



Public Interest Litigations: Epistolary Jurisdictions May Be a Great Help For Upholding Fundamental Rights of The Poor of Bangladesh.

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Introduction:

In this article, we would discuss the epistolary jurisdiction and its impact on upholding the human rights of the poor within the scope of the Constitution of Bangladesh. However, to do so, it would be required to give some focus on Public Interest Litigations as well as the Fundamental Rights of the common people of Bangladesh.

“Public Interest Litigation” (hereinafter referred to as PIL) means litigation in the interest of public and not in the interest of the litigant himself. PIL is a concept of recent origin as evolved by the Indian Supreme Court on the plinth of equal justice by giving liberal interpretation to the long-standing rigid concept of *locus standi* (right to sue). Secondly, to understand the fundamental rights, it is meant only those rights as are protected by the Constitution of Bangladesh in its Part III.

The Constitution of Bangladesh being the supreme law of the land has incorporated in itself the solemn expression of the will of the people at one hand and on the other hand, to ensure justice to the people, it has protected some human rights giving constitutional recognition to them as well as keeping effective mechanism in case of any violation of them by way of enforcement of those rights by invoking writ jurisdiction under article 102 of the Constitutional of Bangladesh.

Of the five writs, two writs namely *habeas corpus* and *quo-warranto* can be invoked by any person according to the provisions of the article 102 of the Constitutional of Bangladesh. Hence, there remains literal bar to public in context of invoking other three kinds of writs which can only be invoked by any ‘aggrieved person’. A person is said to be aggrieved: i) when he has suffered a legal injury by reason of violation of his legal right or interest and ii) when he has shown that he has a direct personal interest in the act

which he challenges . In one of our Supreme Court cases, it was held that: it is now settled principle of law that Article 102 of the Constitution can be invoked only where the petitioner's right has undisputedly accrued under the Constitution or under any other legal instrument and such right has not been given effect to.

However, this barricade of 'aggrieved person' does not exist in India rather any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any violation of fundamental rights of such person or persons in the Supreme Court under Article 32 of Indian Constitution. Under Article 32 and 226 of the Indian Constitution, writ jurisdiction of the Supreme Court and the High Courts depends on their discretion. As a result, they can issue *suo moto* writs on the basis of a letter or information in a newspaper. In those contexts, PIL has reached to its pinnacle in India with a great success.

In Bangladesh PIL has undergone a hard time since its journey to *Dr. Mahiuddin Farooque's case*, which ultimately untied the procedural technicalities of *locus standi* and/or *aggrieved person*. The Constitution of Bangladesh uses the term 'any person aggrieved' not 'aggrieved party' or 'any person personally aggrieved'. The Constitution does not define the phrase: 'person aggrieved'. However, by the phrase it is meant 'a person who without being personally affected has sufficient interest in the matter in dispute'.

However, under the scheme of the Constitution of Bangladesh, there remains a question whether the Constitutional Courts can exercise writ jurisdiction on the basis of any letter or information or any news published in news paper as like as Indian Courts? The Constitution of Bangladesh does not contain of any definition of 'application' even it does not prescribe any specific method for preparing of it, so there is no bar to treat or convert letters as writ petitions. Invoking writ jurisdiction by a court itself on the basis of any letter or information or any news published in news paper is jurisprudentially called 'Epistolary Jurisdiction' the sprit of which is subsequently incorporated in the 'Supreme Court of Bangladesh (High Court Division) Rules 1973 (as amended up to 2012) by its rule 10 of Chapter XIA. The said rule 10 empowers the constitutional courts to treat any letter or report as an application under Article 102 of the Constitution subject to conditions that they are satisfied that those letters or reports contain news that a public wrong of grave nature has been occurred or is going to be occurred. Based upon Dr. Faustina Pereira's letter containing a news that illegal detention of 29 foreigners in Dhaka Central Jail even after expiry of the terms of sentence, the Hon'ble High Court issued *suo moto* rule which was made absolute with a direction to release those foreigners and others illegally detained in different jails. The majority people of Bangladesh being poor and lay

man, this mechanism may be a better instrument for upholding human rights of them as well as upholding the fundamental rights as enshrined in the Constitution.

The ‘Epistolary Jurisdiction’ can ensure enjoyment of some the very basic fundamental rights by the poor and lay man such as: right to protection of law, enforcement of fundamental rights and equality before law. On this point, this jurisdiction is *pro-bono publico* in nature. On the other hand, some critics think that it may invite judicial activism in the administration of justice, which should not be in strict sense. Some think that judicial activism should not lead the judges to transgress the limits of judicial functions nor attract them to intervene into executive policy decisions unless any act of the executive is violative of any provision of law or the Constitution.

Dr. Naim Ahmed, one of the constitutional experts talks about at least three tests to be satisfied to exercise ‘Epistolary Jurisdiction’, by the courts. Of them, violation of fundamental rights and denial of justice are major. The Courts may exercise it in the proper circumstances as an instrument for upholding the rights of the poor and thereby ensuring the enjoyment of those rights by them. This may advocate true sense of upholding of fundamental rights of the poor and unable. In this regards, some leading organizations such as Human Rights and Peace for Bangladesh (HRPB), BELA and ASK have been doing good jobs for the betterment of the poor. The Hon’ble High Court Division has also stretched its hand to help the destitute and poor.

To prepare this article, the writer has taken help from the texts and the reference books on Constitutional Law of home and abroad as well as different Law Reports, the Supreme Court of Bangladesh (High Court Division) Rules, 1973 and relevant law Journals. The writer acknowledges all of them in due respect and gratefulness.

