

PUBLIC ACCOUNTABILITY THROUGH PUBLIC INTEREST LITIGATION.

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INTRODUCTION

Public Interest Litigation was started in US when in *Gideon vs Wain Wright* 1971 a letter written by an accused was treated as a writ petition¹. In India the Supreme Court had treated a letter written by two Professors as a writ petition. In their letter the two Professors had brought to the notice of the Supreme Court the plight of the inmates of a Protective Home.² The epistolary jurisdiction³ has enabled the Indian Supreme Court to treat a letter by a person or on behalf of an aggrieved, telegram or an article in the newspaper as a writ petition.⁴ The service of a lawyer required to file a writ petition, the cumbersome technical rules of procedures have been dispensed with to ensure justice is available to person who are unable to afford expensive lawyers.⁵ In India in consonance with the doctrine of participatory justice⁶ the doors of the court were opened to the underprivileged and helpless people who are unable to bear the cost of litigation or are unaware of their rights.⁷ The courts in order to ensure access to justice have waived the requirement of *locus standi*, which allowed

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¹ A.K. Saharay, *The Constitution of India, An Analytical Approach* at p. 273.

² D.P. Basu, *Constitutional Remedies and Writs* at p. 95.

³ Soli J. Sorabji, "Protection of Fundamental Rights by Public Interest Litigation," in Sarah Hossain, Shahdeen Malik & Bushra Musa (eds), *Public Interest Litigation in South Asia*, Dhaka 1994, at p. 31.

⁴ D.C. Jain, "The Phantom of Public Interest", AIR. 1986, Journal Section p. 87.

⁵ *Peoples Union for Democratic Rights vs Union of India*, AIR 1982 SC at p. 1477.

⁶ *Fertiliser Corporation Kamgar Union (Regd.) vs Union of India*, 1981, 1 SCC at p. 587

⁷ *Ibid* at p. 189

an aggrieved person to vindicate his rights.⁸ The court in *Bandhua Mukti Morcha vs Union of India*⁹ allowed representative standing to public spirited person to bring legal action on behalf of the aggrieved whose rights were affected.¹⁰ As an exception to redressing individual rights the court also allowed public spirited persons or organization on their own to bring legal action to redress public injury or enforce public duty of government or its agencies effecting the collective or diffused rights of the people.¹¹

FEATURES OF PIL

Certain essential features are noticeable in PIL conducted in India, which is different from usual writ petition filed before the court.

Judicial activism on the part of the court has led to relaxation of rules of procedure. Age-old adherence of principle of Locus Standi i.e. petitioner whose right is violated is only entitle to vindicate his right before the court has been dispensed with. In PIL the *locus standi* requirement of the petitioner is waived to enable any member of the public to seek redress for the violation of rights of the down trodden o rights of the public.¹²

PIL is the strategic arm of the legal aid movement.¹³ It is not sufficient that rich peoples rights should only be required to be redressed. For the sake of public interest the rights of the disadvantaged, out-casted as a group, which goes unattended because of their lack of access to the courts, is also required to be vindicated. To establish Rule of law the courts have liberally interpreted the provisions of the constitution to accommodate the interests of the poor people.¹⁴

PIL is not an adversarial procedure where there is one winning party. The party who brings the Public Interest Litigation before the court may not get remedy, which he had sought. He may not have sensitized the judge to the extent required or the judge after balancing the various competing interests decides not to exercise his discretion. The most

⁸ *S.P. Gupta and Others vs Union of India and other*, AIR 1982 SC at p. 190.

⁹ AIR 1984 SC at p.802.

¹⁰ Armin Rosencranz, Shyam Divan, Martha L. Noble, Environmental Law and Policy in India at p. 37.

¹¹ Supra note 8, at p. 192.

¹² Ibid at p. 189

¹³ P. Bhaskara Mohan, "Public Interest Litigation a Study", AIR 1993 Journal Section at p. 20.

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significant gain from PIL is that it brings issues in the lime light before the general public. It helps to form public opinion favourable to the cause.

Judgement by the court on merit may not be the logical outcome in a PIL case. For the sake of expediency and implementation the court may take the matter in its own hands by directing appropriate agencies to provide necessary remedy. In its role as the dispenser of social justice the court could take over the management of matter which is the bone of contention. It could appoint commissions to find out facts.¹⁵ It may exercise supervisory function to ensure that its direction is carried out. It may also decide that a negotiable outcome is in the best interest of the petitioner.¹⁶

PIL is central to the principles of social justice ie. justice for the weak.¹⁷ For long judiciary has been the prerogative of rich people. Much of court's time were spent in giving judgements on matters relating to the interests of rich people. The weaker segment of the society remains ignored and isolated. PIL as an aspect of distributive and social justice tends to overturn this. It sought the court to focus its attention on matters concerning the disadvantaged by creating diffused rights.¹⁸ Social justice demands that the problems of the socially isolated people ought to be resolved so that all can enjoy the benefit of the society and that the rule of law prevails.

PIL has enlarged the door of public accountability through the judiciary. The judges have taken over the matters, which were entirely the prerogative of the executive. They have done so not to encroach upon the activities of the executive but as a collaborative effort to fulfill the obligations of the Constitutions. It has not only usurped their power of decision making but has provided redress whenever it is appropriate to do so.¹⁹

Public Interest Litigation is a kind of judicial procedure in the form of legal activism on the part of the court. Public Interest justifies the court to relax the rigid rules of locus standi²⁰ for filing writ petition by public-spirited person or organization to vindicate collective or diffused rights of

¹⁵ *Bandbna Mukti Morcha vs Union of India*, AIR 1984 SC at p. 813.

¹⁶ A.K. Sharaj, The Constitution of India: An Analytical Approach at p. 270.

¹⁷ Supra note 8, at p. 192.

¹⁸ Ibid., at p. 193.

¹⁹ *Peoples Union for Democratic Rights vs Union of India*, AIR 1982 SC at p. 1477.

²⁰ D.D. Basu, Constitutional Remedies and Writs at p. 87.

the public. Through PIL courts makes use of pro public sentiment of the public crusaders²¹ and permits legal action brought on behalf of the down trodden who are unable to gain access²² to the court. Through PIL accountability is ensured by the court for injustices committed by the agencies of the government or persons in contravention to the fundamental rights guaranteed by the Constitution²³, rights emanating from other laws of the country and the principles of natural justice.²⁴ PIL is a medium for social and economic change in the community by removing the unfairness and injustices in the society. It supports public accountability of the government through electoral process.²⁵ The court in dispensing social justice becomes accountable to the people.²⁶ Customarily the higher judiciary had a free reign in administrative justice without any restraint other than the law itself. Through PIL the courts stood up to the expectation of the people.

COMPLEXITIES OF PIL IN INDIA

In India unlike the USA the PIL dealt with issues relating to the poor.²⁷ In the USA the Public Interest Litigation covered issues common to all people such as consumer rights and environment. In India initially the thrust of PIL was to bring social justice to the economically disadvantaged who are unable to gain access to the court. Later as PIL gain momentum it spread over to other areas of common concern such as environment and gender where the disadvantaged were not necessarily the sole beneficiaries. PIL in India was institutionalised in the higher courts as a last resort option²⁸ to redress injustices. In Madras High Court PIL matters are heard by the Chief Justice himself which shows the high priority given to PIL.

²¹ Supra note 8, at p. 193.

²² A.K. Saharay, The Constitution of India, An Analytical Approach at p. 268.

²³ Supra note 4, at (Prof. Dr. D.C. Jain, The Phantom of Public Interest, AIR. 1986, Journal Section) p. 86.

²⁴ Upendra Baxi, "Taking Suffering Seriously, Social Action Litigation in the Supreme Court of India," in Tirunelaram and Goonarawamy (ed), The Role of Judiciary in Plural Society, Colombo, at p. 37

²⁵ Mario Gomez, In the Public Interest, Essays on Public Interest Litigation and Participatory Justice at p. 102.

²⁶ *Janata Dal vs H.S. Chowdhury and Others* 1992, SCC (4) at p. 303.

²⁷ Ibid at p.7.

²⁸ Sangeeta Ahuja, People Law and Justice, Case Book on Public Interest Litigation, Vol. I at p.5.

Hundreds of PIL litigation's were filed in the Supreme Court and High Courts of India on myriad of subject matter. The court responded by judicial pro-activism in favour of the unfortunates. They had relaxed the rules of procedure. PIL issues included that of prisoners rights, bonded labours, and the plight of slum dwellers etc although some of which would fall in the category of civil liberty.

Other issues, which have been vigorously perused through PIL, relate to environment, women, consumer's rights, education public policy etc.

BONDED LABOURERS AN AREA OF INTENSE PIL LITIGATION.

Bonded labourers whereby people living in hardship are compelled to provide manual labour free of cost or at nominal wages. They are required to provide manual labour because of their inability to pay the amount that they had borrowed from the landed gentry during their hard times. Bonded labour is a curse in the India Society. The age-old practice, which not only restricts the freedom of the person directly indebted but also of other member of his family such as his children or wife who are likewise have to offer manual labour to repay the debts incurred by their head of the family. The bondage is contrary to all human norms and principle of humanity.

In 1976 Bonded Labour System (Abolition) Act 1978 was passed²⁹ to remove the chain of bondage of suppressed people from the clutches of inhuman exploitation. The enactment was made a law to abolish once for all the cruel system. However, due to the apathy of those responsible for running the government the implementation of the Act remained in abeyance. The Act provided for vigilance Committee to be set up in each of the Indian state to ensure the eradication of bonded labour. Many States did not had any Vigilance Committee.

Although in India in number of State bonded labour was practiced but the state machinery kept its eye shut to the existence of bonded labourer's and went to a great length in suppressing the fact of the existence of bonded labour problem.

It was the persistent effort of social organization such as the Bondhua Mukti Morcha that the existence of bonded labour in different industry in number of States came to be known. In 1981 the Vivekand and Vidyullatta Pandit who found out that the existence of the problem of bonded labours is being denied by the State government.³⁰ The issue was brought before

²⁹ Ibid at p. 299.

³⁰ Ibid at p. 301.

the courts through letters. In *Bondhua Mukti Morcha V Union of India and others* the letter depicting the inhuman condition of the labourers working in stone quarries in Faridabad District of Haryana State was treated as a writ petition. In the above case Justice P.N. Bhagavati in response to the preliminary objection by the State government stated that the PIL taken up by the court was to ensure the implementation of social and economic agenda of the legislative and executive to protect the poor. It does not create confrontation with the executive or encroachment of their powers.³¹

In the above case the court had directed that studies to be made to find out the actual position of bonded labourers. Justice P.N. Bhagavaati said that presumption is in favour of bonded labourers wherein it is found that labour is obtained by force unless the state government could rebut the principle. In this case the court had issued 21 directive in different period to provide relief to the victims. The directives relate to the institution of favourable working conditions, protection of bonded labourers and their family and providing them minimum wages etc.

One of the directives of the court relates to the rehabilitation of the bonded labour. It required the state government within 3 months to draw a scheme to rehabilitate the bonded labourer in accordance to government guidelines.³² The rehabilitation of bonded labourers was a matter of great importance. It was found that the bonded labourers who were released from their bondage were compelled to return to bondage of their former contractor for the sake of hunger.³³

Increasingly in PIL cases the Supreme Court is required issue direction which are often not sufficient to bring an end to the matter. In series of direction the court itself supervise and taken over the management of the issue and see through that its directions are carried out and implemented. In many occasion despite the ruling of the Supreme Court the State government are indifferent and make delays in implementing the Supreme Court decisions. Often contempt petitions are required to filed to attract the attention of Supreme Court in order to ensure compliance of their directives by those who are not fulfilling the direction of the court.

On the one hand in the main petition the Supreme Court over the years in order to grapple with the issues and to bring the matter to its logical end have to issue series of direction. On the other hand it has to

³¹ Ibid at p. 311.

³² Ibid at p 313.

³³ P. Bhaskara Mohan, "Public Interest Litigation", AIR 1993 Journal at p. 17.

hear contempt petition and other miscellaneous petitions to deal with the problem effectively. As a result in PIL matter huge amount of paper work is piled up. They consist of petition itself with relevant annexures, affidavits of the opposite side, Report of the Commissions, and Reports of other organizations, order etc .PIL petition remains open and alive for extended period where from date to date new directions are sought. The consequence of this lingering of petition is that the cost has to be shouldered and considerable load of work is thrust upon the judges already overburdened with cases.

The Supreme Court of India had to supervise and monitor the release and rehabilitation of bonded labourers. The task was performed for a considerable number of years. It then passed over the task to the Indian Human Rights Commission.

ISSUES OF LABOUR RESETTLEMENT IN *M.C. MEHTA VS UNION OF INDIA*

Another PIL case was the Taj Mahal Environmental Protection Case.³⁴ It brought to the limelight the complexities now arising in PIL cases. On the petition of M.C. Mehta a renowned environmentalist the Supreme Court of India had ordered 210 polluting industries in Agra where Taj Mahal is located to switch to non-polluting energy or relocate them outside Taj Trapezium.³⁵ It had ordered them to relocate themselves elsewhere. Due to the closing down and relocation of industries many workers had lost their jobs and others were deprived of their due compensation. The BIRLA group after relocating its industry had offered its workers a compensation of Rupees one lakh to those who do not wish to take up employment. The workers who were not willing to go to far off places demanded a greater compensation and back wages. The Chief Justice and his companion judges of the Supreme Court denied workers the claim of enhanced compensation and back wages.³⁶

In India to meet the complexities faced by PIL great innovation and a more *pro active* judiciary is required to dispense social justice and establish

³⁴ The writ petition was filed in 1984.

³⁵ *M.C. Mehta vs Union of India*, AIR 1997 SC at p. 735.

³⁶ In the *Taj Mahal Environmental Protection* case Supreme Court has required the employer in addition to paying full salary during the period of shifting one year wages as bonus to assist in relocating the workers. It also provided retrenchment benefits to those workers who do not want to be shifted.

rule of law. Others who criticize PIL must know that the courts in India have done a commendable job in rescuing people in mortal danger even though in doing so they have often outreached their traditional role of rendering judgement over a dispute.³⁷ Absolute Trust and Faith in Almighty Allah, Nationalism, Socialism and Democracy were made the foundation of the Constitution.

PIL IN BANGLADESH: OVERCOMING *LOCUS STANDI*

Bangladesh after its independence got its first Constitution in 1972. The Constitution was based upon principles that were regarded as reflecting the current trends of that time. It contained principles such as rule of the people in the governance of the State, emancipation of women, reliance upon democratic norms and human rights, exploitation free society, universal education, equal opportunity and separation of judiciary etc.

Above all Part III of the Constitution contained the Fundamental rights that were made enforceable like in other Constitutions. However, there were some drawbacks that prevented the Constitution from being termed as a living document. Article 102 of the Constitution provides the High Court with the power of judicial review. However, judicial review has been restricted to “persons aggrieved”. Under the Bangladesh Constitution in order to gain access under writ jurisdiction he is required to be a person aggrieved i.e. the infliction of wrong must be suffered by the person or espousal of rights must concern or relate to the person himself. If he has a grievance which does not concerns himself he can not come before the court espousing the rights of others. The injury must have been suffered by him in order to seek remedy.³⁸ The *Locus standi* clause in the Bangladesh constitution was a common law principle that is engrained in many Constitutions of the World.³⁹ However in Indian Constitution the *locus Standi* clause was more favourably construed so the Supreme Court had little difficulty in entertaining PIL. However, this was not so in case of

³⁷ R. K. Mahajon, “Public Interest Litigation, Courts Role as Administrator and Social Dimension”, AIR 1995 Journal at p. 53.

³⁸ Justice D.A. Desai, “The Jurisprudential Basis of Public Interest Litigation, Public Interest Litigation in South Asia” in Sarah Hossein, Dr. Shadeen malik and Bushra Musa (eds), supra note at p. 18.

³⁹ M. Amir-ul Islam, “A Review of Public Interest litigation, Experiences in South Asia, Rights in Search of Remedies, Sarah Hossein, Dr. Shadeen malik and Bushra Musa (eds), supra note at p 57.

Bangladesh Supreme Court.⁴⁰ Their hands were tied by this procedural restriction.⁴¹

TOWARDS LIBERAL CONSTRUCTION OF “PERSON AGGRIEVED”

In *Bangladesh Retd. Government Employees Welfare Association vs Bangladesh*⁴² the petitioners challenged computation of pension of government employees. The petitioner a welfare association of retired government employees along with two of its office bearer who were ret. Government servant agitated before the court. The *locus standi* of the government welfare association was challenged.

Honourable Justice Namuddin Ahmed inter alia looked into *D.S. Nakara and others vs Union of India* where the Indian Supreme Court held that members of the society who are unable to take long arduous, costly, protracted journey of legal proceedings had sought assistance of the society to agitate their claim. The society has come before the court for the rights that belongs to huge number of old and disabled retirees. As such the *locus standi* is beyond doubt.

Honourable Justice Naimuddin Ahmed in order to expand the meaning of the word person aggrieved examined clause 5 of Article 102 defining the word “person”.⁴³ The clause defines “person” to include a Statutory Public Authority. It then looked into Article 152 defining Statutory Public Authority. The later clause describes it as any authority, corporation, and body whose work or primary work is validated by any act order or instrument having the effect of law in Bangladesh. Justice Naimuddin said that it is indisputable the Bangladesh Retd. Government Servants Welfare Association is an association registered under the Voluntary social Welfare Association (Regulation and Control) Order 1961. Its apparent that the legal validity of the association’s work is provided by the said Ordinance and as such the association is considered to be body

⁴⁰ Justice Mustapha Kamal, *Bangladesh Constitution Trends and Issues*, at p. 161.

⁴¹ In *State vs Deputy Commissioner, Satkaira & Others*, 14 (1994) BLD the court exercising its inherent jurisdiction has ordered the release of a boy who was languishing in prison for extended period without any charges. He was arrested at the age of 12 years and had spent 12 years in prison convicted on various charges.

⁴² *Bangladesh Retired Government Employees Welfare Association, vs Bangladesh*, 46 (1994) DLR (HCD) at p. 426.

⁴³ *Ibid* at p. 434.

under the definition of the Statutory Public Authority. Therefore, under clause 5 of 102 this association is a person within the meaning of clause (1) (2) of Article 102.

Justice Naimuddin Ahmed declared that as the association has an interest to represent the grievance of retired government employees it is our opinion that the association is a person aggrieved. Justice Naimuddin Ahmed contended that the Constitution constitutes a dynamic document libel to be interpreted and applied in its shifting socio economic needs of those who can not appear before the court on the account of poverty or otherwise.⁴⁴ In this circumstances the inability of the court to refuse to enforce fundamental right on technical ground would constitute failure of the court to uphold its constitutional obligations. As such the pedantic and lexicographic interpretation of the words person aggrieved should be as much as possible negated if it can be done within without being contrary to specific provisions of the Constitution. In the existing case we are violating any of the provisions of the Constitution by extending the meaning of the word person aggrieved. Petitioner as such has locus standi to file the writ petition.

In *Bangladesh Sangbad Patra Parishad (BSP) vs Government of Bangladesh* the petitioner was the Secretary General of Bangladesh Sangbad Patra Parishad⁴⁵ who had challenged the Wage Board award concerning the press industry. The award was given effect by the government. The writ was filed in a representative capacity. Whether the Organization has *locus standi* to raise issues for its member's came up before the court. The Court said that Bangladesh Constitution is not *pari materia* with Indian Constitution. The Constitution of India is silent about who can seek judicial review under Article 32 and Article 127. Although Indian judiciary as a tradition has entertain only person aggrieved. With the rise of *pro bon publico* the Indian judiciary had no procedural difficulty in allowing persons other than whose right have been effected to come before the court. In England the persons aggrieved has been interpreted as who have sufficient interest. There the test of sufficient interest has been made as procedural law vides Court order 53 Rule 3.

The honorable judge of the Supreme Court had said that the petitioner all along had been attached with the Wage Board does not qualify him as a person aggrieved. The court said the petition is certainly not in the form of

⁴⁴ Ibid at p. 435.

⁴⁵ *Bangladesh Sangbad Patra Parishad (BSP) vs The Government of Bangladesh*, 43 (1991) DLR (AD)

PIL and the petitioner was not seeking relief for the down trodden & deprived segment of the community. It is not a *pro bono* petition but concerns with the interest of its members. The petitioner was denied *locus standi* to bring complaint on behalf of its members.

THE BREAKTHROUGH: DR. MOHIUDDIN FAROOQUE VS GOVERNMENT OF BANGLADESH

The strict construction of *locus standi* principle was inhibiting the growth of PIL in Bangladesh.⁴⁶ The High Court division of the Bangladesh Supreme Court had denied *locus standi* to Dr. Mohiuddin Farooque when he filed a writ petition on behalf of the people of Tangail District against the flood action programme implemented by the Bangladesh government. In a landmark decision on Public Interest Litigation case the Supreme Court of Bangladesh has granted *locus standi* to Dr. Mohiuddin Farooque the Secretary General of Bangladesh Environmental Law Association (BELA). In *Dr. Mohiuddin Farooque vs Government of Bangladesh* to file the writ on behalf of the people of Tangail against environment degradation, ecological imbalance that would be caused by the flood action plan.

Dr. Mohiuddin Farooque had challenged FAP 20 which envisages controlled flooding to tackle flood by constructing embanked compartments in Tangail district on experimental basis. Within such compartments discharge of floodwater would be made by draining into sub compartments through network of channels and khals. According to BELA Secretary General such concept has never been put into practice anywhere in the World.⁴⁷ It was contended that the project would displace 3 lakh people, and would have adverse impact on national habitat such as degradation of soil, despoil of natural habitat of fisheries and other flood plain flora and fauna. It would block drainage, deteriorate human health, hamper sanitation, pollute safe drinking water etc.

LOCUS STANDI TO PERSON AS WELL AS ORGANIZATIONS FOR REDRESSING PUBLIC INJURY

The debut of PIL in Bangladesh was made possible when judges of the Supreme Court has construed the *locus standi* clause liberally giving a wider

⁴⁶ Reza Quazi-ul Hoque, "Social Values Through Litigation: the case of Bangladesh", in Jeremy Cooper and Louise G Trubek (eds), Educating for Justice: Social Values and Legal Education, at p. 234.

⁴⁷ *Dr. Mohiuddin Farooque vs Bangladesh*, 49 (1997) DLR (AD) 1, at p. 7.

meaning to the words “person aggrieved”. Justice A.T. M. Afzal said that the decision in *Dr. Mohiuddin Farroque* is an update to the liberalization agenda undertaken in the *Kazi Mukblesur Rahman* case. Justice Afzal said that it is a matter of great pride that *locus standi* was given a liberal contour by the court when *Black Burn* case were being decided in England which expounded the doctrine of sufficient interest for standing and when PIL had not taken root in India.

In *Kazi Mukhlesur Rahman* the appellant had challenged the Treaty of 16 May 1974 between India and Bangladesh transferring Beru Bari to India in exchange of Dahagram and Aunguparta enclaves. Appellant’s *locus standi* was questioned since he was not a resident of the territory.⁴⁸ In this case the Supreme Court appellate division has granted *locus standi* to the appellant because he was a person who had agitated a question of significant Constitutional issue. It also constituted an impending threat to his fundamental right to move freely through out the country and settle anywhere.

Justice A.T.M. Afzal decided that the appellant has a threshold standing bearing sufficient interest on the ground of claiming to have conducted studies and research on the disputed project. He said any person could have sufficient interest on the disputed matter of the suit for which justice is sought if it relates to public injury caused by non fulfillment of public duty or violation of constitutional law seeking enforcement of public duty or compliance of Constitutional obligations. To make sufficient interest there must exist co-relation between the person seeking relief and the subject matter. The court must decide the matter on the facts of each case, as it was not possible to lay down any straitjacket formula or hard and fast rule.

Justice A.T.M. Afzal stated that when objection is raised the court has to decide on each case a) the extent of sufficiency of interest b) fitness of the claimant invoking discretionary jurisdiction. A person claiming sufficient interest may cross the entry stage on the basis of the assertions made in the petition but the other side has the opportunity to contradict the facts or question the bonafideness or suitability of persons in claiming the relief. The honourable justice cited *Bangladesh Sabgbadparta Parishad* case where standing was denied to Parishad who made representation on behalf of the members who were affluent.⁴⁹ Justice A.T.M. Afzal said that the matter would have been different if any organization representing a

⁴⁸ *Kazi Mukhlesur Rahman vs Bangladesh*, 26 (1974)DLR (SC) at p. 50.

⁴⁹ *Ibid* at p. 5.

weaker section of the society had complained violation of fundamental right of its member or public wrong committed against it member in general.

Justice Mustafa Kamal in his judgement has stated that People in Bangladesh were pivotal in framing the Constitution. People as a collective personality has devised the Article 102 as an instrument and mechanism to realize their goals, rights, and duties. Justice Mustapha Kamal said that in a capitalistic *lasses faire* concept judiciary stands mainly to protect the individual rights. However, where Article 13 of our Constitution provides for people's ownership of production & distribution the concept of individual wrong or injury is inappropriate.⁵⁰ Here the subject matter concerns with public wrong or public injury or violation of fundamental right that extends to indefinite number of people it is not necessary that all those suffering collective wrong or whose collateral fundamental right have been infringed should enforce their rights through innumerable individual petitions. It is sufficient that any member of the public inflicted with the common injury or has sustained common incursion or any citizen or any native association as different from agency of foreign organization, supporting a specific case is an "aggrieved person".

According to Justice Mustafa Kamal cause will determine the competence of the applicant. If he supports individual cause he is an aggrieved person if his own interest are affected. If he supports the public cause or injury he need not be personally aggrieved.

Justice Latifur Rahman in the aforesaid judgement said that the judiciary has performed social engineering in line with terms such as welfare state mixed economy and socialist Republic etc. Effective access to justice is the most fundamental requirement and the most fundamental human rights of process that insures legal rights.⁵¹ Rules of *locus standi* developed from the initial stage when it concerned with specific legal injury of either the applicant or some other person or persons for the violation of constitutionals or legally protected interests. Other than these there are different types of other cases where the State or Corporations could act contrary to the Constitution or statutory requirements or does not carry out their obligations causing injury to public interests. In the words of Justice Latifur Rahman who can than complain? Can any public person seek legal redress? Are such rights restricted to certain categories of persons? Or none can complain? Must public injury remain unheard? The

⁵⁰ Ibid at p. 15.

⁵¹ Ibid at p. 20.

person asking for relief for public wrong or public injury has sufficient interest in the dispute and is acting bonafide without personal gain lacks no political motives or other indirect consideration has *locus standi*.

Justice B.B. Chowdhury in his judgement stated that the scheme of the Constitution would be frustrated if social activist and public-spirited persons are refrained from coming to the court on behalf of the public for invoking rights. It could not have been the intention of the framers of the Constitution to out class those who are unable to come before the court because of abject property, illiteracy, and ignorance and disadvantaged situation.

Justice B.B. Roy Chowdhury said that our Constitution does not have Article 48 of the Indian Constitution for the preservation and development of the Environment. Our Constitution protects right to life under Article 31 and 32 as a fundamental right. This includes within its precinct the protection and preservation of the environment, ecological balance without pollution of air and water, sanitation, absence of which the life can not be enjoyed.⁵²

EXPANDING THE HORIZON OF PIL IN ENVIRONMENT MATTERS

In *Mrs. Parveen vs Chairman, Rajdhani Unnayan Kartipakha*⁵³ (formerly Dhaka Improvement Trust) the *locus standi* of the petitioner was disputed. The court had extended the horizon of Public Interest Litigation relating to environmental issue. It had applied the *ratio decendi* of the Dr. Mohiuddin Farroque case. In the later case *locus standi* was granted to BELA to protect the natural habitat of the flood plain in the District Tangail while in the existing case the greenery, lake, natural beauty and other environmental facility was required to be protected. The petition was framed as a personal as well as a public interest litigation. She has challenged RAJUK action to construct a road and some plots by filling up the Gulshan lake and the lakeside adjacent to her residential house at Gulshan. She asserted that the RAJUK action would destroy the greenery and the beauty of the lake and effect the environment situation in the Gulshan Model Town. The action of the RAJUK has violated petitioners fundamental right to protection of law and the right to hold property. Justice Mohd. Mozammel Hossain relying upon sufficient interest criteria of Justice ATM Afzal, public cause

⁵² Ibid at p. 25.

⁵³ *Mrs. Parvin Akhther vs The Chairman Rajdhani Unnayan Kartipakha*, 18 (1998) BLD at p. 117.

notion pronounced by Justice Mustapha Kamal determined that the petitioner has the *locus standi*. The honourable justice said that the petitioner has come before the court with the personal interest as well as interests of all other residents who are sharing the beauty greenery of the lake and the environmental facilities.⁵⁴ The Honourable justice based on social welfare obligation of Justice Latifur Rahman and heart bleeding test of Justice BB. Roy Chowdhury held that as the petition concerns with the common interest of the people of Gulshan Model Town the petitioner has *locus standi*.

GRANTING LOCUS STANDI TO HUMAN RIGHT ACTIVIST FOR THE CAUSE OF THE DOWNTRODDEN

Advocate Sultana Nahar⁵⁵ filed a writ petition for the eviction of six hundred sex workers from the Kandarpati brothel located at the juncture of Malitola, Nawabpur English Road, Dhaka. The brothel is two centuries old and is registered. A mob of unruly goondas along with the local ward Commissioner Hossan Molla in the forefront evicted the sex workers from houses. Despite the assistance sought by the sex workers from the police who were silent spectators they were evicted. The news of eviction was reported in national dailies. According to the version of the newspaper the local people wanted to evict the sex workers for sentimental and religious reason but the local ward Commissioner Mr. Hossan Molla had a different reason to evict the sex workers. He wanted to evict the sex worker from the house, which belonged to him.

Justice Mohd. Mozammel Haq held that Mr. MI Farooqui the learned advocate had had made submission to the effect that sex workers are poor, ignored and unfortunate member of the society. Learned Deputy Attorney General had submitted that as the sex workers were evicted by the people the remedy lies in other place and a sex workers are already evicted the petitioner has no *locus standi* to file the writ petition.

Justice Md. Mozammel Huq said I could not agree with the Deputy Attorney General. Since the goondas and mastans have evicted the sex workers and looted their properties and they are very poor people who have no place to go and as it is not possible for sex worker to apply on their own and since the petitioner is a social worker and belongs to female sex, I am of the opinion that the petitioner has *locus standi* in the way of PIL. The court said “ A great number of the people of the society had been

⁵⁴ Ibid at p. 124

⁵⁵ *Sultana Nahar, Advocate vs Bangladesh & Others*, 18 (1998) BLD (AD) at p. 363.

evicted by the section of the local goondas and miscreants and the inaction of the law enforcing agencies and other government agencies to protect them, led the petitioner to come before this Court for seeking relief on behalf of those poor, neglected, wretched, unfortunate, downtrodden, hated, homeless and helpless people of the society.⁵⁶

EXPANDING THE JUDICIAL REMEDY

In *Bilkis Akther Hossain vs Bangladesh & Others* although not strictly PIL the court expanded judicial remedy by awarding damages for wrongful detention of Khondoker Musharraf Hossain a former BNP minister by the government.⁵⁷ In a writ petition Bilkis Akther the wife of the detainee contended that her husband was wrongfully confined under the Special Powers Act. It was alleged that the detainee has been detained in order to victimise and curtailing his political activity. According to the government the detainee had made heated provocative speeches on 19.3.1997 before the Press Club whereby the participants of the meeting took to street. They became violent, threw missiles cocktail bombs, and damaged a hotel. The detainee along with other took part in subversive activities. The tried to destroy power generation plants in the northern district with the view of disrupting power supply. The detainee was also responsible for instigating the workers of Textile and Spinning mills by generating hatred among them and causing financial loss to the country. Detainee was also implicated in the sabotaging activity whereupon an electric tower in Pabna was partially dismantled.⁵⁸

Justice Mohd. Mozammel Hoque said that it is now well established that the materials and ground of detention upon which the detention authority base its satisfaction are judicially scrutinizable. If the High Court finds that the material and grounds of detention are unreasonable and there is no rational basis or probative value for the detention it can strike down the detention order. His Lordship said that the materials in the form of alleged reports made in quick succession could be fabricated by any person at any time and we are satisfied that the materials are absolutely unreasonable and without foundation and no rationality and probative value. The court said the circumstance lead to the conclusion that the grounds of detention order are to victimise the detainee politically.

⁵⁶ Ibid at p. 369.

⁵⁷ *Bilkis Akther Hossain vs Bangladesh & Oths* 17 (1997) BLD (HCD) at p. 347.

⁵⁸ Ibid 397.

Mr. Moudud Ahmed for the petitioner submitted that the detainees fundamental right to liberty, right to association and right to speech was abridged. The detainees worldly things such as goodwill name and fame, status has been vilified because before eye of the world as he was depicted as terrorist and instigator.⁵⁹ Mr. Moudud Ahmed most fervently and ardently prayed that Respondent No 1 and 2 should be required to pay exemplary monetary compensation and costs so that in future the detaining authority thinks 10 times before detaining any person illegally and restraining from misusing discretionary power under the Special Powers Act.

Justice Mohd. Mozammel Haq said despite there is no specific provision in the Article 102 on costs of compensation but the court all along had been rendering judgement with costs or no costs. Since the court exercises Special Original Jurisdiction and has Extraordinary Inherent Jurisdiction to issue an order as it feels necessary we believe the court has the power to award compensation considering the facts and circumstances of the case. Citing Mahmudul Islam book Constitutional Law of Bangladesh Justice Mohd Mozaamel Hoque said that Constitution does not says what relief would be granted. It is not necessary that only injunctive relief would be given it could provide remedial relief in a suitable case.⁶⁰ His Lordship referred to Article 32 of the Indian Constitution (Article 44 of Bangladesh Constitution) where the Supreme Court had stated that the court is not powerless and ought to make new tool and invent new remedies and if required to enunciate new principle of liability for the purpose of espousing previous fundamental rights. The Indian Supreme Court did not merely gave declaration or direction it also granted exemplary costs and even damages for violation of fundamental rights concerning life and liberty.

His Lordship *inter alia* referred to principle derived from Moharaja V Attorney General of Trinidad and Tobago (1978) AER 670 where their Lordship contended that in public law compensation for the loss of liberty would consist of loss of earning's for the imprisonment and recompense for the discomfort and the ordeal suffered by the appellant for his imprisonment. The Honourable Justice *inter alia* referred to *Ruhul Shah vs State of Britain and Another*.⁶¹ The Indian Supreme Court under writ jurisdiction relating to habeas corpus had awarded Rs. 30,000/- as compensation for the illegal detention. The Judge had cited *Nilabati vs State*

⁵⁹ Ibid at p. 407

⁶⁰ Ibid p.407.

⁶¹ AIR 1983 (SC) 1086

of Orissa⁶² that a claim of compensation in public law is a recognized remedy for the enforcement and protection of human rights and fundamental rights. It is based on the principle of strict liability invoking Constitutional remedy is different from the other than the remedy in private law.⁶³ His Lordship after referring to inter alia *Bhim Sing MLA vs Sate of Jammu and Kashmir*,⁶⁴ *Rural Litigation Entitlement Kendra vs The State of UP*,⁶⁵ and *Habibullah Khan vs Azharuddin*.⁶⁶ Justice Md. Mozammel Hoque held that the underlying principle of these judicial pronouncements is that the Constitutional Court having Constitutional jurisdiction can award monetary compensation to the aggrieved detainee for breach of the detainee's fundamental rights by the detaining authority i.e. the government.⁶⁷

CONCLUSION

In *Sajful Islam Dilder vs Bangladesh*⁶⁸ the High court was conservative in the wholesale application of the *Dr. Mohiuddin Farooque*, the landmark judgement on *locus standi*. The Secretary general of Bangladesh Human Right Commission has sought Rule Nisi challenging the anticipated handing over of Anup Chettia of the United Liberation Front of Assam (ULFA) to Indian authorities. The High Court failed to give equal status to Bangladesh Human Rights Commission like that of BELA. The High Court refused to consider the petitioner as a person aggrieved since the petitioner has failed to qualify Anup Chattia as an unfortunate fellow who can not espouse his own right. No violation of the Constitution or law by the government was shown. The petitioner's contribution to the cause was not like that of BELA. The high court denied access to the petitioner on the ground that he failed to satisfy the court that he has persistently tried to seek relief for a section or group of people whose constitutional rights have been violated, threatened and whose abject property has kept them away from seeking access to the court. He has failed to show that his organization made stride in restoring or enforcing right in the area for

⁶² AIR 1993 (SC) 1960

⁶³ Ibid at p. 408.

⁶⁴ AIR 1986 (SC) 494

⁶⁵ 35 DLR (AD) 77

⁶⁶ 35 DLR (AD) 77

⁶⁷ Ibid at p. 411

⁶⁸ *Sajful Islam Dilder vs Bangladesh* 50 (1998) DLR (HCD) at p.318.

which relief has been sought.⁶⁹ The court in denying *locus standi* to the petitioner laid emphasis on hard substantiation of claims of representation for the downtrodden. The court was also strict in evaluating the track record necessary for espousing the claim. It wanted greater commitment of the petitioner to the cause for which he is agitating.

The *Sajfur Islam Dildar* case concerned with the right of a prisoner whose extradition to India was challenged. The prisoner was an Indian national espousing the right of self-determination for the people of Assam. In India the prisoner's right were the first generation of PIL that were decided by the Indian Supreme Courts. It formed the core of PIL from which other branches such as Consumer Rights, Urban Space, Environment spread. However, in Bangladesh the first ever *stricto sensu* PIL concerned with environment issue be that as it may the court was upright in enunciating the basic tenants of Public Interest Litigation namely.

a) A person other than whose legal right has been violated may have sufficient interest.

b) In case of public wrong any member of the public who is suffering the common violation could espouse claim.

c) Access to justice is basic human rights.

d) Wayfarer, busy body, officious intervener have no standing.

e) A person aggrieved is who vindicates the collective rights of the public.

The mechanism of Public Interest Litigation⁷⁰ is now available in Bangladesh. It is making headway, as the judiciary is able to vigorously assert themselves⁷¹ as the defender of the Constitution. In future issues such as the justiciability of Fundamental Principles of State Policy needed to be over come. In Bangladesh PIL requires elaborate and extensive extension in the hands of the Justices of the Supreme Court not only to implement the Constitutional goals but also to judicially review the ever increasing actions of the State⁷² only than it could measure up with the expectation of the people.

⁶⁹ Ibid at p. 321.

⁷⁰ S. Muralidhar, "Epilogue", in Shangeeta Ahuja, People Law and Justice, Casebook on Public Interest Litigation, Vol II at p. 792.

⁷¹ Naim Ahmed, Conceptualising Public Interest Litigation: Reflections on Selected Jurisdictions, Unpublished seminar paper at p. 15.

⁷² Syed Ishtiaq Ahmed, "An Expanding Frontiers of Judicial Review- Public Interest Litigation" 45 (1993) DLR Journal, at p. 40.