. This provision empowers the High Court Division to issue orders, directions, and writs for the enforcement of fundamental rights and for ensuring that public authorities act within legal limits.

The judiciary has expanded this constitutional jurisdiction through interpretative development, most notably in *Dr. Mohiuddin Farooque v. Bangladesh*, where the doctrine of locus standi was significantly liberalized. This allowed individuals and organizations acting in public interest to initiate proceedings on behalf of affected communities. As a result, PIL in Bangladesh is not explicitly codified but has evolved through judicial interpretation of constitutional provisions.

### **6.4.2 How has PIL contributed to justice and rights protection?**

The study finds that PIL has made a substantial contribution to justice delivery and human rights protection in Bangladesh. It has enabled courts to address systemic violations of fundamental rights, particularly where affected individuals lack the capacity or resources to approach the judiciary.

Through PIL, courts have intervened in cases involving environmental degradation, unlawful detention, gender-based violence, labor exploitation, child protection, and administrative



arbitrariness. These interventions have strengthened the practical enforcement of constitutional rights under Articles 27, 31, and 32.

Organizations such as Bangladesh Environmental Lawyers Association and Ain o Salish Kendra have played an instrumental role in bringing public grievances before the courts, thereby enhancing access to justice and promoting rights-based governance.

#### **6.4.3 Has PIL resulted in judicial activism or judicial populism?**

The study finds that PIL in Bangladesh reflects elements of both judicial activism and judicial populism, depending on the nature and extent of judicial intervention.

On one hand, PIL demonstrates judicial activism when courts intervene to protect fundamental rights, ensure governmental accountability, and remedy administrative inaction. Such interventions are generally grounded in constitutional interpretation and are aimed at enforcing legal rights.

On the other hand, certain PIL decisions exhibit characteristics of judicial populism, particularly where courts issue detailed policy-oriented directives or supervise administrative functions. In such cases, the judiciary may appear to move beyond interpretation into governance, raising concerns about separation of powers and democratic legitimacy.

Therefore, PIL in Bangladesh cannot be classified strictly as either activism or populism; rather, it exists on a continuum between the two, depending on judicial reasoning, scope of intervention, and institutional context.

#### **6.4.4 What are the implications of PIL for separation of powers and democratic governance?**

The study finds that PIL has significant implications for the doctrine of separation of powers in Bangladesh. While it enhances constitutional governance by holding the executive accountable and enforcing fundamental rights, it also raises concerns about institutional balance.

Judicial intervention in policy matters and administrative supervision, although often justified by constitutional necessity, may blur the functional boundaries between the judiciary and the executive. This can create tensions between branches of government and raise questions about the democratic legitimacy of judicial decision-making in policy-related matters.

At the same time, the study recognizes that PIL often arises in contexts where executive and legislative institutions fail to effectively protect rights or enforce laws. In such situations, judicial intervention may be necessary to uphold constitutional supremacy and ensure justice.

## CHAPTER SEVEN:

### CONCLUSION AND RECOMMENDATIONS

#### 7.1 Conclusion

Public Interest Litigation (PIL) has emerged as one of the most significant developments in the constitutional and legal system of Bangladesh. Since the landmark decision in *Dr. Mohiuddin Farooque v. Bangladesh*, PIL has expanded the scope of judicial protection by enabling public-spirited individuals and organizations to seek remedies on behalf of disadvantaged and marginalized groups. Through the relaxation of traditional locus standi requirements, the judiciary has strengthened access to justice and enhanced the practical enforcement of constitutional rights.

This study has examined the constitutional and legal foundations of PIL, its role in protecting public interests, and the debates surrounding judicial activism and judicial populism. The analysis demonstrates that PIL derives its legitimacy from the Constitution of Bangladesh, particularly Articles 27, 31, 32, 44, and 102, which collectively provide the legal basis for the protection and enforcement of fundamental rights.

The findings of this research indicate that PIL has made substantial contributions to environmental justice, human rights protection, governmental accountability, and access to justice. Judicial interventions through PIL have addressed issues such as river pollution, environmental degradation, protection of women and workers, unlawful administrative actions, and the rights of marginalized communities. In many instances, PIL has enabled courts to provide remedies where legislative and executive institutions have failed to respond adequately to public concerns.

At the same time, the study acknowledges criticisms relating to the expansion of judicial authority. Concerns regarding judicial overreach, encroachment upon executive functions, and the potential weakening of democratic accountability have generated debates concerning the proper limits of judicial intervention. These concerns have led some scholars to question whether certain forms of PIL may contribute to judicial populism.

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<sup>65</sup> *Dr Mohiuddin Farooque v Bangladesh* 48 DLR (AD) (1996) 438.

<sup>66</sup> Constitution of the People's Republic of Bangladesh 1972, arts 27, 31, 32, 44 and 102.

<sup>67</sup> Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012) 739.

However, a careful examination of Bangladeshi jurisprudence suggests that PIL has primarily functioned as a form of judicial activism rather than judicial populism. Most PIL decisions have been grounded in constitutional principles and aimed at protecting rights, ensuring accountability, and promoting the rule of law. Unlike some jurisdictions where courts have assumed extensive policy-making roles, the Bangladeshi judiciary has generally exercised a relatively cautious approach while remaining responsive to issues of public importance.

Therefore, this study concludes that Public Interest Litigation in Bangladesh has predominantly served as a tool for justice rather than an instrument of judicial populism. Nevertheless, the continued effectiveness and legitimacy of PIL depend upon maintaining an appropriate balance between judicial intervention and respect for the constitutional roles of the legislature and executive. Such a balance is essential for preserving both constitutional governance and democratic accountability.

## **7.2 Recommendations**

Based on the findings of the study, the following recommendations are proposed to ensure the effective and balanced functioning of Public Interest Litigation in Bangladesh:

### **7.2.1 Develop Clear Judicial Guidelines for PIL Admissibility**

The judiciary should formulate structured guidelines defining the scope, admissibility criteria, and procedural requirements for PIL cases. This would help prevent ambiguity, ensure consistency in judicial decisions, and reduce the risk of misuse of PIL for non-public interests.

### **7.2.2 Prevent Misuse of PIL for Political Purposes**

Mechanisms should be developed to discourage the filing of politically motivated or frivolous PIL petitions. Courts may consider imposing stricter scrutiny at the admission stage to ensure that PIL is used solely for genuine public interest matters rather than partisan or personal objectives.

### **7.2.3 Strengthen Accountability Mechanisms**

While PIL enhances governmental accountability, similar accountability mechanisms should be strengthened within the judicial process itself. This includes ensuring transparency in judicial reasoning, consistent application of legal principles, and effective monitoring of court directives to ensure proper implementation by executive agencies.

#### **7.2.4 Promote Judicial Restraint in Policy Matters**

Courts should exercise caution when dealing with cases that involve complex policy decisions or administrative governance. Judicial intervention should remain focused on constitutional interpretation and rights enforcement, while leaving detailed policy formulation to the executive and legislature in accordance with the separation of powers doctrine.

#### **7.2.5 Enhance Access to Justice Through Procedural Reforms**

Further procedural reforms should be introduced to improve access to justice, including simplified filing procedures for PIL, increased legal aid support, and enhanced awareness programs. Strengthening institutional capacity will reduce over-reliance on judicial intervention as the primary means of addressing public grievances.

#### **Final Remark**

In conclusion, PIL in Bangladesh must be preserved as a constitutional tool for justice while simultaneously ensuring that its application remains within appropriate judicial boundaries. A balanced approach that combines judicial activism with restraint is essential for maintaining both the effectiveness of PIL and the integrity of constitutional governance.

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