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Ensuring Environmental Justice (EJ) through Public Interest Litigation (PIL) in Bangladesh

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ABSTRACT

The legal system in Bangladesh has recently adopted the term Public Interest Litigation (PIL), which is a novel idea that provides a complete rationale for the widely acknowledged notion that humans are social animals. It is founded on the necessity of the public interest or the violation of the public rights and is known as constitutional jurisprudence. The Public Interest Litigation (PIL) mechanism was established to enable common persons to submit a letter and bring this matter to the attention of the highest court. PIL proceedings are now an essential component of the nation's legal system. Notwithstanding these drawbacks, judicial activism is a highly significant potential tool that the judiciary can use in Bangladesh to uphold and advance the rule of law and human rights. Enhancing the rule of law, advancing fundamental rights, and applying the law equally to citizens and states are the responsibility of the judiciary. Laws can be shaped by the judiciary, which can also provide them with direction and consistency. However, the nomination mechanism of the current government and judges' commitment to uphold the values of their specific jurisdictions serve to restrain the radicalism of the judiciary. Judges in Bangladesh are more inclined than other government bodies to make unpopular but ultimately wise verdicts since they are not engaged in political politics. The public anticipated that the courts would play a more significant role in resolving environmental problems as a result of the court's broadening of the definition of the right to life to include environmental protection. This essay explores the concept of access to justice via public interest litigation in a number of Bangladeshi court rulings.

Keywords: Public interest litigation, Environmental justice, and Social justice.

INTRODUCTION:

Hussaini and Mahmud, (2019) states, a legal action brought by the court to enforce the law for the general or public interest, in which members of the public or a certain class of the community have a financial stake or another type of interest that affects their legal rights or obligations, is known as a public interest litigation. The clear nature of public interest litigation intends to distance themselves from the agony of everyone who

has suffered the most from callous treatment at the hands of other people. Fair judicial proceedings and public transparency are the best ways to counteract the growing threat of legal rights violations (Ahmed, 1999). It was customary for only those whose fundamental rights were violated to have the ability to petition the Supreme Court. Justice P. N. Bhagwati defines public interest litigation as a type of litigation where the goals are not to benefit a single person but

rather a class or group of people who are either denied their constitutional rights or are the victims of exploitation or oppression but are unable to access the legal system due to ignorance, poverty, or destitution. Ali and Andaleeb, (2007) opine that, any public-spirited person may file a lawsuit in any court of law to safeguard the "public interest," or the benefit of the public. This type of litigation is known as public interest litigation.

In accordance with this system, a person with a sufficient interest in the case's subject matter, or locus standi, may file a suit for an adequate remedy in the proper court of justice with the necessary jurisdiction. This rigorous locus standi, or sufficient interest, rule is based on the laissez-faire doctrine. According to Hossain's, (1997) theory, the state's primary duties are defending the nation from outside threats and upholding internal law and order. It has little to no care for the wellbeing of its citizens. But under a welfare state, the state needs to be ready at all times to defend citizens' rights. Thus, in the event that a person's or a group's rights are violated, the victim or a public-spirited individual will assess the matter and the court will take it under consideration. This is the idea behind public interest litigation, which allows anyone who isn't directly involved in the case to protest any infringement of rights.

Concept of Environmental Justice

The Environmental Justice Movement arose in the early 1980s in North Carolina, USA, as a result of a local conflict over hazardous waste disposal near an African-American community. The movement has always highlighted that environmental problems cannot be handled without exposing the activities that perpetuate social inequalities (Hossain and Bushra, 1997). This criticism was directed at several conventional environmental organizations. The North American debate on ecology and justice has evolved through fundamental paradoxes, reflecting the issue's complex historical character. Racial and other social issues are frequently neglected on purpose by devoted environmental conservationists, and this defines the entire tradition, which began with fighting for nature parks and wilderness regions. To Islam, (1995) view point, the history of the Western concept of nature is intertwined with the history of the white middle class, UniversePG | www.universepg.com

which learnt to respect the aesthetic value of wilderness. Nature's purified and consequently white zones represent the domains of white power. This was made obvious during the founding years of environmental conservation in the United States, when the First Nations were compelled to abandon their homelands, which overlapped with the proposed Yellowstone and Yosemite national parks.

According to Lehtinen, (2009) the data that environmental dangers tend to pile on ethnic minorities serves as a sharp reminder to North Americans of their violent ethnic past. The historically unique notion of justice is evident in the ongoing re-articulation of social and environmental inequities, both local and global. As a result, environmental justice concerns are addressed in two primary venues. They are commonly addressed in courtrooms by legal professionals, but crucial alternatives are given by activist networks concerned about local-global injustices. The pragmatic attorneys and forward-thinking campaigners share the goal of just decision making and the confidence in positive change with many Europeans (Kamal, 1994). Despite this shared basis, the practical conditions and definitions of environmental justice varied across Europe.

Background of Public Interest Litigation (PIL) in Bangladesh

In Bangladesh, public interest litigation emerged after democracy or after 1991, and political unrest had a significant influence on this labor-intensive practice. The delayed acceptance of public interest litigation in Bangladesh can be attributed to judges' resistance to interpreting the constitution broadly and their difficulty moving away from colonial legal theory (Patwary, 1991; Haque A., 2023). An early ruling by the Bangladesh Supreme Court in the matter of Kazi Mukhlesur Rahman V. Bangladesh (also known as the Berubari case) in 1974 had a strong public interest litigation flavor and came very close to creating a judicial review in the public interest. In the 1991 case of Bangladesh Sangbadpatra Parishad V. Bangladesh, also known as the Sangbadpatra case, the Bangladesh Supreme Court, however, denied the possibility of public interest litigation because, in contrast to the Indian constitution, the Bangladeshi constitution requires a "person aggrieved" test for constitutional

remedy under Article 102 of the constitution. According to the Sangbadpatra case, "the petitioner seeking enforcement of a basic right under our Constitution must be a 'person aggrieved'... The lack of any constitutional requirement relating to pro bono publico lawsuits has made it easier for it to arise in India (Hossain & Hassan, 1999). After winning its legal struggle, the Public Interest Litigation was eventually recognized in 1996 when Dr. Mohiuddin Farooque V. Bangladesh (also known as the FAP 20 case) was decided. In this instance, locus standi was given to the Bangladesh Environmental Lawyers Association (BELA) in order to contest an ongoing flood control project (Ahmed, 1999). In addition, Justice Kamal delivered a much-awaited declaration in this case: "Any member of the public, being a citizen...or an indigenous association...has the right to invoke the [Court's] jurisdiction...when a public injury or public wrong or an infraction of a fundamental right affecting an indeterminate number of people is involved" (Islam, 1997).

Landmark PIL in Bangladesh and its impact

Following the final ruling by the AD in the FAP 20 Case, which is regarded as a landmark judgment on PIL cases, there was a hopeful atmosphere among the attorneys, activists, and other non-governmental organizations that were striving to establish the PIL as a useful instrument for disadvantaged populations. The ruling on locus standi was acknowledged by the AD for the third party in situations where the state or public authorities violated the rights of the parties involved, eliminating any doubts or issues about the "aggrieved party's" standing and validating the PIL proceedings (Weiss, 2008). Following this ruling, several PIL cases were brought before the HCD by attorneys, activists, and other private organizations or NGOs seeking remedies in a variety of areas. Several of these cases are listed below:

In the FAP 20 Case, where the government questioned the petitioner's status, the AD rendered a historic verdict in 1996. After taking the petitioner's sincere intentions into consideration, the AD justices gave Dr. Farooque standing. The AD affirmed the supremacy of the constitution by declaring that anybody may submit a writ petition on behalf of the whole community or society in the event of a public injustice or damage.

Thus, in this instance, PILs have been recognized as distinct legal actions brought in accordance with constitutional principles (Badsha & Shariful, 2014). Dr. Farooque brought the Radioactive Milk Case before the Court, including one of the fundamental rights - the right to life. For the moment, The Commerce Ministry imported radioactive milk, which was dangerous for children's health. Kazi Ebadul Hoque J made some important remarks, saying that government agencies should set up control systems to ensure that similar occurrences don't happen again. Because it addressed the right to life, which has constitutional significance, and because it was a significant case for PIL, this case gave Dr. Farooque standing. A well-known attorney who worked for BELA in 1996, Dr. Farooque, submitted many PIL cases to the court. In one of the cases, Judges Appointment, he attempted to encourage the government to appoint judges to fill open Supreme Court positions. However, Mahmudur Rahman J. declared that no constitutional or legal rights had been infringed by the government's inaction, and as a result, he dismissed Mr. Farooque's standing. In the 2003 case known as the "Air and Noise Case," Dr. M. Farooque v. Secretary, Ministry of Communication, Government of the People's Republic of Bangladesh, and 12 others, a complaint was filed against many ministries and other agencies for failing to satisfy their legal obligations to reduce motor vehicle-related air and noise pollution in the city of Khulana. Despite the fact that the Constitution does not provide any explicit right to life, it is inextricably linked to the right to a safe and healthy environment. The judge felt the same as the petitioner. Numerous environmental degradation concerns were revealed in this instance, including contamination of the natural resources that are necessary for life to exist (Francesco, 2010).

The government of Bangladesh passed three laws that the local governments of Rangamati, Khagrachhari, and Bandarban were associated with. However, some political activists and MPS challenged the laws, and the court eventually heard the challenged petition. The court ruled in favor of the petitioners and set a deadline for holding new elections in these areas. In the Ziaur Rahman v. Government of Bangladesh case, this took place. The idea of intergenerational fairness

did not exist, even though the court had acknowledged environmental rights as communal rights in earlier instances. However, the legitimacy of building the Speaker and Deputy Speaker of Parliament's homes inside the National Assembly Area in violation of the original design was questioned in *Bangladesh Paribesh Andolan and others v. Bangladesh* (henceforth referred to as the National Assembly Area Case) in 2004. The location consists of a park and open space, which is the only one available to those living in the vicinity of the National Assembly. The court noted that the state had a bounden obligation to protect nature and the environment for the sake of future generations and that this included the "right to have open space, parks, waterbodies, etc." The court also emphasized the importance of open spaces, parks, schools, lakes, and other community assets to the local population, ruling that the government may not take any action that would be harmful to the interests of the local community in these areas. This case represents a development over earlier ones, as the court was able to effectively address intergenerational equity.

Since Article 18A was added to the Constitution in 2011, the Appellate Division of the Supreme Court of Bangladesh has only decided one case: *Metro Makers and Developers Limited and others v. Bangladesh Environmental Lawyers' Association (BELA) and others* (also known as the Flood Zone Case). The validity of the Sub-Flood Flow Zone, or SFFZ, of the Dhaka Metropolitan Development Plan (DMDP) for the city of Dhaka was questioned in the Flood Zone Case on the grounds that it dealt with environmental preservation and protection. The Supreme Court of Bangladesh's High Court Division heard the case in 2004 and issued a ruling in 2005, stating that the Sub-Flood Flow Zone violated Article 31 of the Constitution's guarantee of the right to legal protection (Islam, 2014). The 2013 trial court's ruling was upheld by Appellate Division in the appeal. Since the petition was submitted prior to Article 18A's incorporation into the Constitution, the Appellate Division declined to consider it.

PIL contribution to ensuring EJ in Bangladesh

PIL is not the legal aid movement's tactical wing. Just requiring the rights of wealthy people to be upheld is insufficient. The rights of the marginalized and

disadvantaged as a group, which remain unaddressed due to their lack of access to the legal system, must also be upheld for the benefit of the general interest (Hasan, 2009). The constitution's provisions have been liberally construed by the courts to advance the interests of the underprivileged in order to promote the Rule of law. PIL is not a process that is adversarial and has a single victor. The person who files the Public Interest Litigation may not receive the solution he had hoped for. It's possible that he didn't fully sensitize the judge or that the judge chooses not to use his discretion after weighing the conflicting interests. The main benefit of PIL is that it raises concerns to the attention of the general public. It aids in forming supportive public opinion. Through the courts, PIL has increased public accountability. The cases, which were solely the executive branches to handle, have been taken up by the judiciary (Alam, 2008). They have acted in this way as a team to uphold the Constitution's requirements, not interfere with the executive branch's functions. Not only has it taken away their ability to make decisions, but it has also offered recourse when necessary. PIL's contribution to environmental justice is multifaceted, as is given below:

Creating a new regime of human rights

One way to do this is to broaden the definition of the fundamental rights to equality, life, and personal liberty. Human rights such as freedom from torture, sexual harassment, solitary incarceration, bondage and slavery, exploitation, and the right to a timely trial, free legal assistance, dignity, means of subsistence, education, housing, medical treatment, and a clean environment are established throughout this procedure. With the use of PILs, the courts can be activated to enforce these newly reconceived rights.

Democratization of access to justice

To do this, the conventional locus standi rule is loosened. A social action group or any public-spirited individual may petition the court on behalf of the oppressed classes. One can even get the attention of the courts by sending a telegraph or writing a letter. We refer to this as epistolary jurisdiction.

Fashioning new kinds of relief

The writ jurisdiction of the court permits its execution. For instance, the victims of governmental lawlessness

may receive interim compensation from the court. This is in stark contrast to the AngloSaxon adjudication process, which only provides temporary relief meant to maintain the status quo while a final ruling is made. The injured party may still file a civil lawsuit for damages after compensation is awarded in PIL cases. The court may provide the victims with any kind of remedy in PIL petitions.

Devising new techniques of fact-finding

In the majority of instances, the court has assigned its own official to conduct an investigation or formed its own socio-legal commission of inquiry. Investigating human rights abuses has occasionally required the assistance of the National Human Rights Commission or specialists. Investigative litigation is another term for this.

Challenges in ensuring EJ in Bangladesh

Access to environmental justice is restricted by the Environment Court Act of 2010, which establishes judicial forums to resolve issues pertaining solely to the environment (Sarwar, 2021). The Special Magistrate Court cannot consider an offense under section 6(3) of the Act unless an Inspector of the Department of Environment (DoE) submits a written report. Once more, under section 7(4), the Environment Court cannot hear a compensation claim unless the inspector has submitted a written report. However, if the magistrate or the court, as appropriate, is convinced that the inspector has not taken the required action within sixty days of the aggrieved party's request, the court may accept a case directly from private parties without this previous authorization. Alternatively, if the court or magistrate finds cause to take cognizance of the complaint, they may do so immediately after providing the inspector with a fair chance to be heard, or they may instruct the inspector to conduct an inquiry in the proper situation (Hasnat & Kormokar, 2011).

After carefully examining both sections, it becomes clear that the Department of Environment's written report, which serves as the major source of information for filing lawsuits and conducting investigations into them, is necessary for the environmental courts to operate. While the Environment Conservation Act of 1995 permits an individual or group of

individuals to bring a lawsuit for any grievance under the Act, it should be noted that the Environment Court Act has not acknowledged the common people's right to directly access the Environment Courts by requiring a non-judicial authorization (Moneruzzaman, 2022). Apart from the Environment Court Act, the majority of environmental laws likewise put a limit on the court's ability to take cognizance of environmental offenses and need executive body consent prior to court proceedings. It is contended that this type of bar limits environmental litigants' access to justice. The following are the main obstacles to PIL access to justice in Bangladesh:

- i. When someone steps under a Public Interest Litigation (PIL), the government immediately puts up obstacles since PILs often seek to ensure that people's rights and the causes they demand be upheld;
- ii. The judicial system is not immune to government meddling. Therefore, for PIL to flourish, the judiciary must be free from influence from the government.
- iii. Very few people are aware of PIL. An additional significant barrier in certain situations is the law enforcement agency; in other situations, a dearth of skilled attorneys;
- iv. A lack of suitable actions and support from the government;
- v. There are several issues with PIL in Bangladesh, particularly with regard to public ignorance and human rights groups focused only on their own advancement.
- vi. PIL has several challenges, chief among them the dearth of knowledgeable and passionate attorneys committed to serving the public interest;
- vii. The unfavorable political climate is largely to blame. PILs lack awareness of the following issues:
- viii. Corruption, a lack of the rule of law, and political reasons;
- ix. Recently, judicial action has been extremely uncommon in PIL cases in Bangladesh;
- x. A lot of attorneys handle PIL matters only out of financial gain. In relation to the appropriately concerned PIL matters, the high court renders decisions. The attorneys must first get payment in advance before they may begin working on the case.

xi. Everyone needs to be informed of the country's current laws, as well as how they should be established and carried out.

CONCLUSION AND RECOMMENDATIONS:

In conclusion, it may be concluded that public interest litigation in Bangladesh has a highly promising future. Public interest litigation, however, is a component of legal assistance and public interest law and cannot function independently. Furthermore, the absence of the anticipated judicial activism and process fine tuning have prevented the Public Interest Litigation in Bangladesh from reaching the anticipated success. Moreover, Public Interest Litigation cannot proceed without hindrance due to the constitution's "non-enforceable" Fundamental Principles of State Policy. As a result, the Public Interest Litigation has a long way to go before it can be considered a useful tool for social transformation, and a liberal interpretation of the Fundamental Principles of State Policy with the Fundamental Rights as stated in the Constitution is imperative. Many suggestions for resolving the aforementioned issues with this work would probably be emphasized. They are as follows:

1. There should be increased awareness of and visibility for citizens' rights.
2. The governing government should eliminate all barriers.
3. The Apex Court should be accommodating in handling PILs.
4. The litigation process should be easy for the parties involved.
5. Schools, colleges, universities, and community centers should all present PIL concepts, in addition to conferences and seminars.
6. In PIL cases, the concerned group of individuals ought to take the lead.
7. Public education is required through specialized seminars and symposiums in order to develop PIL.
8. Law enforcement organizations must be more supportive and cooperative in PIL.
9. More action in PIL is required from human rights groups and concerned citizens.
10. To create a structure for the attorneys handling Public Interest Litigations and to develop

appropriate and efficient institutions to handle these matters.

11. To handle PIL concerns, a distinct writ bench had to be constituted.
12. Concerning the implications of carrying out the High Court Division's directions regarding arbitrary arrests under section 54 and remand under section 167 of the Code of Criminal Procedure, public opinion should be solicited.
13. An impartial inquiry into the crossfire killings is necessary in order to ascertain if the suspected culprits' crimes, which resulted in their deaths, are capital crimes.
14. Through improved communication, the media and human rights groups should try to follow up on the recommendations of successful PIL cases, and monitoring following judgment.
15. A monitoring cell of judges, members of civil society, the media, and human rights advocates need to be established in order to methodically pursue follow-up actions after judgments.
16. To explore and identify PIL concerns and methods, law journalists and BLAST should regularly schedule meetings.
17. To advance the public interest law movement via the use of all available means, including public interest litigation, since the PIL movement is more beneficial than litigation alone.
18. To place a focus on lobbying and policy and legislative advocacy.

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CONFLICTS OF INTEREST:

I, here by, declare that there are no matters of conflict of interest in the content of the article.

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