



Defending Human Rights through Public Interest Litigation: Role of Human Rights Activists in Bangladesh

Advocate Mahbubul Islam

Two hundred years ago, in 1803, one of these men of vision, Chief Justice Marshall of the United States of America, stated "It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule." More recently, Lord Woolf, The Lord Chief Justice of England and Wales, underscored the transformation that has taken place regarding the role of the judiciary and the process of judicial decision making. Lord Woolf demonstrated the crucial links among the Rule of Law, the Role of the Judiciary, and the Principles of Governance;

"Public interest Litigation", in simple words, means, litigation filed in a court of law, for the protection of "Public Interest", such as pollution, Terrorism, Road safety, constructional hazards etc. PIL is not defined in any statute or in any act. Judges to consider the intent of public at large have interpreted it. Although, the main and only focus of such litigation is only "Public Interest" there are various areas where a PIL can be filed. For example, violation of basic human rights of the poor, content or conduct of government policy, compel municipal authorities to perform a public duty, violation of religious rights or other basic fundamental rights etc. It was during 1980s that the public interest litigation emerged as part of the legal aid movement primarily aimed at protecting the rights of the weaker sections of the community, such as women, children, physically and mentally handicapped, minority and thelike².

The term "PIL" originated: in the United States in the mid-1980s. Since the nineteenth century, various movements in that country had contributed to public interest law, which was part of the legal aid movement. The first legal aid office was established in New York in 1876. In the 1960s the PIL movement began to receive financial support from the office of Economic Opportunity, this encouraged lawyers and public-spirited persons to take up cases of the under-privileged and fight against dangers to environment and public health and exploitation of consumers and the weaker sections. However, it was not easy to convince the judges giving relief through PIL, as it was a new phenomenon in our legal system. But, the legal and social activists were relentless in their efforts and finally enabled the progressive minded judges to interpret the Constitution in line with the public intent.

International laws and Constitutional backing: in this region, the new and liberal interpretation of the fundamental rights found in Part III and the Directive Principles of State Policy in Part IV of the Constitution of India. They are drawn from the

revolutionary documents like the American Bill of Rights and the Universal Declaration of Human Rights. Articles 32 and 228 of the Constitution that give power to any citizen to move the Supreme Court or High Courts wherever there is an infringement of a fundamental right?

History in India: PIL had begun in India towards the end of 1970s and came into full bloom in the 80s. Justice V.R. Krishna Iyer and Justice P.M. Bhagwati, honourable Judges of the Supreme Court of India. They delivered some landmark judgements which opened up new vistas in PIL.

History in Pakistan: and scope in constitution, Article 184(3) of the Constitution of Pakistan 1973 provides the concept of protection of Fundamental Rights through the use of Article 199 of the Constitution. Hence, the Supreme Court of Pakistan can pre-empt the jurisdiction of High Courts under Art. 199 whenever "a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved." The power of Art. 184 (3) is "original jurisdiction" of the Supreme Court to enforce fundamental rights.

History in Sri-Lanka: Lalanath De Silva was a public interest litigator and advocate in Sri Lanka for over two decades. Pioneering the growth of public interest law in the area of the environment, he appeared in many of Sri Lanka's leading environmental cases on behalf of victims, communities and non-governmental organizations. He expressed, when I first started working on environmental issues in Sri Lanka, 30 years ago, we were trying to combat pollution from industrial plants. In order to do this responsibly, we had to purchase books, go to libraries, and travel hundreds of miles to speak with university professors who knew something about the subject. Now, because of the Internet and other advances in communications technology, everyone is plugged into the same data sources. We have the ability to instantly converse with colleagues around the globe about specific issues. We have greatly reduced the amount of time needed to assemble knowledge, take a reasoned position, and advocate for change.

Bangladesh adopted a progressive Constitution: in 1972 with a parliamentary system of government, and making the judiciary the guardian of the constitution to protect the fundamental rights of the people. In Bangladesh there is an emerging legal empowerment sector involving many different organizations engaged in a multitude of justice related interventions, each one working towards the goal of increasing access to justice and empowerment for women and other marginalized groups.

Attempts to introduce PIL in Bangladesh started in 1992. Hence, it seems that advancement of PIL coincided with the restoration of democracy in the country in 1991. Public Interest Litigation got great fillip with the emergence of Bangladesh Environmental Lawyers Association (BELA). Question of locus standi has finally been settled by the Appellate Division in the Flood Action Plan case brought by Dr. Mohiuddin Faruk, founder secretary of BELA holding that any member of the public suffering a common wrong, common injury or common invasion of fundamental rights of an indeterminate number of people or any citizen or an indigenous association espousing such cause has locus standi.

After that decision Human Rights And Peace For Bangladesh (HRPB), Society of Justice and many others organizations as well as public spirited persons brought public interest litigations before the High Court Division for redress of the grievances of the deprived sections of people.

PIL seeks to establish the state's responsibility for its positive acts resulting in violation of constitutional rights and to impute responsibility for the consequences of state inaction. PIL has addressed a wide-ranging set of civil society concerns, relating to both individual rights and the broader development agenda. PIL has itself become a part of the struggle to institutionalize democracy. Eminent lawyer Dr. Kamal Hossain explores the prospects of PIL from the fundamental principle of state policy in his article "Interaction of Fundamental Principles of State Policy and Fundamental Rights." He observes that countries adopting constitutions in recent decades, especially in South Asia, have distinguished non justifiable Fundamental Principle of State Policy from justiciable fundamental human rights in their constitutions.

The Constitution backing for PIL: is grounded around section 102 of the Constitution. Section 102 allows the court to pass an order where there has been a breach of fundamental rights. These are rights set out in Part III of the constitution (and include for example: equality before the law, right to life and personal liberty, and freedoms of movement, assembly, association, thought and conscience). Section 102 allows the court to pass an order requiring the government to do what is required by law, and not to do what is forbidden by law to do. "An aggrieved person" can make the application to the court. It is the wide interpretation by the courts of the term "an aggrieved person" - to include legal aid, human rights, or development organizations - that has opened up public interest litigation. These groups can as a result petition the court on behalf of workers, or other affected groups of people.

Once upon a time, only the aggrieved party had the locus standi (standing required in law) so that he could personally knock the doors of justice and seek remedy for his grievance and the non-affected persons had no locus standis, could not do so. Ultimately, there was hardly any link between the rights guaranteed by the Constitution and the laws made by the legislature on the one hand and the vast majority of people especially illiterate classes, on the other. This scenario gradually changed by the modern interpretation of the judiciary that tackled the problem of 'access to justice' by people through public interest litigation (PIL) by alterations made in the requirements of locus standi and of party aggrieved.

Courageous human rights Activist in Bangladesh: the President, Human Rights And Peace for Bangladesh (HRPB) and glims of PIL, initiatives as stated. With the recent course in litigation in Bangladesh, however, PIL has come under some criticism. But, for people like court seems to ensure one's basic rights and providing legal aid ensuring justice public in general. It is a relatively new trend and is thus attracting people's attention, some negative, but it is for the good of the people and society. The impact of Legal Aid Programs in poverty areas is so strong that they are credited with diffusing the tensions in the inner city and helping to prevent riots.⁵

A momentum of institutional progress: PIL was not easy to convince the judges giving relief through PIL, as it was a new phenomenon in our legal system. But, the legal and social activists were relentless in their efforts and finally enabled the progressive minded judges to interpret the Constitution in line with the public intent. And it was 1996, when the Supreme Court discovered that our Constitution not only validates but also mandates a PIL approach. As a consequence, about 250 number of PIL have been filed over the last few years. These PILs include cases involving illegal arrest and detention, historical milestone, police atrocities, environmental and consumers' matters, poverty and health related problems, rights of children and women, rights of minority and indigenous people etc. Human rights activist the President of HRPB and its Associate's human rights lawyers have been fighting for ensuring human rights through PIL as legal tools as such;

Upholding historical fact: 'challenging the distortion of history in the documents of the independence war', on June 21, 2009, the High Court ruled that Sheikh Mujibur Rahman had proclaimed the nation's independence on March 26, 1971. Petitioner Dr. MA Salam expressed "It was a historical fact and there should have been no debate about it."

Ensuring accountability, transparency and good governance: While government bodies exist to protect these rights and provide these facilities, people have had to seek legal intervention in matters as basic as the supply of pure and safe food and water. The courts have become the last place of refuge for deprived citizens, that belief HRPB has been going to court continuously demanding basic services. That realizes, if government and administrative bodies fail to do what they are legally bound to do, people or organizations can go to court in the interest of the public to make them perform their duties. Eminent jurist and constitutional expert Dr. Kamal Hossain observes that some people are over-enthusiastic about going to court. "Others, however, are forced to, due to the failure of different bodies to deliver and fulfill their responsibilities. The courts, rather than always dealing with them directly, must create pressure on the relevant organs to make them perform," he says.

Issues brought before the Court: for ensuring justice as such; Saving Dhaka's lifeline of four rivers has become an issue in itself, requiring serious intervention of the courts. Encroachment, construction of illegal structures on the banks and even in the middle of the rivers and pollution have all put them at risk, causing the court to order the deployment of police to guard the banks of Buriganga. Not only rivers but even the seaside has to be saved by the courts. With the cancellation of plot allotments on the beaches of Cox's Bazaar in order to maintain ecological balance to take measures to protect the environment.

Injury and death hazards: of humungous billboards—many of them unauthorized—all over as well as outside the city. After an exchange of writ petitions and stay orders, the High Court ordered the dismantling of unauthorized and hazardous billboards, a matter which should have been monitored by relevant city authorities.

Ensuring safety and sanctity: the courts have also had to take responsibility for upholding the inviolability of the Shaheed Minar, asking government to take steps so that functions and meetings are not held in the bedi or main part. The courts have had to order for the protection of Lalbagh Fort, a historic site on which multi-storied buildings have been constructed. Barrister M. Amir-Ul Islam, too, sees the rise in PIL as a healthy trend. “It is a part of the process of a growing democracy, encouraging rule of law and governance, says the eminent jurist. “ Every new democracy as it appears has gone through the process; for example, in India the role of PIL has reached its Zenith.”

Comments and Issues: while public interest litigation may be a sign of increased social consciousness in a growing democracy; it is also a clear sign of bad governance in that society. While critical analysis of public interest litigation is understandable, given our social reality, the practice is a positive one. Ensuring good governance, where those responsible for ensuring rights and services to the people fulfill their duties, can only reduce it.

Conclusion: Public interest Litigation is a topic with high profile due to its importance, relevance and necessity in access to justice for mass people.

1. The concept of Public Interest Litigation as has emerged into the judicial administration of Bangladesh is yet to mature with the concept of justice as guaranteed by the Constitution although it is not defined in any statute or act. Judges to consider the intent of public at large have interpreted it.
2. At the same time as, the main and only focus of such litigation is only ‘public Interest’ there are various areas where public Interest Litigation can be filed, PIL does not work in isolation.
3. Hope of the people has been growing in the direction of access to justice, progressively being confident upon the judicial system of the apex court of the country. It is a part of the greater movement for legal aid or a constituent of the greater theme of public interest law.
4. So in the hand of the social activist lawyer, PIL is one of many strategies that the concerned citizens and activists in Bangladesh are now using in combination.
5. PIL is retaining a close nexus with the press; the voluntary sector organization is increasingly using new strategies including publication, lobbying and representation.
6. Future of PIL in Bangladesh is very luminous and an institutional framework should be developed, we demand from progressive government.

