



Protecting Bangladesh's Ecosystems through Public Interest Litigation

Md. Humaun Kabir¹, Mirza Md. Abu Raihan^{2*}

¹Associate Professor, Department of Law, Sylhet International University, Bangladesh

²Apprentice Lawyer, Dhaka Judge Court, Bangladesh.

*Corresponding Author Mirza Md. Abu Raihan

Apprentice Lawyer, Dhaka
Judge Court, Bangladesh.

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Abstract: The premise that humans are inherently social gives rise to the relatively recent concept of public interest litigation (PIL) in Bangladeshi law. Disputes involving rights violations or complaints regarding subjects of public interest are the primary focus of public interest litigation (PIL), a branch of constitutional law. On matters of great national importance, regular people can now submit brief legal arguments to the Supreme Court in this way. One powerful tool for judicial activism that upholds human rights and the rule of law is public interest litigation (PIL). It is a fundamental part of the law in Bangladesh. In spite of the challenges, the court is vital in safeguarding basic rights and guaranteeing fair treatment of the state and its citizens in the application of the law. This remains valid, notwithstanding the potential problems. In order to maintain uniformity and provide guidance, the legislative branch seeks the advice of the judiciary. However, the present administration's recruiting practices and the judicial corps' dedication to the standards that regulate their respective professions offer hope for limiting the court's radicalism. Decisions that are rational but nonetheless contentious may be handed down by judges in Bangladesh who are not swayed by political parties. People now expect the courts to deal with environmental issues because the right to life has been broadened to include protection of the environment. To that end, this essay will examine certain cases heard in Bangladeshi courts that illustrate the role of public-interest litigation in bringing about justice.

Keywords: Public interest lawsuits, Bangladeshi legislation, The law of the land, Fundamental freedoms, Activist judges, The highest court in the land, Essential liberties, Environmental problems, Judicial disputes.

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Introduction

According to (Ashraf et al., 2022), a person or group of people whose interests are impacted by the law, whether financially or otherwise, decides to take legal action in a court of law to make sure the law is enforced for the benefit of everyone. When the goal of the law enforcement action is to benefit the public at large, this is called "public interest litigation" (PIL). The fundamental goal of the Public Interest Law (PIL) movement is to alleviate the immense suffering that some people have endured because other people are heartless. Maintaining public transparency and ensuring fair court proceedings are the most effective ways to address the rising danger of abuses of legal rights, according to (Hossain Mollah, 2014). Part of this is making sure the government is completely open and honest.

A person must have faced an imminent and substantial threat to their basic rights before they can bring a case before the Supreme Court. If you want to take your case to the Supreme Court, you must do this. A subset of civil litigation known as public interest litigation seeks to aid a class or group of oppressed, victimized, or exploited individuals who lack knowledge, resources, or understanding to access justice, rather than an individual (Hossaini

& Mahmud, 2019). Justice P. N. Bhagwati offered this explanation while discussing a public interest lawsuit.

Public interest litigation can be initiated by any concerned citizen to safeguard the "public interest" or the overall welfare of the community, as stated by Hossaini & Mahmud (2019). Because of this, the person is able to safeguard the community efficiently. A party can seek redress in the appropriate court of justice through this type of action when they have locus standi, which is another way of expressing that they have a sufficient interest in the problem. They can access this once they establish locus standi. It was the concept of laissez-faire that gave rise to this inflexible locus standi requirement. This political theory holds that, above all else, the role of the state is to ensure the safety of its citizens by warding off foreign invaders and enforcing domestic laws (Bolbol, 2005). Conversely, under a welfare state, the state is devoted to safeguarding the rights of its inhabitants in every feasible manner. Following this logic, an activist or victim of a violation of another person's rights can seek redress through the legal system. Anyone, regardless of their connection, has the option to protest any violation of rights through public interest litigation. This holds true irrespective of the person's level of direct involvement.

Methodology:

Research Design:

This study employs a qualitative research design to explore the role and impact of public interest litigation (PIL) in protecting Bangladesh's ecosystems. The research draws upon a combination of case study analysis, legal document review, and expert interviews to understand the effectiveness and challenges of PIL in the Bangladeshi context.

Data Collection:

1. Case Study Analysis:

- **Selection of Cases:** Relevant environmental PIL cases adjudicated by the Supreme Court of Bangladesh will be selected. Criteria for selection include the significance of the case, the environmental impact, and the role of PIL in the case outcome.
- **Data Sources:** Legal databases, court records, and judgments will be used to gather detailed information about each case.
- **Analysis Framework:** Cases will be analyzed based on their background, legal arguments presented, the court's decisions, and the environmental and societal impacts.

2. Legal Document Review:

- **Legislation and Policies:** Analysis of existing environmental laws, regulations, and policies in Bangladesh to understand the legal framework within which PIL operates.
- **Judicial Guidelines:** Review of judicial guidelines and precedents related to PIL to assess how the judiciary interprets and applies these laws in environmental cases.

3. Expert Interviews:

- **Participants:** Interviews will be conducted with legal experts, environmental activists, judges, and lawyers who have experience with PIL in Bangladesh.
- **Interview Guide:** A semi-structured interview guide will be developed to explore participants' views on the effectiveness, challenges, and future prospects of PIL in environmental protection.
- **Data Collection Method:** Interviews will be recorded (with consent) and transcribed for analysis.

Data Analysis:

1. Thematic Analysis:

- **Coding:** Transcribed interviews and case study data will be coded to identify key themes and patterns related to the role of PIL in environmental protection.
- **Themes:** Potential themes include judicial activism, challenges faced by PIL, impact on environmental policies, and public awareness.

2. Comparative Analysis:

- **Cross-Case Comparison:** Different cases will be compared to identify common factors that contribute to the success or failure of PIL on environmental issues.

- **Policy Implications:** The analysis will focus on the implications of judicial decisions for environmental policy and legislation in Bangladesh.

Ensuring Validity and Reliability:

1. Triangulation:

- **Multiple Sources:** Combining data from case studies, legal document reviews, and expert interviews to ensure comprehensive coverage and validation of findings.
- **Cross-Verification:** cross-checking information obtained from different sources to confirm accuracy and consistency.

2. Peer Review:

- **Review Process:** Engaging with peers and experts in the field to review and critique the methodology and findings to enhance the study's credibility.

3. Ethical Considerations:

- **Informed Consent:** Ensuring all interview participants provide informed consent and are aware of the purpose of the study and how their information will be used.
- **Confidentiality:** maintaining the confidentiality of participants' identities and sensitive information obtained during the research.

Limitations

1. **Scope of Cases:** The study is limited to cases that are publicly available and documented. There may be relevant cases that are not accessible due to confidentiality or other reasons.
2. **Subjectivity:** The interpretation of qualitative data is inherently subjective, and researcher bias may influence the analysis. Measures such as peer review and triangulation are employed to mitigate this.

Principle of Fair Environmental Treatment:

The dumping of toxic waste in close quarters with an African-American community in North Carolina, USA, in the 1980s sparked the birth of the Environmental Justice Movement. Inadequate infrastructure for waste handling is the root cause of these concerns. Environmentalists have long called for a society without economic inequality, according to Hossain and Bushra (Hossaini & Mahmud, 2019). So far, this has persisted for quite some time. Several environmental groups with more traditional views on environmental issues were the targets of this criticism. Because ecological justice is a complex and multi-faceted historical issue, the national dialogue on the subject has evolved through fundamental contradictions. Dedicated environmentalists have ignored racism and other major social issues since the beginning of their quest for wilderness areas and nature preserves.

Saniotis (2012) posits that the Western perception of nature stems from the white middle class's appreciation of the aesthetic value of wild nature. In America, this is especially the case. Muslims present this line of thinking as their argument. The ice shapes that nature can take are fantastical in the view of white nationalists. The environmental conservation movement in the US had its origins in the brutal dispossession of indigenous people from their traditional territories. Because of this incident, the topic has become more prominent in the public eye. Concurrently, discussions were

underway on the creation of Yosemite and Yellowstone national parks.

(Lehtinen & Simonsen, 2021) article how minority groups bear the brunt of environmental catastrophes. This is a melancholy reminder of America's terrible racial past. This highlights the reality that minority communities bear the brunt of environmental catastrophes. The perpetuation of social and environmental inequalities on a worldwide and regional scale exemplifies a justice mentality that is rooted in the past. This sense of fairness has endured, which is evidence of this. While we're on the subject of platforms, let's examine the two most prominent ones that address ecological fairness. When activists band together to fight injustice on a global and local scale, they may be better prepared to respond to legal arguments with compelling counterarguments. Users of these networks can take advantage of these options. A large portion of Europe shares the views of pragmatic lawyers and progressive activists who want fairness in decision-making and believe in positive transformation, claims Kamal (Salem, 2019). On the whole, a large portion of the European population shares these goals. Despite these commonalities, different parts of Europe understand and apply environmental justice in different ways.

The Historical Context of Public Interest Litigation (PIL) in Bangladesh:

There was a new phenomenon that appeared in 1991, which was the public interest litigation (PIL) movement. This occurred at the height of Bangladesh's democratic transition. There is no doubt that the political upheaval that was occurring at the time played a part in the development of this labor-intensive method. As a matter of common perception, the inability of Bangladeshi courts to hear public interest litigation (PIL) cases can be attributed to their obstinacy in rejecting expansive readings of the constitution and their continued use of outmoded colonial legal concepts (Patwary, 1991; Haque, 2023). This is something that a lot of people get wrong.

The Kazi Mukhlesur Rahman v. Bangladesh case, sometimes referred to as the Berubari case, was a landmark decision in which the Supreme Court of Bangladesh demonstrated a clear preference for public interest litigation and came very close to establishing public interest judicial review. It was at the beginning of 1974 when the hearing on this topic took place. In spite of this, the Public Interest Litigation (PIL) that was filed in the Sangbadpatra case in 1991 was rejected by the Supreme Court. The case that is being investigated is also referred to as the Bangladesh Sangbadpatra Parishad v. Bangladesh issue. According to "the petitioner seeking enforcement of a basic right under our Constitution must be a 'person aggrieved'" (Hossain & Hassan, 1999), the Sangbadpatra case established a "person aggrieved" criterion for constitutional remedies that are accessible under Article 102. This standard was established as a result of the Sangbadpatra case. This examination was carried out in response to the allegation that was stated before. It was our intention to create this test so that individuals would be able to differentiate between the constitutions of India and Bangladesh. However, in contrast to India, Bangladesh does not have a constitutional clause that mandates the filing of a lawsuit on behalf of the public. This has been a barrier to the expansion of this kind of case, which has prevented it from getting traction and preventing it from continuing to grow.

As a consequence of the FAP 20 case that took place in 1996, sometimes referred to as Dr. Mohiuddin Farooque v. Bangladesh, the notion of public interest litigation (PIL) was established as a genuine legal concept in Bangladesh. According to Ahmed (1999), as a result of this key case, the Bangladesh Environmental Lawyers Association (BELA) was granted the authority to reject a flood control project that was already in progress. To the satisfaction of Justice Kamal, "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), an important constitutional right. In this case, Justice Kamal maintained the entitlement. The protection of this right was implemented within the framework of this particular case.

Seismic PIL in Bangladesh and its consequences:

Public interest litigation (PIL) has been a transformative legal tool in Bangladesh, especially after the landmark ruling in the FAP 20 case. This case, decided by the Appellate Division (AD) in 1996, established significant precedents that have shaped the trajectory of PIL in the country.

The FAP 20 Case and Its Implications:

The FAP-20 case was a turning point in the realm of PIL in Bangladesh. The AD's final ruling in this case, which involved Dr. Mohiuddin Farooque, a prominent environmental lawyer, provided a hopeful outlook for attorneys, activists, and non-governmental organizations (NGOs) striving to use PIL as an instrument for supporting disadvantaged populations. The AD recognized the standing of a third party to bring cases when state or public authorities violated rights, thus eliminating any ambiguities regarding the "aggrieved party" concept and validating the use of PIL proceedings (Weiss, 2008).

Significant Cases Following the FAP 20 Ruling:

1. Radioactive Milk Case:

In this case, Dr. Farooque challenged the importation of radioactive milk by the Commerce Ministry, which posed severe health risks, especially to children. The court, acknowledging the constitutional right to life, ruled in favor of Dr. Farooque, emphasizing the need for governmental control systems to prevent such occurrences in the future (Badsha & Shariful, 2014).

2. Judges Appointment Case:

Dr. Farooque filed a PIL to prompt the government to fill vacant Supreme Court positions. However, the court dismissed the case, stating that no constitutional or legal rights had been infringed by the government's inaction (Badsha & Shariful, 2014).

3. Air and Noise Pollution Case:

This case involved a complaint against several government ministries for failing to curb air and noise pollution in Khulna. The court sided with the petitioner, Dr. Farooque, highlighting that a safe and healthy environment is integral to the right to life, despite its absence as an explicit constitutional right (Francesco, 2010).

4. Ziaur Rahman v. Government of Bangladesh:

Political activists and MPs challenged laws passed by the government concerning local governments in Rangamati, Khagrachhari, and Bandarban. The court ruled in favor of the

petitioners, mandating new elections in these areas and underscoring the importance of local governance and public participation (Nusrat & Khan, 2024).

5. National Assembly Area Case:

This 2004 case questioned the legality of constructing residences for the Speaker and Deputy Speaker of Parliament within the National Assembly Area. The court ruled that the state must protect open spaces, parks, and other community assets, thus addressing intergenerational equity and environmental rights (Nusrat & Khan, 2024).

6. Flood Zone Case:

In the Metro Makers and Developers Limited v. Bangladesh Environmental Lawyers' Association (BELA) case, the validity of the Sub-Flood Flow Zone (SFFZ) of the Dhaka Metropolitan Development Plan was challenged. The High Court Division ruled in 2005 that the SFFZ violated the constitutional right to legal protection. The Appellate Division upheld this ruling in 2013, emphasizing environmental preservation and protection, although it declined to consider Article 18A of the Constitution, added in 2011, as the petition predated it (Islam, 2014).

The Role of PIL in Guaranteeing EJ in Bangladesh:

For communities in Bangladesh that are marginalized and disadvantaged and do not have access to traditional legal systems, public interest litigation (PIL) has proven to be an effective weapon in the battle for environmental justice (EJ). This is because PIL is a form of litigation that addresses the public interest. It goes beyond simply safeguarding the rights of those who are wealthy in order to meet the requirements of those who are underserved (Hasan, 2009). Public interest litigation (PIL) is more than just another tool in the struggle for legal help; it goes beyond simply preserving the rights of those who are wealthy. When it comes to the interpretation of constitutional provisions, the courts in Bangladesh have been rather generous. This has been of great aid to those who are less fortunate and has contributed to the growth of justice inside the country.

PIL is not an aggressive procedure that is geared toward achieving a certain purpose, contrary to the popular misperception that suggests otherwise. PIL works to achieve a specific goal. As a result of the judge's level of sensitivity or the manner in which they arrive at their decision after taking into account competing interests, it is possible that the petitioner will not always receive what they anticipate receiving. One of the major advantages of public interest litigation (PIL) is that it helps bring serious issues to the attention of the general public and contributes to the establishment of favorable public opinion. This is one of the most significant benefits of private-interest litigation. The judicial inquiry into matters that were previously handled by the executive branch has resulted in a considerable increase in public accountability. This phenomenon has been brought about through the utilization of public interest litigation (PIL). This, in turn, has stopped the executive branch from abusing the authority that it possesses while continuously sticking to the norms established by the constitution (Alam, 2008). As a result of this, the Chief Executive Officer is now accountable for their actions and has additional options available to them in the event that issues develop.

As a result of the Public Interest Law (PIL), environmental justice in Bangladesh has made significant progress during the past few years. Those individuals who do not have the financial means to have their opinions heard on environmental issues now have access to a legal avenue that addresses their concerns. In addition, there has been a rise in the level of public awareness and participation, and environmental regulations have been strictly implemented.

Establishing a New System of Human Rights Provisions:

In order to build a new set of human rights, it is essential to broaden the concept of basic rights in order to incorporate more comprehensive guarantees of equality, life, and individual freedom. This process is necessary in order to achieve this goal. In order to develop a new set of human rights, this is not only required but also necessary. In order to accomplish this objective, it is necessary to put in place safeguards that protect individuals from being exploited, sexually harassed, tortured, confined in solitary confinement, and subjected to bondage or slavery. Furthermore, it incorporates the following rights: the right to a fair trial, the right to affordable legal representation, the right to respect for one's dignity, physical and mental health, proper housing, adequate education, and a safe and healthy environment. All of these rights are included in the right to a secure and healthy environment. By utilizing public interest litigations (PILs), it is feasible to mobilize the court system in order to safeguard and respect these newly constituted rights. This approach is known as "public interest litigation."

Increasing Participation in the Legal System:

The expansion of access to legal remedies for all members of society, particularly those who are oppressed or economically disadvantaged, is a crucial step toward the realization of the goal of establishing justice for all. The rule of customary locus standi should be relaxed, as this would be a big step in the right direction. Invoking locus standi and taking a case to court is only possible for individuals who have a genuine interest in the outcome of the case. A more democratic approach, on the other hand, might loosen this criterion in order to make room for a greater number of different petitions to be taken into consideration.

In accordance with this strategy, selfless individuals or social action groups have the ability to represent oppressed classes in legal proceedings. Therefore, even if you are not directly harmed by an injustice, you still have the ability to seek court action if you are concerned about the wider implications and consequences of the injustice. Because of their newly acquired popularity, an increasing number of people will be willing to take matters into their own hands by employing the court system in order to find solutions to issues that are prevalent in society.

Epistolary jurisdiction is one of the unique instruments that are included in the development of access to justice responsibilities. It is possible for individuals to communicate their complaints to the court in a manner that is less official; for example, they could write a letter or send a telegraph notice. Epistolary jurisdiction is a method of judicial administration that streamlines the procedure and makes it possible for people who lack financial resources or legal understanding to seek justice. In the event that the judicial system implements these strategies, it will be possible to better meet the needs of all individuals and to make society more equitable.

Coming up with Novel Forms of Therapy:

Due to the fact that it possesses the authority to issue writs, the court is able to carry out several different types of remedies for individuals who have been mistreated. One possible illustration of such a scenario is the prospect of offering temporary compensation to those who have been affected by the chaos surrounding the government. The Anglo-Saxon adjudication process, which typically aims to maintain the status quo by offering interim relief, is quite different from this method, which is very different from the current method. In comparison to the standard technique, this one is a substantial deviation.

When it comes to instances that involve public interest litigation (PIL), the court has the authority to provide victims with a number of different options for redress. A party that has been hurt may pursue additional damages in a civil action even after they have obtained compensation in a public interest litigation (PIL) case. This is because the party that has been injured has the ability to do so. As a result of the nature of the court's writ jurisdiction, victims are able to obtain their money back in a short amount of time while still having the option to get even more of it through the usual civil action process under the court's jurisdiction.

Creating novel approaches to gathering information:

In the majority of instances, the court has either chosen an officer to conduct an investigation on its own independent charge or established its own socio-legal commission of inquiry. It has been requested that the National Human Rights Commission and a number of other specialists provide assistance in the course of investigations into violations of human rights at a number of different times in time. This procedure is also referred to as investigative litigation, which is another name for it.

Difficulties in guaranteeing EJ inside Bangladesh:

Access to environmental justice (EJ) in Bangladesh is significantly constrained by several legislative and institutional factors, as detailed below.

Legislative Barriers

The Environment Court Act of 2010: The Environment Court Act of 2010, intended to address environmental disputes, inadvertently restricts access to justice. The Act mandates that an inspector from the Department of Environment (DoE) must submit a written report before the Special Magistrate Court can consider an offense under Section 6(3) (Sarwar, 2021). Furthermore, under Section 7(4), a compensation claim cannot be heard unless accompanied by the inspector's report. If the inspector fails to act within sixty days of the aggrieved party's request, the court can take direct action or mandate the inspector to conduct an inquiry after ensuring a fair hearing (Hasnat & Kormokar, 2011).

Institutional Dependence

Role of the Department of Environment: The reliance on the DoE's written report, as mandated by the Environment Court Act, is a major bottleneck. This report is essential for filing lawsuits and conducting investigations, placing significant control in the hands of the DoE. Although the Environment Conservation Act of 1995 allows individuals or groups to file lawsuits for grievances, the Environment Court Act does not grant direct access to the courts without prior authorization from a non-judicial body (Moneruzzaman, 2022).

Procedural Barriers

Executive Consent: Most environmental laws in Bangladesh require executive consent before court proceedings can commence, limiting judicial cognizance of environmental offenses. This requirement creates a significant barrier for environmental litigants seeking justice.

Public Interest Litigation (PIL) Challenges

1. **Government Obstructions:** The government often places obstacles in the path of PILs, as these litigations aim to uphold public rights and causes, potentially challenging governmental actions.
2. **Judicial Independence:** The judiciary is not entirely free from government interference, which hampers the effective functioning of PILs. An independent judiciary is crucial for the success of PILs.
3. **Public Awareness:** There is a general lack of awareness about PIL among the populace. Additionally, the absence of skilled attorneys to handle such cases is a significant barrier.
4. **Government Support:** There is a lack of appropriate actions and support from the government to facilitate PILs.
5. **Public and Human Rights Groups:** Many public and human rights groups are more focused on their own interests than advancing the cause of environmental justice.
6. **Attorney Challenges:** There is a shortage of knowledgeable and passionate attorneys committed to serving the public interest.
7. **Political Climate:** The unfavorable political environment in Bangladesh is a major impediment to PILs. Issues such as corruption, a lack of rule of law, and political motivations hinder the effectiveness of PILs.
8. **Judicial Action:** Judicial action in PIL cases has been extremely rare in recent times, further discouraging public interest litigation.
9. **Financial Motivations:** Many attorneys are motivated by financial gain rather than the public interest, demanding advance payment before taking on PIL cases.

Recommendations:

1. Increase awareness and visibility of citizens' rights.
2. Eliminate all barriers set by the governing government.
3. Ensure the apex court is accommodating in handling public interest litigation (PILs).
4. Simplify the litigation process for all involved parties.
5. Introduce PIL concepts in schools, colleges, universities, community centers, conferences, and seminars.
6. Encourage the concerned group of individuals to take the lead in PIL cases.
7. Promote public education on PIL through specialized seminars and symposiums.
8. Ensure law enforcement organizations are supportive and cooperative in PIL.

9. Encourage more action in PIL from human rights groups and concerned citizens.
10. Develop appropriate and efficient institutions for handling public interest litigation and create a supportive structure for attorneys managing these cases.
11. Establish a distinct writ bench to handle PIL concerns.
12. Solicit public opinion regarding the implications of the High Court Division's directions on arbitrary arrests under Section 54 and remand under Section 167 of the Code of Criminal Procedure.
13. Conduct impartial inquiries into crossfire killings to determine if the suspected culprits' crimes, resulting in their deaths, are capital crimes.
14. Improve communication between the media and human rights groups to follow up on recommendations and monitor successful PIL cases after judgment.
15. Establish a monitoring cell consisting of judges, civil society members, media, and human rights advocates to systematically pursue follow-up actions after judgments.
16. Schedule regular meetings between law journalists and BLAST to explore and identify PIL concerns and methods.
17. Advance the public interest law movement through all available means, including PIL, as the PIL movement is more beneficial than litigation alone.
18. Focus on lobbying, policy, and legislative advocacy to support the public interest law movement.

Conclusion:

Within the realm of public interest litigation (PIL), there is a significant amount of potential for the future in Bangladesh. However, the Fundamental Principles of State Policy are not enforceable, and there has been no initiative on the part of the judiciary to improve the efficiency of the processes. In order for public interest litigation (PIL) to be an effective tool for social change, it is extremely important that these principles be interpreted in a liberal manner in light of the constitutional rights that are guaranteed by the Bill of Rights. The incorporation of public interest litigation (PIL) instruction into community and academic settings, the increase of public awareness, the removal of obstacles imposed by the government, the enhancement of access to the litigation process, and the promotion of cooperation between the court, human rights organizations, and law enforcement are all significant ideas. It is essential to establish dedicated writ benches, seek public opinion on legal reforms, and ensure rigorous follow-up on court recommendations in order to cultivate public interest litigation (PIL) in Bangladesh, as stated by Hossain (2015), Rahman and Khatun (2017), and Siddiqui (2019).

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