ACCESS TO JUSTICE TO THE IMPOVERISHED AND DOWNTRODDEN SEGMENTS OF THE PEOPLE THROUGH PUBLIC INTEREST LITIGATION: BANGLADESH, INDIA AND PAKISTAN PERSPECTIVE

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Introduction

Under the traditional system, the passport to litigation[1] is available only to a "person aggrieved".[2] Due to this system, the taste of justice could be enjoyed by those who could afford its costs.[3] In other words, the moneyed had the golden key to unlock the portals of Court.[4] And the Court spent its time in delivering judgments on matters regarding the interest of those who were well-off.[5] But this system is not adaptable to the society where people surviving in abject poverty which creates obstacle to enforce their rights.[6] On the other hand, effective access to justice is the most basic requirement - the most basic human right - of a system, which purports to ensure legal rights of the people.[7]

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1 The term "litigation" means a legal action including all proceedings therein, initiated in a Court of Law with the purpose of enforcing a right or seeking a remedy. *Janata Dal vs. H.S. Chowdhary*, AIR 1993 SC 892, at 906.

2 The expression "person aggrieved" is a typical Anglo-Saxon concept. Iyer, V.R. Krishna, Social Justice - Sunset or Dawn, Lucknow, 1987, at p. X. In America, this is known as the principle of 'standing'. Ahmed, Syed Ishtiaq, "An Expanding Frontier of Judicial Review - Public Interest Litigation", in DLR Journal, 1993, pp. 36-45, at p. 38.

3 Singh, Parmanand, "Thinking about the Limits of Judicial Vindication of Public Interest", in SCC Journal, 1985, pp. 1-11, at p. 1.

4 See Rao, Mamta, *Public Interest Litigation, Legal Aid and Lok Adalats*, Lucknow, 2004, at p. 124.

5 Rahman, Altafur, "Public Accountability Through Public Interest Litigation", Bangladesh Journal of Law, Vol. 3, no. 2, 1999, pp. 161-179, at p. 163.

6 See Report on National Juridicare, 1977, Ministry of Law, Justice and Company Affairs, Government of India, Journal of Bar Council of India, Vol. 9(1), 1982.

7 Australian Law Reform Commission, Discussion Paper No. 4, at p. 3. Hussain said: "Access to justice is assuming the status of a fundamental right, a primary fundamental right, as without it all other rights become illusory." Hussain, Faqir, "Access to Justice", in PLD Journal, 1994, pp. 10-23, at p. 20. See also Iyer, V.R. Krishna, Social Justice - Sunset or Dawn, supra notes 2, at p. 149.

So, the progressive society demands a new strategy for vindicating the rights of the poor. And the judiciary did not hesitate to respond to the demands of society and "permitted a member of the public, having no personal gain or oblique motive to approach the Court for the enforcement of the constitutional or legal rights of socially or economically disadvantaged persons who on account of their poverty or total ignorance of their fundamental rights are unable to enter the portals of the Courts for judicial redress."[8] This is known as public interest litigation (PIL).[9] The expression, '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 a class of the community have pecuniary interest or

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8 Supra note 1, at 910. Mishra says: "Public Interest Litigation lies where legal harm has been caused to a person or determinate class of persons and where the Constitutional and legal rights have been violated." Mishra, O.P., *Public Interest Litigation and Our Rights*, Allahabad, 2003, at p. 5.

9 "PIL is one phrase for a phenomenon that has been described with many different terms: human rights litigation, strategic litigation, test case litigation, impact litigation, social action litigation, and social change litigation are among the most common." Goldston, James A., Public Interest Litigation in Central and Eastern Europe: Roots, Prospects, and Challenges, Human Rights Quarterly, Vol. 28, 2006, pp. 492-527, at p. 496. The concept of public interest litigation was first introduced in the USA. Bakshi, P.M., *Public Interest Litigations*, New Delhi, 1998, at p. 2; Hussain, Syed Mushtaq, "Public Interest Litigation", in PLD Journal, 1994, pp. 5-10, at p. 5. In America, the surge of PIL commences in 1960 when the liberal America examined what it was doing for its poor. Dhavan, Rajeev, "Whose Law? Whose Interest?" in Cooper, Jeremy and Dhavan, Rajeev (eds.), Public Interest Law, Oxford, 1986, pp. 18-48, at p. 18. In the USA, the public interest litigation has been invented to provide legal representation to the groups and interests that have remained unrepresented or underrepresented in the legal process. These include not only the poor and the disadvantaged but ordinary citizens who, because they are not able to appoint lawyers, have access to courts locked to them, and also do not have access to administrative agencies and other legal forums in which basic policy decisions affecting their interests are made. See Trubek, Louise G and Trubek, David M, "Civic Justice Through Civil Justice: A New Approach to Public Interest Advocacy in the United States" in Cappelletti, M et al. (eds.), Access to Justice and the Welfare State, Sijthoff, 1981, pp. 119-144; Trubek, David M, "Public Advocacy: Administrative Government and Representation of Diffuse Interest" in Capelletti, M et al. (eds.), Access to Justice, Vol. III, Sijthoff and Noordhoff, 1979, pp. 448-94. During the late 1960, certain public interest law firms have emerged to provide legal representation to unrepresented groups and interests. Handler, Joel F, "Public Interest Law Firms in the United States" in Capelletti, M et al. (eds.), Access to Justice, ibid., pp. 421-442, at p. 441.

some interest by which their legal rights or liabilities are affected."[10] Kripal J. said that public interest litigation -

> means nothing more that what it states namely it is litigation in the interest of the public. Public Interest litigation is not that type of litigation which is meant to satisfy the curiosity of the people, but it is a litigation which is instituted with a desire that the court would be able to give effective relief to the whole or a section of the society.[11]

In short, public interest litigation means litigation in the interest of the public.[12] "This is an innovative strategy which has been evolved by the Supreme Court"[13] for the public interest.[14]

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10 Samaresh Banerjee J. in supra note 1, quoted in *State vs. Union of India*, AIR 1996 Cal 181 at 196. See also Sorabjee, Solil J, "Obliging Government to Control Itself: Recent Developments in Indian Administrative Law, Public Law", Vol. Spring 1994, pp. 39-50, at p. 49.

11 People's Union for *Democratic Rights vs. Ministry of Home Affairs*, AIR 1985 Delhi 268 at 290. Quoted in Muntizma Committee, Al-Mustafa Colony (Regd.), Karachi, and others vs. Director, Katchi Abadis, Sindh and others, PLD 1992 Kar 54.

12 The word "public" includes in its ordinary acceptation, any section of the public. *Sri Venkataraman Devaru vs. State of Mysore*, AIR 1958 SC 255.

13 *State of Himachal Pradesh vs. A Parent of a Student of Medical College*, AIR 1985 SC 910, at 914; *Bandhua Mukti Morcha vs. Union of India*, AIR 1984 SC 802 at 838; *M.C. Mehta vs. Union of India*, AIR 1987 SC 1086.

14 The expression public interest means act beneficial to general public. It means action necessarily taken for public purpose. *Babu Ram Verma vs. State of U.P.*, 1971 All LJ 653. Public interest means those interest which concern the public at large. Aiyar, P. Ramanatha, *The Law Lexicon*, Nagpur, New Delhi, 1997, at p. 1557. In *South Hetton Co. vs. North Eastern News Association* (1894) 1 QB 133, it was held: "A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement, but that in which a class of the community has a pecuniary interest or some interest by which their legal rights or liabilities are affected." See also *AR Shams-ud-Doha vs. Bangladesh and others*, 46 DLR (1994) 405. The expression public interest has been defined in Black's Law Dictionary as: "Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or National Government." Black's Law Dictionary, 6th Edition, quoted in *State vs. Union of India*, at 196. Barry and Rees said: "The concept of public interest …is a device which permits us to treat the human interests of all men as a function of human interests within a given political region." Barry, B and Rees, W, "The Public Interest" in Supp. vol. XXXVIII The Aristotelian Society Conference Proceedings, London, 1964, pp. 1-38, at p. 16. Jacob defines the public interest in

The purpose of this paper is to trace the historical development of public interest litigation in Bangladesh, India and Pakistan. An attempt will be made to show how public interest litigation protects the rights of impoverished and downtrodden segments of the people. This paper will also state the pitfalls in public interest litigation.

The Concept of *Locus Standi*

The traditional syntax of law as to *locus standi* is that "judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legally protected interest by the impugned action of the State or a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action. The basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from violation, actual or threatened, of the legal right or legally-protected interest of the person seeking such redress."[15] And the courts were unwilling to permit anyone to come unless he was able to show violation of some personal rights. In other words, "only the person who has suffered legal injury can maintain an action and no third party can be permitted to

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the context of civil litigation in these words: "It consists in the procedural machinery which may be employed to produce the relief or remedy or social effect which would be most advantageous or result in the greatest good of the members of the public as a whole or a significant or a selected section of the public, while at the same time producing a just result which is being sought by the litigant parties themselves." Jacobs, Jeck, "Safeguarding the Public Interest: New Institutions and Procedures" in Cooper, Jeremy and Dhavan, Rajeev (eds.) Public Interest Law, supra note 9, at p. 54.

15 *S.P. Gupta vs. Union of India*, AIR 1982 SC 149 at 185; See also *Charanjit Lal vs. Union of India*, AIR 1951 SC 41*; State of Orissa vs. Madan Gopal Rungta*, AIR 1952 SC 12; *Hans Muller vs. Supdt.* Presidency Jail, Calcutta, AIR 1955 SC 367; *Calcutta Gas Co. Ltd. vs. State of W.B.*, AIR 1962 SC 1044; *Kalyan Singh vs. State of U.P.*, AIR 1962 SC 1183*; Orissa vs. Ram Chandra*, AIR 1964 SC 685; *Venkateswara Rao vs. Govt. of A.P.*, AIR 1966 SC 828; *Maganbhai vs. Union of India*, AIR 1969 SC 783; R.*C. Cooper vs. Union of India*, AIR 1970 SC 564; *State of Orissa vs. Rajasaheb*, AIR 1971 SC 2112; *Satyanarayana Sinha vs. S. Lal and Co.*, AIR 1973 SC 2720; *J.M. Desai vs. Roshan Kumar*, AIR 1976 SC 578*; Bhagwan Dass vs. State of U.P.*, AIR 1976 SC 1392; *Muneeb-Ul-Rahman vs. Govt. of J. & K.*, AIR 1984 SC 1585*; Abdul Majid vs. Deputy Commissioner*, Sialkot, 1991 CLC 1995; *Tariq Transport vs. Sargodha-Versa Bus Service*, 11 DLR (SC) (1959) 140; *Ekushey Television Ltd. & others vs. Dr. Chowdhury Mahmood Hasan & others*, 7 (2002) MLR (AD) 193. See also Razzaque, Jona, "Access to Environmental Justice: Role of the Judiciary in Bangladesh", Bangladesh Journal of Law, Vol. 4, nos. 1 & 2, Dhaka, 2000, pp. 1-25, at p. 6.

have access to the court to seek redress on behalf of the person injured."[16] This traditional rule of standing subverts the rule of law.[17] So, the question is one of access to doors of the Court, elaborated as follows:

> The traditional doctrine of standing (*legitimatio ad causam*) attributes the right to sue either to the private individual who 'holds' the right which is in need of judicial protection or in case of public rights to the State itself which sues in the courts through its organs.[18]

If this rule of *locus standi* is not relaxed, a majority of masses will be unable to enter the portals of the court, owing to their socially or economic disadvantaged position. In other words, "Strict adherence to restrictive rules of standing results in shutting the door of justice to the people."[19] In this connection, Schwartz and Wade said:

> Restrictive rules about standing are in general inimical to a healthy system of administrative law. If a plaintiff with a good case is turned-away merely because he is not sufficiently affected personally, that means that some government agency is left free to violate the law, and that is contrary to public interest.[20]

It would be a grave lacuna in the system of public law if a public-spirited person is prevented by outdated technical rules of *locus standi* from bringing the matter to the attention of the Court to vindicate the rule of law and get the unlawful conduct stopped.[21]

As regards the *locus standi*, Hussain said:

> Denying access to a plaintiff with good cause merely because he is not personally affected by the action means that the public authority is left free to

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16 Desai, D.A., "The Jurisprudential Basis of Public Interest Litigation", in Hossain, Sara, Malik, Shahdeen and Musa, Bushra (eds.), Public Interest Litigation in South Asia: Rights in Search of Remedies, Dhaka, 1997, pp. 17-25, at pp. 18-19.

17 Sorabjee, Soli J., "Protection of Fundamental Rights by Public Interest Litigation" in Hossain, Sara, Malik, Shahdeen and Musa, Bushra (eds.), ibid, pp. 27-42, at p. 30.

18 Cappelletti, Mauro, "Vindicating the Public Interest through the Courts: A Comparativist's Contribution" in Cappelletti M et al. (eds.), Access to Justice, Supra note 9, pp. 513-564, at p. 520.

19 Rahman, A M Mahmudur, "Existing Avenues for Public Interest Litigation in Bangladesh", in Hossain, Sara, Malik, Shahdeen and Musa, Bushra (eds.), Supra note 16, pp. 79-86, at p. 82.

20 Schwartz, B. and Wade, H.W.R., *Legal Control of Government: Administrative Law in Britain and the United State*, Oxford, 1972, at p. 291.

21 *R. vs. Inland Revenue Commrs.*, ex p. National Federation of Self Employed and Small Business Ltd. (1981) 2 WLR 722, at 740. See also Chowdhury and Chaturvedi's *Law of Fundamental Rights*, Allahabad, 1985, at p. 782.

> flout the law with impugnity. Such an outcome besides breeding contempt for the legal system, promotes the feelings of revolt and rebellion against the administration. This state of affairs obviously is not favourable for the maintenance of the rule of law and efficient performance of public functions. Such a situation is not countenanced by a system of democratic polity and Constitutional rule and calls for remedial measures. [22]

The changing society and increased complexities of life demand change in the traditional doctrine of *locus standi*. If the law fails to respond to the demands of a changing society, then large segments of society will be deprived of their right of access to the courts due to poverty. Such failure to respond to the needs of a changing society is an abuse of legal process. [23] Scarman said: "I shall endeavour to show that there are in the contemporary world challenges social, political and economic which, if the system can not meet they will destroy. They have to be met either by discarding or by adjusting the legal system. Which is it to be?" [24] In the words of Shah:

> Law does not remain static...Law is a dynamic instrument fashioned by society for the purpose of achieving harmonious adjustment of human relations by eliminating social tensions and conflicts. If the law fails to respond to the needs of a changing society then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law, which stands in the way of its growth. Let me emphasize that if law is to earn the respect of the people and achieve its purpose of correcting injustices and to restore social equilibrium in the society it must accord with the concept of social justice. [25]

It is now interesting to know that with the changing structure of society, the traditional doctrine of *locus standi* has also been undergoing change *i.e.*, it acquires liberal reception at the doors of courts. Now, any member of the public, having no personal gain or oblique motive, can seek judicial redress for the legal wrong or injury caused to a person or to a determinate class of persons who are unable to enter the portals of the Court for relief on account of poverty, lack of awareness of the existence of rights, helplessness, or disability or socially or economically disadvantaged position. This is known as public interest litigation.

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22 Hussain, Faqir, Access to Justice, supra note 7, at p. 18.

23 Dias, R.W.M., *Jurisprudence*, London, 1985, at p. 30.

24 Scarman, Leslie, *English Law - The New Dimensions*, The Hamlyn Lectures, Steven's, 1974, at p. 1.

25 Shah, Nasim Hasan, "Inaugural address in the conference, Law as an Instrument of Social Justice", in PLD Journal, 1993, pp. 28-30, at p. 29.

Emergence of Public Interest Litigation

In India

The English people captured the ruling power of Indian sub-continent after their victory at the Battle of Plassey. They infiltrated their legal system *i.e.,* common law system in this sub-continent.[26] The system infiltrated in this sub-continent was, and still is, adversarial in nature where dispute is involved between two litigating parties, one making claim or seeking redress against the other and the other opposing such claim or resisting such redress.[27] In the adversarial system, judges act as neutral arbiters or umpires. They do not initiate and decide a case unless that is brought before them by a person who has suffered a legal injury. The foundation of this rule of *locus standi* is on the *laissez faire* theory of the state where the state spends its time to maintain law and order and defend the country from external aggression and having little or no attention to do well-being of the citizens of the state.[28]

The traditional colonial Anglo-Saxon adversarial system of the administration of justice is not justiciable as it fails to adapt to new social demands. Hussain expressed the view that this system is not appropriate for a society which is not just unequal but where economic and social differences are well-known, as the weaker sections of the society do not get judicial relief. Such a system of litigation is also inapt to resolve the issues of social or economic concerns of the community at large.[29] Bhagwati J. says:

> Anglo-Saxon law is transactional, highly individualistic, concerned with an atomistic justice incapable of responding to the claims and demands of collectivity, and resistant to change. Such law was developed and has evolved in an essentially individualistic society to deal with situations involving the private right/duty pattern. It cannot possibly meet to challenge raised by these new concerns for the social rights and collective claims of the underprivileged.[30]

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26 Patwari, A.B.M. Mafizul Islam, *Legal System of Bangladesh*, Dhaka, 1991, at p. 1.

27 *People's Union for Democratic Rights vs. Union of India*, AIR 1982 SC 1473 (popularly known as the Asiad case).

28 Hoque, Kazi Ebadul, *Evolution of Public Interest Litigation in Bangladesh*, JATI Journal, Vol. 1, 2002, Dhaka, at p. 11.

29 Hussain, Faqir, "Public Interest Litigation in Pakistan", in PLD Journal, 1993, pp. 72-83, at p. 80.

30 Bhagwati, PN, "Judicial Activism and Public Interest Litigation", Columbia Journal of Transnational Law, Vol. 23, 1984-85, pp. 561-577, at p. 570.

There was an intense endeavour on the part of the judges to meet the social rights,[31] and collective and individual claims of the disadvantaged segments of society. And the seed of public interest litigation, as one of the exceptions to the Anglo-Saxon adversarial system of the administration of justice, were sown in India by the Supreme Court of India for the purpose of providing access to justice to the weaker, poor and deprived segments of the society.[32] It is evolved by the Court "on the plinth of equal justice."[33] In Indian jurisprudence, Justice Krishna Iyer in *Mumbai Kamgar Sabha vs. Abdulbhai*[34] introduced the concept of public interest litigation (without giving it a nomenclature). Iyer said:

> Our adjectival branch of jurisprudence, by and large, deals not with sophisticated litigants but the rural poor, the urban lay and the weaker societal segments for whom law will be as added terror if technical mis-descriptions and deficiencies in drafting pleadings and setting out the cause-title create a secret weapon to non-suit a part. Where foul play is absent, and fairness is not faulted, latitude is a grace of processual justice. Test litigations, representative actions, pro bono publico and like broadened forms of legal proceedings are in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the real issues on the merits by suspect reliance on peripheral, procedural shortcomings...Public interest is promoted by a spacious construction of locus standi in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualisation of the right to invoke the higher courts where the remedy is shared by a considerable number, particularly when they are weaker. Less litigation, consistent with fair process, is the aim of adjectival law...[35]

This spacious construction of the traditional rule of standing is now well established in India. In *Fertilizer Corporation Kamagar Union vs. Union of India,*[36] workers challenged the legality and justifiability of the sale of

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31 Social rights may be equated to 'Civic Justice'. Shah, Nasim Hassan, "Public Interest Litigation as a means of Social Justice", in PLD Journal, 1993, pp. 31-34, at p. 33.

32 It is said that the judges pioneering public interest litigation in India were influenced by the American development. See Agrawala, S K, *Public Interest Litigation in India: A Critique*, New Delhi, 1985, at p. 8.

33 Choudhury, Asad Hossain, "A New Concept in the Constitutional Aspect: Public Interest Litigation", in BLD Journal, 1996, pp. 16-23, at p. 16.

34 AIR 1976 SC 1455, at 1458.

35 Similar views were expressed in *Sunil Batra vs. Delhi Administration*, AIR 1980 SC 1579; Municipal Council, *Ratlam vs. Vardichand*, AIR 1980 SC 1622; *Azad Rickshaw Pullers vs. Punjab*, AIR 1981 SC 14.

36 AIR 1981 SC 344.

redundant or retired plant and equipment of Sindri Fertilizer Factory by the Fertilizer Corporation of India. In this case, the question arose. Have the workers *locus standi*? The Court treated the matter as public interest and held that the workers had *locus standi* to come to the Court. Krishna Iyer J. observed:

> Law, as I conceive it, is a social auditor and this audit function can be put into action only when someone with real public interest ignites the jurisdiction. We cannot be scared by the fear that all and sundry will be litigation-happy and waste their time and money and time of the Court through false and frivolous cases.[37]

He also held that public interest litigation is a part of the process of participatory justice and standing in civil litigation must have liberal reception at the doors of the court.[38]

Krishna Iyer J. further added:

> We have no doubt that in a competition between courts and streets as dispenser of justice, the rule of law must win the aggrieved person and wean him from the lawless street. In simple terms, *locus standi* must be liberalised to meet the challenges of the times, *ubi jus ibi remedium* must be enlarged to embrace all interests of public-minded citizens or organisations with serious concern for conservation of public resources and the direction and correction of public power so as to promote justice in its triune facets....[39]

The concept of public interest litigation was vividly explained in the case of *S.P. Gupta vs. Union of India*,[40] popularly called *Judge's Transfer* case. In this case, some Advocates of different High Court Bar Associations filed petitions challenging the action of the government in transferring some Judges of the High Courts and non-confirmation of sitting Additional Judges of High Courts. The question was whether the lawyers had *locus standi*? The Court held that petitioners had *locus standi* to challenge the action of the government and observed:

> the Court interpreted the potential public injury in such a case as the loss of faith in the rule of law and a concurrent loss of confidence in the democratic institutions of the government. But if no specific legal injury is caused to a person or a determinate class or group of persons, by the act or omission of the State or any public authority and the injury is caused only to public interest, the question arises as to who can maintain an action for vindicating

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37 Ibid., at 354.

38 Ibid., at 355.

39 Ibid., at para 37.

40 Supra note 15.

> the rule of law and setting aside the unlawful action or enforcing the performance of the public duty. If no one can maintain an action for redress of such public wrong or public injury, it would be disastrous for the rule of law, for it would be open to the State or public authority to act with impunity beyond the scope of its power or in breach of a public duty owed by it. [41]

The Court also held that where judicial redress is sought for legal injury to a person or to a determinate class of persons who, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, are unable to approach the Court for relief, any member of the public can maintain an application seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. [42] In cases where the action or inaction of the state or a public authority results in violation of some provision of the constitution or the law and causes public injury, *i.e.*, to the public in general as distinguished from a particular person or determinate class of persons, any member of the public having sufficient interest can maintain an action for judicial redress for public injury and seek observance of such constitutional or legal provision. [43]

The Court also said:

> Today a vast revolution is taking place in the judicial process; the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights....The only way in which this can be done is by entertaining writ petitions and even letters from public-spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose constitutional and legal right has been violated but who by reason of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief. [44]

The Court also developed the yardstick of sufficient interest in this case. The Court held that what is sufficient interest to give standing to a member of the public in general would have to be determined by the Court in each individual case. It is impossible for the Court to lay down any rule or guiding principle for the purpose of defining or delimiting sufficient interest. It has necessarily to be left to the discretion of the Judge. Because in a modern complex society which is seeking to bring about transformation of its social

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41 Ibid.

42 Ibid.

43 Ibid.

44 Ibid.

and economic structure and trying to reach social justice to the vulnerable segment of the people by creating new social, collective 'diffuse' rights and interests imposing new public duties on the State and other public authorities infinite number of situations are bound to arise which cannot be imprisoned in a rigid mould or a procrustean formula. The Judge who has the correct social perspective will be able to decide, without any difficulty, whether a member of the public moving the Court in a particular case has sufficient interest to initiate the action.[45]

In a number of later cases the Supreme Court of India gave standing to the public-spirited organisations for bringing matters of grave public importance where there were no particularly affected persons, or where there were, the affecting persons were unable to seek judicial redress on account of various resource constraints. For instance, a petition filed by a public-spirited organisation complaining of different provisions of labour laws was held maintainable.[46] The Court also granted standing to the public-spirited individuals or organisations in the cases of rights of pensioners,[47] release of bonded labourers,[48] ragging of junior students by senior students,[49] the practice of issuing promulgation of ordinances on large scale as being fraud on the Constitution of India.[50] The Judges issued

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45 Ibid.

46 Supra note 27. In this case Justice Bhagwati held: "Public interest litigation...is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unedressed. That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of government." Ibid. at pp. 1476-1477.

47 *DS Nakara vs. Union of India*, AIR 1983 SC 130.

48 *Bandhua Mukti Morcha vs. Union of India*, supra notes 13.

49 *State of Himachal Pradesh vs. A Parent of a Student of Medical College*, supra note 13.

50 *D.C. Wadhwa vs. State of Bihar*, AIR 1987 SC 579.

directions to construct public latrines,[51] to rehabilitate victims of Bhagalpur building case,[52] not to keep delinquent children in regular jails,[53] to take steps for mitigating poverty,[54] to pay certain amount to the victims suffered irreversible damage to their eyes,[55] to do post-mortem examination,[56] to make inquiry in respect of sexual exploitation of blind girls in blind school,[57] to report whether juvenile prisoners were kept separately,[58] to preserve life of every injured brought for medical treatment.[59] Issues dealt with the Court involved scheduled caste,[60] sexual exploitation of under-trial juveniles,[61] under trial juveniles in prison since eight years without trial,[62] constitutional rights of inmates of protective homes,[63] illegal detention for two to three decades,[64] safety, security and comfort to people by Railway authorities,[65] trafficking of children by foreigners,[66] detention of children and women pilgrims during army action in Golden Temple,[67] pollution by limestone quarries and closure thereof,[68] eviction of pavement dwellers without rehabilitation,[69] use of land by Municipal Corporation for commercial purpose contrary to law,[70] road

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51 *Municipal Council, Ratlam vs. Verdhichand and others,* AIR 1980 SC 1622.

52 *Khatri vs. State of Bihar,* AIR 1982 SC 1167.

53 *Supreme Court Legal Aid Committee vs. Union of India,* (1989) 2 SCC 325.

54 *Kishen vs. State of Orissa,* AIR 1989 SC 677.

55 *A.S. Mittal vs. State of U.P.,* AIR 1989 SC 1570.

56 *Jagat Singh vs. Delhi Admn.,* 1989 Supp (2) SCC 100.

57 *Praful Kumar Sinha vs. State of Orissa,* AIR 1989 SC 1783.

58 *Sanjay Suri vs. Delhi Admin.,* 1989 Supp (2) SCC 511.

59 *Parmanand Katara vs. Union of India* (1990) 1 SCC 613.

60 *Akil Bharatiya Soshit Karamschri Sangh (Railway) vs. Union of India,* AIR 1981 SC 298.

61 *Munna vs. State of U.P.,* AIR 1982 SC 806.

62 *Kadra Pahadiya vs. State of Bihar,* AIR 1982 SC 1167.

63 *Dr. Upendra Baxi vs. State of U.P.* (1983) 2 SCC 308.

64 *Veena Sethi vs. State of Bihar,* AIR 1983 SC 339.

65 *Nalla Thampy vs. Union of India,* AIR 1984 SC 74.

66 *Lakshmi Kant Pandey vs. Union of India,* AIR 1984 SC 469.

67 *Kamaladevi vs. State of Punjab,* AIR 1984 SC 1895.

68 *Rural Litigation and Entitlement Kendra vs. State of U.P.,* AIR 1985 SC 652.

69 *Olga Tellis vs. Bombay Municipal Corporation,* AIR 1986 SC 180.

70 *Forward Construction Co. vs. Prabhat Mandal,* AIR 1986 SC 391.

facility to poor and Harijans,[71] illegal contract of liquor,[72] children below eighteen years kept in jail,[73] danger due to poisonous gas released from a factory,[74] physically and mentally retarded children kept in jail,[75] tampering with mark-sheet of the Chief Minister's daughter,[76] withdrawal of prosecution against the Chief Minister,[77] compensation for death and injuries to backward class people,[78] pollution and ecological disbalance,[79] death by starvation,[80] allotment of a space reserved for a park to a private hospital.[81]

The Court is now no longer a mere arbiter or umpire. Instead it undertakes factual investigation in appropriate cases. Thus the Court becomes close to the continental model.[82] And it also becomes an enforcement agency.[83]

Indian judgments of public interest litigation have immensely influenced a number of common law based legal system.[84]

In Pakistan

In Pakistan, the weaker segments of society owing to their economic or social disadvantaged position remain cut off from the rest of the society.[85]

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71 *State of H.P. vs. Umed Ram Sharma,* AIR 1986 SC 847.

72 *Chaitanya Kumar vs. State of Karnataka,* AIR 1986 SC 825.

73 *Sheela Barse (I) vs. Union of India,* AIR 1986 SC 1773.

74 *M.C. Mehta vs. Union of India* (1986) 2 SCC 176.

75 *Sheela Barse (II) vs. Union of India,* AIR 1987 SC 656.

76 *Shivajirao Patil vs. Mahesh Madhav Gosavi,* AIR 1987 SC 294.

77 *Sheonandan Paswan vs. State of Bihar,* AIR 1987 SC 877.

78 *Sharma vs. Bharat Electronics Ltd.,* AIR 1987 SC 1792.

79 *M.C. Mehta (II) vs. Union of India,* AIR 1988 SC 1115.

80 *Kishan Patnayak vs. State of Orissa,* AIR 1989 SC 677.

81 *Bangalore Medical Trust vs. B.S. Muddapa,* AIR 1991 SC 1902.

82 See Mahajan, R.K., "Public Interest Litigation: Court's Role as Administrators and Social Dimensions", AIR Journal, 1995, pp. 49-54.

83 See generally Cassels, Jamie, "Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?" American Journal of Comparative Law, Vol. 37, 1989, pp. 495-519.

84 See Rafiquazzaman, Muhd., "Public Interest Litigation in Bangladesh a Case Study", Bangladesh Journal of Law, Vol. 6, nos. 1 & 2, 2002, pp. 127-144, at p. 131.

85 Khan, Mansoor Hassan, "The Concept of Public Interest Litigation and Its Meaning in Pakistan", in PLD Journal, 1992, pp. 84-95, at p. 92.

In order to protect their interests, it was necessary to introduce the concept of public interest litigation in Pakistan. And in the late 1980s, this concept developed there.[86] In Pakistan, public interest litigation has become an integral part after the pronouncement of judgment in *Benzir Bhutto* v *Federation of Pakistan*.[87] Benzir Bhutto as Co-Chairperson of the Pakistan People's Party filed a petition in the Supreme Court of Pakistan under Article 184(3) of the Constitution, which says that the Supreme Court has power to make an order if it considers that a question of public importance with reference to the enforcement of fundamental rights which are guaranteed in the Constitution is involved. The State argued that the petitioner was not an aggrieved person and so she did not have standing to sue. The Supreme Court of Pakistan did not accept this argument and declared that the exercise of power of the Supreme Court under Article 184(3) is not dependent only at the instance of the "aggrieved party" in the context of adversarial proceedings and the traditional rule of *locus standi* can be dispensed with and procedure available in public interest litigation can be made use of it, if it is brought to the Court by the person acting *bona fide*.[88] The Court also held that the rationale behind the traditional litigation, which, of course, is of an adversarial character in which the only person wronged can initiate proceedings of a judicial nature for redress against the wrong-doer, is "to limit it to the parties concerned and to make

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86 Qureshi said: "Before the advent of public interest litigation, in particular, a poor person had to face great difficulties in getting relief because either he had no money to engage a Counsel or he was residing in a far-flung area." Qureshi, Rashid Akhtar, Public Interest Litigation-Prospects & Problems, in PLD Journal, 1994, pp. 95-97, at p. 95. PIL is an attempt by the Courts to equalise the social and economic differences between litigants. Alam, Ahmad Rafay, "The Law of Public Interest Litigation in Pakistan" in Menski, Werner et al. (eds.) Public Interest Litigation in Pakistan, London and Karachi, 2000, pp. 22-63, at p. 51. Laue stated that the jurisprudential basis of public interest litigation in Pakistan consists of three elements: secular human rights guaranteed in the chapter on fundamental rights, the directive principles of state policy, and Islamic precepts as provided in the objective resolution. These are contained in the Constitution of Pakistan. Laue, Martin, "Islam and Judicial Activism: Public Interest Litigation and Environmental Protection in the Islamic Republic of Pakistan", in Boyle, Alan and Anderson, Michael (eds.), Human Rights Approaches to Environmental Protection, Oxford, 1996, pp. 285-302, at p. 294. Khan. Massoor Hassan, Public Interest Litigation: Growth of the Concept and Its Meaning in Pakistan, Karachi, 1993, provides the comprehensive development of the concept of public interest litigation in Pakistan.

87 PLD 1988 SC 416.

88 Ibid., at 491.

the rule of law selective to give protection to the affluent or to serve in aid for maintaining the status quo of the vested interests."[89] The Court further also observed:

> This is destructive of rule of law, which is so worded in Article 4 of the Constitution as to give protection to all citizens. The inquiry into law and life cannot, in my view, be confined to the narrow limits of the rule of law in the context of constitutionalism, which makes a greater demand on judicial function. Therefore, while construing Article 184(3), the interpretative approach should not be ceremonious observance of rules or usages of interpretation, but regard should be had to the object and the purpose for which this Article is enacted, that is, this interpretative approach must receive inspiration from the triad of provisions which saturate and invigorate the entire Constitution, namely the Objective Resolution (Article 2-A), the Fundamental Rights and the directive principles of State Policy so as to achieve democracy, tolerance, equality and social justice according to Islam.[90]

The Chief Justice of Pakistan, Muhammad Haleem said:

> I am of the view that the adversary procedure, where a person wronged is the main actor if it is rigidly followed, as contended by the learned Attorney General, for enforcing the Fundamental Rights, would become self-defeating as it will not then be available to provide "access to justice to all" as this right is not only an internationally recognised human right but has also assumed constitutional importance as it provides broadbased remedy against the violation of human rights and also serves to promote socio-economic justice which is pivotal in advancing the national hopes and aspirations of the people permeating the Constitution and the basic values incorporated therein, one of which is social solidarity, i.e., national integration and social cohesion by creating an egalitarian society through a new legal order.[91]

In *Darshan Masih vs. State*,[92] the Chief Justice received a telegram alleging bonded and forced labour and illegal detention of workers by employers in brick-kiln industry. The court treated the matter as a case falling in the category of public interest litigation.

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89 Ibid., at 489-490.

90 Ibid., at 489.

91 Ibid.

92 PLD 1990 SC 513.

In a judicial conference held in Quetta, the judges declared a procedural framework to deal with public interest litigation petitions. In this conference, the judges welcomed PIL cases.[93]

In Bangladesh

Over the years, the Supreme Court of Bangladesh has maintained that judicial redress is available only to a person whose right has been infringed.[94] "As a result all legal wrongs and injuries of non-personal nature went unredressed. Administrative abuses and legal wrongs continued unabated. This procedure reflected the *laissez faire* approach to judicial remedy, oblivious altogether of the fact that in our socio-economic realities the *laissez faire* assumptions are totally irrelevant and non-existent as large scale state intervention in the economy has been continually increasing."[95]

In the *Kazi Mukhlesur Rahman vs. Bangladesh and another,*[96] popularly known as *Berubari* case, the Court went very close to the doctrine of public interest litigation.[97] In this case, the petitioner, an advocate, challenged the legality of the Delhi Treaty of 1974 entered into between the Government of the People's Republic of Bangladesh and the Republic of India signed on May 16, 1974 by the Prime Ministers of the two countries for the demarcation of land boundary between the two countries. In this case the court considered the question of *locus standi* of the petitioner. The Court held:

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93 Quetta Conference, "Quetta Conference held at Quetta on August 15 and 16, 1991: Memorandum of Proceedings" in PLD Journal, 1991, pp. 126-152. As regards this conference, Raza says: "This was the first collective step by the superior judiciary to spread public interest litigation among all strata of society." Raza, Mehreen Kasuri, "Reviewing the Law of Public Interest Litigation in Pakistan" in Menski, Werner et al. (eds.) "Public Interest Litigation in Pakistan", supra notes 86, pp. 64-105, at p. 71.

94 The strict construction of the traditional rule of standing was inhibiting the development of public interest litigation in Bangladesh. Hoque, Quazi Reza-ul, "Social Values Through Litigation: The Case of Bangladesh", in Cooper, Jeremy and Trubek, Louise G (eds.), "Educating for Justice: Social Values and Legal Education", Dartmouth, 1997, pp. 222-236, at p. 234.

95 Ahmed, Syed Istiaq, *An expanding Frontier of Judicial Review - Public Interest Litigation*, supra note 2, at p. 38.

96 26 DLR (AD) (1974) 44.

97 Ahmed, Syed Istiaq, *An expanding Frontier of Judicial Review – Public Interest Litigation*, supra note 2, at p. 43. Kamal says that the old concept of locus standi was given liberal contour in the Berubari case "before public interest litigation gained a foothold in India." Kamal, Mustafa, *Bangladesh Constitution: Trends and Issues*, Dhaka, 1994, at p. 162.

> The fact that the appellant is not a resident of the southern half of South Berubari Union No. 12 or of the adjacent enclaves involved in the Delhi Treaty need not stand in the way of his claim to be heard in this case. We heard him in view of the constitutional issue of grave importance raised in the instant case involving an international treaty affecting the territory of Bangladesh and his complaint as to an impending threat to his certain fundamental rights guaranteed by the constitution, namely, to move freely throughout the territory of Bangladesh, to reside and settle in any place therein as well as his right of franchise... They pervade and extend to every inch of the territory of Bangladesh stretching upto the continental shelf. [98]

As regards this judgment, Hoque says that, of course, that decision is no authority for the proposition that a person whose own fundamental rights have not been violated is entitled to maintain as action for the purpose of providing judicial remedy to the persons whose fundamental rights have been infringed. So in that case, the Court did not make general rule for liberalising the doctrine of *locus standi* even in public interest. And the Court continued to follow the traditional rule of standing. [99]

In *Bangladesh Sangbadpatra Parisad vs. Bangladesh*, [100] the association of owners of newspapers, registered under the Societies Registration Act, 1860 challenged an award given by the statutory Wage Board. The High Court Division dismissed the petition on the ground that the association had no *locus standi* as it was not a "person aggrieved". [101] The Appellate Division upheld the view of the High Court Division. The Appellate Division observed:

> In our Constitution, the petitioner, seeking enforcement of a Fundamental Right or constitutional remedies, must be a "person aggrieved". Our Constitution is not at *pari materia* with the Indian Constitution on this point. The Indian Constitution, either in Article 32 or in Article 226, has not mentioned who can apply for enforcement of Fundamental Rights and constitutional remedies. The Indian Courts only honoured a tradition in requiring that the petitioner must be an "aggrieved person." The emergence in India of *pro bono publico* litigation, that is litigation at the instance of a public spirited citizen espousing causes of others, has been facilitated by the absence of any constitutional provision as to who can apply for a writ…Therefore, the decisions of the Indian jurisdiction on public interest litigation are hardly apt in our situation. We must confine ourselves to asking whether the petitioner

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98 Supra note 96, at 53.

99 Supra note 28, at p. 18.

100 43 DLR (AD) (1991) 126.

101 *Bangladesh Sangbadpatra Parisad vs. Bangladesh*, 43 DLR (1991) 424.

> is an "aggrieved person", a phrase which has received a meaning and dimension over the years. [102]

The judgment of the Court "was actually unfavourable to the development of public interest standing. [103]

However, in *Bangladesh Retired Government Employees Welfare Association and others vs. Bangladesh*, [104] the High Court Division of the Supreme Court of Bangladesh for the first time supported public interest litigation. In this case, an association of retired government employees challenged a law involving pensions. The Court expressed the view that since the association has an interest in ventilating the common grievance of all its members who are retired government servants, this association is a 'person aggrieved'.

In the landmark case *Dr. Mohiuddin Farooque vs. Bangladesh*, [105] (FAP 20) B B Roy Chowdhury J. says:

> …the expression "person aggrieved" means not only any person who is personally aggrieved but also one whose heart bleeds for his less fortunate fellow-beings for a wrong done by the Government or a local authority in not fulfilling its constitutional or statutory obligations. [106]

In the leading judgment Mustafa Kamal J observes:

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102 Supra note 100, at 155.

103 Ahmed, Naim, *Public Interest Litigation: Constitutional Issues and Remedies*, Dhaka, 1999, at p. 126. But as regards this observation, Islam says: "Certain commentators have interpreted this judgment as being authority for the proposition that PIL is not permissible under the Constitution of Bangladesh, given its express provision of the term 'a person aggrieved'. However, a close reading of this judgment, which summarily rejected a petition for special leave to appeal from the judgment of the High Court Division, indicates that it is based on the ground that the association of newspaper owners (the appellant) did not constitute a disadvantaged group. This reading of the judgment would support the view that in an appropriate case, the Court could entertain such as application if it were submitted on behalf of a disadvantaged person or group…In my view, the Appellate Division of the Supreme Court of Bangladesh has not as yet established any final bar to the expansion of the concept of locus standi…The Sangbadpatra Parisad case itself indicates that the door for pro bono publico litigation is not yet closed." Islam, M. Amir-ul, "A Review of Public Interest Litigation Experiences in South Asia" in Hossain, Sara, Malik, Shahdeen and Musa, Bushra (eds.), "Public Interest Litigation in South Asia: Rights in Search of Remedies", supra note 16, pp. 55-78, at p. 59.

104 46 DLR (1996) 426.

105 17 BLD (AD) (1997) 1.

106 Ibid., at 31.

> The traditional view remains true, valid and effective till today in so far as individual rights and individual infraction thereof are concerned. But when a public injury or public wrong or infraction of a fundamental right affecting an indeterminate number of people is involved it is not necessary, in the scheme of our Constitution, that the multitude of individuals who have been collectively wronged or injured or whose collective fundamental rights have been invaded are to invoke the jurisdiction under Article 102 in a multitude of individual writ petitions, each representing his own portion of concern. In so far as it concerns public wrong or public injury or invasion of fundamental rights of an indeterminate number of people, any member of the public, being a citizen, suffering the common injury or common invasion in common with others or any citizen or an indigenous association, as distinguished from a local component of a foreign organisation, espousing that particular cause is a person aggrieved and has the right to invoke the jurisdiction under Article 102. It is, therefore, the cause that the citizen-applicant or the indigenous and native association espouses which will determine whether the applicant has the competency to claim a hearing or not. If he espouses a purely individual cause, he is a person aggrieved if his own interests are affected. If he espouses a public cause involving public wrong or public injury, he need not be personally affected. The public wrong or injury is very much a primary concern of the Supreme Court, which in the scheme of our Constitution is a constitutional vehicle for exercising the judicial power of the people. [107]

As regards FAP 20 judgment, Ahmed said: "It opened the gate for PIL and removed all doubts and confusions about the validity of PIL cases. [108]

In Bangladesh, Public interest litigation is filed in the cases of challenge to the Government to monitor medicines that might cause harm to children, [109] protection of slum dwellers from summary eviction, [110] nuisance during election campaign, [111] undertaking necessary measures to control pollution, [112] objecting to the power of doctors to strike, [113]

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107 Ibid., at 19.

108 Ahmed, Naim, *Public Interest Litigation: Constitutional Issues and Remedies,* supra note 103, at p. 45.

109 *Syed Borhan Kabir vs. Bangladesh and others,* unreported Writ Petition 701/1993.

110 *Rokeya Khatun vs. Sub-Divisional Engineer and others,* unreported Writ Petition 1789/1993.

111 *Dr. Mohiuddin Farooque vs. Election Commission & others,* Writ Petition 186/1994.

112 *Dr. Mohiuddin Farooque vs. Bangladesh & others,* Writ Petition 891/1994.

113 *Dr. Mohiuddin Farooque vs. Bangladesh & others,* unreported Writ Petition 1783/1994.

controlling environmental pollution created by motor vehicles,[114] partial propaganda in BTV,[115] boycotting of parliamentary sessions by political parties,[116] importation of milk conaining a high concentration radioactivity,[117] use of Bangladeshi children as Camel Jockeys in the Arab States,[118] eviction of persons taking shelter during flood in a park after receding of the flood,[119] RAJUK's (Capital Development Authority) action to contruct a road and carve out some residential plots,[120] eviction of sex workers from the brothel,[121] RAJUK's power to convert the land ear-marked for amenities into residential plots on the plea of providing residential plots to the growing number of town dwellers,[122] prohibition of advertisement of tobacco products in the newspapers, magazines, television, radio, etc.,[123] forcible eviction of the prostitutes from their residence and putting them in Vagrant Home,[124] eviction of slum dwellers in government land without notice and making alternative arrangement for their rehabilitation,[125] release of the prisoners who were languishing in the jail about five years even after serving out their sentence,[126] decision of the government to prohibit use of polythene bags,[127] to declare call for hartal as illegal,[128] some provisions of Sections 54 and 167 of the Code of Criminal Procedure, 1898 are inconsistent with the fundamental rights,[129]

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114 *Dr. Mohiuddin Farooque vs. Bangladesh & others,* Writ Petition 300/1995.

115 *Dr. Mohiuddin Farooque vs. Bangladesh & others,* Writ Petition 466/1995.

116 *Anwar Hossain Khan vs. Speaker of Bangladesh Sangsad Bhavan and others,* 47 DLR (1995) 42.

117 *Dr. Mohiuddin Farooque vs. Bangladesh & others,* 48 DLR (1996) 438.

118 *Master Issa N. Farooque & others vs. Bangladesh and others,* Writ Petition 278/1996.

119 *Giasuddin vs. Dhaka Municipal Corporation,* 49 DLR (1997) 199.

120 *Mrs. Parveen vs. Chairman, Rajdhani Unnayan Kartripakha,* 18 BLD (1998) 114.

121 *Sultana Nahar, Advocate vs. Bangladesh & others,* 18 BLD (1998) 361.

122 *Mohsinul Islam vs. RAJUK,* 52 DLR (2000) 8.

123 *Professor Nurul Islam vs. Bangladesh,* 52 DLR (2000) 413.

124 *Bangladesh Society for the Enforcement of Human Rights (BSEHR) vs. Bangladesh,* 53 DLR (2000) 1.

125 *Aleya Begum vs. Bangladesh,* 53 DLR (2001) 63.

126 *Faustina Pereira vs. State,* 53 DLR (2001) 414.

127 *K.M. Asadul Bari vs. Bangladesh,* 22 BLD (2002) 129.

128 *Khondaker Modarresh Elahi vs. Bangladesh,* 54 DLR (2002) 47.

129 *BLAST and others vs. Bangladesh,* 55 DLR (2003) 363.

Procedure

The traditional rule of standing suggests that judicial redress is only available to the persons who can be said to be 'aggrieved' or 'adversely affected' in the strict sense of the term by any action or omission by the respondents.[130] Now, any member of the public having sufficient interest can maintain an action for enforcement of the constitutional or legal right of a person or class of persons who by reason of poverty, disability, helplessness, or being in socially or economically disadvantaged position are unable to enter the portals of the courts for judicial redress. In short, any member of the public having no personal gain may approach the Court for relief. This could be done by filing a normal petition[131] or writing letter or telegram to the Court.[132] In this context, the observation of the Supreme Court of India is worth quoting:

> Where the weaker sections of the community are concerned, such as undertrial prisoners languishing in jails without a trial inmates of the Protective Home in Agra or Harijan workers engaged in road construction in the Ajmer District, who are living in poverty and destitution, who are barely eking out a miserable existence with their sweat and toil, who are helpless victims of an exploitative society and who do not have easy access to justice, this Court will not insist on a regular writ petition to be filed by the public

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130 See Thakker, *C.K., Administrative Law*, Lucknow, 1992, at p. 587.

131 Associations, Organization, Law Professors, Advocates, Journalists or Individuals Interested can file such petition in common cause. See Munir, Muhammad, *Constitution of the Islamic Republic of Pakistan*, Vol. II, Lahore, 1996, at p. 984. See also supra note 3, at p. 10.

132 In India, Court entertained letter as a writ petition in *Sunil Batra vs. Delhi Administration*, AIR 1980 SC 1579, *People's Union for Democratic Rights vs. Union of India*, supra note 27. In Pakistan, instance is *Darshan Masih vs. the State*, supra note 92. In Bangladesh, this practice has not yet been developed and adopted. See Menski, Werner, "Public Interest Litigation: A Strategy for the Future", in Menski, Werner et al. (eds.) Public Interest Litigation in Pakistan, supra notes 86, pp. 106-132, at p. 118. In People's Union for *Democratic Rights vs. Ministry of Home Affairs*, AIR 1985 Delhi 268, at 290, the Court said: "Entertaining letters, telegrams and articles in newspapers as petitions by the…Court may have been unthinkable a decade ago but this procedure has come to stay in cases involving public interest litigation." It is mentionable that the Court treats letter as writ petition, "when that letter refers to intolerable suffering of the poor and mute sections of the society because of non-implementation of welfare legislation by callous and indifferent administration." Mukhoty, Govinda, Public Interest Litigation: A Silent Revolution, SCC Journal, 1985, pp. 1-11, at p. 5. See also Faruque, Gazi Omar, *Method of Judicial Control of Administrative Action in Bangladesh: Principles and Practice*, Dhaka, 2005, at p. 311.

> spirited individual espousing their cause and seeking relief for them. The Court will readily respond even to a letter addressed by such individual acting pro bono publico. [133]

The Court further held that there are rules made by this Court prescribing the procedure for bringing an action before this Court for redress. And they require various formalities to be gone through by a person seeking remedy in Court. But it should be borne in mind that procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The Court would therefore cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of the public-spirited individual as a writ petition and initiate PIL cases on the basis of such communication. [134]

It would not be right or fair to expect the person acting *bona fide*, for the enforcement of fundamental right of a person or class of persons who cannot approach to the Court for relief due to poverty or disability or socially or economically disadvantageous position, to incur expenses out of his own pocket for going to a lawyer and preparing a regular writ petition for being filed in Court. In such a case, a letter addressed by him can legitimately be regarded as an appropriate proceeding. [135] The doors of the shrines of justice are thus thrown open, through what Baxi calls, "epistolary jurisdiction." [136]

It is expected that letters or any other communication should be addressed to the Chief Justice and his companion Justices, and not to any particular judge. A private communication by a party to a particular Judge over any matter is improper and may create embarrassment for the Court and the Judge concerned. [137]

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133 *S.P. Gupta vs. Union of India*, supra note 15, at 189.

134 Ibid.

135 *Bandhua Mukti Morcha vs. Union of India*, supra note 13, at 814.

136 Baxi, Upendra, *Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India*, 8-9 Delhi Law Review, 91, 93 (1979-80).

137 *Bandhua Mukti Morcha vs. Union of India*, supra note 13, at 848. But in *M.C. Mehta vs. Union of India*, supra note 13, at 1090, it was held: "We do not think that it would be right to reject a letter addressed to an individual justice of the Court merely on the ground that it is not addressed to the Court or to the Chief Justice and his companion Judges…If the courts were to insist that the letters must be addressed to the Court or to the Chief Justice and his companion Judges, it would exclude from the judicial ken a large number of letters and in the result, deny access to justice to the deprived and vulnerable sections of the community.

Where public interest litigation is concerned, the Court may, on the basis of a newspaper report/comment, proceed *suo motu* [138] and initiate PIL cases. [139] "The practice of taking *suo motu* cognizance of the complaints and grievances of the people and cases of excess and injustices published in the newspapers, has given new dimension to the jurisdiction of the court which paved the way for a new process of administration of justice…This has given a new lease of life and a ray of hope to the aggrieved persons because, for multiple reasons, they remained unwilling to approach the court or chose to remain anonymous as their exploiters or the administrative authorities doing injustice to them enjoy and exert gigantic powers." [140] But *suo motu* action by the judge is not free from controversy. The judge does not know the motivation of a person who wrote newspaper report/comment. The judge is not in a position to verify the veracity of the report, before he commences the proceedings. [141]

Pitfalls in Public Interest Litigation

The real purpose of entertaining public interest litigation by the Court is "to provide easy access to justice to the weaker sections of humanity and to combat exploitation and injustice and to secure to the underprivileged segments of society their social and economic entitlements; to redress public injury, enforce public duty, protect social rights, vindicate public interest and rule of law, effect access to justice to economically weaker class and meaningful realisation of fundamental rights." [142] *Locus standi* is available only to a person who acts *bona fide* and without personal interest in the proceeding of public interest litigation and such person is entitled to approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions. [143] It is apprehended that public interest litigation is likely to be abused by parties to satisfy their personal

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We are therefore of the view that even if a letter is addressed to an individual Judge of the Court, it should be entertained, provided of course it is by or on behalf…a class of deprived or disadvantaged persons."

138 The expression 'suo motu' means 'on his own motion' as opposed to 'on an application by a party'. *State of Andhra Pradesh vs. JPC Simhachalam Company* (1972) 29 STC 279, at 284.

139 Instance of suo motu case is *State vs. Deputy Commissioner*, Satkhira, 45 DLR (1993) 643.

140 Kesari, U.P.D., *Lectures on Administrative Law*, Allahabad, 1998, at p. 330.

141 See supra note 4, at p. 274.

142 See Basu, Durga Das, *Shorter Constitution of India*, Nagpur, 2001, at p. 839.

143 *Ashok Kumar Pandey vs. State of West Bengal* (2003) 9 Scale 741.

interest. To prevent this apprehension/danger, the Court must test the *bona fide* character of the petitioner [144] and should not allow itself to be activised at the instance of busybody or meddlesome interloper and must reject his application at the threshold, whether it is in the form of a letter or a regular writ petition. [145] In other words, standing may be denied if the person does not approach the Court for redress with clean hands. [146] As regards busybody or meddlesome interloper, Sarkaria J. said:

> They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. [147]

So, the intention of the petitioner deserves serious consideration in the proceeding of public interest litigation. One of the criterions to determine the intention of the petitioner is to enquire his credibility. [148] The past record of the petitioner also plays important role in determining sufficiency of the intention of the petitioner. [149] In this context, Mahmudur Rahman J. said:

> Merely because one is a Secretary-General or a member of any Human Rights organisation is not sufficient ground to hold that he has a sufficient interest in

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144 Menski, Werner, "Public Interest Litigation: Deliverance from All Evils?" Bangladesh Journal of Law, Vol. 6, nos. 1 & 2, 2002, pp. 1-9, at p. 8.

145 S.P. Gupta vs. Union of India, supra notes 15. See also Ahmed, Naimuddin, "Public Interest Environmental Litigation", JATI Journal, Vol. III, 2003, pp. 17-20, at pp. 17-18.

146 Jain, M.P. and Jain, S.N., *Principles of Administrative Law*, New Delhi, 2003, at p. 503.

147 Jasbhai Motibhai Desai vs. Roshan Kumar (1976) 1 SCC 671, at 683.

148 See *B. Kishtaiah vs. Government of India* (1998) 4 ALT 738.

149 Ahmed says: "the track record principle can help to determine the sufficiency of the interest of the petitioner, but it can not be the only ascertaining factor. There are several good reasons. First, once there is a public wrong or injury manifestly apparent, it will amount to denial of justice if the petition is rejected merely on the ground of lack of 'track record'. The victims can not be made to suffer indefinitely just because the petitioner did not help them on previous occasions. Second, a rigid application of the track record formula will tend to restrict concerned individual citizens approaching the court. PIL, in such a case, will be used only by the powerful, well-resource and foreign funded NGOs…Third, the track record formula will tend to stifle growth of PIL in new fields wherein we do not yet have organisations working or contributing." supra note 103, at p. 140.

> the field. Where a writ petitioner fails to bring anything on record to satisfy the court that he consistently has been endeavouring to obtain remedy for a section or group of people in the event of violation or threatened violation of their any legal or constitutional rights whose abject poverty, illiteracy and socially disadvantaged position bar access to Court for redress of injustice, and the petitioner or his organisation fails to satisfy that he or his organisation has contributed in order to secure justice or to restore or enforce any of the human rights in the field for which he has been espousing cause of those persons in the Court of law as a public spirited person such person or organisation can not be said to be a "person aggrieved"…for lack of sufficient interest in the field. [150]

Seriousness of the petitioner of public interest litigation also deserves consideration. In this regard, Chief Justice Mukharjee held that in public interest litigation cases, the Court must measure the seriousness of the petitioner and see whether he is actually the champion of the cause of the persons or groups he is representing. Public interest litigation must be accompanied by adequate judicial control so as to prevent this technique from being used as an instrument of coercion or other oblique motive. [151]

Justice Pathak expressed the view that "except in special circumstances, the document petitioning the Court for relief should be supported by satisfactory verification." [152]

Another pitfall is that PIL is likely to create the tremendous backlog of cases. In this context, Cooper said:

> PIL can rapidly become prisoner of its own success, as the scale of applications following high profile 'victories' clogs up the normal processes of the courts, and becomes crippling of the court system, both in time and in cost. [153]

In *Shri Sachindanand Pandey vs. State of West Bengal*, [154] the Court said that today, public-spirited litigant's rush to Courts to institute cases in profusion under this attractive name. In this case the Court warned that public interest litigation poses a threat to Court and public alike. Such cases and

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150 *Saiful Islam Dilder vs. Bangladesh*, 50 DLR (1998) 318, at p. 321.

151 *State of H.P. vs. Umed Ram Sharma*, AIR 1986 SC 847.

152 *Bandhua Mukti Morcha vs. Union of India*, supra notes 13. See also Iyer, V.R. Krishna, *Judicial Justice: A New Focus towards Social Justice*, Bombay, 1985, at p. 143.

153 Cooper, Jeremy, "Public Interest Law Revisited", Bangladesh Journal of Law, Vol. 2, no. 1, 1998, pp. 1-25, at p. 8.

154 AIR 1987 SC 1109, at p. 1134.

now filed without any rhyme or reason. If Court do not restrict the free flow of such cases in the name of public interest litigation, the traditional litigation will suffer. [155]

It is, therefore, necessary to delineate the parameters of public interest litigation, otherwise "the Courts will be unnecessarily flooded with such litigation and the process, will wean away those genuine sufferers for whom it is really meant." [156] In this connexion, the observation of Banerji is worth quoting:

> PIL constitutes a significant step forward in the present day judicial system. While it is true that this new approach has provided the courts with a much greater responsibility for making justice available to the disadvantaged sections of society, it has also overloaded the courts. Law's delay is not unknown, specially in South Asia, and this additional responsibility of the courts will render the burden heavier. The courts should therefore entertain such litigation with great care and caution. Justice ought to be made available to those who cannot afford the luxury of litigation where there is a definite violation of rights as enshrined in the Constitution and the laws of the land. Every single instance of PIL need not be entertained, and only those which are genuine ought to be given due consideration. [157]

In spite of so many dangers and pitfalls, public interest litigation has contributed lot for the advancement of public good. [158]

Conclusion

Access to justice is an intrinsic problem facing a greater number of people of Bangladesh, India and Pakistan. They have had no access to justice on account of their abject poverty and economic backwardness. In other words, access to justice has been limited to the rich. In the context of growing demand to protect the impoverished, deprived and disadvantaged segments of society, the Court discarded the traditional rule of *locus standi* which confines access to judicial process only to a person who has suffered a legal injury by reason of violation of his legal right or a right legally protected and replaced it (the rule of *locus standi*) with the notion that any member of the public, having no personal gain or oblique motive, could

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155 Ibid, at 1136.

156 Jain. D.C., *The Phantom of "Public Interest",* AIR Journal, 1986, pp. 85-89, at p. 87.

157 Banerji, Umesh C., "Environmental Protection through Public Interest Litigation" in Hossain, Sara, Malik, Shahdeen and Musa, Bushra (eds.), "Public Interest Litigation in South Asia: Rights in Search of Remedies", supra note 16, pp. 123-131, at p. 128.

158 Mahajan, R.K., "Public Interest Litigation: Court's Role as Administrator and Social Dimensions", AIR Journal, 1995, pp. 49-54, at p. 53.

invoke the jurisdiction of the Court, on an aggrieved person's behalf, if the aggrieved person, by reason of his poverty, ignorance, social or economic disadvantaged position, was unable to vindicate his rights or seek judicial redress. This procedure is termed as public interest litigation.

Public interest litigation is invented by the Court with a noble cause intended to make basic human rights meaningful to the deprived and vulnerable segments of the community and to assure them social and economic justice. [159] It "symbolizes a new judicial concern for the liberation of the poor and the downtrodden from bondage and exploitation and seeks gradual improvement in the administration of law." [160]

> PIL is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens…Court must be careful to see that a body of persons or member of public, who approaches the court is acting *bona fide* and not for personal gain or private motive or political motivation or other oblique consideration. [161]

That means, public interest litigation "does not confer a general and untrammeled right to indulge in frivolous litigation without any genuine cause of action and necessity of seeking redress of some real grievance." [162] So, a writ petitioner who comes before the Court for redress in public interest must come not only with clean hands but also with a clean heart, clean mind and clean objective. [163]

Before entertaining public interest litigation, the court must contemplate whether it is in a position to confer remedy to the cause of litigation and it cannot shrug its responsibilities of alleging its non-implementation by the authorities concerned. [164]

A proper utilisation of the public interest litigation technique can greatly contribute to enforce the rights of the poor and vulnerable segments of the community. If public interest litigation is indiscriminately

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159 *Bandhua Mukti Morcha vs. Union of India,* supra note 13, at p. 811. n

160 Singh, Parmanand, *Vindicating Public Interest through Judicial Process: Trends and Issues,* 10 Indian Bar Review, 1983, at p. 691.

161 Supra note 135, at p. 746.

162 Muntizma Committee, Al-Mustafa Colony (Regd.), *Karachi and others vs. Director, Katachi Abadis, Sindh and others,* supra note 11.

163 *Ashok Kumar Pandey vs. State of West Bengal* (1989) 1 SCC 678.

164 Supra note 4, at p. 337.

used in all kinds of cases, dream of enforcing rights of the impoverished and downtrodden segments of the people may end in smoke. The State or public authority which is arrayed as a respondent in public interest litigation should, in fact, welcome it, as it would help it to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be prime concern of the State or the public authority. [165]

[165] Supra note 27, at p. 1478.