



**Public Interest Litigation: *Locus Standi* and
justiciability: the case of *National Board of Revenue v.
Abu Saeed Khan and others***

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To get a relief from the court of law, a person must show that he is adversely affected by the impugned action or that his own right has been violated, however this rule later on extended to that of ‘*sufficient interest*’ in the issue in question. Further, the issue for determination, raised by the person must be a justifiable issue to be resolved through the judicial process. The traditional view of *locus standi* and that of justiciability have been expanded to a considerable extent in the field of public interest litigation (PIL) as an exception to the general rule.

Public interest litigations are those petitions moved before the court for the enforcement of public duty and protection of public interest by public-spirited person(s) or organization(s) in furtherance of the group interest even though they may not be directly injured in their own rights or interest.

The jurisdictions of USA, England, India, Pakistan and Bangladesh, amongst others, have accepted the concept of PIL and granted adequate reliefs in various fields of public interest by liberalizing the traditional rule of *locus standi*.

PIL in India

In India, the liberalization of the rule of *Locus Standi* came out of the following considerations¹:

- (1) to enable the Court to reach the poor and the disadvantaged sections of society who are denied their rights and entitlements,
- (2) to enable individuals or groups of people to raise matters of common concern arising from dishonest or inefficient governance, and
- (3) to increase public participation in the process of constitutional adjudication.

It appears that in India, the late 1970s and early 1980s was dominated by PIL on behalf of oppressed people for the enforcement of human rights within the scope of fundamental rights guaranteed by the Constitution. The liberal rules of *locus standi* enabled the courts to reach victims of injustice. Justice Bhagwati in *P.U.D.R v. India*² held:

¹ S.P. Sathe, *Judicial Activism in India*, p.205 (Second Edition, Oxford University Press)

² AIR 1982 SC 1473 @1476

“we wish to point out with all the emphasis at our command that public interest litigation which 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 a large number of people who are poor, ignorant or in socially or economically disadvantaged position should not go unnoticed and unredressed.”

In India, the horizon of public interest litigation was widened later on and included the claims against violations of human rights on behalf of the victims of political oppression, social tyranny and economic exploitation made by public-spirited persons or organizations- for instances – against allegations of the killing of innocent people or suspected accused through false encounters³, the death of persons in police custody because of torture⁴, inhuman working conditions in stone quarries⁵, for controlling occupational health hazards⁶, to get the CBI to enquire into the Gajraula nuns rape case⁷ and against allegation of police atrocities⁸ and so on.

PIL was extended for the recognition of group rights. The Supreme Court of India also entertained a PIL petition by the workers of a public sector company challenging the sale of a plant by its management causing colossal loss to the public treasury relaxing the traditional view of *locus standi*⁹.

In *S.P.Gupta v President of India*¹⁰ and *Supreme Court Advocates on Record Association v India*¹¹ the Supreme Court of India entertained PIL petitions from lawyers for securing the independence of the judiciary as a basic feature of the constitution. However, Justice Bhagwati in *S.P.Gupta v President of India*¹² extended the *locus standi* to any member of the public having sufficient interest and held:

³ *Chaitanya kalbagh v. U.P.*(1989) 2 SCC 314

⁴ *Dilip K. Basu v. West Bangal* (1997) 6 SCC 642

⁵ *Bnadhua Mukti Morcha v. India* ; AIR 1992 SC 38

⁶ *C.E.R.C v. India*; AIR 1995 SC 922: (1995) 3 SCC 42

⁷ *Gudalure M.J.Cherian v. India* ; (1992) 1 SCC 397

⁸ *Arvinder Singh Bagga v. U.P.*; AIR 1995 SC 117: (1994) 6 SCC 565

⁹ *Fertilizer Corporation Kamger Union v. Union of India*; AIR 1981 SC 344: (1981) 1 SCC 568

¹⁰ AIR 1982 SC 149; (1981) Supp. SCC 87

¹¹ (1993) 4SCC 441: AIR 1994 SC 268

¹² AIR 1982 SC 149; (1981) Supp. SCC 87

“We would, therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from the breach of public duty or from violation of some provision of the constitution or the law and seek enforcement of such public and observance of such constitutional or legal provision.”

Since the late 1980s, the main focus of public interest litigation seems to have shifted towards prevention of government lawlessness, nourishment of the doctrine of rule of law and protection of the environment. References may be given to *M.C. Mehta v India*¹³ for protection and conservation of wild life, *M.C. Mehta v India*¹⁴ against degradation of the Taj Mahal, *M.C. Mehta v India*¹⁵ against pollution of the river Ganges by Calcutta tanneries, etc.

The traditional concept of mandamus has been changed and its scope has increased under PIL. Mandamus, under the traditional sense, is issued to compel the government or public authority to do what it is legally obliged to do. However, the mandamus under PIL, is issued to mandate the government or the public authority to do what it is entirely within its discretion to do or not to do. Indian Courts has applied it in many cases. In *Parmajit Kaur v. Punjab*¹⁶, mandamus was issued against the allegation of violation of human rights and the CBI was asked to investigate it, mandamus was issued on a petition against non-functioning of medical equipment in government hospitals¹⁷, petition for improving the conditions of service of the members of subordinate judicial service¹⁸ and so on.

PIL Experience in Pakistan

In Pakistani Jurisdiction, the concept of PIL was first fully embraced by the Supreme Court in the case of *Benazir Bhutto v President of Pakistan*¹⁹. The jurisdiction of the Supreme Court under Article 184(3) of the Constitution of Pakistan is open-ended and thus proceedings could be maintained by an individual whose fundamental rights are infringed. Scope of PIL has been widened in Pakistani jurisdiction especially in field of rule of law and constitutionalism. Recently the Supreme Court in the infamous Panama Papers case, applied the concept of PIL widening the rule of *locus standi*²⁰. Pursuant to this PIL mandamus, the Prime Minister, Nawaz Sharif had to give up his public office following the judgment.

Position of PIL in Bangladesh

¹³ (1997) 3 SCC 715

¹⁴ (1997) 2 SCC 353

¹⁵ (1997) 2 SCC 411

¹⁶ (1996) 7 SCC 20

¹⁷ *PUCL, Delhi v. India*, AIR 1997 Del.395

¹⁸ *All India Judges Association v India* (1998) 2 SCC 204

¹⁹ (1997) PLD 1988 SC 388

²⁰ *Imran Ahmad Khan Niazi v Mian Muhammad Nawaz Sharif and nine others (Panama Papers Scandal)*: Constitutional Petition No.26 of 2016

The Supreme Court of Bangladesh fully embraced the concept of PIL by widening both the rules of *locus standi* and justiciability in the case of *Dr. Mohiuddin Farooque v. Bangladesh*²¹. The Appellate Division held:

“...when a public injury or a 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 has been collectively wronged or injured or whose collective 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 organization, espousing that particular cause is a person aggrieved and has the right to invoke the jurisdiction under Article 102”.

The interpretation of ‘person aggrieved’ is given as that the person not being personally affected may have sufficient interest in the subject matter of dispute²². A public functionary owing a public duty to the public in general, every citizen has sufficient interest in the performance of that public duty²³. It appears that in the case of *Dr. Mohiuddin Farooque v. Bangladesh* above the Appellate Division expanded the *locus standi* in PIL cases holding that if it concerns public wrong or public injury or invasion of the 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 can invoke Article 102 of the Constitution.

In our jurisdiction PIL cases were successfully allowed by the Apex Court in various circumstances for protection of fundamental human rights and rule of law, securing basic structure of the Constitution and constitutional provisions, protection of environment, challenging lawlessness of the government and public authority, protection of the court from scandalizing, etc. The Supreme Court thus liberalized the rule of *locus standi* for addressing the public wrong and public injury. In *Ekushey Television Ltd v. Chowdhury Mahmood Hasan*²⁴ Appellate Division entertained a PIL petition for securing transparency and accountability as rule of law in the government action, though the injury caused by the breach of duty of the public authority was not to any specific or determinate class or group of people or to a particular individual but to the public in general.

²¹ 49 DLR (AD)1, para 48

²² *Nasiruddin v. Secretary, LGRD*, (1999) 51 DLR (AD)213

²³ *Parvin Akhter v RAJUK*, 1998 BLD 117

²⁴ (2002) 54 DLR (AD)130

PIL was successfully allowed for protecting the environment²⁵, challenging the appointment of Secretary for Law, Justice and Parliamentary Affairs²⁶, the constitutionality of Emergency Powers Ordinance and Rules of 2007²⁷, determination of the warrant of precedence²⁸, direction to the Election Commission to seek material information about election candidates through sworn affidavits²⁹, among others.

Human Rights and Peace for Bangladesh (“HRPB”)³⁰, a leading organization working with PIL, has successfully obtained judgment in 62 cases before the Supreme Court for various issues concerning public interest.³¹ The most discussed case conducted by President of this organization is the Constitution 16th Amendment Case.³²

Some of their various decided cases are, amongst others, as follows:

1. Writ Petition No. 324 of 2009 – Ensuring Pure Food
2. Writ Petition No. 1190 of 2009 – Stop Vat in health service
3. Writ Petition No. 3503 of 2009 – Save the rivers Buriganga, Balu, Turag and Shitalakkha
4. Writ Petition No. 6235 of 2006 – Protection of Azimpur Graveyard
5. Writ Petition No. 9329 of 2008 – Arrangement of Earthquake rescue equipment
6. Writ Petition No. 1053 of 2011 – Recovery of Supreme Court Land
7. Writ Petition No. 945 of 2011 – Protection of Uttara Lake in Dhaka
8. Writ Petition No. 1079 of 2010 – Sanctity protection of Central Shahid Minar at Dhaka
9. Writ Petition No. 3676 of 2010 – Save the water of Buriganga River and to stop the sewerage line
10. Writ Petition No. 626 of 2011 – Protection of Cox Bazaar sea beach area
11. Writ Petition No. 5959 of 2011 – Stop hill cutting at Cox Bazaar
12. Writ Petition No. 6930 of 2010 – Stop the use of tannery waste in poultry food
13. Writ Petition No. 1802 of 2009 – Protection of Lalbagh Fort Land
14. Writ Petition No. 7862 of 2011 – Protection of Labsha Masjid as an archeological site

National Board of Revenue v. Abu Saeed Khan and others

It is apparent from the cases mentioned above that in Bangladeshi jurisdiction both the concepts of *locus standi* as well as justiciability (scope) have been given liberal meaning and thus PIL has come forward to deliver redress from many public wrongs. However, in

²⁵ *Parvin Akhter v RAJUK*, 1998 BLD 117; *Dr. Mohiuddin Farooque v. Bangladesh*, (1998) 50 DLR 84

²⁶ *Bangladesh v. Md. Aftabuddin*, 2010 BLD (AD) 1

²⁷ *Sultana Kamal v. Bangladesh*, (2009) 14 BLC 141

²⁸ *Bangladesh v. Md. Ataur Rahman and Others*, BD Legal Times Nov 2016, AD 46

²⁹ *Abdul Momen Chowdhury v. Bangladesh*; WP No. 2561 of 2005 (unreported)

³⁰ <http://www.hrp.org.bd/>

³¹ All judgments are available in HRPB’s official website- (www.).

³² 2017 (Special Issue) BLT (AD) 01

a recent case, *National Board of Revenue vs. Abu Saeed Khan and others*³³, the Appellate Division took a narrower view in relation to the concept of *locus standi* in PIL cases.

The Appellate Division (judgment delivered by S.K. Sinha CJ) in the above case, prescribed some criteria for the High Court Division to follow in entertaining petitions in public interest litigation.

“38 – We reemphasize the parameters within which the High Court Division should extend its discretionary jurisdiction in entertaining a PIL.

- 1. Before entertaining a petition the Court will have to decide the extent of sufficiency of interest and the fitness of the person invoking the discretionary jurisdiction.*
- 2. The Court which is considering the question of bonafide in a particular case will have to decide as to why the affected party has not come before it and if it finds no satisfactory reason for non-appearance of such affected party, it may refuse to entertain the petition.*
- 3. If a petition is filed to represent opulent members who were directly affected by the decision of the Government or Public Authority, such petition would not be entertained.*
- 4. The expression ‘person aggrieved’ used in Article 102 (1) means not any person who is personally aggrieved but one, whose heart bleeds for the less fortunate fellow beings for a wrong done by any person or authority in connection with the affairs of the Republic or a Statutory Public Authority .*
- 5. If a person making the application on enquiry is found to be an interloper who interferes with the action of any person or authority as above which does not concern him is not entitled to such petition.*
- 6. The Court is under an obligation to guard that the filing of a PIL does not convert it into a publicity interest litigation or a private interest litigation.*
- 7. Only a public spirited person or organization can invoke the discretionary jurisdiction of the Court on behalf of such disadvantaged and, helpless persons.*
- 8. The Court should also guard that its processes are not abused by any person.*
- 9. The Court should also guard that the petition is initiated for the benefit of the poor or for any number of people who have been suffering from common injury but their grievances cannot be redressed as they are not able to reach the Court.*

³³ 18 BLC (AD) (2013) 116

10. *It must also be guarded that every wrong or curiosity is not and cannot be the subject matter of PIL.*
11. *No petitions will be entertained challenging the policy matters of the Government, development works being implemented by the Government, Orders of promotion or transfer of public servants, imposition of taxes by the competent authority.*
12. *The Court has no power to entertain a petition which trespasses into the areas which are reserved to the executive and legislative by the Constitution.*
13. *A petition will be entertained if it is moved to protect basic human rights of the disadvantaged citizens who are unable to reach the Court due to illiteracy or monetary helplessness.*
14. *Apart from the above, the following are some of the categories of cases which will be entertained:*
 - a) *For the protection of neglected children.*
 - b) *Non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of labour laws (except in individual cases).*
 - c) *Petitions complaining death in jail or police custody, or caused by law; enforcing agencies.*
 - d) *Petitions against law enforcing agencies for refusing to register a case despite there are existing allegations of commission of cognizable offences.*
 - e) *Petitions against atrocities on women such as, bride burning, rape, murder for dowry, kidnapping.*
 - f) *Petitions complaining harassment of torture of citizens by police or other law enforcing agencies.*
 - g) *Petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wild life.*
 - h) *Petitions from riot victims. ”*

An overview

It can safely be deduced from the criteria mentioned in this judgment that PIL can mainly be entertained in the case of serious violation of fundamental rights especially right to life and liberty, for group rights of least advantaged and for protection of environment. Clauses 7 and 9 of paragraph no. 38 of the judgment seem to have deviated from the earlier jurisprudence of *locus standi* developed by the Appellate Division in *Dr. Mohiuddin Farooque v. Bangladesh*³⁴ and *Ekushey Television Ltd v. Chowdhury Mahmood Hasan*³⁵. Subsequent decision of the Appellate Division dated 03.07. 2017 in

³⁴ (1997) 49 DLR (AD)1

³⁵ (2002) 54 DLR (AD)130

16th Amendment case³⁶, followed the principles of *Dr. Mohiuddin Farooque's* case since the same was concerned with the protection of independence of judiciary as basic feature of the Constitution.

Clause 11 of paragraph no.38 also seems not to be in the line of judicial principles as regards the scope of PIL enunciated in the *Dr. Mohiuddin Farooque* case. By the instant criteria, the redress against public wrong for the enforcement of the rule of law and petitions for protection of basic structure of the Constitution, against violation of the provisions of the Constitution, ensuring the independence of the judiciary, contempt of court for scandalizing the court³⁷ are left out. In other words, many successful PIL cases filed by HRPB and other public spirited people and organization can hardly be entertained if the above criteria are followed strictly. However, the Appellate Division in the case of *National Board of Revenue vs. Abu Saeed Khan and others* did not overrule the earlier decisions of the Appellate Division and therefore the principles expounded by the Appellate Division in the *Dr. Mohiuddin Farooque* case and other cases, pinnacle in their own regard, are still the governing and applicable principles in relation to *locus standi* and justiciability as the those principles were followed in the latest case of the 16th Amendment of the Constitution. Further during the hearing of 16th Amendment case in both the Divisions, the case of *National Board of Revenue vs. Abu Saeed Khan and others* was referred and both the Divisions were not inclined to accept the criteria specified therein. It is submitted that in the case of *National Board of Revenue vs. Abu Saeed Khan and others*, the PIL petition failed not on the ground of *locus standi* but for lack of justiciability. However, to determine the *locus standi* and justiciability in PIL cases, the court has to put its endeavor to find out as to whether the principles already accepted in our jurisdiction in the earlier cases are applicable in the given facts and circumstances of a particular case. The court also must guard against the interloper/busybody from bringing any action under PIL for oblique purpose.

³⁶ 2017 (Special Issue) BLT (AD) 01

³⁷ *Advocate Riaz Uddin Khan and Advocate K.M. Hassan V Mahmudur Rahman*; 63 DLR (AD)29