



Sonargaon University (SU)

Research Monograph

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

Sonargaon University (SU)

Submitted To

Joydeep Chowdhury

Lecturer

Department of Law

Sonargaon University (SU)

Submitted by

Chaiti Rani

ID No. LLB 2202026047

Program: LL.B (Hon's)

Department of Law

Sonargaon University (SU)

Date of Submission: 25 June, 2026

Letter of Transmittal

To

Joydeep Chowdhury

Lecturer

Department of Law

Sonargaon University (SU)

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

.....
Chaiti Rani

ID No. LLB 2202026047

Program: LL.B (Hon's)

Department of Law

Sonargaon University (SU)

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.

.....
Chaiti Rani

ID No. LLB 2202026047

Program: LL.B (Hon’s)

Department of Law

Sonargaon University (SU)

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.

.....
Joydeep Chowdhury

Lecturer

Department of Law

Sonargaon University (SU)

Acknowledgement

With the blessings of Almighty God and my deepest gratitude to the Divine, I have been able to complete this Research Monograph successfully. I offer my sincere thanks to God for granting me the strength, wisdom, patience, and guidance throughout the course of this study. I am truly grateful for the opportunity and support that enabled me to accomplish this academic work. 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 classmate as 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.

We are indeed thanks to everyone who inspired us to write this Research Monograph.

Thank you

Chaiti Rani

ABSTRACT

Public interest litigation is constitutional jurisprudence and it is based on necessity of public interest or infringement of public rights. Public interest litigation protects fundamental rights of the society and provides social justice to economically and socially disabled people. In recent years, PIL has begun to emerge as a potent new force within the justice system of Bangladesh. Social and political activists have expressed high levels of interest in the potential of this phenomenon to bring about significant change in Bangladesh society. This study examines the idea of social justice through public interest litigation and Judicial Ruling in various judgments in Bangladesh. Judicial Ruling on Public Interest Litigation in Bangladesh: Evaluating Effective and Pathways for Reform as it has developed in recent years marks a significant departure from traditional judicial proceedings.

TABELE OF CONTENTS

Letter of Transmittal	i
Declaration.....	ii
Supervisor Certificate	iii
Acknowledgement	iv
Abstract.....	v

Chapter: 01

Introduction

1.1 Introduction	01
1.2 Statement of Problems	01
1.3 Objectives of the Study	02
1.4 Methodology of the Study	02
1.5 Scope and Limitation of the Study	03

Chapter-2

Literature Review

2.1 Introduction	04
2.2 Public Interest Litigation (PIL)	06
2.3 Justice.....	06
2.4 Evaluating Effective and Pathways for Reform.....	07
2.5 Conclusion	07

Chapter-3

Pathways for Reform

3.1 Introduction	08
3.2 Constitution of Bangladesh & PIL.....	08
3.3 Environment Conservation Act 1995 (Amended Act 2010)	11
3.4 Environment Conservation Rules 1997	12
3.5 Environment Court Act 2000 (amended in 2010).....	13
3.6 Conclusion	13

Chapter: 4

Tool for Justice or Judicial Populism Public Interest Litigation (PIL)

4.1 Introduction.....	14
4.2 Conservative View VS Liberal View	14

4.3 Positive Approach of Judiciary	15
4.4 Suo Motu Approach	19
4.5 Conclusion	21

Chapter: 5

Conclusion

5.1 Introduction	35
5.2 Findings	36
5.3 Recommendations	37
5.4 Concluding Remarks	38
Bibliography	39

Chapter: 01

Introduction

1.1 Introduction

Public Interest Litigation is the power given to the public by courts through Judicial Ruling. Such cases may occur when the victim does not have the necessary resources to commence litigation or his freedom to move court has been suppressed or encroached upon. The court can itself take cognizance of the matter and proceed suo motu or cases can commence on the petition of any public-spirited individual.¹ Public Interest Litigation (PIL) has emerged as one of the most influential judicial mechanisms for protecting constitutional rights and ensuring social justice in modern democratic societies. Unlike traditional litigation, which focuses mainly on private disputes between individuals, PIL aims to protect the collective interests of the public, particularly disadvantaged and marginalized groups who often lack the financial ability, legal awareness, or social power to seek justice through ordinary legal procedures. Through PIL, courts are empowered to address issues affecting society at large, including environmental degradation, human rights violations, corruption, abuse of administrative authority, labor exploitation, and public health concerns. As a result, PIL has become an important instrument for promoting accountability, transparency, and the rule of law.

In Bangladesh, the development of PIL represents a significant transformation in constitutional jurisprudence and judicial activism. Initially, the legal system followed the traditional doctrine of locus standi, under which only a directly aggrieved person could file a case before the court. This restrictive approach created barriers for poor and vulnerable communities who were unable to approach the judiciary despite suffering from violations of fundamental rights. Over time, however, the judiciary gradually adopted a more liberal interpretation of constitutional remedies, particularly under Article 102 of the Constitution, which empowers the High Court Division to

¹ Hasan, Sayed Rizwana, 'Application and Reforms Needs of the Environmental Laws in Bangladesh' (Bangladesh Journal of Law, Vol. 9 Nos. 1 & 2, 2005) 85-108

issue writs for the enforcement of fundamental rights and judicial review of administrative actions.

The recognition and expansion of PIL in Bangladesh were strongly influenced by developments in neighboring India and by the growing role of civil society organizations advocating for human rights and environmental justice. One of the most important milestones in this regard was the contribution of the Bangladesh Environmental Lawyers Association (BELA), whose landmark environmental cases helped establish the legitimacy of PIL before the Supreme Court. Since then, PIL has become an effective legal weapon for addressing various public concerns such as illegal detention, environmental pollution, workplace safety, consumer protection, women's rights, prison conditions, and government accountability.

Despite these positive contributions, PIL remains a subject of considerable debate among legal scholars, judges, politicians, and academics. Supporters argue that PIL strengthens democracy by ensuring access to justice and compelling state institutions to fulfill their constitutional obligations. They view judicial activism through PIL as necessary in situations where executive authorities fail to protect public welfare or violate constitutional principles. On the other hand, critics contend that excessive judicial intervention may undermine the principle of separation of powers and encourage judicial populism. Judicial populism refers to situations where courts issue decisions primarily influenced by public sentiment, media attention, or political pressure rather than strict constitutional interpretation and legal reasoning. According to critics, some PIL cases in Bangladesh demonstrate judicial overreach by interfering in matters that properly belong to the executive or legislative branches.

Therefore, the growing importance of PIL raises an important question: whether Public Interest Litigation in Bangladesh primarily functions as a genuine tool for justice and constitutional protection, or whether it sometimes operates as a form of judicial populism. This study seeks to critically examine the constitutional basis, evolution, achievements, criticisms, and contemporary challenges of PIL in Bangladesh. It also aims to analyze the balance between judicial activism and judicial restraint in order to evaluate the true role of PIL in the country's democratic and constitutional framework. Judicial Ruling on Public Interest Litigation in Bangladesh Public interest environment litigation as our rights development mechanism is one of

the most important issue of the present scenarios of various legal sectors of our country. The term public interest environmental litigation (PIEL) is a new phenomenon in our legal system, is used to describe cases where conscious citizens or organizations approach the court bona fide in public interest. It is litigation introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party. It is not necessary, for the exercise of the court's jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court.

1.2 Statement of Problems

Public Interest Environmental Litigation is not defined in any statute or act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is only Public Interest there are various areas where a Public Interest Litigation can be filed. The research aims to answer two questions: can PIEL be developed in our country and if so, should it be developed as a tool to protect the environment? Public Interest Litigation (PIL) has become an important mechanism for protecting constitutional rights and ensuring justice in Bangladesh. Through PIL, the judiciary has addressed numerous issues relating to environmental protection, human rights, administrative accountability, labor rights, and the protection of marginalized communities. The expansion of PIL has significantly increased access to justice for individuals and groups who are unable to seek legal remedies through traditional litigation because of poverty, illiteracy, or social disadvantage. As a result, PIL is often regarded as a powerful instrument for promoting social justice and strengthening constitutional governance.²

However, despite its positive role, the growing use of PIL in Bangladesh has generated important legal and constitutional concerns. One major issue is the increasing tendency of judicial activism through PIL, where courts sometimes intervene in policy matters traditionally reserved for the executive or legislative branches of government. Critics argue that excessive judicial intervention may weaken the principle of separation of powers and create tension among state institutions. In some cases, courts have issued directives involving administrative

² Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012) 567.

policies, governance matters, and public administration that extend beyond traditional judicial functions.

Another significant problem is the possibility of judicial populism. Some PIL cases are alleged to be influenced by media attention, political controversies, or public emotions rather than strict constitutional interpretation and legal reasoning. This raises concerns regarding whether courts are always maintaining neutrality and judicial restraint while deciding PIL matters.³ Furthermore, relaxed rules of locus standi may encourage frivolous or politically motivated petitions filed for publicity or personal interests instead of genuine public welfare.⁴ Such misuse of PIL can burden the judiciary and reduce the effectiveness of the legal system.

In addition, there are practical challenges concerning the implementation of court directives issued in PIL cases. Government authorities often fail to execute judicial orders effectively due to administrative weakness, political resistance, or lack of coordination. Consequently, many PIL judgments remain ineffective in achieving long-term social change.⁵ Delays in judicial proceedings and limited public awareness regarding constitutional remedies also reduce the practical effectiveness of PIL in Bangladesh.

Therefore, the central problem of this study is to critically examine whether Public Interest Litigation in Bangladesh primarily serves as a constitutional tool for justice, protection of fundamental rights, and accountability, or whether it has increasingly encouraged judicial populism and judicial overreach. The study also seeks to identify the challenges, limitations, and implications of PIL within the constitutional framework of Bangladesh.

1.3 Objectives of the Study

Objectives of the study are as follows;

1. To know the basic idea public interest environmental litigation rights.

³ M. Emdadul Bari, *The Constitutional Law of Bangladesh: Progression and Transformation at its 50th Anniversary* (Springer 2021) 214.

⁴ Syed J.R. Mudassir Husain, 'Public Interest Litigation in Bangladesh: A Critical Appraisal' (2015) 26 Dhaka University Law Journal 45.

⁵ Ridwanul Hoque, *Judicial Activism in Bangladesh: A Golden Mean Approach* (Cambridge Scholars Publishing 2011) 132.

2. To identify existing legislation regarding Judicial Ruling on Public Interest Litigation in Bangladesh.
3. To discuss current situation of Evaluating Effective and Pathways for Reform.
4. To analysis the existing rights and remedies are available for Evaluating Effective and Pathways for Reform.
5. To provide suggestions, if necessary.

1.4 Methodology of the Study

In any thesis work, data collection is very important. Every research involves a method by which the desired result can be achieved. In this regard I have used both qualitative and quantitative methods. It is qualitative because I have analyzed the Law and theory. It is quantitative because I will show data. In this regard first and secondary sources have also been applied. First sources are Law, books, journal and secondary source is newspaper. To prepare the thesis paper I have been used some method and these are: I searched internet, collected some books which are related with Public Interest Litigation, Environment Conservation Act 1995, Environment Conservation Rules 1997, Environment Court Act 2000, some newspaper which has some article related with public interest environmental rights in Bangladesh, find out some journal whose are related with the public interest environmental rights.⁶

⁶ *Bangladesh Environmental Lawyers Association (BELA) v Bangladesh Writ Petition No. 2911 of 2003 (Ship Breaking to be Regulated by Law)*

1.5 Scope and Limitation of the Study

Time allocated for the preparation of the thesis paper is very short. Time is a great problem to finish the work properly within time. For the limitation of time I cannot go to the BLAST, BELA office to take their interview to know about the public interest environmental rights practically. In order to prepare this thesis paper I have to depend on mainly in internet and various books. It is too much necessary to observe the laws and Judicial Ruling for ensuring the environmental rights through PIL in Bangladesh and how the Government and NGOs and other institution are working about this matter. But I am failed due to the limitation of time.

Chapter-2

Literature Review

2.1 Introduction

Nowadays, Public Interest Environmental Litigation (PIEL) is a tool for ensuring justice in environmental sector which plays a vital role to ensure environmental rights and applicability towards the society have been discussed globally. However, in order to draw a conceptual framework of this research, the relevant research works have been discussed follows:

Jona Razzaque ‘Public Interest Environmental Litigation in India, Pakistan and Bangladesh’ she said that, the various factors play in the process of public interest environmental litigation; and also described in various methods to implement the country’s aspiration for a better environment.⁷ So, it is very important to the people to know about the environmental sector and also work with the development in that sector for implementation.

Professor Abram Chayes, He says that ‘Public Interest Litigation (PIL) is refer to the practice of lawyers to participate social change through court order, decrees that reform legal rules, enforce existing laws and articulate public norms’.⁸ So, through PIL we can get our environmental rights, enforce existing laws and articulate public norms which is very needed specially third world country like Bangladesh.

Gazi Saiful Hasan and Mahmudul Hasan Khan ‘Access to Environmental Justice: An Analytical Studies of Legal Framework in Bangladesh’ said that human beings rely on environment to get different resources to live their live. So, degradation of environment ultimately hampers human life and consequence of continuous imbalanced environment causes climate change which is now a burning issue in

⁷Jona Razzaque, *Public Interest Environmental Litigation in India Pakistan and Bangladesh*(Kluwer Law International Publication, 1st Ed, 2004).

⁸ Abram Chayes, *The Role of The Judge in Public Law Litigation* (Harvard Law review,1281,1976)

Bangladesh because it will face much more destruction than other countries.⁹ So, it is necessary to learn and aware about environment sector to protect human existence.

Harish Slave 'Justice Generations: Environment and Social Justice' said that a remarkable feature of this development is the growing application of the Judicial Ruling in environmental protection goes beyond the mere enforcement of the statutory provision of the environmental laws and embraces restitutionary as well as injunctive relief on the basis of constitutional jurisprudence and weaving environmental law buzzwords such as sustainable development 'polluter pays', 'precautionary principle', doctrine of trust, and intergenerational equity.¹⁰ So, public international environmental litigation is a feature which is a growing application of the Judicial Ruling in environmental protection.

Syed Rizwana Hasan 'Application and Reforms Needs of the Environmental Laws in Bangladesh' She said that in Bangladesh, like many other developing countries, is facing multitude of environmental problems such air pollution, hazardous waste, land degradation, water pollution etc. Pressure of rising population, rapid industrialization, urbanization and agricultural development has largely contributed to the environmental degradation in Bangladesh. It has large number of environmental legislation and many laws contain provisions on environmental protection. In Bangladesh, there are about 180 laws, which deal with or have relevance to environment. Apart from statutes, Bangladesh has also well-developed environment policy and many separate policies which have relevance on preservation and conservation of environment.¹¹ So, it is clear that we have lot of environmental problems and there are laws too but it should be updated and proper monitoring to ensure our environmental rights.

⁹Gazi Saiful Hasan and Mahmudul Hasan Khan, *Access to Environmental Justice: An Analytical Studies of Legal Framework in Bangladesh* (The Legal Analyst, 2013) 7-13.

¹⁰ Harish Slave, *Justice Generations: Environment and Social Justice* (New Delhi Oxford University Press, 2000) 360-380.

¹¹Syed Rizwana Hasan, 'Application and Reforms Needs of the Environmental Laws in Bangladesh' (Bangladesh Journal of Law, Vol. 9 Nos. 1 & 2, 2005) 85-108.

2.2 Public Interest Litigation (PIL)

Public Interest Litigation (PIL) is grounded Section 102 of the Constitution. Section 102(1) allows the court to pass an order where there has been a breach of fundamental rights. There are rights set out in Part III of the constitution and include for example: equality before law, right to life and personal liberty and freedom of movement, assembly, association, thought and conscience. Section 102(2) (a) (i) allows the court to pass an order requiring the government to do what is required by law and not to do what is forbidden by law to so.¹² The application can be made by “an aggrieved person” to include legal aid, human rights or development organizations that has opened up public interest litigation. These groups can as a result petition the court on behalf of the workers or other affected group of people. PIL describes legal actions brought to protect or enforce rights enjoyed by members of the public or large part of it.

Public Interest Litigation (PIL) refers to a form of legal action initiated before a court for the protection of public interest rather than private or individual interest. It is a judicial mechanism through which any public-spirited individual, group, or organization may seek legal remedies on behalf of disadvantaged, marginalized, or affected people whose constitutional or legal rights have been violated. PIL aims to ensure social justice, governmental accountability, protection of fundamental rights, and enforcement of constitutional obligations.¹³

Traditionally, under common law principles, only a person directly affected by a legal wrong could file a case before the court. This principle is known as *locus standi*. However, the strict application of locus standi often prevented poor and vulnerable people from accessing justice because they lacked financial resources, legal knowledge, or social influence.¹⁴ To overcome this limitation, courts gradually

¹² Bangladesh Constitution s 102 (1), (2)(a)(i).

¹³ S. P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (2nd edn, Oxford University Press 2003) 182.

¹⁴ M. P. Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2018) 1678.

relaxed procedural rules and allowed public-spirited persons and organizations to file petitions in matters involving broader public welfare.

The concept of PIL first developed significantly in India during the 1970s and 1980s through judicial activism of the Supreme Court. Indian judges such as Justice P. N. Bhagwati and Justice V. R. Krishna Iyer played important roles in expanding access to justice by liberalizing standing rules and recognizing the rights of disadvantaged groups.¹⁵ Inspired by the Indian experience, the judiciary in Bangladesh gradually adopted the concept of PIL through constitutional interpretation and judicial decisions.

In Bangladesh, PIL mainly operates under Article 102 of the Constitution, which empowers the High Court Division of the Supreme Court to issue writs for the enforcement of fundamental rights and judicial review of administrative actions.¹⁴ The recognition of PIL became firmly established through landmark decisions of the Supreme Court, particularly in cases filed by the Bangladesh Environmental Lawyers Association (BELA). Through these decisions, the judiciary accepted that organizations and public-spirited individuals could represent public causes even if they were not personally aggrieved.

PIL in Bangladesh has been used in various areas such as environmental protection, prevention of illegal detention, labor rights, consumer protection, prison reform, protection of women and children, anti-corruption measures, and administrative accountability. It has become an important instrument for strengthening democracy, protecting constitutional governance, and ensuring justice for disadvantaged communities.¹⁶

Despite its positive contributions, PIL has also faced criticism. Some scholars argue that excessive judicial intervention through PIL may lead to judicial overreach and weaken the constitutional principle of separation of powers.¹⁶ Others believe that PIL

¹⁵ Upendra Baxi, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India' (1985) 4 Third World Legal Studies 107.

¹⁶ Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012) 553.

remains essential in countries where executive and administrative institutions often fail to protect public welfare and constitutional rights effectively.

According to Black's Law Dictionary "Public Interest Litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."¹⁷

As I understand the phrase "Public Interest Litigation", it means nothing more than what it states namely, it is a litigation in the interest of the public. Public interest litigation is not that type of litigation which is meant to satisfy the curiosity of the people, but it is a litigation which is instituted with a desire that the court would be able to give effective relief to the whole or a section of the society.

2.3 Justice

The proper administration of the law; the fair and equitable treatment of all individuals under the law. A title given to certain judges, such as federal and state Supreme Court judges that is 1) fairness 2) moral rightness. 3) a scheme or system of law in which every person receives his/her/it's due from the system, including all rights, both natural and legal is justice.

Justice is one of the most fundamental concepts in law, society, and governance. It refers to fairness, equality, and the proper administration of laws in order to protect rights and maintain social order. In a democratic state, justice ensures that every individual receives equal treatment before the law and that no person is deprived of rights unfairly or arbitrarily. The idea of justice is closely connected with morality, human rights, and the rule of law. It aims to establish a society where individuals can live with dignity, freedom, and security.¹⁸

¹⁷Henry Campbell Black, *Black's Law Dictionary* (4th ed, 2005).

¹⁸ John Rawls, *A Theory of Justice* (Revised edn, Harvard University Press 1999) 3.

The concept of justice can be understood from different perspectives, including legal justice, social justice, economic justice, and political justice. Legal justice focuses on the fair application of laws and equal access to judicial remedies. Social justice emphasizes equality, protection of disadvantaged groups, and the elimination of discrimination and exploitation. Economic justice relates to fair distribution of resources and opportunities, while political justice ensures participation, accountability, and protection of democratic rights.¹⁹ Together, these dimensions contribute to the establishment of a balanced and humane society.

In Bangladesh, the Constitution recognizes justice as one of the fundamental principles of the state. The Preamble of the Constitution declares that the Republic shall secure for all citizens equality, human dignity, and social, economic, and political justice.²⁰ Fundamental rights guaranteed under Part III of the Constitution also reflect the commitment to justice by ensuring equality before law, protection of life and liberty, freedom of expression, and protection against arbitrary state actions.

The judiciary plays a central role in ensuring justice by interpreting laws, protecting constitutional rights, and reviewing governmental actions. Courts act as guardians of the Constitution and protect citizens against unlawful or unconstitutional acts committed by public authorities. In this context, Public Interest Litigation (PIL) has become an important tool for ensuring justice, particularly for poor and marginalized communities who often lack access to legal remedies. Through PIL, courts can address collective grievances involving environmental degradation, human rights violations, corruption, labor exploitation, and administrative injustice.²¹

Justice also requires that legal institutions remain independent, impartial, and accountable. Judicial decisions should be based on constitutional principles and legal reasoning rather than political influence or public pressure. When justice is administered fairly and effectively, public confidence in the legal system increases, democratic governance is strengthened, and social stability is promoted. However, delays in judicial proceedings, corruption, inequality, and lack of access to legal

¹⁹ H. L. A. Hart, *The Concept of Law* (3rd edn, Oxford University Press 2012) 158.

²⁰ The Constitution of the People's Republic of Bangladesh 1972, Preamble.

²¹ Ridwanul Hoque, *Judicial Activism in Bangladesh: A Golden Mean Approach* (Cambridge Scholars Publishing 2011) 101.

services may weaken the delivery of justice in developing countries like Bangladesh.²²

Therefore, justice is not merely the enforcement of laws but the achievement of fairness, dignity, and equality within society. It remains the ultimate objective of constitutional governance and the legal system.

2.4 Evaluating Effective and Pathways for Reform

Structured standing criteria: The Supreme Court's Appellate Division could issue clearer guidelines to prevent frivolous PILs and deter misuse by ensuring *bonafide* petitions only Bangladesh.

Mandated enforcement mechanisms: Introduce **rolling mandamus** or institutional monitoring frameworks—courts could appoint committees to oversee implementation and ensure compliance The Daily StarProthomalo.

Efficiency boost in courts: Implement case management reforms—such as pre-screening PILs, time-bound hearings, and encouraging alternative dispute resolution to reduce backlog.

Resource & capacity building: Equip local governments and implementing agencies with technical and financial support to execute court directives effectively.

Institutionalize PIL education: Provide training for judges, lawyers, and civil society on PIL best practices, limits, and responsible mechanisms.

Public Interest Litigation (PIL) has become a significant judicial instrument for ensuring access to justice, protecting fundamental rights, and promoting accountability in Bangladesh. Over the years, PIL has been used by courts to address issues such as environmental protection, human rights violations, labor rights, administrative corruption, and the protection of marginalized communities. Its effectiveness lies in its ability to broaden access to justice beyond traditional legal standing rules and allow public-spirited individuals and organizations to act on behalf of affected groups. However, despite its achievements, PIL also faces structural, procedural, and institutional challenges that limit its overall effectiveness and raise concerns about judicial overreach and judicial populism.

²² Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012) 41.

Effectiveness of PIL in Bangladesh

One of the major strengths of PIL is its contribution to expanding access to justice. In many developing contexts, large sections of society remain unable to approach courts due to poverty, illiteracy, or social marginalization. PIL addresses this gap by relaxing the traditional requirement of locus standi, enabling courts to hear cases filed in the public interest. This has made the judiciary more accessible and responsive to societal needs.

PIL has also played an important role in strengthening environmental governance. Courts have issued directives against illegal industrial pollution, encroachment of rivers, and destruction of natural resources. Through such interventions, PIL has contributed to environmental protection and public health awareness. Similarly, PIL has been used to safeguard human rights, including protection against unlawful detention, custodial torture, and violations of dignity and liberty.

Furthermore, PIL has enhanced administrative accountability by enabling judicial review of arbitrary government actions. It has acted as a check on executive power and reinforced the principle of rule of law. In many instances, PIL has compelled public authorities to act within constitutional boundaries and ensure lawful governance. This demonstrates its importance as a corrective mechanism within the constitutional framework.

However, the effectiveness of PIL is not absolute. In some cases, implementation of court orders remains weak due to bureaucratic inefficiency, lack of political will, and institutional resistance. Moreover, excessive reliance on judicial intervention sometimes shifts responsibility away from administrative agencies, which may undermine long-term governance capacity.

Challenges Facing PIL

Despite its benefits, PIL in Bangladesh faces several challenges. One major concern is judicial overreach, where courts are perceived to be entering policy-making domains

traditionally reserved for the executive and legislature. This raises questions about separation of powers and institutional balance.

Another challenge is the misuse of PIL for personal, political, or publicity-driven purposes. In some instances, petitions are filed without genuine public interest, leading to unnecessary litigation and burdening the judiciary. Additionally, delays in judicial proceedings reduce the timely impact of PIL judgments, limiting their practical value.

Lack of enforcement of judicial decisions is another critical issue. Even when courts issue strong directives, implementation by government agencies is often inconsistent. This weakens the transformative potential of PIL and reduces public confidence in the legal system.

Pathways for Reform

To improve the effectiveness of PIL in Bangladesh, several reforms can be introduced. First, clearer procedural guidelines should be developed for accepting PIL cases. Courts should ensure that only genuine public interest matters are admitted, while frivolous or politically motivated petitions are discouraged.

Second, strengthening enforcement mechanisms is essential. Judicial orders in PIL cases should be monitored effectively, and responsible authorities must be held accountable for non-compliance. Establishing monitoring cells or reporting mechanisms could improve implementation outcomes.

Third, judicial restraint should be maintained to preserve the balance of powers among state institutions. Courts should avoid unnecessary policy interference and focus on constitutional interpretation rather than administrative decision-making. This would help reduce concerns about judicial populism while maintaining the legitimacy of PIL.

Fourth, legal awareness and access to justice programs should be expanded. Educating citizens about constitutional rights and legal remedies would reduce dependency on courts for minor issues and empower individuals to seek justice more effectively.

Finally, strengthening legal aid institutions and civil society organizations can enhance the quality and credibility of PIL petitions. Well-organized public interest groups can ensure that PIL is used responsibly and effectively for genuine public welfare.

PIL remains a vital instrument for ensuring justice, protecting rights, and promoting accountability in Bangladesh. While it has achieved considerable success in expanding access to justice and addressing public grievances, its effectiveness is limited by procedural weaknesses, enforcement challenges, and concerns regarding judicial overreach. Through appropriate reforms focused on judicial restraint, procedural clarity, enforcement strength, and civic awareness, PIL can be made more effective and balanced. Ultimately, a well-functioning PIL system should serve as a bridge between constitutional ideals and real-life justice while maintaining respect for democratic principles and institutional boundaries.

2.5 Conclusion

The ongoing Constitutional Reform Commission has proposed merging all rights under a unified "Fundamental Rights and Freedoms" charter and enhancing enforceability across civil, social, and cultural domains—which could strengthen PIL enforcement across rights categories

Chapter-3

Pathways for Reform

3.1 Introduction

Writ is a written document by which one is summoned or required to do or refrain from doing something. Historically writ originated and developed in British legal system. A writ is just a written command given out by a legal authority like a court. It can be to enforce an action, or stopping an action from happening.²³ Now, a Public Interest Litigation (PIL) is a form of writ, with just one specification that the matter is related to the general well being of the public instead of a particular litigant. Writs are filed by institutions or individuals for benefit in their own cases, whereas, PIL is an application that is filed by any citizen for easing out any undue inconvenience faced by the public at large. Public interest litigation is not defined in any statute or any act. It has been interpreted by a judge to consider the intent of public at large.

3.2 Constitution of Bangladesh & PIL

The very early concept of PIL in Bangladesh was founded in the case of Kazi Mukhlesur Rahman vs. Bangladesh and others.²⁴ Until 1994, Bangladesh had no reported cases decided by the Supreme Court on environmental issues. The first such case was filed in January 1994 by the Bangladesh Environmental Lawyers Association (BELA). BELA has since filed more than 250 cases on environmental issues. The cases involve a wide range of issues including river pollution, industrial pollution, vehicular pollution, labor welfare, compensation for losses inflicted by development projects, encroachment and derogation of important wetlands, relocation of industries, prevention of hill cutting, conservation of forests, defending forest rights, fishermen's rights & farmer's rights amongst others. The major achievements of BELA in the field of Public Interest Environmental Litigation (PIEL) include recognition of 'right to environment' as part of constitutional 'right to life'²⁵.

²³ Md. Abdul Halim, *The Legal System of Bangladesh* (CCB Foundation, 10th ed, 2016) 83.

²⁴ *Kazi Mukhlesur Rahman vs. Bangladesh Writ Petition* (No 59) (1974) 26 DLR 44.

²⁵ Bela Bangla, *Introducing Bela* (5 January 2017) <http://www.belabangla.org/introducing-bela/>.

Public interest litigation is important because of several factors. In most developing countries, the Pathways for Reform of environmental laws is weak and the laws are difficult to enforce and sometimes ambiguous. Public interest litigation has helped bridge this gap.

Public interest litigation is important where the government is not willing to promote/protect the environment. The government may not be willing to prosecute those who violate environmental laws and at times the government is a violator of environmental laws. In some jurisdictions an injunction can be brought to compel or stop the government from degrading the environment.

Article 18A of the Constitution of the People's Republic of Bangladesh states that the State shall endeavor to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens.²⁶ Here the term 'improve the environment' refers to the principle of sustainable development because conservation of environment refers to two notions which are (i) 'improvement of the qualitative and quantitative characteristics of different components of environment' and (ii) another is 'prevention of degradation of the components of environment'.²⁷ Therefore, to ensure conservation of environment, sustainable development must be there. The title name of section 18A is 'Protection and improvement of environment and biodiversity'. Therefore, the essence of section 18A of the constitution is 'conservation of environment' which include protection and improvement of environment

Public Interest Litigation is grounded around section 102 of the Constitution. Under below:102.

The application to the court can be made by "an aggrieved person." It is the wide interpretation by the courts of the term "an aggrieved person" - to include legal aid, human rights, or development organizations - that has opened up public interest

²⁶*The Constitution of People's Republic of Bangladesh* Article 18A

²⁷*The Environment Conservation Act 1995* s 02 Clause(f).

litigation. These groups can as a result petition the court on behalf of workers, or other affected groups of people

Powers of High Court Division to issue certain orders and directions, etc.

Section 102 allows the court to pass an order where there has been a breach of fundamental rights. These are rights set out in Part III article 31 & 32 of the Constitution (and include for example: equality before the law, right to life and personal liberty, and freedoms of movement, assembly, association, thought and conscience)

(1) The High Court Division on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any the fundamental rights conferred by Part III of this Constitution.

(2) The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law-

(a) on the application of any person aggrieved, make an order-

(i) directing a person performing any functions in connection with the affairs of the Republic or of a local authority to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do;

(ii) declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority has been done or taken without lawful authority and is of no legal effect; or

(3) Notwithstanding anything contained in the foregoing clauses, the High Court Division shall have no power under this article to pass any interim or other order in relation to any law to which article 47 applies

(4) Whereon an application made under clause (1) or sub-clause (a) of clause (2), an interim order is prayed for and such interim order is likely to have the effect of-

(a) prejudicing or interfering with any measure designed to implement any development programme, or any development work; or

(b)being otherwise harmful to the public interest, the High Court Division shall not make an interim order unless the Attorney-General has been given reasonable notice of the application and he (or an advocate authorized by him in that behalf) has been given an opportunity or being heard, and the High Court Division is satisfied that the interim order would not have the effect referred to in sub-clause (a) or sub-clause (b)

(5)In this article, unless the context otherwise requires, "person" includes a statutory public authority and any court or tribunal, other than a court or tribunal established under a law relating to the defence services of Bangladesh or any disciplined force or a tribunal to which article 117 applies.²⁸

The exemption in sub-section 3 - referring back to article 47 of the constitution - has little impact on health and safety issues

3.3 Environment Conservation Act 1995 (Amended Act 2010)

In 1989, the Ministry of Environment and Forest was established to address environment-related issues. The government drafted a national conservation strategy, adopted the national environment policy of 1992, and revised the old law by enacting the Bangladesh Environment Conservation Act, 1995. The Department of Environment was also restructured. The national environment management action plan (NEMAP) has also been finalized and is being implemented.

A law was enacted in 1974 to control pollution of water. That law was replaced by an ordinance in 1977. The concern for water subsequently became a concern for management of the environment and this led to the Environment Conservation Act of 1995. Conservation as it has been defined in the Act of 1995, would require qualitative and quantitative improvement of different components of the environment and prevention of their degradation. Environment, as has been defined in the Act, includes water, air, land and other physical properties and the interrelationships which exists among them and between them, and human beings, other living beings, plants and micro-organisms.

²⁸ Ibid 102.

The Act sought to address emission from vehicles, an environmental offence that was addressed in the Motor Vehicles Ordinance of 1983. The provision for punishment makes the implementation of this Act rather difficult as that requires exercise of magisterial power. Under Section 12 of the Act, no industrial unit shall be established and no industrial project adopted without obtaining environmental clearance from the Director General of the Department of Environment. Prior to that, adoption of pollution fighting devices for industries was binding for the industries by virtue of a notification of the Ministry of Local Government, Rural Development and Co-operatives. With the subsequent adoption of the Environment Conservation Rules of 1997 some progress has been made with regard to the effective implementation of the Act.

The Act of 1995 also empowered the government to declare an area to be an 'ecologically critical area' (ECA) if its eco-system appears to be under serious threats of degradation or is degraded. The Ministry of Environment and Forests has already declared seven areas as critical. These are the Sundarbans, Cox's Bazar-Teknaf sea beach, St. Martin's Island, Shonadia Island, Hakaluki Haor, Tanguar Haor, and Marzat Oxbow Lake. In these ECAs, a ban has been imposed on some activities that include felling or extracting trees; hunting and poaching of wild animals; catching or collection of snails, coral, turtles, and other creatures; any activities that may threaten the habitat of flora and fauna; activities likely to destroy or alter the natural characteristics of the soil and water; establishment of industries that may pollute soil, water, air and/or create noise pollution; and any other activity that may be harmful for fish and aquatic life.

3.4 Environment Conservation Rules 1997

Formulated in exercise of the powers conferred by section 20 of the Bangladesh Environment Conservation Act, 1995 (Act 1 of 1995),

It sets the Environmental Quality Standards to control quality of air, water, noise, emissions and discharge. Projects are categorized into four classes (Green, Orange-A, Orange-B and Red) according to their potential threat and impact to environment

Implementation of the rule is the responsibility of the Department of Environment (DOE) under Ministry of Environment & Forests.²⁹

3.5 Environment Court Act 2000 (amended in 2010):

It defines the jurisdiction of the Environmental Court for trial of offence or for compensation under environmental law. The court can impose penalty for offences under any environmental law, to confiscate and equipment or a transport used in the commission of such offence or an article or other thing involved with the offence, and to pass order or decree for compensation in appropriate cases.

3.6 Conclusion:

The Act has also given operational definitions of 'eco-systems', 'pollution', 'waste', and 'hazardous substance'; previously such definitions did not exist in the Pathways for Reform.³⁰ This Act has given the Director General of the Department of Environment all the authority needed to deal with matters connected with protection of the environment.

²⁹*Environment Conservation Rules 1997*, s 20.

³⁰*Environment Conservation Act 1995* s 02.

Chapter: 4

Tool for Justice or Judicial Populism Public Interest Litigation (PIL)

4.1 Introduction

The judges apply the law to facts in and describes about the term judicial restraint and Judicial Ruling. The difference is that the judges take the law as it is and activist judges make up the law as they go along. In Bangladesh, Judicial Ruling does not find any configuration. It is not defined anywhere but is extensively talked about in all section of the society, NGOs and bureaucrats. Statement of Judiciary and its power is Judicial Ruling.

4.2 Conservative View VS Liberal View

The concept of public interest litigation as has emerged into the judicial administration of Bangladesh is yet to mature with the concept of justice as guaranteed by the Constitution. This is a crucial concept in a country like ours where 65% of the total population have no or less access to judiciary although the constitution commits for equality before law, justice, right to life and equal enjoyment of fundamental rights by all citizens. Before 1994 there is no good statistics of environment litigation even if the aggrieved person did not directly related or aggrieved could not file litigation. It was interesting to note that the concept of PIL is developing in Bangladesh as a performance of public duty by some citizens groups holding or advocating in support of progressive ideologies. Thus in 1994 a petition was first taken before the High Court by a national non-governmental organization called Bangladesh Environmental Lawyers Association (BELA) on behalf of the people of a locality where a disputed development action was being implemented. The petition was at first rejected by the court on the ground of standing of the organization. An appeal was preferred from that rejection where the core question was whether groups like BELA with dedicated and sincere record of activism can claim to have acquired sufficient interest to seek judicial redress against anarchy in its own field of action. The question was vital as it was a constitutional requirement under

Article 102 that it is only “a person aggrieved” who can file petitions for enforcement of fundamental rights. Being responded by the Supreme Court in the positive this became the turning point in the history of PIL in Bangladesh.

Public Interest Litigation (PIL) has generated significant academic and judicial debate regarding its role in constitutional governance, especially in developing democracies such as Bangladesh. The discussion is often framed through two broad perspectives: the conservative view and the liberal view. These two approaches differ fundamentally in how they interpret judicial power, constitutional interpretation, and the role of courts in promoting social justice.

Conservative View on PIL

The conservative view generally emphasizes judicial restraint, strict adherence to constitutional boundaries, and respect for the doctrine of separation of powers. From this perspective, PIL is seen with caution because it may encourage courts to interfere in executive and legislative functions. Conservative scholars argue that the judiciary should not become a policy-making body or an alternative center of governance.³¹

According to this view, the primary role of the judiciary is to interpret law, not to create or reshape public policy. Excessive use of PIL may lead to “judicial overreach,” where courts issue directions that involve administrative decisions, budgetary allocations, or policy reforms. Such actions, critics argue, undermine democratic accountability because elected representatives, not judges, are responsible for policy formulation.³²

Furthermore, conservatives argue that PIL may open the door to frivolous or politically motivated litigation. Since locus standi is relaxed, individuals or groups may file cases for publicity, personal interest, or political gain rather than genuine public welfare. This can burden the judiciary and divert attention from genuine cases requiring urgent judicial intervention. They also express concern that judicial

³¹ Aharon Barak, *The Judge in a Democracy* (Princeton University Press 2006) 117.

³² Richard A Posner, *How Judges Think* (Harvard University Press 2008) 142.

populism may influence court decisions, where judges respond to public emotions rather than strict legal reasoning.³³

From the conservative perspective, reforms should focus on limiting PIL jurisdiction, strengthening admissibility criteria, and ensuring that courts avoid interfering in administrative governance unless there is a clear constitutional violation.

Liberal View on PIL

The liberal view supports a broad and progressive interpretation of PIL, emphasizing its role as a tool for social transformation and justice. Liberal scholars argue that in societies with inequality, corruption, and weak administrative institutions, strict procedural rules may prevent vulnerable groups from accessing justice. Therefore, PIL is necessary to ensure substantive justice over procedural formalism.³⁴

From this perspective, the judiciary is not only a legal interpreter but also a guardian of fundamental rights. When the executive fails to protect citizens' rights or acts arbitrarily, courts have a constitutional duty to intervene. Liberal theorists argue that PIL strengthens democracy by holding the state accountable and ensuring that constitutional promises are fulfilled in practice.³⁵

In Bangladesh, liberal scholars highlight the importance of PIL in addressing environmental degradation, labor exploitation, illegal detention, and violations of human dignity. Organizations such as the Bangladesh Environmental Lawyers Association (BELA) demonstrate how PIL can be used effectively to protect public interest and enforce environmental laws. Liberal thinkers argue that without PIL, many marginalized groups would remain unprotected due to institutional weaknesses and social inequality.

The liberal view also supports judicial activism, arguing that courts should adopt a flexible and purposive interpretation of the Constitution. In this view, judicial intervention through PIL is not a threat to democracy but rather a reinforcement of

³³ M. Emdadul Bari, *The Constitutional Law of Bangladesh: Progression and Transformation at its 50th Anniversary* (Springer 2021) 223.

³⁴ Upendra Baxi, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India' (1985) 4 *Third World Legal Studies* 107.

³⁵ Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012) 560.

constitutional governance, especially when other branches fail to perform their duties effectively.

Comparative Analysis

The conservative and liberal perspectives reflect a tension between judicial restraint and judicial activism. Conservatives prioritize institutional balance and fear judicial dominance in governance, while liberals prioritize access to justice and the protection of fundamental rights. Both views acknowledge the importance of PIL but differ in its scope and limits.

A balanced approach suggests that PIL should neither be excessively restricted nor overly expanded. Courts must ensure that PIL serves genuine public interest while avoiding unnecessary interference in policy matters. This balance is essential for maintaining judicial credibility and constitutional harmony.

The debate between conservative and liberal views on PIL highlights the complex role of the judiciary in modern constitutional systems. While the conservative approach emphasizes caution, restraint, and separation of powers, the liberal approach focuses on justice, equality, and judicial responsibility in protecting rights. In the context of Bangladesh, an optimal approach requires combining both perspectives—allowing PIL to function as a tool for justice while ensuring that judicial power is exercised within constitutional limits.

4.3 Positive Approach of Judiciary

The concept of public interest environmental litigation is a crucial concept in a country like ours where most of the populace have no or less access to judiciary. But judiciary is now more positive about public interest environmental litigation. However relentless efforts of the social activities enabled the progressive minded judges to interpret the Constitution liberally through a series of case. I am describing here the cases:

Kazi Mukhlesur Rahman Vs. Bangladesh and another, 1974, 3 CLC (AD) [1181]

Kazi Mukhlesur Rahman vs. Bangladesh, popularly known as the Berubari case, is generally regarded as the starting point of PIL in Bangladesh. The petitioner Kazi Mukhlesur Rahman, an advocate by profession, came to the court challenging an international treaty signed by the Prime Ministers of Bangladesh and India in May 1974, allowing India to retrain the Southern half of South Berubari Union No. 12 on the ground that the agreement involved cession of territory and was entered into without lawful authority by the executive head of government. Since the petitioner had come to the court as a citizen his standing was disputed.

Judgement: September 3, 1974

Chief Justice Sayeem granted the petitioner 'locus standi' on the ground that the petitioner agitated a question involving a constitutional question of grave importance which threatened his right as a citizen to move freely throughout the territory of Bangladesh and to reside and settle in any part therein. The court held that the question is not whether the court has jurisdiction but whether the petitioner is competent to claim a hearing reinterpreting a citizen's right vis-à-vis the power of the state, CJ Sayeem observed: "it appears to us that the question of locus standi does not involve the court's jurisdiction to hear a person but the competency of the person to claim a hearing so that the question is one of discretion which the court exercises upon due consideration of the facts and circumstances of each case."³⁶

**Dr. Mohiuddin Farooque Vs Election Commission & Others WP No.186/1994
(Nuisance during Election Campaign)**

The first ever-environmental litigation was filed in 1994 in the form of a Writ Petition in the High Court Division of the Supreme Court of Bangladesh by a group of environmental lawyers called the Bangladesh Environmental Lawyers Association (BELA). It was filed against the four authorities of the Government responsible for the enforcement of various civic rights, and accordingly, the respondent was the State. The election of the four Municipal Corporations of the country, held at the beginning of this year, evidenced gross violation of some legal obligations and, consequently,

³⁶Kazi Mukhlesur Rahman v Bangladesh(1974) 26 DLR (AD) 44.

interfered with the various rights of the people. The unlawful activities created by the election campaign resulted in encroaching on public properties, restricting and depriving the rights to life, property, enjoyment of public resources, etc. of the city dwellers. The footpaths and other public places were saturated with election camps, incessant use of loudspeakers and other noisy instruments rendered life miserable; the walls of the four major cities of the country where the elections were being held were all covered with election slogans; unscheduled and unregulated processions created serious traffic jams, and so on. Repeated appeals by the Election Commission for showing respect to the laws of the country were virtually ignored. All this anarchy prompted the institution of a petition where the Honorable Court issued rule nisi upon the respondents asking them to show cause as to why they should not be directed to comply with the directive issued by the Election Commissioner touching upon the various acts and laws and rules. The Court also considered the prayer of the petitioner to restrain the Election Commissioner from holding the election till full compliance with the respondents. The rule, however, was disposed of, following assurance from the Attorney General that the Government would take all necessary steps to implement all the directives of the Election Commission.³⁷

Dr. Mohiuddin Farooque v. Bangladesh & others Writ Petition No. 92/1996 (Radiated Milk)

This petition was filed by Dr. Farooque as a potential consumer seeking redress against the failure of the authorities in taking effective and efficacious measures in dealing with the consignment of 125 metric tons Skimmed Milk Powder which was imported to Bangladesh and was found by the Atomic Energy Commission to be containing high concentration of radioactivity. It was argued that the consumers must be protected against all unscrupulous activities aiming to release the said consignment of radiated milk to give meaning to the Constitutional right to life. The Judgment addressed some vital issues for the first time. While the authorities were directed to adopt necessary measures to ensure proper testing of milk, the scope of constitutional

³⁷*Dr. Mohiuddin Farooque V Election Commission & Others*(1994) WP No.186.

right to life was given a broader meaning. Right to environment was expressly recognized as being included in right to life³⁸

Bangladesh Environmental Lawyers Association (BELA) v. Bangladesh and others Writ Petition No. 2911 of 2003 (Ship Breaking to be Regulated by Law)

Most recently BELA has also filed a petition on the 19th of April, 2003 before the Honb'le High Court division to check pollution of coastal / marine ecosystem caused by the disposal of hazardous ship wastes as taking place in the ship breaking operation in Sitakunda of Chittagong. Seeking relief against violation of legal provisions on environment and bounla protection, the petition has been filed, amongst others, the Secretaries, Ministry of Shipping, Industries and Commerce, Labour and Employment, Environment and Forest. The Director General, Department of Environment, Fire Service and Civil Defence, Chief Inspector of Factories and Establishments, Department of Explosives, Collector of Customs, Chittagong, Mercantile Marine Department and the President of Bangladesh Ship Breakers Association are amongst the other respondents. According to the petitioners; the available records suggest that no ship-breaking agencies have environmental clearance despite the clear requirement to have such clearance as a hazardous industry/factory. Moreover, the persistent violation of labour related laws in the ship breaking agencies have resulted in few major explosions in the past three years.³⁹

Upon hearing the petitioner, the Division Bench of the High Court Division comprising Mr. Justice M. M. Ruhul Amin and Mr. Justice Mohammad Bazlur Rahman has issued a Rule Nisi calling upon the respondents to show cause why they should not be directed to ensure that ship breaking operation is undertaken only after obtaining certificate of environmental clearance as required under section 12 of the Environment Conservation Act, 1995 and on adopting detailed and appropriate safety and labour welfare measures as required under the Factories Act, 1965. The Court has also asked the respondents to show cause as to why ship breaking shall not be

³⁸*Dr. Mohiuddin Farooque v Bangladesh & others* (1996) 48 DLR (HC) 438

³⁹*Bangladesh Environmental Lawyers Association (BELA) v. Bangladesh and others*(2003)Writ Petition No. 2911.

undertaken only after obtaining gas free certificate from the custom Department to prevent dangerous explosion and protect the workers/labourers from the risk of death, grievous hurt and injuries. In this regard the respondents would also show cause why import of ship for breaking purposes shall not be regulated in line with the requirements of the Basel Convention, 1989. The Rule is made returnable within 4 weeks. The matter is now pending for hearing.

Bangladesh Garments Manufacturers and Exporters Association (BGMEA) Vs. Bangladesh, Civil Petition 1162/2013

Judgement:03.04.2011

The BGMEA has constructed a fifteen storied commercial complex on the Begun Bari Khal and Hatirjheel lakewhich is natural water body as well as in the government record and in the Master Plan of the Dhaka City, as Lake/Jolashoy/Doba. As such from the Joladhar Ain 2000, the class or the nature and character of the same cannot be changed nor can be used in any other manner/purpose nor can the same be leased out, rented or transferred by anybody. The law further provides that any person changing the nature and character of such Joladhar (water body), in violation of section 5 of the said Act of 2000, shall be dealt with in accordance with law as provided in section 8. Since BGMEA has constructed the multi-storied commercial building upon the said waterbody in violation of the law such illegal construction/obstruction must be demolished for which the BGMEA or any other person, notwithstanding anything contained in any other law, cannot claim any compensation as provided in Section 8(2) of the Joladhar Ain 2000. The petitioner is directed to demolish the building namely, “BGMEA Complex” situated on the water body of Begunbari khal and Hatirjheel lake at once, at its own costs, in default the RAJUK is directed to demolish the same within 90 days from the date of receipt of this judgment and realize the entire demolition costs from the petitioner, BGMEA. In the verdict, the HC said that the BGMEA building was illegally constructed on government land in gross violation of the capital’s master plan and the laws relating to protection of its environment and wetlands.⁴⁰

⁴⁰*Bangladesh Garments Manufacturers and Exporters Association (BGMEA) v Bangladesh* (2013) Civil Petition 1162.

4.4 Suo Motu Approach

Suo motu, meaning on its own motion, is a Latin legal term. When a court or a government entity takes an action on its own account and not as a result of a party asking or making a motion to move the court or the entity to act.⁴¹

Suo-motu actions taken by the superior courts in the past few years have both enthralled the general public and kept the activist judiciary active. A suo-motu action is when, instead of parties bringing a case or controversy to the courts, the court takes cognizance of it itself and commences proceedings. Though the usage of Suo-motu is less in our country. M Zahir opined that the HC can issue any suo moto rule over anything related to constitutional rights of citizens. The constitutional obligations imposed upon the judges and the SC, the third schedule of the constitution (oath of judges), judicial customs and long established principles allow the HC division to issue suo moto rules.⁴² In Article 27 of the constitution, 'All citizens are equal before law and are entitled to equal protection of law'. It has further been stated in Article 31 'To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law'. This suo moto rule has truly reflected the spirit of fundamental rights enshrined in the constitution of People's Republic of Bangladesh.

State vs. Major Kazi Waheduzzaman and others [Suo Motu Rule on Extra-Judicial Killings], Criminal Miscellaneous Case No 24727 of 2009

Facts: On 17.11.2009, a High Court Division Bench relying on newspaper reports of two persons having been allegedly killed by Rapid Action Batallion (RAB) personnel, directed Major Kazi Wahiduzzaman and Lieutenant Hasan, respectively of RAB-3 and RAB-8, the Director General (DG) of RAB and the Secretary, Ministry of Home

⁴¹TheLaw, *Encyclopaedic Legal Dictionary* (at 16 February 2017).

⁴²Sekander Zulker Nayeem, 'Jurists debate suo moto', *The Daily Star* (Bangladesh) 02 February 2017 <http://www.thedailystar.net/news-detail-183364>.

Affairs (MoHA) to show cause as to why appropriate action should not be taken against the concerned RAB officials. The news reports had stated that two men, Lutfor Rahman and his younger brother, Khairul Haque, were arrested by the RAB on 13.11.2009 and killed in a 'shootout' with RAB in Shirkhara village under Sadar Upazila, Madaripur District, on 16.11. 2009. In a counter-affidavit submitted by Md. Abdus Sattar Miah, Law Officer, RAB Forces Headquarters, dated 17.11.2009 and filed on behalf of Lt. Hasan, the DG of RAB and the Secretary of MoHA, it was stated that there is no one by the name of Major Kazi Wahiduzzaman serving in RAB-3 and RAB-8, that the two newspaper reports on the basis of which the Rule had been issued were baseless, false and motivated, and that no operation as alleged was conducted in the territorial jurisdiction of RAB-3 and RAB-8. It was also submitted that the High Court's Rule may frustrate the investigation process of the criminal case and the Rule is not a maintainable. BLAST and Ain o Salish Kendra separately appeared as intervenors in this petition and submitted affidavits.⁴³

4.5 Conclusion

Order: On 15.12.2009, the Court briefly heard the state and the two human rights groups, including BLAST, and on the Attorney General's request, the matter was adjourned for hearing until 09.01.2010. The Court expressed its concern that as many as eleven incidents of extra-judicial killings had taken place in the country in the twenty-six days since it issued the Suo Motu rule, and requested the AG to take an initiative to ensure that no such killings take place till the next hearing.⁴⁴

Status: Pending hearing (awaiting reconstitution of Bench)

⁴⁴*State v Major Kazi Waheduzzaman and others* (2009) Case No 24727.

Chapter: 5

Conclusion

5.1 Introduction

PIL is no more an unknown phenomenon in Bangladesh now, and a huge number of PIL are filing by different NGOs as well as by the persons legally concerned in every year. The courts are very often debating for the locus standi or the standing for suits⁴⁵. No doubt, the time is perfect for ensuring environmental justice in Bangladesh by PIL.

⁴⁵KT Alam and Abu Noman Mohammad Atahar Ali, '*Public Interest Litigation and Role of the Supreme Court in Ensuring Social Justice in Bangladesh*' (eLaw Journal: The Islamic University Studies Journal of Law Publication, 2006).

5.2 Findings

There are Acts regarding environmental issues which are mentioned but we do not get environmental justice. There are some reasons which are:

- (i) Government passed Environment Court Act 2010 with the view to establishing environment court for speedy trial of environment offences and matters but how can a joint district judge perform the functions of civil criminal and environmental courts?
- (ii) The environmental offence are of special nature involving scientific and technical implication for environmental violations expert knowledge is specially required to determine the level of pollution but which is absence in Environment Court Act 2010.
- (iii) The Department of Environment, the principal implementing agency severely lacks human and physical resources to respond to the demanding tasks and responsibilities of both policy and the Act.
- (iv) Lacking of awareness of people in general Public Interest Environmental Litigation.
- (v) When Courts are inaccessible the legal process of environment cases could be lengthy and time consuming.
- (vi) The legal proceedings are expensive to most people.
- (vii) Government are providing certificates to build new establishments which are threatening to the environment and makes excessive suits.
- (viii) Failures of institutions set up at the state and central level for enforcing and monitoring the laws made to protect the environment.
- (ix) When courts formulate policies to be followed without consulting government, legislature opposes stating that policy making is not job for judiciary.
- (x) The Role of the Judiciary should improve much more because the judiciary is cautious in adopting a flexible standing and in applying the internationally recognised environmental principle. The fear may not be unfounded taking account of the fact that a very relax standing would open up the floodgate. The judiciary good will would be of little use if the public does not have access to funding to move the petition. This

includes the initial expenses of the applicant, the overall cost of the case, availability of legal aid and cost order of the court. At the moment, majority of the funding comes from private foundations and from foreign assistance. The unreliable nature of the source made it more important to have a state fund on environment.⁴⁶

⁴⁶ Jona Razzaque, '*Access to Environmental Justice Role of the Judiciary in Bangladesh*' (2008) Journal: www.eng-consult.com/ben/papers/paper-jona.

5.3 Recommendations

- (i) Current PIL system is abused with excessive filling of trivial issues. Thus exemplary penalty should be imposed on people for filing such cases.
- (ii) To bring more social/environmental problems of people, awareness needs to be spread around and in those NGOs play a very important role.
- (iii) To ensure environmental rights the institutions should set up at the state and central level for enforcing and monitoring the laws made to protect the environment.
- (iv) The non-government organization requires participating more in the policy making and making the politicians aware of the loopholes in the environment and an environment law reform body should be made for analyzing the environmental law.
- (v) Currently Judges do not understand the environmental problems to a greater extent because of their bringing up in sophisticated surroundings. Thus, training should be arranged for judges so that they understand concerned problems in depth.
- (vi) Public consciousness and effective public participation should be ensured through different government and non-government organization.
- (vii) Contribution of Public Interest Litigation in the protection of environment should be more wider.
- (viii) Right now we do not have many Eco-PIL benches in our country. Thus in order to respond to environmental problems in a better way courts should be equipped with Eco-PIL benches.

5.4 Concluding Remarks

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

Bibliography

Book

1. Halim, Abdul, *The Legal System of Bangladesh* (CCB Foundation, 10thed, 2016)
2. Chayes, Abram, *The Role of The Judge in Public Law Litigation* (Harvard Law review, 1281, 1976)
3. Black, Henry Campbell, *Black's Law Dictionary* (4thed, 2005)
4. Hossain, Md Iqbal, *International Environmental Law Bangladesh Perspective*, (Ain Prokashan, 5thed, 2014) 8.
5. Razzaque, Jona, *Public Interest Environmental Litigation in India Pakistan and Bangladesh* (Kluwer Law International Publication, 1st Ed, 2004)

Statute

1. *The Constitution of the People's Republic of Bangladesh*
2. *Environment Conservation Act 1995* (Amended Act 2010)
3. *Environment Conservation Rules 1997*
4. *Environment Court Act 2000* (amended in 2010)

Journal

1. Hasan, Sayed Rizwana, 'Application and Reforms Needs of the Environmental Laws in Bangladesh' (Bangladesh Journal of Law, Vol. 9 Nos. 1 & 2, 2005) 85-108.
2. Slave, Harish, *Justice Generations: Environment and Social Justice* (New Delhi Oxford University Press, 2000)
3. Hasan, Saiful, Gazi and Mahmudul Hasan Khan, *Access to Environmental Justice: An Analytical Studies of Legal Framework in Bangladesh* (The Legal Analyst, 2013)

Case

1. *Kazi Mukhlesur Rahman v Bangladesh Writ Petition* (No 59) (1974) 26 DLR

2. *Dr. Mohiuddin Farooque v Election Commission* WP No.186/1994 (Nuisance during Election Campaign)
3. *Dr. Mohiuddin Farooque v Bangladesh* Writ Petition No. 92/1996 (Radiated Milk)
4. *Bangladesh Environmental Lawyers Association (BELA) v Bangladesh* Writ Petition No. 2911 of 2003 (Ship Breaking to be Regulated by Law)
5. *Bangladesh Garments Manufacturers and Exporters Association (BGMEA)v Bangladesh*, Civil Petition 1162/2013
6. *State v Major Kazi Waheduzzaman*, Criminal Miscellaneous Case No 24727 of 2009

Internet

1. Bela Bangla, *Introducing Bela*(5 January 2017), <<http://www.belabangla.org/introducing-bela/>>
2. Nayeem, Sekander Zulker 'Jurists debate suo moto', *The Daily Star* (Bangladesh) 02 February 2017, <<http://www.thedailystar.net/news-detail-183364>>
3. The Law, *Encyclopaedic Legal Dictionary* (at 16 February 2017)