

GUIDELINES AND DIRECTIVES GIVEN IN PUBLIC INTEREST LITIGATIONS IN BANGLADESH: A REVIEW OF STATUS OF THEIR IMPLEMENTATION AND IMPACT

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ABSTRACT

Public Interest Litigation (hereinafter referred to as PIL) has been developed in Bangladesh through citizen action and judicial activism in order to establish collective rights of people. PIL attempts to ensure access to justice to the socially and economically disadvantaged, deprived and exploited sections of the people who are unable to seek remedy through court due to various resource constraints. Over the last decades, PIL cases filed have covered wide range of issues including environmental pollution, arbitrary arrests and unreasonable police remand, delays in trials of under-trial prisoners; rights of persons with disabilities, incarceration of children in prisons, forced eviction of slum dwellers, consumer safety and health rights, protection of workers' rights for safety in the workplace, gender discrimination in public employment, fatwa violence, sexual harassment in educational institutions and work places and so on. The main objective of the article is to identify main PIL cases that deal with collective rights of marginalized and socially excluded group of people. This article aims at mapping and analyzing these PIL cases and also highlighting the status of implementation and impact of the judgments on the larger community in Bangladesh. The article will also assess how far directives and guidelines handed down by the judiciary have been complied with the concerned government agencies and shed light on their impact. It is observed that PIL judgments, directives and guidelines have definitely positive impact on legal empowering poor and marginalized communities, protection of collective rights and ameliorating conditions of disadvantaged segments of the society.

I. INTRODUCTION

The judiciary of Bangladesh is increasingly assuming an impressive role through liberal interpretations of procedural rules and various laws for a better regime of social justice of what is known as 'judicial activism.' Public Interest Litigation (hereinafter referred to as PIL) has emerged as a pivotal instrument of such judicial activism in the South Asia.¹

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¹ Important studies on PIL includes: Hossain, S., Malik, S., and Musa, B., (eds.), *Public Interest Litigation in India, Pakistan and Bangladesh*, Dhaka, 1997; Menski, W., Alam, A. R. and Kasuri, M. R., *Public Interest Litigation in Pakistan*, Pakistan Law House, Karachi,

PIL has been developed in Bangladesh through judicial activism in order to establish collective rights of people. PIL attempts to ensure access to justice to the socially and economically disadvantaged, deprived and exploited sections of the people who are unable to seek remedy through court due to various resource constraints.² PIL is also used as an instrument to influence law, policy and institutional reform. PIL has led the way for expansive interpretation of the procedural rule of *locus standi* and has also opened up the judicial system for those who, otherwise, would have been restricted in terms of access to judicial remedies for violation of their rights.³ The development of PIL reflected a paradigm shift from the conventional role of judiciary as adjudication of disputes to as an avenue for the delivery of social justice.⁴

Public interest litigation is one of the important strategies of judicial activism, which is now regarded as a necessary and inevitable part of the judicial process in South Asia.⁵ In South Asia, much of the human rights jurisprudence has been developed by the courts as a result of public interest litigation which seeks to enforce basic human rights of the deprived and vulnerable sections of the society. PIL is a means of protection of collective rights of poor and under-privileged group of people and is now well accepted avenue of judicial activism.⁶ PIL also helps ensure awareness building through media publicity and accountability of the government and expands access to justice for the disadvantaged and marginalized people.

The PIL is an innovative approach in accessing the judicial process through dismantling the procedural barriers of *locus standi* and is playing a critical role in bringing issues of violation of human rights before the courts. PIL address group rather than individual rights and can offer new and effective remedies, both of a preventive and of a continuing nature.⁷ The PIL can promote human

2000; Ahuja, S., *People, Law and Justice: Casebook on Public Interest Litigation*, New Delhi, 1997; Ahmed, N., *Public Interest Litigation: Constitutional Issues and Remedies*, Dhaka, 1999; Hoque, R., *Judicial Activism in Bangladesh: A Golden Mean Approach*, Newcastle upon Tyne, 2011.

² Hossain, S., Malik, S. and Musa, B. (eds.), *Public Interest Litigation in South Asia: Rights in Search of Remedies*, Dhaka, 1997, at pp. 1-52.

³ *ibid.*

⁴ *ibid.*

⁵ *Bhagwati*, Justice P N, "Fundamental Rights in their Economic, Social and Cultural Context", in: *Developing Human Rights Jurisprudence*, 2 (1990) Commonwealth Secretariat, London, at p. 81.

⁶ See, Cooper, J., "Public Interest Law Revisited", 2(1998) *Bangladesh Journal of Law*, pp. 1- 25.

⁷ Dias, J. C., "The Impact of Social Activism and Movements for Legal Reform in South Asia", in: Hossain, S., Malik, S. and Musa, B., (eds.), *Public Interest Litigation in South Asia: Rights in Search of Remedies*, Dhaka, 1997, at p. 8.

rights in several ways: firstly, any public-spirited citizen or social action group can approach the court on behalf of the oppressed to realise their rights. Secondly, the court can create a new regime of human rights by expanding the meaning of fundamental human rights to equality, life and personal liberty. Thirdly, the court can grant new kinds of relief under its writ jurisdiction. Fourthly, the court can monitor the state institutions such as jails, women's protective homes, and safe custody and can contribute in gradual improvement in their management and administration.⁸

PIL case is also sometimes initiated by the higher judiciary itself through *suo motu* rule. The term *suo motu* has not been defined in any law, but in generally it refers to taking notice or cognizance of a matter by any court or authority on its own motion. Power of the court to provide remedies in *suo motu* proceedings must be well founded. First, it must be apparent from the circumstances that justice will be denied unless the matter is given consideration. Second, epistolary jurisdiction applies mainly to violations of fundamental rights. Third, it applies to very grave, inhuman and serious situations only.⁹

Over the last decades, PIL cases filed have covered wide range of issues including environmental pollution, arbitrary arrests and unreasonable police remand, delays in trials of under-trial prisoners; rights of persons with disabilities, incarceration of children in prisons, forced eviction of slum dwellers, consumer safety and health rights, protection of workers' rights for safety in the workplace, gender discrimination in public employment, fatwa violence, sexual harassment in educational institutions and work places and so on.

The main objective of the article is to identify main PIL cases that deal with collective rights of marginalized and socially excluded group of people. The article focuses on PIL cases of post-1990, which witnessed a robust growth of judicial activism in Bangladesh spurred by creative and liberal interpretation of the constitution by the court. This article aims at mapping and analyzing some specific areas of PIL cases such as protection of environment, ship breaking industries, arbitrary arrests and detention, women and children rights, eviction of slum dwellers and corporal punishment and also highlighting the status of implementation and impact of the judgments on the larger community in Bangladesh. The PIL cases have been chosen for analysis in this article on the basis of areas where the court adopted relatively progressive interpretation and made important intervention involving directives for legal and policy changes implicating collective rights, social justice and constitutional safeguards. The article also identifies challenges in implementation of the guidelines

⁸ See, Cranston, R., "Access to Justice in South and South East Asia", in: Faundez, J., (ed.), *Good Government and Law*, London, 1997, at p. 233.

⁹ *supra* note 1, Ahmed, N., at p. 147.