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Public Interest Litigation: A Functional Means to Ensure Social Justice

Md. Rabiul Islam*

Abstract

With the advancement of public rights beyond the traditional dominion of individualism and private right, public interest litigation as an effective legal proceeding is dominating the current legal plane in different names and shapes across the world. The ultimate objective of any branch of law relies on the virtual application in the course of proceedings, and in that regard, public interest litigation demonstrates its success by rendering justice to all, preferably to the disadvantaged people. The enormous outcomes of this inimitable litigation process drive against the state authority to internalise the attitude in formulating the legislations, upholding the greater interest of the nationals and restraining from the haughty and detrimental actions by abusing the entrusted power.

Introduction

Public interest litigation¹ being an important topic of constitutional and administrative law facilitates the procedures for ensuring social justice. PIL in different jurisdictions demonstrates interesting pattern but has come out from the traditional constraints. Initially, PIL can be regarded as a means to get redress for the poor and powerless people because the under privileged party can afford neither the best lawyers nor the resources available to his opposite party. So PIL might be considered as an effective way massively exercised in the second or third world countries although first world countries such as the United States of America, England, Canada, Australia offers different ideas for the origin and development of PIL because of their immense dependencies upon this well adopted modern litigation. The usefulness of PIL should be practised to a greater extent in least developed countries which are still fighting for democracy, rule of law and social justice because there the people as a whole or a segment of the society are often poor, ignorant, unorganised or afraid to approach the court personally. At present, PIL is found in every legal system in the world. The concept of PIL has been expanded with the advancement of human rights. Cooperation among the human rights organisations, journalists, judges, lawyers and the administration plays the key role for its progression. In my work, I have endeavoured to review the meaning,

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¹ Hereinafter mentioned as PIL.

background and explore the development, proceedings and the achievements of PIL in the field of social justice with the special reference of Bangladesh.

Etymological background of PIL

The urge to find out the etymological background of PIL drives us to search the constitutional and administrative terms used by the US law experts, whereas they used to denote PIL for the expression of *Public Interest Law*. Black's Law Dictionary preferred to use Public Interest Law instead of Public Interest Litigation and thereby PIL is depicted as "Legal practice that advanced social justice or other causes for the public good, such as environmental protection".² US jurists wanted to establish one kind of new law of procedure which does not work only to resolve the civil or criminal matters but also to work for providing the social justice. Following the same view Upendra Baxi has called it 'social justice litigation'.³ The elaboration of PIL was found changed through the threshold provided by Oxford English Dictionary⁴ whereas the phrase '*Public interest*' was meant 'the common well being also public welfare' and '*Litigation*' as 'a legal action including all proceedings therein, initiated in a court of law with the purpose of enforcing or seeking a remedy'. Black's Law Dictionary defined '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 class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected'. Whose interest will be, about that K J Aiyar wrote "Litigation that is instituted by a person, not to enforce his personal right, but on behalf of the public".⁵

Definition of PIL

In order to define Public Interest Litigation in *People's Union of Democratic Rights v Union of India*,⁶ Justice PN Bhagwati observed "Public interest litigation is essentially a co-operative effort on the part of the petitioner, the state or public authority and the Court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable section of the community and to reach social justice to them." For more clarification about the discussing subject we may note the observation of Prof. Jaffe as when a large group of people are

² Bryan A. Garner (2009) *Black's Law Dictionary*, 9th edition, WEST.

³ *Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India*, in *JUDGES AND THE JUDICIAL POWER* at 294.

⁴ 2nd edition vol. XII.

⁵ K J Aiyar (2001) *Judicial Dictionary- A Complete Law Lexicon*, 13th edition, Butterworths, India.

⁶ AIR 1982 SC 1473.

affected but there is none who is singled out, then one person on their behalf can go to the court. Justice Bhagwati asserted that PIL is the strategic arms and legal movement of the person to reach to the poor masses.

In respect of the objective of PIL, it has been explained by Kirpal, J. in *People's Union for Democratic Rights v Ministry of home Affairs*⁷ as "As I understand the phrase 'public interest Litigation', it means nothing more than 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 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." All the rights stand on the living position of human being except some intellectual property rights. So, life is the most fundamental thing in a traditional and political society. This basic thought gets its life where democracy prevails. In *Vineet Narain v Union of India*⁸ it is relatively seen as "Principles of public life are of general application in every democracy and one is expected to bear in mind while scrutinising the conduct of every holder of public office".

Public interest is definitely legal but extra-ordinarily means to take care the public laws. It is definitely technical but maintains some proceedings to provide social justice particularly normally to a class of people or the community at large having personal deficiency or on account of economic or social crisis or through state oppression are impeded from bringing the petition before the court of law.

Why PIL

Citizens' lives and their interests now-a-days over and over look for the judicial remedies. Contemporary legal thoughts and notions are said to be dominated by a package of rights produced in the eighteenth to twenty first century. Classical legal ideas concentrated on the rights to life, liberty, and property which are treated as 'preferred' freedoms. The terms 'equity' and 'efficiency' which got origin because of the hard and fast rules of common law were sought by PIL.⁹ Thus, the laws based on the principles of equity are knocked by this exceptional proceeding. But PIL is not free from limitations. The boundaries for PIL are being shown below-

⁷ AIR 1985 Delhi 268 at 290.

⁸ 1998 CrI J (1208) (SC), (1998) 1 Cur CrR 197, AIR 1998 SC 889.

⁹ Burton A Weisbrod (1978) "Conceptual perspective on the public interest: An economic analysis" in Burton A Weisbrod, Joel Handler and Neil K Komesar (eds.) (1978) *Public Interest Law: An Economic and Institutional Analysis*, Berkeley et al, University of California Press pp 4-29.

- (a) There must be the violation of constitutional or legal rights, entitlements or privileges or non-performance of constitutional or legal duties. (*Dr Mohiuddin Farooque v Bangladesh and others*)¹⁰
- (b) The courts are reluctant to do anything that the judicial mechanism is not designed to perform. (*Vincent Parikulangara v Union of India*)¹¹
- (c) The court initiates while it is possible to provide adequate remedy through judicial process. (*People's Union for Democratic Rights v Ministry of Home Affairs*)¹²
- (d) Before coming for PIL, alternative remedies at first should be exhausted.¹³

In a democratic society people submit their mandate to be governed by their representatives in their chosen way. We can get a very few number of countries where the nationals are satisfied with their governance. The success of a state government can be easily estimated by observing its judiciary. Potential judiciary needs fair and fearless working atmosphere. The independence of the administration of justice is being shaken heavily by the executive still at present though we are howling as the worshiper of the rule of law and accountable government. Subordinate courts in most of the countries of the world are not completely free from the influence of the executive. Comparatively, the upper courts discharge their judicial functions more smoothly than the lower courts. Among the secondary functions of the higher courts, issuing writ, *suo motto* or judicial review (special original jurisdiction/constitutional jurisdiction) keep great significance for preserving the rights of the people against the violation by the state authority. Several Asian countries' upper judiciary exercise the writ jurisdiction but in England this subject matter is conducted by the High Court of Judicature in England by the name of 'judicial review' excessively. Whatever the means of the states, it is inevitable that without preserving the effective procedures to get back the various basic rights of the people, the state cannot prove its welfare characteristics. The administration of justice should work properly with the cooperation of the efficient legislative and executive since *judicis est jus dicere non dare* (It is for the judge to administer, not to make laws). Lord Denning observed in *Padfield and Others v Minister of Agriculture, Fisheries and Food and Others*¹⁴ "Good administration requires that

¹⁰ 17 BLD (AD) (1997).

¹¹ 1987 2 SCC 165.

¹² AIR 1985 Delhi 268 at 281.

¹³ Dr. Naim Ahmed (1999) *Public Interest Litigation: Constitutional Issues and Remedies*, 1st edn BLAST, p. 59.

¹⁴ [1968] AC 997, 1006.

complaints should be investigated and that grievances should be remedied. When Parliament has set up machinery for that very purpose, it is not for the Minister to brush it on one side. He should not refuse to have a complaint investigated without good reason."

Sequential development of PIL

Law finders traced back Public Interest Litigation in the American administration of justice. But before American era, it is believed that public interest litigation regarding its etymological background had come through the Roman regime.¹⁵ Ancient Roman laws of procedure permitted *actions privatae* (private litigation) brought by certain individuals aimed at protecting individual rights. On that time *publicae populares* (public interest litigations seeking to safeguard public interests of the society) were allowed to be submitted by any citizen unless stipulated otherwise by law.

The origin and expansion of PIL in America has witnessed many incidents like capitalism, excessive individualism and sense of perfection in the enjoyment of the personal rights. During the 1870s, legal aid movement truly aided the invention and maturity of the public interest law. Next this era, the period of industrialisation is treated as the Progressive Era Reforms during the turn of the twentieth century when some American legislations and state established organizations tried to defend the collective rights like the rights of the consumers, workers, traders etc. These prior optimised factors became more crystallized with the birth of American Civil Liberties Union (ACLU) and the other history changing platform named the National Association for the Advancement of Coloured People (NAACP). In USA, Federal Commission on Civil Rights was established in 1958 and the Civil Rights Act was legislated in 1964 in consequence of the landmark PIL, *Brown v Board of Education*.¹⁶ Socially conscious people and forums moved hard for the advancement of the unrepresented constituencies filled with neglected people. This subject was reflected in a statement of the Council for Public Interest Law established by 'Ford Foundation in USA' as "Public interest law is the name that has been given efforts to provide legal representations to previously unrepresented groups and interests, such groups and interests include; poor, environmentalists, consumers, racial and ethnic minorities, and others." Hence, then the Federal Government took very flexible approach due to a bunch of successful PIL cases. Observing the outstanding changes throughout the dynamic trends to exercise PIL cases, at 1985 Fred Strasser uttered,

¹⁵ Zhang Wanhong and Ding Peng *Public Interest Litigation and the Development of Human Rights*, in Chinahumanrights.org, October 29, 2009.

¹⁶ [1954] 347 US 483.

"Fifteen years after the new generation of public interest law was born, the turbulent practice has survived to become a permanent fixture on the American legal landscape.¹⁷"

Alike American practice of legal aid, in England this associating activities practice ran through in one form or another prior to the 2nd World War. However, the English activists for the development of PIL had appeared comparatively less vigorous than the Americans. This point can be a relative issue between two states but honestly the functioning of Child Poverty Action Group, Joint Council for the Welfare of Immigrants, SHELTER and other similar minded groups contributed noteworthy in England. There they wanted to keep up the rights of the deprived and under privileged people. Even, they were agreed to welcome 'legal imperialism'¹⁸ disregarding English circumstances. Intellectual judges and advocates of English courts gave their big thoughts to flourish this phenomenon. Realising so, Carol Harlow said 'Public interest law has retained its court orientation. ...this has been a mistake and is an important cause of the disillusion experienced by many of its keenest advocates'.¹⁹

In the United Kingdom the concept of PIL emerged through the approaches by Lord Denning and Chief Justice Parker through the landmark series of *Blackburn cases* (*R v Commissioner of Police of Metropolis, ex parte Blackburn*²⁰ (the issue of mandamus involved in this case in order to compel the higher police authority to act against the gaming clubs which was a matter of public interest), *Blackburn v Attorney General*²¹ (by this case the plaintiff sought the declaration from the government about the status of sovereignty through the signing in an international treaty), *R v Police Commissioners, ex parte Blackburn (No 3)*, *R v GLC, ex parte Blackburn*²² (through this case the plaintiff asked London local government authority for the enforcement of law against the open exhibition of the pornographic films). Apart from this very established series, PIL was also filed on the question of taxes (*R v Inland Revenue Commissioners, ex parte National Federation of Self-Employed and Small Businesses Ltd*²³) and also for imposing accountability upon the government on

¹⁷ Fred Strasser (1985) 'Public interest law acquires the concerns of middle age' Vol 7 National Law Journal, at 1 and 8.

¹⁸ Jeremy Cooper and Rajeev Dhavan (eds.) Oxford, Basil Blackwell, pp 18-48 at 38.

¹⁹ Carol Harlow (1986) "Public interest litigation in England: The state of the art".

²⁰ [1968] 2 QB 118.

²¹ [1971] 1 WLR 1037.

²² [1976] 1 WLR 550).

²³ [1981] 2 All ER 93.

some international issues (*R v HM Treasury, ex p Smedley*²⁴; *R v Foreign Secretary; ex p Rees Mogs*²⁵). In UK, the effective operation of PIL depends on the control of the judiciary over the malfunctions or abuse of powers by the executive and this was very basic concept of rule of law invented by A.V. Dicey. Though Lord Diplock was tensed about the usual collision between the executive and judiciary, he hoped for the further progress of judicial empowerment.

Indian pioneers (few prominent judges, Krishna Iyer, J, Bhagawati, J, AC Gupta J., Murtaza Fazal Ali J., VD Tulzapurkar J., DA Desai J., RS Pathak J. and ES Venkataramaiah) of PIL were encouraged and influenced by the American developments.²⁶ But it can not be said that it was only the achievement of the judges rather conscious citizens, non-governmental organizations and social action group became perseverant to awake the judiciary.²⁷ Interesting enough that sometimes in India the judges had to play the role of the human activists within the limit of their constitutional power. Justice Krishna Iyer was the path finder in this respect; he realized the agony of people and attempted to deal the public issue. In 1976 that noble man observed in *Mumbai Kamgar Shobha v Abdulbhai*²⁸ as "Test litigation, representative action, *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." The time between 1976 and 1982 is the historical one when Justice Krishna Iyer and Justice Bhagowati had to work hard leading to the progress of public interest litigation with many social justice issues, for example, reviewed the system of confinement which imprisoned the prisoner longer than the maximum of his punishment (*Hossainara Khatoon and others v Home Secretary, State of Bihar*).²⁹ Apart from those, there were also some renowned cases which gained the social justice as *People's Union for Democratic Rights v Union of India*,³⁰ *Bondhu Mukti Morcha v Union of India*³¹ but *S.P. Gupta*

²⁴ [1985] 1 All ER 589.

²⁵ [1994] QB 552.

²⁶ SK Agarwala (1985) 'Public Interest Litigation in India: A Critique', New Delhi, Tripathi and Indian Law Institute at 8.

²⁷ Barnett R Rubin (1987) "The civil liberties movement in India: New approaches to the state and social change" in vol XXVII *Asian Survey*.

²⁸ AIR 1976 SC 1455.

²⁹ (1980) 1 SCC 115.

³⁰ AIR 1982 SC 1473.

³¹ AIR 1984 SC 802.

*and others v Union of India*³² (Judges Transfer case) got the highest attention from the media as well as the scholars.

Pakistan judiciary followed the examples of India for PIL though the development began after the late 1980s. In Pakistan, the initiators for PIL were Afzal Ullah CJ, Nasim Hasan Shah. The landmark cases of PIL in Pakistan are as *Benazir Bhutto v Federation of Pakistan*³³ (Martial Law Government for registration as political party was challenged), *Darshan Masih alias Rehmatay and others v The State*³⁴ (a case of fundamental rights) etc.

After the independence, Bangladeshi court faced the test of litigation having public issue at first with the famous *Third Amendment Case* (Berubari Case- *Kazi Mukhlesur Rahman v Bangladesh and another*³⁵). This leading case proved that no matter concerned with public can go without being judged. The judiciary felt courageous. Justice M H Rahman narrated this as "In some of the developing countries the very existence of judiciary as an institution is at stake....For the time being the worthwhile role for him will be to do justice between a citizen and a citizen, so that a foundation may be laid for the future when a citizen will be able to expect justice against the mighty and the overbearing as well."³⁶ A breach of law can be challenged by any one for the sake of the public interest as we see in *AK Mujibur Rahman v Returning Officer and others*³⁷ whereby the candidacy of Ziaur Rahman as a member of armed forces was challenged for the presidential election. Public interest litigation came with full force through the *Eighth Amendment case* (*Anwar Hossain Chowdhury v Bangladesh*³⁸ -for the prevention of the basic structure of the constitution from the violation) and thereby the lawyers and the judges struggled to save the spirit of the constitution from the capricious gaming of the autocrat. During this progressive period autocratic regime was defied by a *quo-warranto* writ. This action was not for any personal grievance; consequently it brought the victory of the public interest issue from the street to the judiciary. A mind blowing sentence was found in the writing by BH Chowdhury CJ for this writ (*M Mostafa Hossain v Sikder M Faruque and another*) which strengthened the public interest affair as "...in a writ

³² (AIR 1982 SC 149).

³³ PLD 1988 SC 416.

³⁴ PLD 1990 SC 513.

³⁵ 26 DLR (SC) 1974 (44).

³⁶ M H Rahman (1988) 'the role of the judiciary in the developing societies: Maintaining a balance' – Journal 'Law and International Affairs', Vol- II.

³⁷ 31 DLR (1979) 156.

³⁸ 1989 BLD (Spl.) 1; 41 DLR (AD) (1989) 165.

of quo-warranto challenging authority of a person holding public office, any citizen, irrespective of personal grievance can come to the Court.³⁹

In 1996, the loc as stand of PIL was recognised with a broad notion in the leading case, Mohiuddin Faruque Vs Bangladesh well known as FAP-20 case. The formal judicial recognition of PIL has been established by this case.

The name 'Public Interest Litigation' was used in the lower judiciary where the petition was brought by the 'Jubo Ainjibi Forum' for the violation of the section 294B of the Penal Code (*KM Zabir v Amanullah and others*⁴⁰). In the higher courts through the constitutional writ petitions many cases were treated as PIL and its scope was expanded. *State v Falu Miah*⁴¹ case is a successful one where the journalists played important role for the development of PIL. Falu Miah's release order was not enough as the redress for the gross mistake done by the police force of Shatkhira. It came before the pavement of the High Court Division of the Supreme Court as a writ named *State v Deputy Commissioner, Shatkhira and others*.⁴² From the period herein before mentioned, we are still observing the excellent success of the PIL in various aspects.

The theme 'Public Interest'

Two different words 'Public' and 'Interest' after being together have made the phrase 'public interest'. The term 'public' was interpreted in *Tatem Steam Navigation Co. v Inland Revenue Commissioners*⁴³ as "the community as an aggregate, but not in its organised capacity, hence the members of the community." On the other hand, interest can be clear with its synonyms as rights, privileges, powers and immunities. When the terms 'public' and 'interest' are separate, it is easy to mean them but their combination have not yet traced any satisfactory clarification. Nevertheless, the approaches to over come this dilemma are going on.

The phrase 'public interest' has been characterized by 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 interest of the particular localities, which may be affected by the matters in question, interest shared by citizens generally in affairs local, state or national government."

³⁹ 7 BLD (AD) (1987) 315.

⁴⁰ Case No. 1097A1/88.

⁴¹ Unreported case but Criminal Misc. 1755/1993.

⁴² 45 DLR (1993) 643.

⁴³ [1941] 2 KB 194.

Barry and Rees provided a broader sensitised definition of 'public interest' as "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. It has considerable value as a weapon for criticising selfish private interests or class interests, and its advantages in a highly individualistic and often savagely competitive society are obvious."⁴⁴

Consequently, public interest is nothing but the common right of the people which will be protected by the state authority and in its violation people will come into the courts for the remedies. In PIL, public interest will get priority over the private interests, group interests and vested interests (*Frank Shipping Ltd. v Bangladesh*)⁴⁵ though it is the judges who will decide the existence of public interest. Obviously, during the exercise of their discretion, the judge will work judiciously not arbitrarily or whimsically.

PIL especially for disadvantaged group of people

From the emergence of PIL, it has been working for secure social justice. Hence, the disadvantaged or back-blocked citizens who are ignorant about their rights and remedies should get effective solutions through PIL. Those people have been categorised by Dr B L Wadhwa in the following way⁴⁶ -

- (i) poorest of the poor; (ii) deprived; (iii) the illiterate; (iv) the urban and rural unorganised labour sector; (v) women; (vi) children; (vii) handicapped by 'ignorance, indigence and illiteracy'; and (viii) other downtrodden having no access to justice.

Scopes

Hans Dembowski found in his research work that the PIL has conquered success in the sense of making official authorities responsible and accountable to civil society.⁴⁷

It is almost clear that PIL can be used

- i) for the preservation of the constitutionalism, constitutional spirit and basic structure of the constitution (3rd amendment case, 5th amendment case, 7th amendment case and 8th amendment case of Bangladesh- where

⁴⁴ B. Barry and W. Rees (1964) "The Public Interest" in Supp. Vol. XXXVIII 'The Aristotelian Society Conference Proceedings, London, pp 1-38'.

⁴⁵ 50 DLR (AD) 1998.

⁴⁶ 'Public Interest Litigation' (2009) 2nd edition published by Universal Law Publishing Co. Pvt. Ltd. p. 2.

⁴⁷ "Taking the State to Court - Public Interest Litigation and the Public Sphere in Metropolitan India", The Germany-based NGO Asia House.

- we see the protection of the state territory, fundamental principles of state policy);
- ii) to protect the violation of the separation of power (*Shamsul Haque Chowdhury v Justice M Abdur Rouf*⁴⁸)
 - iii) to have the proper laws and guidelines within the ambit of the constitution for the improvement administrative laws (*BLAST v Bangladesh and others [Gram Sharkar, Village Government Act, 2003]*⁴⁹)
 - iv) to justify the legitimacy of the interim or caretaker government as a writ petition was filed on 25th January, 2000 by several lawyers whereas articles 8 and 69 were triggered on.
 - v) to challenge the structure or nature of the local government (articles 7, 9, 11, 59 and 60) with *BLAST v Bangladesh and Others*⁵⁰ [Gram Sarkar (Village Government)]
 - vi) to protect the fundamental rights of the citizens from the violations committed by the executive or its wings (*SA Coconut Mills Ltd v Government of the People's Republic of Bangladesh and Others*⁵¹ - article 27 of Bangladesh Constitution; *BLAST v Bangladesh and others*⁵²; *Saifuzzaman v State*⁵³ - infringement of article 32, 33 and 35; *Rabia Bhuiyan MP v Ministry of LGRD & others*⁵⁴ - violated article 15(a), 18(1), 31 & 32; *Iftexhar Hasan (MD) v State (Criminal)*⁵⁵; *Dewanbagh Darbar Sharif and others v Bangladesh and others*⁵⁶ - article 41),
 - vii) to compel the state authority to go through the fundamental principle of state policy (*Rabia Bhuiyan MP v Ministry of LGRD & others*⁵⁷ - violated article 15(a), 18(1), 31 & 32)

⁴⁸ 49 DLR (1997) 495.

⁴⁹ 60 DLR (2008) 234 (Writ Petition No. 4502/2003).

⁵⁰ Writ Petition No. 3806 of 1998 (*Rubel Killing case*).

⁵¹ 54 DLR (2002) HCD p 1.

⁵² [55 DLR (2003) 363].

⁵³ [56 DLR 324].

⁵⁴ 59 DLR (AD) 2007 p176.

⁵⁵ 59 DLR (AD) 2007 p36.

⁵⁶ 54 DLR (2002) (HCD) 413.

⁵⁷ 59 DLR (AD) 2007 p176.

- viii) to challenge the public order (*Shamsar Ahmad v District Magistrate*⁵⁸) of the executive and judicial offices (*Ramesh Thapper v State of Madras*⁵⁹).
- ix) to ensure the right to trade and business (*Md Kamal Hossain and others v Bangladesh and others* [Spectrum Sweater Factory Collapse]⁶⁰)
- x) to prevent the constitutional post and some sophisticated office from wrong appointment (*Saiyid Munirul Huda Chowdhury v AKM Nurul Islam*;⁶¹ *M Saleem Ullah v Justice Mohammad Abdul Quddus*;⁶² *M saleem Ullah v Justice Sultan Hossain Khan*⁶³)
- xi) to keep the executive in the right track means to knock them to do their constitutional functions properly (*Defective Flood Action Plan 20-Dr. Mohiuddin Farooque v. Bangladesh/ Sikandar Ali Mondol v Bangladesh*;⁶⁴ *Cool Mines Provident Fund Commissioner v Ramesh Chandra Jha*⁶⁵)
- xii) to challenge the Government's negligence to obtain the approval of Parliament (*Haiti Troops case- M Saleem Ullah v Bangladesh*⁶⁶)
- xiii) to review the decision making process of the executive (*Chowdhury Mahmood Hasan and others v Bangladesh and others*⁶⁷)
- xiv) to protect the Parliament from *en-mass* resignation (*Anwar Hossain Khan v Speaker of Bangladesh Sangsad Bhavan and others*⁶⁸)
- xv) to make public and scrutinize the hidden or misleading information. In the *Attorney General of Hong Kong v Ng Yuen Shiu*⁶⁹ where Lord Fraser of Tullybelton said: "The justification for it is primarily that, when a public authority has promised to follow a certain procedure, it is in the

⁵⁸ 1994 CrLJ 1870 at 1874.

⁵⁹ AIR 1950 SC 124.

⁶⁰ Writ Petition No. 3566 of 2005.

⁶¹ 1 BLC (1996) 437.

⁶² 46 DLR (1994) 691.

⁶³ Writ petition 990/1994.

⁶⁴ Unreputed writ petition 998/1994 and 1576/1994.

⁶⁵ (1990) 1 SCC 589 at 591- 593.

⁶⁶ 47 DLR (1995) 218.

⁶⁷ 54 DLR (2002) (HCD) 537.

⁶⁸ 47 DLR (1995) 42.

⁶⁹ [1983] 2 AC 629.

interest of good administration that it should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty." The Canadian case, *Fraser H. Edison v The Queen and Dollard Investments Limited v Minister of National Revenue* [2001] FCT 734) corroborated this view

- xvi) to challenge hartals or strikes (*Abu Bakar Siddique v Sheikh Hasina and Others*;⁷⁰ *The State v Md Zillur Rahman Others*;⁷¹ *Khondoker Modarresh Elahi v Government of the People's republic of Bangladesh* (spl. original)⁷²- call for hartal per se is not illegal but where any call for hartal is accompanied by threat it would amount to intimidation and the caller for hartal or strike would be liable under the ordinary law of the land). Very recently, at the middle of January 2010 from the Goanhati High Court in an application of PIL by Journalist Mrenal Banarjie in the province of Assam in India Justice J. Chelamasshor and Justice A.C. Roy have decided that Bondh or strike will not be proclaimed by any political parties or any racial or ethnic group. Even the High Court has mentioned the figure of financial damage (Rs.14,18,00000) for one day strike in the province.
- xvii) where the arbitrary or whimsical taxes are imposed by the Government
- xviii) to make the Government answerable for price hike (*Dr B L Wadehra v Union of India*⁷³)
- xix) in a way of habeus corpus writ to keep free four political leaders from unlawful detention (*Bilkis Akhter Hossain v Bangladesh and others*⁷⁴; *Md Shahanewas v Government of Bangladesh*⁷⁵)
- xx) to oppress the inhuman and cruel treatment during imprisonment (*Salma Sobhan v Government of Bangladesh and others*⁷⁶)
- xxi) to challenge extra-ordinary killing by the law-enforcing agencies (*Dr B L Wadehra v Union of India*⁷⁷)

⁷⁰ Unreported writ petition 2057/95.

⁷¹ 19 BLD (HCD) (1999) 303.

⁷² 54 DLR (2002) (HCD) 47.

⁷³ HC CWP/2048/1998.

⁷⁴ 17 BLD (1997) 411.

⁷⁵ 18 BLD (1998) 337.

⁷⁶ Writ petition 2852/1997.

⁷⁷ SC WP (CrI) No. 287/1993.

- xxii) as the big shield for the protection of the municipal rights like drain, sewerage etc.
- xxiii) to prevent public nuisance *Dr. Mohiuddin Farooque v. Election Commission & others*;⁷⁸ *Bangladesh Environmental Lawyer's Association v Election commission & Others*;⁷⁹ *M Saleem Ullah v Justice AKM Sadeque*⁸⁰ (nuisance made by election campaign)
- xxiv) to keep environment free from industrial pollution (*Dr. Mohiuddin Farooque v. Bangladesh & others*;⁸¹ *BLAST and another v Bangladesh and others* [Non-compliance with Environment Conservation Rules' Case]⁸²)
- xxv) to protect the environment from the 'Vehicular Pollution' (*Dr. Mohiuddin Farooque v. Bangladesh & others*;⁸³ *BLAST and others v Bangladesh and others*⁸⁴)
- xxvi) to keep the natural resources and their development (*Gulshan Lake case- Parveen Akhter v the Chairman Rajdhani Unnayan Kartipakkha and others*;⁸⁵ *Dr. Mohiuddin Farooque v. Bangladesh & others*;⁸⁶ *Nabaganga river case*;⁸⁷ *BLAST and Mrs Zohora Khanum v Bangladesh and others*⁸⁸)
- xxvii) to keep the ecological balance (*Nijera Kori v. Bangladesh & others*⁸⁹)
- xxviii) to prevent the eviction of the slum dwellers without making alternative arrangement (*Ain O Shalish Kendra (ASK) and others v Government of Bangladesh and others*⁹⁰).

⁷⁸ Writ Petition No. 186/1994.

⁷⁹ 46 DLR (1994) 235.

⁸⁰ Writ petition 1010/95.

⁸¹ Writ Petition No. 891/1994.

⁸² Writ Petition No. 341 of 2009.

⁸³ Writ Petition No. 300/1995.

⁸⁴ Writ Petition No. 1694/2000.

⁸⁵ 18 BLD (1998) 117.

⁸⁶ Writ Petition No. 948/1997.

⁸⁷ <http://www.newagebd.com/2009/apr/23/home.html>.

⁸⁸ Writ Petition No. 7483 of 1997.

⁸⁹ Writ Petition No. 1162/1998.

⁹⁰ 19 BLD (HCD) (1999) 489.

- xxix) to keep the regular medical care for the people (*Dr. Mohiuddin Farooque v. Bangladesh & others*⁹¹; *Buriganga Encroachment- Bangladesh Environment Lawyers Association (BELA) v. Bangladesh and others*⁹²)
- xxx) to prevent an unlawful construction (*Sharif Nurul Ambia v. Bangladesh & others*⁹³)
- xxxi) to wipe out food adulteration (Radiated Milk -*Dr. Mohiuddin Farooque v. Bangladesh & others*,⁹⁴ Contaminated Drink- *Dr. Mohiuddin Farooque v. Bangladesh & others*⁹⁵)
- xxxii) to challenge the remuneration which is less than the statutory minimum wages (*People's Union v India*⁹⁶)
- xxxiii) to be free from bonded or forced labour (*Bandhu Mukti Morcha v Union of India*⁹⁷)
- xxxiv) to save the working women from the sexual harassment
- xxxv) for vanishing child labour and bonded labour (*M C Mehta v State of Tamil Nadu*⁹⁸) and child trafficking (*Lakshmi Kant Pandey v Union of India*⁹⁹)
- xxxvi) to protect medical negligence (*A S Mittal v State of Uttar Pradesh*¹⁰⁰)
- xxxvii) to save the mass people from the arbitrary decision of the executive
- xxxviii) to direct the law enforcing authority for the due process of law (*Boddie v Connecticut*¹⁰¹)

The scopes of PIL have been extended with the development of the human rights by different international declarations and regulations and the guaranteed fundamental rights of the people by the states' constitution. So, the perfection of the state administration, in different phrases as *the rule of law* or *good governance* (whereas

⁹¹ Writ Petition No. 1783/1994.

⁹² Writ Petition No. 4098/1999.

⁹³ Writ Petition No. 937/ 1995.

⁹⁴ Writ Petition No. 92/1996.

⁹⁵ Writ Petition No. 867/97.

⁹⁶ AIR 1982 SC 1473.

⁹⁷ (1991) 3 SCC 161.

⁹⁸ AIR 1991 SC 417.

⁹⁹ AIR 1984 SC 469.

¹⁰⁰ AIR 1989 SC 1570.

¹⁰¹ 401 US 67, 81.

the terms 'good governance' are being used recently, so a very popular and meaningful definition is laid down here: "To enhance the rule of law and constitutional government in Singapore by providing sound legal advice and assistance in developing a fair and responsive legal system, furthering good public administration and protecting the interests of the state and of the people"¹⁰²). Actually, the scopes of the PIL cannot be enlisted briefly. It is being utilized to provide enormous benefits to the people.

The triggering subject for PIL: At first it is not for only PIL but also for other cases, that wrong (cause of action) has to be occurred because *Juri ex injuria non oritur* (A right cannot arise out of wrong doing). PIL connotes the matters (wrongs) which are concerned with the public good and the public interest (*Central Inland Water Transport Corporation Ltd v Broja Nath Ganguly*¹⁰³; *Shri Paresar v Municipal Board*¹⁰⁴). Public interest is the sole factor in order to apply for a PIL. Personally someone might be affected by an action of other but those problems can be sorted out through the scope of some divisions of private or public laws. Precisely, those factors cannot be the subject matter of PIL always. This matter was also developed by the House of Lords in *O'Reilly v Mackman*¹⁰⁵ whereas the seeking to challenge the decision of a public authority by the way of an ordinary proceeding not by a judicial review was treated as the abuse of the process of the court by the aggrieved person. Without public interest the courts are not bound to ensure the social justice. Public interest is not vivid in nature. But we can convey it as easy understanding that it would be more than special and vested interests. Sometimes, people think 'public policy'¹⁰⁶ and 'public interest' same. It does not matter that a subject for PIL is not rendering public policy rather it would be matter that has touched public interest anyway. Incidentally, 'public interest' can be substituted with the doctrine of 'public trust' was established in the case, *Kamalnath*.¹⁰⁷

The remedy through the PIL is not only limited within the violation of the constitutional laws rather it can be sought by challenging the validity of the different provisions of the ordinary laws (*Olga Tellis v Bombay Municipal Corporation*¹⁰⁸).

¹⁰² statement by the Singapore Attorney General's Chambers.

¹⁰³ AIR 1986 SC 1571.

¹⁰⁴ (1997) 1 WLC 443 at 446 (Raj.).

¹⁰⁵ [1983] 2 AC 237.

¹⁰⁶ Lord Davey in *Janson v Driefontein Consolidated Gold Mines Ltd* [1902] AC 484 at 500 "Public policy is always an unsafe and treacherous ground for legal decision".

¹⁰⁷ 1988 1 SCC, 388.

¹⁰⁸ AIR 1986 SC 180.

Pertinent to mention that, whether a case would be entertained as a PIL depends on the judges. They are free to exercise their discretion.

Who can file PIL

A petition brought by an individual for his personal grievance that would disqualify PIL. In PIL, the victim or harmed person or persons would not come. It is the natural rule for litigation that the aggrieved would come with a particular prayer in a court of law and in order to be the petitioner would have sufficient interest in the facts of the case. About the 'aggrieved person' in PIL, James LJ said in *ex parte Sidebotham*¹⁰⁹ "... the words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order has been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongly deprived him of something, wrongfully refused him something, or wrongfully affected his title to something". A statement of the Indian Supreme Court in *Bihar Legal Support Society v CJI*¹¹⁰ is remarkable to identify the liberalisation of the access into justice with PIL as "ordinarily only a person whose rights are violated can move a court for redress. However where there is likelihood of any Government action injuring the interests of many persons, any one may move the court for relief." But bonafide intention is required for approaching PIL. So, political gains or private interest can damage the initiative. Justice Latifur Rahman uttered in famous *FAP* case – "Thus I hold that a person approaching the court for redress of a public wrong or public injury has sufficient interest (not personal interest) in the proceedings and is acting bonafide and not for his personal gain or private profits, without any political motivation or other oblique consideration has locus standi to move the High Court Division under article 102 of the Constitution of Bangladesh."

The countries where PIL has been activated, they keep the option 'aggrieved party' liberal through the constitution or other ordinary laws. Constitutional provision of Bangladesh can be good example in this regard. Md Mozammel Hoque J. liberalized the meaning 'aggrieved party' in *Abu Bakar Siddique v Justice Shabuddin Ahmed and others*¹¹¹ as "Article 102 of the Constitution provides that a person who is aggrieved may file an application under article 102(2) of the Constitution. But it does not provide that a person should be personally aggrieved. If the Constitution provides personal aggrievement, then the scope of Article 102 would be narrower." Justice BB

¹⁰⁹ [1880] 14 Ch D 458.

¹¹⁰ AIR 1987 SC 38.

¹¹¹ 1 BLC (1996) 483.

Roy Choudhury's observation seemed more flexible in famous *Falu Miah's*¹¹² case in favour of the broader explanation of the 'aggrieved party' that "... 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."

Locus standi

The concept of 'locus standi' may get attention for the surprising characteristics of PIL. 'Locus standi' is literally meant 'place of standing or the right to bring an action or to be heard in a given forum'.¹¹³ This latin phrase 'locus standi' is being explained widely to receive PIL. The pre-requisite of the 'aggrieved party' is 'locus standi'. In case of citizen standing, it is enough for the petitioner to show an interest or concern common with the general public. But in case of representative public interest standing, where the petitioner is espousing the cause of a vulnerable section of the society, he must show that his concern is real not illusory.¹¹⁴ *Blackburn/McWhirter* cases played vital role to bring the change of concept 'sufficient interest' dramatically. In *R v Ireland Revenue Commissioners (IRC) ex parte National Federation of Self-Employed and Small Business Limited*¹¹⁵ their Lordships took the liberal view about the law of standing. It was illustrated that the applicant's interest can be succeeded for PIL, even the subject of writ was too remote. Thus, it is not obligatory always that the people have to be harmed by the act of the state authorities, rather when the people notice the violation of public interest, PIL can enable them to go for the remedy against that (*Dr. D.C. Fardinva Anti and others v State of Bihar and others*¹¹⁶). Bangladeshi judges observations regarding 'locus standi' in PIL were influenced by the principle discovered by Lord Denning and motivated by the classical observation of Justice Krishna Iyer in *Fertilizer Corporation Kamgar v Union of India*.¹¹⁷ In *Ashok Kumar v The State of West Bengal*¹¹⁸ Supreme Court of India decided as "Under the relaxed rule, any member of the public having sufficient interest can maintain an action for judicial redress of a

¹¹² Dr. Naim Ahmed (1999) *Public Interest Litigation: Constitutional Issues and Remedies*, 1st edn, BLAST, page 30.

¹¹³ Black's Law Dictionary (2009), 9th edn, WEST.

¹¹⁴ Dr. Naim Ahmed (1999) *Public Interest Litigation: Constitutional Issues and Remedies*, 1st edn, BLAST, page 138.

¹¹⁵ [1982] AC 617.

¹¹⁶ 1987 SC 579.

¹¹⁷ AIR 1981 SC 149.

¹¹⁸ (2004).

public injury suffered by an indiscriminate class of persons, provided the acts bona fide is not moved by an oblique motivation." A professor of political science was considered having sufficient interest to challenge the administrative actions of the provincial government by following the contradictory ordinances. (*DC Wadhwa v the State of Bihar*¹¹⁹)

Consequently, it is the judges of the court of law who would determine the sufficient standing of the petitioner. In India Justice PN Bhagwati decided in *S P Gupta and others v Union of India and others*¹²⁰ "What is sufficient interest to give standing to a member of the public would have to be determined by the Court in each individual case. It is not possible for the Court to lay down any hard and fast rule or any straightjacket formula for the purpose of defining or delimiting 'sufficient interest'." In Bangladesh, an unnoticed but quite revolution took place through the judgement of the case of *Kazi Mukhlesur Rahman v Bangladesh*¹²¹ decided on September 3, 1974 whereby the Delhi Treaty held between Bangladesh and India was challenged by the petitioner. The ground of challenge was that the agreement involved cession of Bangladesh territory and was entered into without lawful authority by the executive head of government. The petitioner submitted that the remedies found in the article 102(2) of Bangladesh Constitution are discretionary. Hence, the phrase 'any person aggrieved' should be construed liberally. Then the Appellate Division initiated first as institutionally to improve the concept of 'locus standi' and thereafter this higher division settles seven principles in this regard viz. (1) the High Court Division should not suffer from any lack of jurisdiction under Article 102 to hear a person. (2) The High Court Division will grant locus standi to a person who agitates a question affecting a constitutional issue of grave impotence, posing a threat to his fundamental rights which pervade and extend to the entire territory of Bangladesh. (3) If a fundamental right is involved, the impugned matter needs not to affect a purely personal right of the applicant touching him alone. It is enough if he shares that right in common with others. (4) In interpreting the words "any person aggrieved", consideration of "Fundamental Rights" in Part III of the Constitution is a relevant one. (5) It is the competency of the person to claim a hearing which is at the heart of the interpretation of the words "any person aggrieved". (6) It is a question of exercise of discretion by the High Court Division as to whether it will treat that person as a person aggrieved or not. (7) The High Court Division will exercise that jurisdiction upon due consideration of the facts and circumstances of each case.¹²²

¹¹⁹ (1987).

¹²⁰ AIR 1982 SC 149.

¹²¹ 26DLR(SC) 44.

¹²² http://www.belabangla.org/html/daily_star.htm.

Dr Mohiuddin Farooque and his organization Bangladesh Environmental Lawyers Association (BELA) worked enough to expand the theory of 'locus standi'. *FAP case*¹²³ approached by this gracious lawyer is the landmark decision for public interest standing. ATM Afzal states – "Any person other than an officious intervenor or a wayfarer without any interest or concern beyond what belongs to any of the 120 million people of the country or a person with a oblique motive, having sufficient interest in the matter in dispute is qualified to be a person aggrieved and can maintain an action for judicial redress of public injury arising from breach of public duty or for violation of some provisions of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision." In this very case the leading judgement about locus standi was given by Justice Mustafa Kamal as "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."

Justice BB Roy Choudhury made very sentimental and human remark in *Nazrul Islam's case*¹²⁴ that "... 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."

In a simple sentence it can be expressed that locus standi can be granted if any public wrong or injury and if that is happened by the Government or its organizations then any one from the nationals but with clean hand and clean mind can file PIL. Today, it is absolutely immaterial whether the petitioner is harmed.

Against whom PIL can be filed

PIL can be filed against the Government and the organizations established by the Government like autonomous bodies (simply the bodies pointed out in Bangladesh Constitution¹²⁵). No one is allowed to bring PIL against the private party. Private party can be the respondent here, but in that case at first the Government authority has to be the party and subsequently the private party might come with proper

¹²³ 17 BLD (AD) (1997) 1.

¹²⁴ 45 DLR (1993) 643.

¹²⁵ Article 102(1).

relevancy.¹²⁶ In UK we see that the proceeding of judicial review contains public interest can be brought against the private party alone. There, the private party basically the private institutions or the personnel working over there but those private institutions will have to work objectively as a public body. The subcontinents' courts are yet to develop in this regard.

Place for filing PIL

In most of the countries where PIL is being practised, PIL is filed therein usually in the higher courts because in most of the countries popular idea that PIL is found within the writ jurisdiction and judicial review (especially in UK). In India PIL is dealt with the Supreme Court (art 32 of the Constitution of India) and High Courts (art 226 of the Constitution of India). Identically in Bangladesh PIL comes in the higher court (High Court Division of the Supreme Court under article 102 of Bangladesh constitution) (*Md Idrisur Rahman v Shahiduddin Ahmed and others*¹²⁷) but many matters may come to the lower judiciary (as under the jurisdiction of the Magistrate Court in accordance with the section 133 of Indian CrPC) (*Md Kafiluddin v Maulana Syed Fazlul Karim and another*¹²⁸) within their jurisdiction which contain the public interest issues. At the same time we should be conscious that PIL is not representative suits described by Code of Civil Procedure in Bangladesh as "Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend, in such a suit, on behalf of or for the benefit of all persons so interested."¹²⁹

Steps gone through in PIL

Alike other cases, PIL are filed and proceeded in the same manner. During the proceedings, if the judge thinks fit may appoint commissioner to inspect the allegations. After having the replies from the opposite parties and rejoinder from the petitioner, final hearing takes place. Next, considering all the concerned matters, the judge provides the final decision.

¹²⁶ Adv. Mihir Deasi and Adv. Kamayani Bali Mahabal, *Introduction to Public Interest Litigation*, Health Care Case Law in India – A Reader by CEHAT and ICHRL- pp. 199-200.

¹²⁷ Writ Petition 1381/94.

¹²⁸ Dhaka CMM Court, Petition case no. 1998/1994.

¹²⁹ Order I rule 8(1) of Bangladesh CPC.

Procedural neutrality

Traditional procedural laws for ordinary litigations are not strictly followed in respect of PIL because PIL is not for private individual but for the people. The differences for PIL are as follow-

- (a) The strict bilateral party structure is not maintained here.
- (b) The subject matters of PIL have been developed by the bar and benches. Like other scopes of ordinary lawsuits, PIL subjects are not exogenously given.
- (c) Relief for PIL is might not be in a form of compensation.
- (d) Judicial activism is obvious for PIL.
- (e) The subjects of PIL are not limited with the interest of the private individual but a grievance about the proper enforcement of the public policy.

Flexibility in procedures

The upper courts have ensured flexible procedures about PIL. To broaden the access to justice, actions may be commenced by a formal petition or by just writing a letter to the court. The motivation behind allowing this epistolary jurisdiction is fairness: a person acting *pro bono publico* (pro bono proceedings when there has been- (a) callous neglect as a policy of state, (b) a lack of probity in public life) should not have to incur personal expenses for the preparation of a regular petition that seeks to guarantee the rights of the poor. For example, in *Advani v. Madhya Pradesh*, the court accepted a clipping of a newspaper story about bonded labourers as the basis for a PIL action.¹³⁰ Building on this principle of access to justice, the courts have established legal aid as a fundamental right in criminal cases and courts will often waive fees, award costs, and provide other assistance to public interest lawyers.¹³¹

Epistolary jurisdiction of the courts

The court has the power to consider the letters and telegrams as an application for writ. This epistolary jurisdiction of the court was first introduced in India and the earlier cases in this regard were as *Sunil Batra v Delhi Administration*¹³² and *Ichhu Devi v Union of India*¹³³. This extra-ordinary jurisdiction was subsequently practised in Pakistan in *Darsan Masih v the State*.¹³⁴ In Bangladesh this practice requires more

¹³⁰ AIR 1985 S.C. 1368.

¹³¹ Jamie Cassels, (1989) *Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?*, AM. J. COMP. L. 495, 498.

¹³² AIR 1980 SC 1579.

¹³³ AIR 1980 SC 1983.

¹³⁴ PLD 1990 SC 513.

improvement. Article 102 of Bangladesh Constitution contains the terms 'on the application of' has not any clear illustration. Moreover, the constitution does not lay down any specific procedure for preparing such an application. So, it appears that there is no bar to treat or convert letters as writ petition.

Position of 'suo moto' in PIL

PIL has to be applied in the court by a private person or any legal person- pressure groups as human rights organisations or by the court itself on behalf of the deprived people. Hence, the *suo moto* power of the court gets attention. *Suo moto* means 'on its own motion', which normally refers to a situation where in a judge acts without being requested by either party to action before the court.¹³⁵ Normally, the newspapers reports drive the judges to act *suo motto*. The sources of information to the judges may include also television, radio and report given by any reliable friend or the judge coming across some injustice in his daily life. With this outstanding power, the empowered court can take an application of PIL after being informed from any justified source (even from print or electronic media). In Bangladesh, for the assessment of 'hartal' (political strike) in the light of offence against public tranquillity under sections 141 to 160 of the Penal code, the court tried *the State v Zillur Rahman and other*.¹³⁶ The most famous *suo motto* rule was also issued in another case *State v Deputy Commissioner Bogra and others*¹³⁷ (where an unlawful detention was reported by the newspaper).

Conclusion

A sovereign republic without any hesitation believes that all powers belong to the people (in Art. 7 of Bangladesh Constitution). This faith of a state strikes on the social justice. Many countries of the present world though are not strictly following socialistic legal system, maintaining some state policies where social issues get priority (Arts. 8-25 of Bangladesh Constitution). Now, government of a state is to realise the public demands and to maintain the public functions. So, this is the era of 'Social State' whereas the role of the courts has been expanded enormously. When people felt the public rights decisively concerned with the community and society, the thinking about PIL started on. People judged them as a whole instead of their individual existence. They discovered many social, political, economic and ideological issues. In every single aspect, they intended to put the government in a responsible and accountable position to satisfy their new dimension of rights. Being a part of the political society, a countryman is highly dependable upon the judiciary

¹³⁵ www.winegeek.com/whatdoes-suo-moto-mean.htm

¹³⁶ 19 BLD (HCD) (1999) 303.

¹³⁷ Unreported writ petition 1389/1999.

because that is last resort for relief. Thus, "... the emergence of the notion of 'access to justice' as a judicial answer to egalitarian ideals and demands for effectiveness, and the development of PIL" is a big challenge for the 'Social Welfare State'. This utility of PIL shows its action mode towards the society at large whereby it contains the theme as legal service to the poor and under privileged community.¹³⁸ In addition, the success of PIL works as a pressure figure to enact the laws in those countries where many human rights have not acquired the national status yet. Therefore, it is the state authority who should conserve the sufficient law abiding atmosphere within its sovereign boundary whereas people would be motivated, fearless and hopeful to have nothing but justice against all grievances irrespective of the aspects as either the laws of the state have been violated or going to be violated.

¹³⁸ Special Committee of the American Bar Association on Public Interest Practice 1973, as quoted by Cooper, Jeremy (1991) *Keyguide to Information Sources in Public Interest Law*, London, Maxwell.