

Public Interest Litigation: An Effective Mechanism for Securing Human Rights and the Rule of Law

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Introduction

Lexically, the expression 'Public Interest Litigation' (hereinafter referred to as PIL) means litigation filed in a court of law for the protection of 'Public Interest', such as pollution and constructional hazards; terrorism, issues of livelihood and public safety and so forth. PIL is not defined in any statute. It has been interpreted by judges to consider the interest of public at large.¹ Although, the main and only focus of such litigation is on 'Public Interest' there are various areas where a PIL can be filed.² It is not necessary, for the exercise of the court's jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court. The court can itself take cognizance of the matter and proceed *suo motu* or cases can be commenced upon the petition of any public-spirited individual in that situation.³ Such cases, however, may be accommodated when the victim does not have the necessary resources to commence and continue litigation or his freedom to move the court has been suppressed or encroached upon. So, PIL is the power given to the public by courts through judicial activism⁴ to protect, secure and uphold various rights which are very likely to be jeopardized otherwise. Hence, PIL can broadly work as a catalyst to secure human rights *vis-a-vis* rule of law because the latter is based on the belief that every individual has the right to enjoy the dignity of man.⁵ The object of this paper is to assess the efficacy of PIL as an effective mechanism for securing human rights and the rule of law. This will be done mainly by analysing case law relating to PIL of various jurisdictions as well as by

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¹ Rajendra Ramlogan, *Sustainable Development: Towards a Judicial Interpretation* (Martinus Nijhoff, 2011) 248.

² Basant Lal Wadehra, *Public Interest Litigation: A Handbook* (Universal Publishing, 2009) 47.

³ Pravin H Parekh (ed), *Human Rights Year Book-2010* (Universal Publishing, 2010) 206.

⁴ *Francis Coralie v Union Territory of Delhi* (1981) 1 SCC 688; Jamie Cassels, 'Judicial Activism and PIL in India: Attempting the Impossible?' (1989) 37 *American Journal of International Law* 495, 495-512.

⁵ M Ershadul Bari, 'The Rule of Law and Human Rights' (1990) 13 *Bangladesh Journal of Law* 53, 53-6.

exploring the interface between and among them, i.e., PIL, Human Rights and the Rule of Law.

Conceptualising Public Interest Litigation

When there is an abuse or misuse of power, who can bring a case before the court? Can any member of the public come? Or must he have some private rights of his own? In many statutes or constitutional enactments it is enacted that in case of non-compliance, a 'person aggrieved' may complain to the court or to a tribunal. During the 19th century, those words were construed very restrictively.⁶ It was said that a man was not a 'person aggrieved' unless he himself has suffered particular loss in that he had been injuriously affected in his money or property rights. He was not 'aggrieved' simply because he had a grievance. It was not enough that he was one of the public who was complaining in company with hundreds or thousands of others. That was laid down in 1880 by a distinguished Judge, Lord Justice James, in the *Sidebotham case*.⁷ But, subsequently in *R v Thames Magistrates' Court*,⁸ Lord Justice Parker and Denning departed⁹ from that old test. Thus, the usual and traditional concept of *locus standi*¹⁰ as evolved from the Anglo-Saxon Jurisprudence¹¹ is vitiated in cases of PIL. And in recent years the old position has been much altered. There have been a remarkable series of cases in which private persons (third parties)¹² have come to the court and have been heard. There is now a much wider concept of *locus standi* when complaint is made against a public authority. It extends to anyone who is coming to the court on behalf of the public at large.¹³

The intervention of the court may be sought by way of PIL in cases where- a) the statutory provisions have overlooked the interests of a significantly affected group that would otherwise suffer in silence; and b) the existing rules and standards are not complied with due to indifference towards a particular group unjustly denying them any legal entitlements or resulting in unfair and hostile treatment. PIL, hence, in the legal regime provides a platform for protecting human rights of those who are not in a position to go to court for legal remedy mainly due to poverty and ignorance among other things. The emergence of PIL over the last twenty years has been a

⁶ K L Bhatia, *Judicial Activism and Social Change* (Deep & Deep, 1990) 200.

⁷ (1880) 14 Ch D 458, 465.

⁸ (1957) 5 LGR 129.

⁹ They shifted their position from *economic injury* concept to *non-economic injury* concept of aggrieved person.

¹⁰ Ordinarily *Locus Standi* means right to sue.

¹¹ Anglo-Saxon Jurisprudence means jurisprudence of the old English people before Norman Conquest.

¹² Third party (not the aggrieved) means that which is not directly injured in money or property. He is not the actual victim but a party (plaintiff) to the litigation.

¹³ Lord Denning, *The Discipline of Law* (Butterworths, 1979) 117.

salutary development towards providing the vast majority of citizens with access to justice and effective protection of their fundamental rights. PIL has thus, evolved as a powerful tool capable of fulfilling the promises that the constitutions held out resulting in the establishment of the rule of law.

So, where a legal wrong or injury is caused to a person or persons due to violation of any constitutional or otherwise guaranteed rights¹⁴ and the aggrieved persons are not in a position to challenge the illegality due to poverty, helplessness or financial inability and thus, cannot go before the court, such matters and cause of action can be brought before the court by any such individual who feels that justice must be brought to these aggrieved acting *pro bono publico*.¹⁵ Even in some situations the court may take reasonable steps *suo moto*, as it deems appropriate for the ends of justice, although the court itself is not an aggrieved party.

In *Miss Benazir Bhutto Case*,¹⁶ the full bench of the Pakistan Supreme Court held that in cases of violation of fundamental rights of a class or a group of persons who are unable to seek redress from a court the traditional rule of *locus standi* can be dispensed with and procedure available in Public Interest Litigation can be made use of, if it is brought to the court by the person acting *bona fide*. The Court also held that the rule of *locus standi* can be relaxed in order to include a person who in a bonafide manner makes an application for the enforcement of the human rights of a detrimental class of persons whose grievances go unnoticed and so unredressed.

Hence, it is convincing that Public Interest Litigation is a concept which recognizes maintainability of legal action by a third party (not the aggrieved) in a unique situation.¹⁷ If a plaintiff with a good case is turned away, merely because he is not sufficiently affected personally, it means that some person is left free to violate the law, and that is contrary to the rule of law and public interest. If the case is accepted to ensure public interest, it is referred to as Public Interest Litigation.

Conceptualising Human Rights

Human rights are those rights which a person can claim because he is a human being. Human rights literally mean the rights of man. They are also called natural rights. Thomas Paine may have been the first to use the term human rights,¹⁸ in his English translation of the 'French Declaration of the Rights of Man' adopted by the National Assembly of France in 1789 which prefaced the Constitution of 1791. Later on, the term 'human rights' has

¹⁴ Holning Lau and Jen Yap Po (eds), *Public Interest Litigation in South Asia* (2011) 35.

¹⁵ *S P Gupta v Union of India* AIR 1982 SC 149.

¹⁶ 1988 PLD SC 416.

¹⁷ Unique situation means a situation where third party acts as friend in good faith without any malafide intention *pro bono publico*, not for his own vested interest.

¹⁸ Thomas Paine, *The Rights of Man* (Gutenberg, 1789).

been used in the English text of the *Universal Declaration of Human Rights, 1948*¹⁹ and such usage continues in this day.

So, human rights are commonly understood as worldwide inalienable fundamental rights backed up by state obligations and are essential for the existence of human beings themselves.²⁰ They are intrinsic to every human being, simply because of being human. They include all, and only, human persons. Around the world, people and nations have recognized the importance of human rights as a fundamental part of social justice.²¹ They represent the minimal moral standards for human society.²² The possession of human rights is the principal means for maintaining a notion of human dignity. Human rights are concerned with the dignity and self-esteem of the individual that are essential for securing personal identity and promoting human community.²³

Since, human rights inhere universally in all human beings and the principal means for preserving the notion of human dignity, they unlike other 'possessions' cannot normally be traded off. 'Universal inherence' and 'inalienability' are the two principal characteristics which distinguished human rights from other rights.

For promotion and protection of human rights, PIL carries a compendious value as it has the ability to correct decisions and render government authorities accountable to citizen. It can encourage governments to make their human rights obligations meaningful to all parts of society and thus contribute to social and environmental justice. It may encompass elements of other legal remedies such as class actions which determine the rights of large numbers of people whose cases involve common questions of law or fact. PIL often also entails a form of judicial review, examining the legality of decisions and activities of public authorities or the constitutionality of the law. Hence, for the promotion and protection of human rights PIL plays a capacious role. Some important human rights, which public interest litigation ultimately establishes, promotes and secures are, among others: right to life, liberty and personal security,²⁴ right to equality before the law,²⁵ right to freedom from arbitrary arrest and detention;²⁶ right to freedom of

¹⁹ Alan S Rosenbaum, *The Philosophy of Human Rights: International Perspective* (Greenwood Press, 1980) 9.

²⁰ Samantha Power and Graham Allison (eds), *Realizing Human Rights: Moving from Inspiration to Impact* (Palgrave Macmillan, 2000) 357.

²¹ Curtis F J Doebbler, *Introduction to International Human Rights Law* (CD Publishing, 2007) 173.

²² Morris B Abram, 'Freedom from Thought, Conscience and Religion' (1967) 2 *Journal of the International Commission of Jurists* 40.

²³ Abdul Aziz Said, *Human Rights and World Order* (Praeger Publisher, 1978) 1.

²⁴ The Universal Declaration of Human Rights, 1948, art 2.

²⁵ Ibid, art 7.

²⁶ Ibid, art 9.

movement;²⁷ right to own property;²⁸ right to social security;²⁹ right to education;³⁰ right to a standard of living;³¹ right to health;³² right to housing;³³ right to freedom from discrimination³⁴ etc.

Conceptualising the Rule of Law

The 'Rule of Law' means literally what it says: the rule of the law. The origin of this term may be ascribed to Edward Coke in England with his milestone remark that the King must be under God and the law. So, the term 'Rule of Law' is used in contradiction of the rule of man. In any society in which rule of law prevails it is the law that governs even though instrumentally of man, and no man is independent of or above the law. In such a society every executive action must have legal sanction behind it and there is no place for executive action that springs from individual whim, caprice or malice. Thus, the arbitrary action is complete antithesis of the rule of law.³⁵ The government is merely to act as per the dictates of law. Hence, the ideal of the rule of law in its narrow sense is often expressed by the phrase 'government by law and not by men'.

According to A V Dicey, the rule of law connotes at least three elements, *firstly*, the absolute supremacy of regular law; *secondly*, equality before law; and *thirdly*, the law of the constitution is not the source but the rights of individuals.³⁶ Criticizing this notion, Ivor Jennings opined that the rule of law more essentially means a democratic government.³⁷ Wade and Phillips in this connection added that "it involves the absence of arbitrary power and proper exercise of power".³⁸ The Indian Supreme Court affirmed that "the absence of arbitrary power is the first essential of the rule of law . . . decisions should be made by the application of known principles and rules and in general such decisions should be predictable and the citizen should know where he is. If any decision is taken otherwise that is antithesis of the

²⁷ Ibid, art 13.

²⁸ Ibid, art 17.

²⁹ Ibid, art 22.

³⁰ Ibid, art 26.

³¹ Ibid, art 25.

³² International Covenant on Economic, Social and Cultural Rights, 1966, art 12.

³³ Ibid, art 11.

³⁴ Ibid, art 2.

³⁵ Bari, above n 5, 53-8.

³⁶ A V Dicey, *Law of the Constitution* (Macmillian, 1939) 202-3.

³⁷ Ivor Jennings, *The Law and the Constitution* (University of London Press, 1959) 47-8.

³⁸ E C S Wade and Godfrey Phillips, *Constitutional Law* (Oxford University Press, 1967) 58.

rule of law”.³⁹ Bhagwati J in *Bachan Singh v State of Punjab* observes, “... its postulate is intelligence without passion and reason free from desire. Whenever we find arbitrariness or unreasonableness there is denial of the rule of law”.⁴⁰

However, the principal notion of the rule of law in its substantive sense appears to be ‘the availability of justice’ to the masses at large in a determined territory without any distinction of religion, race, caste, sex, place of birth, etc. This is because, the rule of law is an ideal of constitutional legality, involving open, stable, clear and general rules and more importantly, even-handed enforcement of those laws.⁴¹

In this connection, it would be no exaggeration to mention that the rule of law is a basic feature of the constitution of Bangladesh. It has been pledged in the preamble⁴² to the Constitution that the fundamental aim of the state is to realize a society in which rule of law will be secured for all citizens. The framers of the Constitution, after mentioning ‘rule of law’ in the preamble, took care to mention other concepts touching on the qualitative aspects of law, thereby showing their adherence to the concept of rule of law. So, to attain this fundamental aim of the State, the Constitution has made substantive provisions, where every functionary of the State must justify his action with reference to law. Here, ‘Law’ does not mean anything that Parliament may pass. Article 27 forbids discrimination in law or in State action and article 31 provides protection of law. Again, article 7 imposes limitation of the legislative that no law which is inconsistent with any provision of the Constitution can be passed and article 26 declares that all existing law inconsistent with the provisions of fundamental rights of the citizens, to the extent of such inconsistency, shall become void.

Securing Human Rights and the Rule of Law through PIL

PIL is closely linked to human rights and the rule of law. To the downtrodden and the deprived, the fundamental rights which are of deep and daily significance are the rights of survival or subsistence. Without these rights the exercise of other basic freedoms becomes theoretical and remote.⁴³ PIL is a saviour of many human rights, such as civil rights, poverty, women’s rights, child exploitation, etc.⁴⁴

³⁹ *S G Jaisinghani v Union of India and Others* AIR 1967 SC 1427.

⁴⁰ AIR 1982 SC 1325.

⁴¹ P W Hogg and C F Zwibel, *The Rule of Law in the Supreme Court of Canada* (UTLJ, 2005) 715-18.

⁴² The Constitution of the People’s Republic of Bangladesh, preamble, para 3.

⁴³ Soli J Sorabjee, ‘Protection of Fundamental Rights by Public Interest Litigation’ in Sara Hossain, Shahdeen Malik and Bushra Musa (eds), *Public Interest Litigation in South Asia* (UPL, 1997) 27-42.

⁴⁴ Available at: <<http://books.google.com.bd/books?id=kw9JkkggYj9EC&pg=PA57&lpg=PA57&dq>> accessed 29 January 2013.

The rule of law, on the other hand, is linked to human rights, because the former is based upon the notion that it must create an environment for establishing social, economic and cultural conditions, which enable men to live in dignity and to live with aspirations.⁴⁵ It requires an ordered legal framework which will permit the full development of the individual by ensuring certain human rights and fundamental freedoms. Again, it is a cardinal principle of the rule of law that human rights must of necessity be safeguarded and respected. A mere declaration and insertion of fundamental rights in the constitution is meaningless unless an effective and easy remedy or machinery is provided for enforcing these rights. In the case of *Saiyyid Abu A'la Moudoodi and Others v Federation of Pakistan*,⁴⁶ Habibur Rahman J. observed: "the basic principles underlying a declaration of Fundamental Rights in a Constitution is that it must be capable of being enforced not only against the executive but also against the legislature by judicial process." But, everybody may not have the capacity to visit the court owing to financial incapacity.⁴⁷ So, if any person comes before the court on behalf of that incapable person, the former should not be barred on the ground of not having the *locus standi*. In order to securing the rule of law, the judicial process must be liberal and expansive. This expansion has been made in PIL by the court through liberal interpretation of *locus standi*.

Again, PIL is not only an isolated phenomenon concerning the problem of either *locus standi* or human rights, but also an integral part of the concept of rule of law. This is because rule of law cannot be segregated from the issue of access to law and justice. Without easy access to justice, legal and constitutional rights would be mere parchment promises or teasing illusions. This would further constitute a denial of justice, which judges are pledged to uphold.⁴⁸ Hence, PIL works as a nexus between 'under privileged group' and 'judiciary' and the outcome of which is the upliftment of human rights, civil and political as well as economic, social and cultural.⁴⁹

⁴⁵ *Benazir Bhutto v Federation of Pakistan* [1988] PLD (SC) 416, 421.

⁴⁶ [1964] PLD (SC) 673.

⁴⁷ PIL was started to protect the fundamental rights of the people who are poor, ignorant or in socially and economically disadvantaged position.

⁴⁸ R W M Dias terms such failure as a kind of 'abuse of power', see, R W M Dias, *Dias on Jurisprudence* (1985) 30.

⁴⁹ After the World War II, the concept of the 'Rule of Law' has undergone a radical change, which is now thought to be concerned not only with the negative aim of protecting the individuals from arbitrary power of the executive, emphasis is also placed on a more positive aspect of the rule of law. Although a free society primarily recognizes civil and political rights of the people, such right may seem a shadow rather than substance to large sections of the population, who lack minimum standard education and economic security. The panoply of law to hungry people may enforce obedience, but it does not attract respect or support. Accordingly, the proper operation of the rule of law is very difficult to achieve, unless economic conditions assure a reasonable standard of living and stability for the population. It is for this reason, emphasis is placed both on ESC rights as well as CP rights, see, Report of

It is a fact that most of the people of third world countries live below subsistence level.⁵⁰ Only because of the prohibitive cost of litigation,⁵¹ they cannot even think of going to the court of law for justice. So, unlike traditional litigation, the lawyers, magnanimous individuals and social service organizations are coming forward for the cause of justice to these poor and disadvantaged people through PIL, and thereby the rule of law and human rights are getting secured.

In the same vein, while writing his judgment in *Miss Benazir Bhutto Case*,⁵² Muhammad Haleem CJ held that the rationale behind the traditional litigation, which was essentially of adversarial character in which only the person who was wronged could initiate proceedings, was 'to limit it to the parties concerned and to make the rule of law selective to give protection to the affluent or to serve in aid of maintaining the *status quo* of the vested interests'. In the judgment it was declared that the relaxation of the rule of standing requirement provides, 'access to justice to all', and also gives a broad-based remedy against the violations of human rights. Besides, emphasized was given that while interpreting the constitution, interpretation must be derived from the provisions of the constitution which 'saturate' and 'invigorate' it like the objective resolution, fundamental rights and directive principles. This, it was declared, would amount to socio-economic justice and would lead to the establishment of an egalitarian society through a new legal order which will string and uphold 'equality before law' and 'equal protection of law'. Indeed, these two norms are closely associated with the protection of human rights and establishment of the rule of law. And owing to such nexus the urge for these two norms could be found in different human rights instruments, for example: Article 7 of the *Universal Declaration of Human Rights, 1948*⁵³ provides: "All are equal before law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination." The International Covenant on Civil and Political Rights, 1966 in Article 26 states: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law." In the same way, the International Covenant on Economic, Social and Cultural Rights, 1966 in Article 3 declares that state parties must ". . . ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the Covenant."

the International Congress of Jurist, *Delhi Declaration*, 1959; African Conference on the Rule of Law, *Law of Lagos*, 1961.

⁵⁰ World Bank, *Poverty Around the World* (2008) 2.

⁵¹ Anurodha Rao, *Public Interest Litigation: A Tool for Social Action and Public Accountability* (Public Affairs Centre, 1999) 19.

⁵² PLD 1988 SC 388.

⁵³ Adopted and proclaimed by General Assembly (GA) resolution 217(A)(III) of 10 December 1948.

The above-mentioned human rights norms have also found expression in major regional human rights instruments⁵⁴ and national constitutions⁵⁵ throughout the world. And from that point of view, it is convincing that the concept of PIL plays an important role in advancing human rights norms- 'equality before law' and 'equal protection of law' on one hand, and the rule of law on the other. Because, strict follow up of the rule of *locus standi* stands as an impediment, rather than carrying into effect these two significant human rights norms. So, to overcome this impediment and to ensure equality before law in practice, the concept of PIL developed by the court ⁵⁶ has been playing an effective role. Actually, when the court passes any orders in PIL, the court does not do so with a view to mocking at legislative or executive authority or in a spirit of confrontation but with a view to enforcing the constitution and the law. Because, it is vital for the maintenance of the rule of law that the obligations which are laid upon the executive by the constitution and the law should be carried out faithfully and properly within the legal paradigm.

PIL has thus, developed a new jurisprudence of accountability of the state for constitutional and legal violations, adversely affecting the interest of the weaker sections in the community. Various PIL decisions in different jurisdictions demonstrate how courts have given impetus to the promotion and protection of human rights,⁵⁷ by expanding the meaning of fundamental right to equality, life and personal liberty. In this process, the rights to speedy trial, free legal aid, dignity, education, medical care, right against torture, sexual harassment, solitary confinement, and so on have emerged as human rights.⁵⁸ This further gives the idea that, at least in those cases human rights would have been threatened if they were thrown away. PIL is thus, a part of a process of ensuring access to law and justice as well as a

⁵⁴ This view of equality before law and equal protection of law is also inserted in major regional human rights instruments. For example, Article 4 of the *African Charter on Human and Peoples' Rights, 1981* provides that every individual shall be equal before law and every individual shall be entitled to equal protection of the law. Article 24 of the *American Convention on Human Rights, 1969* provides that all persons are equal before law. Consequently, they are entitled, without discrimination, to equal protection of the law.

⁵⁵ For example, Article 31 of the Constitution of the People's Republic of Bangladesh states about 'Right to Protection of Law'.

⁵⁶ *R D Shetty v International Airport Authority* (1979) 3 SCC 489.

⁵⁷ Christine M Forster and Vedna Jivan, 'Public Interest Litigation and Human Rights Implementation: The Indian and Australian Experience' (2008) 3(1) *Asian Journal of Comparative Law*; Parmanand Singh, 'Human Rights Protection through Public Interest Litigation in India' (1999) 45 *Indian Journal of Public Administration* 731; S Susman Susan, 'Distant Voices in the Courts of India: Transformation of Standing in Public Interest Litigation' (1994) 57 *Wisconsin International Law Journal*.

⁵⁸ Available <<http://www1.umn.edu/humanrts/research/india-litigation.html>> accessed 22 January 2013.

part of constitutional commitment.⁵⁹ Various instances of judicial activism can be referred to here where the court through PIL has established, promoted and secured human rights and the rule of law.

Though in India, Krishna Iyer J. introduced an expansive construction of *locus standi* in 1976,⁶⁰ in Bangladesh⁶¹ it happened 20 years later when BELA filed a case, commonly known as *FAP-20 case*.⁶² Prior to that, Dr Mohiuddin Farooque, founder of BELA, filed a petition⁶³ against the four authorities of the government⁶⁴ responsible for the enforcement of various civil rights⁶⁵ like, encroaching on public properties at the time of election campaign; saturation of footpaths and other public places with election camps; incessant use of loudspeakers and other noisy instruments; covering walls with election slogans; traffic jams resulted from unscheduled and unregulated processions and so on. The High Court Division (HCD) of the Supreme Court of Bangladesh issued a *Rule Nisi* upon the respondents asking them to show cause as to why they should not be directed to comply with the directives issued by the Election Commissioner touching upon various laws. The rule, however, was disposed of, following assurance from the Attorney General that the government would take all necessary steps to implement all the directives of the Election Commission. So, this case worked as a catalyst for protection of certain human rights⁶⁶ which in essence has advanced the rule of law.

In *Dr Mohiuddin Farooque v Election Commission & Others*,⁶⁷ a writ petition was filed by Dr Mohiuddin Farooque in the HCD of the Supreme Court praying for intervention of the court in restoring the public medical services and care all over the country disrupted by the continuous strike of

⁵⁹ Upendra Baxi, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India' [1985] *Third World Legal Studies* 107, 111-32; Singh, 'Protecting the Rights of the Disadvantaged Groups through Public Interest Litigation' in Goerlich Singh, and Michael Von Hauff (eds), *Human Rights and Basic Needs* (1998); Sripathi, 'Human Rights in India Fifty Years after Independence', [1997] *Denver Journal of International Law and Policy* 93; C M Abraham, *Environmental Jurisprudence in India* (Kluwer) 31.

⁶⁰ *Mumbai Kamgar Sabha v Abdulbhai* AIR 1976 SC 1455 [7].

⁶¹ Available at <http://www.banglapedia.org/HT/P_0307.HTM> accessed 3 February 2013.

⁶² *Dr Mohiuddin Farooque v Bangladesh* (1997) 17 BLD (AD) 1.

⁶³ *Dr Mohiuddin Farooque v Election Commission & Others* [1994] Writ Petition No 186/1994.

⁶⁴ Accordingly the respondent was the state.

⁶⁵ Those rights are internationally recognized mainly by the *International Covenant on Civil and Political Rights*, 1966 and also by various regional human rights instruments.

⁶⁶ Mainly civil rights.

⁶⁷ [1994] Writ Petition No [1994] 1783/1994.

Bangladesh Civil Service (Health) cadre doctors. The respondents⁶⁸ were directed by way of mandatory injunction to call off the strike of the doctors of all the government medical hospitals, complexes and centres immediately with effect within 24 hours from the date of service of notice and to join their offices respectively. It was a case of great public importance and involved the interest of the nation as a whole, as the entire system for getting treatment by the people had become paralyzed and the sufferings of the people knew no bounds. Similarly, the court has broadened its mandate by giving protection to the consumers against all unscrupulous activities in releasing the consignment of radiated milk⁶⁹ as well as contaminated drink.⁷⁰

On the basis of PIL, the meaning of 'right to life' has been given an extensive meaning and is still expanding. The Supreme Court of Bangladesh made it clear that 'right to life' includes anything that affects life, public health and safety. It includes the improvement of public health by creating and sustaining conditions congenial to good health and ensuring quality of life consistent with human dignity.⁷¹ In *Biplob Kumar Roy v Bangladesh & Others*⁷² the court cancelled a lease of open fisheries for protecting the rights of the poor fishermen community and ensuring their livelihood. In another case,⁷³ the court directed to ensure safe and healthy environment to the workers also. Moreover, various matters of environmental issues have been brought before the court in Bangladesh by way of PIL where the court has been approached to redress a variety of issues like, air pollution,⁷⁴ vehicle pollution,⁷⁵ unlawful construction,⁷⁶ lake filling up,⁷⁷ unregulated operation

⁶⁸ The petition was filed against the following respondents: (1) Bangladesh, represented by the Secretary, Ministry of Health and Family Welfare, (2) The Director General of Health Services, (3) The Bangladesh Medical and Dental Council, and (4) The Bangladesh Medical Association.

⁶⁹ *Dr Mohiuddin Farooque v Election Commission & Others* [1996] Writ Petition No 92/1996.

⁷⁰ *Dr Mohiuddin Farooque v Bangladesh & Others* [1997] Writ Petition No 867/1997.

⁷¹ (1997) 49 DLR (AD), at p.1.

⁷² [1997] Writ Petition No 1840/1997.

⁷³ *Sramik Nirapatta Forum and Others v Bangladesh and Others* [2005] Writ Petition No 3566 of 2005.

⁷⁴ *Dr Mohiuddin Farooque v Election Commission & Others* [1994] Writ Petition No 891/1994.

⁷⁵ *Dr Mohiuddin Farooque v Election Commission & Others* [1995] Writ Petition No 300/1995.

⁷⁶ *Sharif Nurul Ambia v Bangladesh & Others* [1995] Writ Petition No 937/1995.

⁷⁷ *Dr Mohiuddin Farooque v Bangladesh & Others* [1997] Writ Petition No 948/1997.

of brick fields,⁷⁸ hill cutting,⁷⁹ gas explosion,⁸⁰ Sundarbans conservations,⁸¹ illegal sand collection,⁸² stone crush⁸³ and so forth. It is pertinent to mention here that right to environment is an important human right, which is frequently ascribed to 'right to life'. The origin of a right to environment can be found in the Stockholm Declaration.⁸⁴ Subsequently, several international and regional human rights instruments have included various statements of the right to environment.⁸⁵

⁷⁸ *Dr Mohiuddin Farooque v Bangladesh & Others* [1997] Writ Petition No 1252/1997.

⁷⁹ *Dr Mohiuddin Farooque v Bangladesh & Others* [1997] Writ Petition No 6020/1997.

⁸⁰ *Dr Mohiuddin Farooque v Bangladesh & Others* [1997] Writ Petition No 6105/1997.

⁸¹ *Bangladesh Environmental Lawyers Association (BELA) v Bangladesh and Others* [2004] Writ Petition No 2224 of 2004.

⁸² *Bangladesh Environmental Lawyers Association (BELA) and Thengamara Mohila Sabuj Sangha (TMSS) v Bangladesh and Others* [2004] Writ Petition No 4244 of 2004.

⁸³ *Bangladesh Environmental Lawyers Association (BELA) v Bangladesh and Others* [2005] Writ Petition No 8603 of 2005.

⁸⁴ Available at <<http://untreaty.un.org/cod/avl/ha/dunche/dunche.html>> accessed 3 March, 2013.

⁸⁵ *The United Nations Charter, 1945* does not define human rights to environment. However, the term can be interpreted through the concept of 'well-being'. Similarly, the *UDHR, 1948* does not mention a human right to environment. It affirms the right to life and a right to a standard of living adequate for health and well-being. The *ICCPR* and the *ICESCR* affirm that every human being has the 'inherent right to life' and the right of everyone 'to the enjoyment of the highest attainable standard of physical and mental health' through 'the improvement of all aspects of environmental and industrial hygiene'. In environmental terms the 'right to life' may include a positive obligation on the state to take steps to prevent a reduction of or an extension of life expectancy. For example, by providing better drinking water or less polluted air. Article 8 of the *European Convention on Human Rights* incorporates the right to be free from interference with one's home and property. The limited case law in this area usually deals with noise pollution, for example, in alleged nuisance complaints about excessive aircraft noise at Heathrow Airport the *European Court on Human Rights* found that the benefits to the community out-weighed the individual's right to bring a claim. However, in the case of *Lopez Ostra v Spain* (20 EHRR 277 of 9 December, 1994), the Court ruled that the applicant suffered health problems from the fumes of a tannery waste treatment plant operating a few meters away from her home. Again, Economic, Social and Cultural rights include the right to a healthy environment, a decent working environment, decent living conditions and to health. These rights are covered by various treaties which establish the close relationship between socio-economic development, environmental and human rights concerns. The *1981 African Charter on Human and Peoples' Rights* was the first human rights treaty to expressly recognize the right of '[a]ll peoples' to a 'satisfactory environment favourable to their development'. Within Europe, the *Organization of Economic and Development (OECD)* stated that a 'decent' environment should be recognized as one of the fundamental human rights. The *Organization of American States* introduced a right to environment in its *1988 Protocol of San Salvador*.

Since 1996, Bangladesh Legal Aid and Services Trust (BLAST)⁸⁶ has filed 82 public interest litigation petitions in the Supreme Court of Bangladesh.⁸⁷ These petitions have resulted in judicial orders for government action to comply with statutory duties, and have led to expanded interpretation of fundamental rights guaranteed under the Constitution of Bangladesh. Significant PIL petitions include: challenging arbitrary arrests and unreasonable police remand and obtaining guidelines to safeguard persons under arrest and detention;⁸⁸ securing the right to fair trial;⁸⁹ challenging delays in trials of under-trial prisoners;⁹⁰ challenging incarceration of children in prisons;⁹¹ securing consumer safety;⁹² safeguarding health rights;⁹³ seeking protection of workers' rights for safety in the workplace;⁹⁴ ensuring access to justice;⁹⁵ preventing forced eviction and displacement and securing alternative rehabilitation of slum dwellers;⁹⁶ challenging gender discrimination in public employment;⁹⁷ challenging the failure of state authorities to ensure safety and security of women through taking

⁸⁶ BLAST is a non profitable organization established in 1993 to provide legal aid for the establishment of valid claims of and protection for the marginalized and the poor through the judicial system of Bangladesh. It has now emerged as one of the leading free legal aid services organizations in Bangladesh. See Muhd Rafiqauzzaman, 'Public Interest Litigation in Bangladesh: A Case Study', (2002) 6(1-2) *Bangladesh Journal of Law*.

⁸⁷ Vide Official website of BLAST. Available at <<http://www.blast.org.bd/whatwedo/pilandadvocacy>> accessed 17 April 2013.

⁸⁸ *Bangladesh Legal Aid and services Trust and Others v Bangladesh* (2003) 55 DLR 363.

⁸⁹ *Bangladesh Legal Aid and Services Trust and another v Bangladesh and Others* (2002) 22 BLD (HCD) 206.

⁹⁰ *Bangladesh Legal Aid Services Trust and others v Bangladesh and Others* [2003] Writ Petition No 7578 of 2003.

⁹¹ *Bangladesh Legal Aid Services Trust and others v Bangladesh and Others* [2003] Writ Petition No 7578 of 2003.

⁹² *Bangladesh Legal Aid and Services Trust v Bangladesh (Secretary, Ministry of Health and Family Welfare) and Others* (2005) 25 BLD (HCD) 83.

⁹³ *Bangladesh Legal Aid and Services Trust v Bangladesh (Secretary, Ministry of Health and Family Welfare) and Others* Writ Petition No 1043 of 1999.

⁹⁴ *Ayesha Khanam and others v Bangladesh, represented by Secretary, Cabinet Division, Bangladesh Secretariat, Dhaka and Others* (2006) 11 MLR (AD) 237.

⁹⁵ *Bangladesh Legal Aid and Services Trust v Bangladesh (Secretary of Law, Justice and Parliamentary Affairs) and Another* (2008) 60 DLR (HCD) 234.

⁹⁶ *Bangladesh Legal Aid and Services Trust and Others v Bangladesh and Others* (2008) 13 BLC (HCD) 384.

⁹⁷ *Mosammat Nasrin Akhter and Others v Bangladesh and Others* Writ Petition No 6309 of 2003.

action against extra-judicial penalties by informal village tribunals;⁹⁸ and directions for the establishment of courts and furthering the separation of the judiciary from the executive in the Chittagong Hill Tracts.⁹⁹

Indeed, apart from the PIL petitions initiated by BLAST, a large number of PIL petitions (referred to earlier) were initiated by Ain O Salish Kendro (ASK), Bangladesh National Women's Lawyers Association (BNWLA), and Bangladesh Environmental Lawyers Association (BELA) whereby millions of people were benefited and thereby human rights were secured. For instances, Doctors strike case,¹⁰⁰ where the court ordered the doctors to join to their respective hospitals immediately and thereby the common people got a reality to their right to medical care; Slum dwellers case,¹⁰¹ where the court ordered not to evict the slum dwellers from Dhaka city and thus they got secured their right to shelter; Industrial pollution case,¹⁰² where the court ordered to ensure appropriate pollution control measure and thereby general people got a reality to their right to health.

Thus, the aforesaid matters of great public interest, brought before the court through PIL, have protected, promoted and secured human rights in respective fields. And at the same time, in a society where human rights are given proper protection, the rule of law gets secured in a parallel way. Hence, as a whole, for securing human rights and the rule of law, PIL is causative perhaps, effective.

In India, M.C. Mehta, as a petitioner in person, was a pioneer in bringing a large number of issues to the court concerning environmental and economic degradation. These included the issues arising out of the leak of oleum gas from a factory in Delhi,¹⁰³ pollution in Delhi,¹⁰⁴ the danger of the Taj Mahal from the Mathura refinery,¹⁰⁵ regulation of traffic in Delhi¹⁰⁶ and the degradation of the Ridge area in Delhi.¹⁰⁷ The Indian court, has given

⁹⁸ *Bangladesh Legal Aid and Services Trust and Others v Bangladesh and Others* Writ Petition No 5863 of 2009 with Writ Petition No754 of 2010 and Writ Petition No 4275 of 2010.

⁹⁹ *Bangladesh Legal Aid and Services Trust v Secretary, Ministry of Law, Justice and Parliamentary Affairs* (2009) 61 DLR (HCD) 109.

¹⁰⁰ *Dr Mohiuddin Farooque v Election Commission & Others* [1994] Writ Petition No 1783/1994.

¹⁰¹ *Ain O Salish Kendra (ASK) and Others v Government of Bangladesh and Others* Writ Petition No 3034 of 1999, (1999) 19 BLD HCD 488.

¹⁰² Writ Petition No 891 / 1994.

¹⁰³ *M C Mehta v Union of India* (1996) 4 SCC 750.

¹⁰⁴ *M C Mehta v Union of India* (1996) 4 SCC 351.

¹⁰⁵ *M C Mehta v Union of India* 8 SCC 770.

¹⁰⁶ *M C Mehta v State of Tamil Nadu* (1996) 6 SCC 756.

¹⁰⁷ *M C Mehta v Union of India* (1997) 11 SCC 227.

remedies in various other matters like, health right of workmen,¹⁰⁸ right to emergent treatment,¹⁰⁹ right of patients undergoing ophthalmic treatment at Eye Camps, right against medical negligence, right to quality blood transfusion, right to protection against injurious drugs,¹¹⁰ etc. Besides in Pakistan also, the term 'right to life' covers clean atmosphere and unpolluted environment,¹¹¹ adequate level of living,¹¹² quality of life,¹¹³ clean water,¹¹⁴ etc.

However, owing to the elaborative attention given in the field of PIL, now the ambit of PIL is not confined to any particular field. For example, relief was granted and appropriate directions were given in respect of sexual exploitation of juvenile under-trial prisoners,¹¹⁵ illegal detention for three decades,¹¹⁶ holding under-trial prisoner for eight years without trial,¹¹⁷ trafficking of children by foreigners,¹¹⁸ allotment of a space reserved for a park to a private hospital,¹¹⁹ death by starvation,¹²⁰ challenging international treaty¹²¹ and so on.

These cases have clearly led to an expansion of the concept of *locus standi*. Along with this, the court's doors have been opened for the voiceless poor, the disadvantaged and weaker sections of citizens who are otherwise powerless and unable to gain access to law and justice. By giving a constitutional dimension to applicable rules and procedures, particularly in the field of human rights enforcement, the court has spearheaded judicial activism ensuring compliance with and the implementation of human rights guarantees. The court is no longer a mere umpire for adversaries who choose to fight their gladiatorial legal battles before it.¹²² Instead, it has undertaken factual investigation in appropriate cases or directed that- a)

¹⁰⁸ *Consumer Education and Research Center v Union of India* (1985) 3 SCC 42.

¹⁰⁹ *P R Subhas Chandran v Govt of A P* AIR 2000 AP 272.

¹¹⁰ *Vincent Panikurlangara v Union of India* (1987) 2 SCC 165.

¹¹¹ *Shehla Zia v Pakistan* PLD 1994 SC 693.

¹¹² *Employees of the Pakistan Law Commission v Ministry of Works* [1994] SCMR 1548.

¹¹³ *Amanullah Khan v Chairman, MRC* [1995] SCMR 202.

¹¹⁴ *Salt Miners Case* [1994] SCMR 2061.

¹¹⁵ *Munna v State of Uttar Pradesh* AIR 1982 SC 806.

¹¹⁶ *Veena Swthi v State of Bihar* AIR 1983 SC 339.

¹¹⁷ *Kadra Pehadiya v State of Bihar* AIR 1981 SC 939.

¹¹⁸ *Lackshmo Kant Pandey v Union of India* AIR 1984 SC 469.

¹¹⁹ *Bengalore Medical Trust v B. S. Muddapa* AIR 1991 SC 1902.

¹²⁰ *Kishan Patnayak v State of Orissa* AIR 1989 SC 677.

¹²¹ *Kazi Mukhlesur Rahman v Government of Bangladesh* (1974) 26 DLR (SC) 44; *Tanakpur case of Nepal*; *Mc Whirter's case of England*.

¹²² M Amir-Ul Islam, 'A Review of Public Interest Litigation Experiences in South Asia' in Sara Hossain, Shahdeen Malik and Bushra Musa (eds) *Public Interest Litigation in South Asia* (UPL, 1997) 55-78.

reports are to be filed in compliance with its directions and orders; and b) steps have to be taken to monitor such compliance under its direct supervision.¹²³ Thus, such judicial activism has enabled the court to play the role of a social auditor or judicial ombudsman by providing a powerful check on executive excesses and corruptions through preventing misuse or abuse of powers and wastage of public funds.

Prospects of PIL in Securing Human Rights and the Rule of Law

PIL as it has developed in recent years marks a significant departure from traditional judicial proceedings. The court is now seen as an institution not only providing relief to citizens but also venturing into policy formulation, which the state must follow. With the liberalization of *locus standi*, PIL has greater prospects in ameliorating the conditions of the downtrodden and deprived sections of the people by providing remedy to their sufferings and making fundamental rights in the constitution a reality.

In United States of America, where the liberalising trend in the rule of standing has already reached maturity, courts have recognized not only taxpayers' or competitors' or consumers' standing asserting economic or uneconomic interests but also the standing to include aesthetic and environmental interests also.¹²⁴ The courts have recognized standing in citizens' groups concerned with protection of natural, scenic and historic resources and a National Conservation Organization challenging the construction of expressway;¹²⁵ a public benefit corporation bringing a class action against a proposed nuclear detonation;¹²⁶ an organization devoted to environmental protection challenging the use of DDT;¹²⁷ a citizens' group attacking a model cities programmer;¹²⁸ and a conservationist organization challenging mining and timber cutting in a national forest.¹²⁹

In the United Kingdom, the PIL movement started with the *Blackburn cases*.¹³⁰ Blackburn, a former Member of Parliament, took up many cases before the Court of Appeal which involved matters of public concern. The court granted him *locus standi* to challenge the police inaction in prosecuting big gambling houses,¹³¹ governmental action relating to the joining of European Economic Common Market,¹³² and enforcing

¹²³ Ibid.

¹²⁴ *Sierra Club v Morton* 405 US 727 (1972).

¹²⁵ *Citizens' Committee v Volpe* 425 F 2nd 97 (1970).

¹²⁶ *Crowther v Seaborg* 312 F Supp 1205 (1971).

¹²⁷ *Environmental Defence Fund v Hardin* 428 F 2nd 1093 (1970).

¹²⁸ *North City Area Wide Council v Romney* 428 F 2nd 754 (1970).

¹²⁹ *West Virginia Highlands Conservancy v Island Creek Coal Co.* 411 F 2nd 232 (1971).

¹³⁰ Denning, above n 12, 117.

¹³¹ *R v Commr. of Police of Metropolis* (1968) 2 QB 118.

¹³² *Blackburn v Attorney General* (1971) 1 WLR 1037.

pornography law.¹³³ Similarly, the court allowed standing to Ross McWhirter (he was one of twin brothers who produced the Guinness Book of Records) to file petition for injunction restraining Independent Broadcasting Authority from telecasting a film which according to him was outrageous – ‘a shocker, the worst ever’;¹³⁴ to seek a writ of prohibition for failing to properly use their censorship powers;¹³⁵ to challenge the actions of public officials,¹³⁶ etc.

In India, until the PIL was developed by the Supreme Court, justice was a remote and theoretical notion for the masses. They were unaware of the law or of their legal rights, unacquainted with the niceties of procedure involved, and too impoverished to engage lawyers, file papers and bear heavy expenditure on dilatory litigation. The vested interests that exploited them were emboldened to continue with their cruel and illegal practices with impunity. By propounding the thesis that citizens should be enabled to enjoy the ‘right to life’ and ‘liberty’ guaranteed under Article 21 of the Constitution,¹³⁷ the Supreme Court of India enlarged the scope of *locus standi* to include the rightful concern of other citizens willing to espouse the cause of their less fortunate countrymen. Understandably, an increasing number of cases have come up before the Supreme Court and in some instances it has acted *suo motu* in converting newspaper reports and letters recounting incidents of gross exploitation and inhumanity into writs.¹³⁸

In Bangladesh, besides other cases of public interest, some writ petitions have also been filed and disposed of by the Supreme Court specially in order to address environmental justice. Here the agenda of PIL was mainly based on strategic issues to generate awareness amongst the common people and all the actors for development of a realistic regulatory framework and environmental jurisprudence. Following a BELA case¹³⁹ in 1996, the concept of PIL was recognized by the judiciary that has allowed the millions of voiceless an access to the formal justice system. Meanwhile, BELA,

¹³³ *R v Police Commissioner* (1973) QB 241.

¹³⁴ *A G v Independent Broadcasting Authority* (1973) QB 629.

¹³⁵ *R v Greater London Council* (1976) 1 WLR 550.

¹³⁶ *R v Secretary of State for the Environment* (1990) 1 QB 504.

¹³⁷ The Constitution of India.

¹³⁸ Justice Rajendra Sachar and Justice R. N. Aggarwal have *suo motu* taken notice of a news report about convicts sentenced to simple imprisonment in Tihar Jail being forced to serve rigorous imprisonment. Newspaper reported the cases of convicts who had been asked to affix their thumb impression on the convict history ticket. Below the thumb impression a jail officer had allegedly written in Hindi which on translation in English would read: “I want to get my simple imprisonment changed into rigorous imprisonment.”

¹³⁹ *Dr Mohiuddin Farooque v Bangladesh* (1996) 9 BSCR (AD) 27; (1997) 17 BLD (AD) 1.

BLAST as well as other NGOs (non- government organizations)¹⁴⁰ have initiated a large number of public interest cases. These cases, also stated earlier, involve a wide range of issues including river pollution,¹⁴¹ industrial pollution,¹⁴² vehicular pollution,¹⁴³ labour welfare,¹⁴⁴ compensation for losses inflicted by development projects,¹⁴⁵ encroachment of important wetland and relocation of industry,¹⁴⁶ payment of environmental compensation in development project,¹⁴⁷ unlawful filling of flood plan zones,¹⁴⁸ etc. As a result of those cases, millions of common people have been benefited and thereby human rights have been protected ultimately resulting in the establishment of the rule of law.

Thus, a change is taking place in the judicial process through various public interest cases,¹⁴⁹ where the court has introduced new methods, devises and strategies for the purpose of providing access to justice to the common mass deprived of their basic human rights. In this connection, it would be worthwhile to quote a passage from Mr Justice Krishna Iyer from his book *Law and the Urban Poor in India*:

Please remember that procedure is not an *alibi* to strangle the right to life, nor a priestly ceremonial for a decent burial of a fundamental liberty. Considerations of a routine kind cannot hold good where human disasters are the price.¹⁵⁰

¹⁴⁰ These are, among others, Ain O Salish Kendro (ASK), Bangladesh National Women's Lawyers Association (BNWLA) and Bangladesh Society for the Enforcement of Human Rights.

¹⁴¹ *Bangladesh Environmental Lawyers Association (BELA) v Bangladesh & Others* Writ Petition No 4098/1999 (pending).

¹⁴² *Bangladesh Environmental Lawyers Association (BELA) v Bangladesh & Others* Writ Petition No 4098/1999.

¹⁴³ *Dr Mohiuddin Farooque v Election Commission & Others* Writ Petition No 300/1995 (pending).

¹⁴⁴ *Bangladesh Environmental Lawyers Association (BELA) v Bangladesh and Others* Writ Petition No 2911 of 2003 (pending).

¹⁴⁵ *Dr Mohiuddin Farooque v Bangladesh & Others* Writ Petition No 7422/1997.

¹⁴⁶ *Bangladesh Environmental Lawyers Association (BELA) v Bangladesh and Others* Writ Petition No 488 of 2006 (pending).

¹⁴⁷ *Sramik Nirapatta Forum and Others v Bangladesh and Others* Writ Petition No 3566 of 2005 (pending).

¹⁴⁸ *Bangladesh Environmental Lawyers Association (BELA) v Bangladesh and Others* Writ Petition No 3336 of 2002 (pending).

¹⁴⁹ These are, among others, *BSER v Bangladesh* 3 DLR 2001; *BLAST v Bangladesh* 4 BLC 600; *ASK v Bangladesh* 19 BLD 488; *ETV Ltd v Dr Chowdhury Mahmood Hasan* 54 DLR (AD) 130; *Engineer Mahmudul Islam & Others v Govt of Bangladesh & Others* (2003) 23 BLD (HCD) 80.

¹⁵⁰ V R Krishna Iyer, *Law and the Urban Poor in India* (BR Pub, 1988) 89.

So, PIL represents a daring, and in some respects unique response to a problem of unparalleled proportions in the legal world. The commitment of judges to PIL reflects their conviction that the courts are bound to make a relevant and meaningful contribution to the alleviation of tensions¹⁵¹ and to preservation of the social fabric. The phenomenon of PIL is one, which seeks to reach out to the segments of a community bereft of influence, privilege or even basic opportunity, and to assure them, at least in a fundamental sense, of the benefits of the legal order, which could hardly be achieved through conventional litigation.¹⁵² PIL brings justice within the reach of the poor masses. It has the objective of promoting and vindicating public interest which ensures that violation of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantageous position, must not go unnoticed and unredressed.

Conclusion

In the legal discourse, PIL has achieved an identity of its own in spite of the refusal of the concept of *actio popularis*.¹⁵³ The emergence of the concept and, even more strikingly, its unrepentant dimensions in the current practice of various courts, clearly in conflict with traditional norms of judicial detachment and objectivity, represent a bold response to the perceived implications of social inequality and economic deprivation.¹⁵⁴ The poor and the disadvantaged, in comparison with the rich and advantaged, are entitled to 'preferential consideration'¹⁵⁵ owing to their own wretched standing and stunted capacity.¹⁵⁶ But, that treatment was frequently denied to them till the emergence of PIL. Today, that denial is difficult, perhaps impossible. This is because other people can bring the case before the court of law on behalf of those poor segments of society. Today people do not feel that- a) the constitution and the law are meant only for the benefit of a fortunate few; and b) have no meaning for the large number of poverty-stricken, half-clad, half-hungry people. And these are the feelings which should never be

¹⁵¹ G L Peiris, 'Public Interest Litigation in the Indian Subcontinent: Current Dimensions' (1991) 40(1) *The International and Comparative Law Quarterly* 66.

¹⁵² *Ibid.*, 89.

¹⁵³ Andrew Byrnes, Jane Frances Connors and Lum Bik (eds), *Advancing the Human Rights of Women: Using International Human Rights Standards in Domestic Litigation* (1997) 135.

¹⁵⁴ *Ibid.*, 68.

¹⁵⁵ *Ibid.*

¹⁵⁶ The Indian Supreme Court held that "The concern shown (by the law) to the rich and well-to-do much greater than that shown to the poor and disadvantaged because the former can, on account of their dominant social and economic position and large material resources, resist aggression on their rights where the poor and the deprived just do not have the capacity or the will to resist and fight," see, *Bihar Legal Support Society v Chief Justice of India* (1986) 4 SCC 769. See also, for discussion of general aspects of public interest litigation, S K Agarwala, 'Public Interest Litigation in India: A Critique' (K M Munshi memorial lectures, 1985); P N Bhagwati, 'Judicial Activism and Public Interest Litigation' (1985) 23 *Columbia Journal of Transnational Law* 561.

allowed to grow¹⁵⁷- as these feelings have already been clarified by PIL as perilous to human rights and the rule of law.

Hence, the role of PILs provides a useful illustration of how their contribution to human rights have improved and strengthened the rights of disadvantaged groups on one hand and secured the rule of law on the other. The broader is the application, the more is the success. So, it would be no exaggeration to conclude that PIL, under the prevailing conditions stated above, has emerged as an effective mechanism of judicial activism to secure human rights and the rule of law.

¹⁵⁷ AIR 1985 SC 910.