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## Judicial Activism on the Right to Safe Environment in Bangladesh: Trends & Prospects

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*Judicial activism, through a process known as public interest litigation, has emerged as a powerful mechanism for a drastic change in the development of environmental issues in Bangladesh. To confront this situation, the PIL has been created to empower ordinary citizens to write a letter and draw the apex court's attention. PIL has become integral to the country's judicial system, and it was established by some significant non-governmental organizations (NGOs) in Bangladesh. Apart from the shortcomings, judicial activism is an essential potential instrument of the judiciary to protect and promote human rights and the Rule of law in Bangladesh. This paper examines the idea of access to justice through public interest litigation, illustrating various judgments in Bangladesh relating to environmental issues. Environmental issues relating to 3 components – water, land, and air, have been evaluated, identifying the present situation of the cases and actions taken. The study finds that in most cases, the actions taken by the Court do not meet the concerns; instead, the action is just a show-cause notice that stays for years. The study recommends that a division bench be set up in the Supreme Court to address these environmental concerns with writs and accelerate the outcomes prominently.*

**Keywords:** *judicial activism, safe environment, right to life, locus standi.*

## INTRODUCTION

The right to a safe and healthy environment is increasingly recognized as a fundamental human right globally. However, in Bangladesh, the right to a safe environment has been identified through the judgments of the public interest litigation relating to environmental justice. The right to a safe environment is thus established in the light of the right to life, specified in the Constitution as a fundamental right. Even though the Constitution of Bangladesh identifies the environmental rights in the Article 18A<sup>1</sup> Under the heading of 'Protection and improvement of environment and biodiversity,' it is included in the part of Fundamental Principles of State Policy, which are considered as the duty of the State, other than the right of people. That is the context for which the environmental rights of the people have been unenforceable because, since 1994, the journey of the public interest litigation by Dr. Mohiuddin Farooque, BELA, BLAST, and others for upholding environmental justice as well as the people's right to be in a safe environment began with an approach of seeking relief under the inclusion of the right to life. The interpretations of the Court have remarkably paved the way for the right to a safe environment in Bangladesh. This type of judicial activism has been essential in tackling the country's environmental concerns and acting as a fundamental instrument for environmental preservation in the lack of robust legal frameworks. The judiciary's proactive involvement in this context is highlighted by its conclusion that a safe environment is essential to enjoying life. The courts have responded to the growing environmental issues by expanding constitutional rights to include environmental preservation and solving current difficulties. Enabling people and organizations to file environmental lawsuits in Court and avoiding conventional legal barriers, public interest litigation, or PIL, has been instrumental in this legal process. Examining the concepts established by these instances is crucial to determine whether the Court's interpretation of the right to a safe environment adequately meets the contemporary issues of environmental degradation or not. Careful consideration must be given to the judiciary's involvement in defining and extending this right, mainly through the right to life, to assess the level of judicial activism in defending environmental rights. Given the increasing intensity of environmental issues, it is critical to evaluate how judicial activism has changed and determine if it is in a position to fulfill expectations in the future. It is possible to understand the judiciary's

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<sup>1</sup> Constitution of the People's Republic of Bangladesh 1972, art 18A

current position and its potential to handle Bangladesh's developing environmental challenges by examining how fundamental rights have expanded through these cases.

Notwithstanding these legal victories, obstacles still stand in achieving the right to a safe workplace. The significance of court verdicts is frequently diminished by the sluggish speed of legal proceedings and the lax implementation of court orders. Although courts have been inclined to put environmental rights in the scope of constitutional safeguards, these findings still have varied applications. It is a fact that the Bangladesh court system lessens a case's potency. In cases involving environmental issues, the effectiveness of judicial interventions is undermined if the case is settled quickly because, in certain instances, the court orders are not enforced with the required urgency. If the case is settled quickly, the true purpose of the lawsuit will not be fulfilled at any cost. In evaluating those activities, it is necessary to highlight the developments and future directions of judicial activism in advancing Bangladesh's right to a safe environment, which is the focus of this study. This study will evaluate how well the judiciary has established and broadened the right to a safe environment and whether or not the existing legal framework and rulings of the courts are adequate for dealing with the multitude of environmental challenges that Bangladesh encounters today. It will do this by analyzing significant legal proceedings and the guiding principles that have emerged from them.

## **BACKGROUND OF THE STUDY**

The right to a safe environment expresses a need to live in an environment that is safe and sound for human beings and is the right of every individual. The Constitution of the People's Republic of Bangladesh does not express the right to the environment, either with directive principles or as a fundamental right. But articles 31<sup>2</sup> and 32<sup>3</sup> have been established to safeguard this right. Article 31 states, 'To enjoy the protection of the law, and to be treated in accordance with the law, and only in accordance with the law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular, no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with the law<sup>4</sup>. Article 32 states, 'No person shall be deprived of life or personal

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<sup>2</sup> Constitution of the People's Republic of Bangladesh 1972, art 31

<sup>3</sup> Constitution of the People's Republic of Bangladesh 1972, art 32

<sup>4</sup> Constitution of the People's Republic of Bangladesh 1972, art 31

liberty save in accordance with law'<sup>5</sup>. These two articles together incorporate the fundamental 'right to life.' In 1994, public interest litigation was initiated before the Supreme Court dealing with air and noise pollution. The Supreme Court agreed with the argument presented by the petitioner that the constitutional 'right to life' does extend to include the right to a safe and healthy environment. In a recent case, the Appellate Division and the High Court Division of the Supreme Court have dealt with the question in a positive manner. The Appellate Division, in the case of *Dr. M. Farooque v Bangladesh*<sup>6</sup> has reiterated Bangladesh's commitment to engaging concern for the conservation of the environment, irrespective of the locality where it is threatened. The High Court Division, in the same case, expanded the fundamental right to life to include anything that affects life, public health, and safety. It consists of enjoying pollution-free water and air, improving public health by creating and sustaining conditions congenial to good health, and ensuring the quality of life consistent with human dignity. The Court added that if the right to life means the right to protect the health and normal longevity of any ordinary human being, then the fundamental right to life of a person has been threatened or endangered. These two cases show that the courts are willing to establish the right to a clean environment. More cases have shown the same vision for ensuring a healthy and safe environment. The environmental cases have been filed as a writ petition under Article 102<sup>7</sup> of the Constitution as an infringement of fundamental rights. Throughout all these years, the Courts have entertained cases and given judgments. Recently, many crucial facts have become the utmost fear in the fast-changing world and its climate. Many environmental issues are forming that are not being enlisted. Besides, how far the right to a safe environment has been ensured through the cases is yet not described.

## **SIGNIFICANCE AND RATIONALITY**

Enforcement of the right to a safe environment has been easy because of the public interest litigation. Though being able to live in a safe environment is not recognized strongly in the Supreme Law of Bangladesh, different PIL cases and judgments have paved the way to treat this right as a fundamental right under the right to life. This paper analyzes the cases filed and the principles that have emerged in establishing the right to a safe environment. It is significant to

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<sup>5</sup> Constitution of the People's Republic of Bangladesh 1972, art 32

<sup>6</sup> *Mohiuddin Farooque v Bangladesh* [2003] 55 DLR 69 [HCD]

<sup>7</sup> Constitution of the People's Republic of Bangladesh 1972, art 102(1)

analyze the principles established to identify the ambit of the right to the environment and whether it can meet the present environmental degradation situation. The role of the judiciary needs to be identified in establishing the right to a safe environment. Since the environmental issues have been brought before the Court through Articles 31 and 32 of the Constitution, and over the years, many principles have been established and are still developing; it has to be scrutinized how far judicial activism is helping to create the right to a safe environment and how far it has been broadening.

## **RESEARCH QUESTIONS**

**The questions which would be acknowledged in this study are as follows:**

1. What is the legal framework of the right to a safe environment in Bangladesh?
2. How far is the right to a safe environment ensured through judicial activism in Bangladesh?
3. What are the possible changes for the betterment of the current scenario of judicial activism on the right to environment in Bangladesh, and what should be done?

## **RESEARCH OBJECTIVES**

**This study has specific objectives, such as:**

1. To understand the boundary of the right to a safe environment in Bangladesh.
2. To understand judicial activism in the context of environmental issues.
3. To determine the significance of judicial activism in raising environmental issues as a right.
4. To scrutinize the past PIL cases and their structure.
5. To identify possible reforms and suggestions to strengthen the rights of the environment.

## **RESEARCH METHODOLOGY**

This study will use a qualitative method. Resources for the research will be assembled mainly from secondary sources, although a few primary sources will also be used. Secondary sources

will include books, journal articles, newspaper articles, blog articles, online journals, e-books, and reports published by different organizations.

## LITERATURE REVIEW

Since environmental issues and their application as a right have always been crucial, and judicial activism on the right to a safe environment has kept the issue significant, lots of work has been done on this area, and many scholars have given their views and scrutinized the issue from different angles.

In the journal '**Public Interest Environmental Litigation and Enforcement of Right to Environment in Bangladesh: A Comparative Study from the Global Intersecting Approach.**'<sup>8</sup>, Mahmudul Hasan and Md. Deedarul Islam Bhuiyan has discussed the procedural history of public interest environmental litigation in Bangladesh to showcase the frequent practice of using this intersecting approach with the right to life as a tool to enforce the right to the environment in the country. The paper has scrutinized the global trend of reading together multiple enumerated human rights in international instruments to cobble together something resembling a right to the environment. Through determining the judicial approach of intersecting different existing fundamental rights to create a right to environment, this paper has also discussed the emerging necessity for a judicially enforceable and comprehensively defined right to environment in the Constitution of Bangladesh.

Ridwanul Hoque has discussed in '**Taking Justice Seriously: Judicial Public Interest and Constitutional Activism in Bangladesh.**'<sup>9</sup> about judicial activism in dispensing justice through promoting and protecting the 'public interest' and imperatives of constitutionalism. This study has revealed the unsuccessful PILs and the reasons lie in the judicial unwillingness to remain jurisprudentially creative.

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<sup>8</sup> Mahmudul Hasan and Md. Deedarul Islam Bhuiyan, 'Public Interest Environmental Litigation And Enforcement Of Right To Environment In Bangladesh: A Comparative Study From The Global Intersecting Approach' (2019) 3(4) International Journal of Law, Humanities & Social Science <[https://www.academia.edu/39700340/PUBLIC\\_INTEREST\\_ENVIRONMENTAL\\_LITIGATION\\_AND\\_ENFORCEMENT\\_OF\\_RIGHT\\_TO\\_ENVIRONMENT\\_IN\\_BANGLADESH\\_A\\_COMPARATIVE\\_STUDY\\_FROM\\_THE\\_GLOBAL\\_INTERSECTING\\_APPROACH](https://www.academia.edu/39700340/PUBLIC_INTEREST_ENVIRONMENTAL_LITIGATION_AND_ENFORCEMENT_OF_RIGHT_TO_ENVIRONMENT_IN_BANGLADESH_A_COMPARATIVE_STUDY_FROM_THE_GLOBAL_INTERSECTING_APPROACH)> accessed 10 August 2024

<sup>9</sup> Ridwanul Hoque, 'Taking justice seriously: judicial public interest and constitutional activism in Bangladesh' (2006) 15(4) Contemporary South Asia <<https://www.tandfonline.com/doi/full/10.1080/09584930701330006>> accessed 10 August 2024

Md. Saiful Karim, Okechukwu Benjamin Vincents, and Mia Mahmudur Rahim, in '**Legal Activism for Ensuring Environmental Justice**'<sup>10</sup>, has discussed the role of environmental lawyers in upholding environmental justice and dealt with social movements regarding the right to the environment in Bangladesh. Moreover, this article has scrutinized whether public interest litigation on the right to the environment and the principles obtained are enough to ensure environmental protection.

An Indian Writer, M. Z. Ashraful, in '**Application of the Principles of International Environmental Law in the domestic legal System of Bangladesh: A Critical Study on the legal framework and the position of the judiciary**'<sup>11</sup>, has given Bangladesh's environmental synopsis. This paper also discusses the international principles of environmental law and their application in Bangladesh's legal system. Moreover, it focuses on the judiciary's role in dealing with environmental cases.

In the book **Principles of International Law**,<sup>12</sup> Phillippe Sands and Jacqueline Peel have discussed the international principles of environmental protection, rules, and regulations. The book also analyzed the fundamental principles of environmental law and environmental issues such as climate change, biodiversity, ocean and freshwater, chemicals, atmospheric protection, and water regulation.

This study has identified the current scenario of judicial activism, where the cases have been pending for a long time, and how the judges deal with the issues through their judgments, which have been critically evaluated. The most crucial context is that the environmental issues that occurred at the time needed prompt actions to save the environment. All cases being filed, whether Courtthe entertains those promptly or whether the decisions meet the expectations, have been entertained and answered in this paper. The literature above brings valuable insights

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<sup>10</sup> Md. Saiful Karim et. al., 'Legal Activism For Ensuring Environmental Justice' (2012) 7(1) Asian Journal of Comparative Law <<https://www.cambridge.org/core/journals/asian-journal-of-comparative-law/article/abs/legal-activism-for-ensuring-environmental-justice/4162AEBD9A80F3ABA1D37444A9C49973>> accessed 10 August 2024

<sup>11</sup> M. Z. Ashraful, 'Application of the Principles of International Environmental Law in the domestic legal System of Bangladesh: A Critical Study on the legal framework and the position of judiciary' (2014) 19(5) IOSR Journal Of Humanities And Social Science <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3156552](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3156552)> accessed 10 August 2024

<sup>12</sup> Phillippe Sands and Jacqueline Peel, *Principles of International Environmental Law* (4th edn, Cambridge University Press 2018)

into upgrading the concerns in the regime of judicial activism more conceptually. Still, this study tried to identify the trends being followed and judge the trends based on environmental needs.

## **SCOPE OF THE STUDY**

This paper will analyze the relevant articles of the Constitution of the People's Republic of Bangladesh. It will scrutinize judicial activism and the remarkable PIL cases on the right to a safe environment in Bangladesh. Also, this study would realize the right to a safe environment and its prospects through judicial activism from Bangladesh's perspective and NGOs' contribution. This study would not include the vast environmental laws of Bangladesh or environmental crimes in the international arena. It would exclude the concept of environmental justice.

## **LIMITATIONS OF THE STUDY**

This paper has certain limitations, which are lack of time, funding, and information inaccessible from governmental offices and NGOs. The inability to visit certain NGOs for interviews further contributes to the limitations.

## **CONCEPTUAL AND THEORETICAL FRAMEWORK**

### **CONCEPTUAL DEFINITIONS**

**Judicial Activism:** The word judicial activism first appeared in the *Marbury v Madison*<sup>13</sup> case, which Chief Justice Marshall of the USA determined in 1804 when he stated, 'The court should determine what the law is.' Legislation that violates the Constitution is unenforceable. The Court must uphold the Constitution and disregard a law if there is a contradiction between it and a provision of the Constitution or legislation passed by Congress. Afterward, the two concepts of judicial review and judicial activism were established. Judicial activism is the judiciary's proactive role in assuring the protection of people's rights and freedoms. A concept of judicial decision-making that allows judges to let personal opinions about public policy, among other things, influence their judgments is known as judicial activism.<sup>14</sup> It is described as an ideology that pushes judges to break from rigorous obedience to legal precedent in favor of progressive

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<sup>13</sup> *Marbury v Madison* [1803] 5 US 137

<sup>14</sup> Bryan A. Garner, *Black's Law Dictionary* (8th edn, West Group 2004)



and innovative social policies incompatible with the restraint required of appellate judges. Judge Robert Bork has referred to judicial activism as a judicial sickness, one that knows no bounds.<sup>15</sup>

Judicial activism is the idea that judges take on a role as independent policymakers or independent trustees on behalf of society, which appears to go beyond their long-standing traditional role as interpreters of the legal provisions, Constitution, and laws. Judicial activism is the idea that the Supreme Court and other judges may and should interpret the Constitution and laws in novel ways to suit their ideas about what modern society requires.<sup>16</sup>

**Right to Safe Environment:** Since the 1970s, when the 1972 Stockholm Declaration first made a passing reference to it, the right to a healthy or safe environment has steadily come into its own<sup>17</sup>. According to Principle 1 of the Stockholm Declaration, ‘Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being’<sup>18</sup>. Most references to a right to a healthy or safe environment appear in international treaties. In this regard, some may advocate for preserving an environment that is ‘ecologically sound’<sup>19</sup>, ‘permits a life of dignity and well-being’<sup>20</sup>, ‘sufficient to his or her health and well-being’ and respecting biodiversity. The 2007 Malé Declaration on the Human Dimension of Climate Change was called ‘the right to an environment capable of preserving human society and the full enjoyment of human rights’. Other terms, such as the rights to a ‘clean’, ‘safe’, ‘favorable’, ‘wholesome’ or ‘ecologically balanced’ environment, may be employed. The many designations might allude to various sources of safety. However, preserving the environment as a place that doesn't damage people will be the main emphasis of the right to a ‘safe’ environment.<sup>21</sup> This concept is remarkable since, according to the World Health Organization (WHO), 24% of all fatalities worldwide are environmental-related.<sup>22</sup> On a different

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<sup>15</sup> Robert H. Bork, *The Worldwide Rule of Judges* (Aei Press 2003)

<sup>16</sup> AFM Abdur Rahman, 'Bangladesh Perspective on Rule of Law for supporting The 2030 Development Agenda/Sustainable Development Goal of UNEP' (*Academia*)

<[https://www.academia.edu/23048781/Bangladesh\\_Perspective](https://www.academia.edu/23048781/Bangladesh_Perspective)> accessed 10 August 2024

<sup>17</sup> Yann Aguila, ‘The Right to a Healthy Environment’ [*International Union for Conservation of Nature*, 29 October 2021] <<https://www.iucn.org/news/world-commission-environmental-law/202110/right-a-healthy-environment>> accessed 10 August 2024

<sup>18</sup> Stockholm Declaration 1972, s 1

<sup>19</sup> World Heritage Convention 1972

<sup>20</sup> Stockholm Declaration 1972

<sup>21</sup> Aguila (n 17)

<sup>22</sup> World Health Organization, *Preventing disease through healthy environments: a global assessment of the burden of disease from environmental risks* (2018)

level, the right to a 'healthy' environment often refers to preserving the health of the ecosystem in nature.

**PIL:** As it has progressed in recent years, public interest litigation constitutes a significant divergence from the established court system. It is a crucial and regularly used legal tactic for achieving our environmental rights in Bangladesh. It is brought before the High Court Division via a writ petition to protest governmental entities' or individuals' actions that violate environmental legislation. The term 'public interest litigation' (PIL), which may refer to a lawsuit brought by either a person or an environmentalist group, is quite common in Bangladesh.<sup>23</sup> It is not necessary for the party that brought the lawsuit to be the party who was wronged, as is often required under the system of judicial review as set down in Article 102 of the Bangladesh Constitution. This kind of lawsuit may also be brought informally by any member of the public, the Court itself, after reviewing news articles, or both. This process is known as epistolary jurisdiction. The environmental issues of Bangladesh are addressed through the concept of Public Interest Litigation.

## RELEVANT THEORIES

Regarding the origin and evolution of judicial activism, there are two theories<sup>24</sup> behind the whole concept. The two theories are:

1. Theory of vacuum filling and
2. Theory of Social Want

**1. Theory of Vacuum Filling:** According to the vacuum-filling concept, a power vacuum in the political system might result from any organ's inaction or laziness.<sup>25</sup> When such a hole grows, it harms the country's welfare and might devastate its democracy. Nature forbids this vacancy from remaining. Thus, other governing organizations expand their jurisdictions and fill this gap. The vacuum is created by inaction, ineffectiveness, contempt of law, negligence, corruption, and a lack of discipline and character in the legislature and the executive branch. As a result, the only

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<sup>23</sup> Rahman (n 16)

<sup>24</sup> Ravi P Bhatia, 'Evolution of Judicial Activism In India' (2003) 45(2) Journal of the Indian Law Institute <<https://www.jstor.org/stable/43953414>> accessed 10 August 2024

<sup>25</sup> Abhishek Roy, 'Concept of Judicial Activism with an example of PPP in India' (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-3130-concept-of-judicial-activism-with-an-example-of-ppp-in-india.html>> accessed 10 August 2024

surviving branch of Government, the judiciary, is left with little choice but to broaden its scope and fill the gaps left by the administration and the legislative. According to this argument, the judiciary's alleged hyper-activism results from filling the space left by the legislature's and the executive's lack of action.

### **THEORY OF SOCIAL WANT**

According to the Theory of Social Want, the emergence of judicial activism was caused by the country's laws being unable to address the conditions and issues at the time. When the current laws could not offer a solution, the Court needed to take up the issues of the oppressed and provide a solution. They had no choice but to give the existing laws to non-traditional readings and use them for the greater good within the constraints of Government. As a result, judicial activism has developed. Supporters of this idea believe that judicial activism is essential to bringing about social change. The judicial branch of the Government fills in the gaps in the laws and gives the law life. With the ability to review, the Court can now take on the role of a change catalyst.

### **ANALYTICAL FRAMEWORK**

**Data Type:** The type of data that was used was mostly secondary data. Statutes, acts, ca, such as judgments, etc., have been used as authoritative data, etc., were used data, law books, law laws, legal information, newspaper articles, blogs, etc., have been collected., were collected toch.

**Data Source:** Proper data have been collected from different sources relevant to completing this study. d. Some data has been obtained from different laws, such as the Constitution of the People's Republic of Bangladesh. Again, in the formation of this study, several case laws relating to the right to a safe environment have had a significant impact. These cases are mostly retrieved from the Environmental Organization BELA, which has taken a stand on different occasions since the 90s. Since there are so many components of the environment to deal with, here in this study, I have upheld 2 elements to finish the study, and the relevant case laws are also related to these two components, such as land and water.

**Data Collection Process:** The data was collected by selecting the nature of the cases and then collecting judgments from the legal websites. Secondary data was gathered by speculating statutes; law reports books, and related sources. Additional secondary data sources include legal journals, websites, articles, and newspapers, all identified through a thorough examination.

**Data Interpretation Technique:** The method of data interpretation used to gather the data obtained for this research begins with gathering the required information and works its way forward from there. The next step is to produce some results, then establish some conclusions, and the last step is to provide any relevant suggestions. Several methods of data interpretation were used during this investigation.

## **HISTORICAL DEVELOPMENT OF JUDICIAL ACTIVISM IN BANGLADESH**

Judicial activism helps environmental laws be implemented correctly and gives the great majority or the underprivileged, access to the legal system. The right to the environment has gained explicit legal protection due to the judiciary's progressive interpretation of various constitutional and legislative laws.<sup>26</sup> Various groups' campaigns for environmental protection paved the way for the growth of judicial activism, and those same organizations later gave rise to the most notable PIL cases.

## **SOCIAL MOVEMENTS**

Although diverse and diversified, the movements for environmental conservation in Bangladesh are sufficiently integrated and maintained to fulfill the criteria of a social movement according to the majority of definitions. They have even shown all of the components included in Tilly's narrow categorization of the word, including group claims, claim-making acts, and public displays of worthiness, among other things. BELA, the Bangladesh Centre for Advanced Studies (BCAS), and the Bangladesh Poribesh Andolon (BAPA) are prominent organizations actively participating in these efforts.

Since 1986, the BCAS has been actively researching environmental projects and publishing relevant books, newsletters, and articles containing environmental concerns. It seeks to address sustainable development through (a) the integration of environmentalism and development, (b)

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<sup>26</sup> Hasan (n 8)

good governance and the participation of the people, (c) the alleviation of poverty and the development of sustainable livelihoods, and (d) economic growth and the partnership of the public and private sectors. It has been responsible for several publications that have impacted the formulation of national environmental policy. People acknowledge BCAS's contribution to protecting the environment both within and outside Bangladesh. The Bangladesh Association for the Protection of the Environment (BAPA) is working to create a countrywide civic movement to halt and reverse the environmental deterioration in Bangladesh. It supports social mobilization, policy advocacy, and conservation and has participated in awareness campaigns via its publications, demonstrations, and other activities. Additionally, it has held conferences, approved resolutions, and organized conferences. BAPA's impact on the environmental movement has garnered praise from various writers.

### **APPROACH OF JUDICIAL ACTIVISM THROUGH PIL**

BELA's efforts are directly responsible for the vast bulk of environmental protection accomplished via legal action. However, after the landmark judgment in the FAP-20 Case<sup>27</sup>, in which standing was allowed for environmental civil society organizations if certain conditions were present; some other human rights and legal aid organizations began to participate in filing PILs for environmental protection. These organizations include BAPA, Bangladesh Legal Aid and Services Trust (BLAST), and Ain o Salish Kendra (ASK). BLAST, ASK, and BELA have all collaborated to submit many PILs to protect the environment. In addition, BELA offers legal support to several other environmental organizations submitting writ petitions. Historically, the laws and institutions in Bangladesh dealing with natural resources were 'use' oriented, aiming to obtain the most possible economic profit. In certain cases, this strategy may be detrimental to the interests of the next generations.<sup>28</sup>

Public Interest Litigation (PIL) in Bangladesh has helped execute numerous laws about preserving the environment and controlling pollution. PIL has been the primary vehicle through which the higher Court has established itself in environmentalism. As a result, a new field of jurisprudence, known as environmental jurisprudence, has been formed. There are many instances of environmental PIL in which the judicial system has shown passion and care for the

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<sup>27</sup> *Dr Mohiuddin Farooque v Bangladesh* [1997] 17 BLD 1 [AD]

<sup>28</sup> Hasan (n 8)

environment.<sup>29</sup> The judiciary developed the PIL in environmental matters with various methods, including relaxing standing, suo motu actions, interpreting the law in a manner conducive to environmental protection, framing various remedies, and applying international environmental law in the national legal system.<sup>30</sup> In addition, PIL makes it easier for the Government to be held accountable for its failure to safeguard the environment.<sup>31</sup> The case study demonstrates that the Bangladeshi Supreme Court modified its mind over time and resolved the locus standi issue. In *Kazi Mukhlesur Rahman v Bangladesh*<sup>32</sup>, which is regarded as the beginning of PIL in Bangladesh, locus standi was first loosened. Following the restoration of democracy in 1991, PIL has developed into a powerful tool to combat environmental degradation in Bangladesh, thanks in part to the work of, among others, ‘*Dr. Mohiuddin Farooque v Bangladesh and others*<sup>33</sup> and ‘FAP-20 case’<sup>34</sup>.

## LANDMARK CASE STUDIES (CONCERNING LAND, AIR AND WATER)

**1. Dr. Mohiuddin Farooque v Bangladesh & Ors<sup>35</sup> (Gulshan Lake Fill-up):** In 1997, a petition was filed against the ‘Banani, Gulshan, and Baridhara Lake Development Project Agreement’ between RAJUK and Indus Valley Investment Pvt. Ltd. to build a huge construction project in the regions, breaking constitutional and legal criteria. The High Court Division issued a Rule after hearing the petition. The Court ordered them to explain why the agreement and subsequent agreements to lease out 220 acres of public land should not be declared null and void and of no legal effect because they were undertaken without lawful authority, in violation of law and the Constitution, and against the public interest. The Court ordered them to show cause why the agreement and subsequent agreements were not unlawful.

**2. Dr. Mohiuddin Farooque v Bangladesh & Ors<sup>36</sup> (Uttara Lake Fill-up):** A High Court Division bench banned building on Uttara Lake. Dr. Mohiuddin Farooque, BELA Secretary General, filed an injunction against the Ministry of Housing and Public Works Secretary, RAJUK

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<sup>29</sup> *Ibid*

<sup>30</sup> Jona Razzaque, *Public Interest Environmental Litigation in India, Pakistan and Bangladesh* (2004) Kluwer Law International <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1794221](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1794221)> accessed 10 August 2024

<sup>31</sup> Altafur Rahman, ‘Public Accountability through Public Interest Litigation’ (1999) 3(2) *Bangladesh Journal of Law* <<https://www.biliabd.org/wp-content/uploads/2021/08/Altafur-Rahman.pdf>> accessed 10 August 2024

<sup>32</sup> *Kazi Mukhlesur Rahman v Bangladesh* [1974] 26 DLR 44 [HCD]

<sup>33</sup> *Dr Mohiuddin Farooque v Bangladesh* [1997] 17 BLD 1 [AD]

<sup>34</sup> *Ibid*

<sup>35</sup> *Ibid*

<sup>36</sup> *Ibid*

Chairman, and Department of Energy Director General (DoE). RAJUK reportedly filled part of the lake against the city's Master Plan, threatening the local biodiversity. Uttara residents sued. The lawsuit would end the injunction. On February 17, 2004, the Hon'ble Court presided over by Mr. Justice Md. Imman Ali and Mr. Justice Shamin Hasnain heard the petition in full and dismissed it without a cost order. After the judgment, BELA filed Civil Miscellaneous Petition 84 of 2004 and Civil Petition for Leave to Appeal 564 of 2004, which the appellate division approved after hearing the petitioner. All parties must wait for the verdict.

**3. Rabia Bhuiyan, MP v Ministry of LGRD & Ors:**<sup>37</sup> The Government failed to shut arsenic-contaminated tube wells, prompting the writ petition. The Court recognized the seriousness of the issue and the dangers of drinking arsenic-contaminated water. It connected environmental contamination to the Constitutional right to life and the duty to improve the environment to protect it.

**4. Bangladesh Environment Lawyers Association (BELA) v Government of Bangladesh and Ors**<sup>38</sup>, **(Tannery Case)**: In 2017, the SC upheld the eviction of 155 Hazaribagh tanneries and penalized each BDT 55,000/- for contaminating the neighborhood and Buriganga River. Environmentalists and the Government had campaigned to move them. In 2019, the tanneries left Hazaribagh. RAJUK wants to build parks, playgrounds, community halls, commercial malls, and an indoor gaming complex.

**5. Bangladesh Environment Lawyers Association (BELA) v Bangladesh and Ors**<sup>39</sup> **(Buriganga Encroachment)**: The Secretaries of the Ministry of Land, Home Affairs, and Water Resources, Chairmen of the Bangladesh Water Development Board and Bangladesh Inland Water Transport Authority, and Deputy Commissioners of Dhaka and Narayanganj were ordered to prepare and submit an action plan with a specific time frame and measures to recover the river Buriganga's public property and evict the squatters. A division bench of the High Court ordered BELA to provide the report within two months in response to Writ Petition No. 4098 of 1999. The Honorable Court also issued a Rule Nisi ordering the state parties and the Secretary of the Ministry of Environment to show cause why they should not be directed to perform their legal duties, which include immediately removing the illegal encroachment over the river

<sup>37</sup> *Rabia Bhuiyan, MP v Ministry of LGRD and Ors* [2007] 59 DLR [AD]

<sup>38</sup> *BELA v Government of Bangladesh and Ors* [2003] WP No 1430/2003

<sup>39</sup> *Bangladesh Environment Lawyers Association [BELA] v Bangladesh and Ors* [1999] WP No 4098/1999

Buriganga, protecting its environment, and restoring it in the public interest. After hearing the petitioner in the previous Writ Petition, the Honorable Court was delighted to make an Order on January 18, 2000, to immediately remove the unlawful encroachment across the river Buriganga to reclaim public property and maintain its environment.

**6. Bangladesh Environmental Lawyers Association (BELA) v Bangladesh and Ors<sup>40</sup> (Protection of Fuldi River from Unlawful Leasing):** BELA filed this Writ Petition with the Supreme Court's Honourable High Court Division on March 9, 2002, to safeguard public asset sustainability. The Gazaria police station in Munshigonj District unlawfully leased the Fuldi River in Sonar Kandi for 99 years. Farmers utilize the river for irrigation and drainage. Traditional fishing, boat ferry service, daily practical usage, water transport, and other common applications like many other rivers in the country are how peasants in the nearby villages earn a livelihood. The petitioners allege that the defendants have been maliciously misusing their position to deny them and the local population access to subsistence and environmental protection as the Scheduled Land is a Fuldi River water flow corridor. The Court issued a Rule Nisi ordering the Respondents to explain why the impugned settlement of the disputed scheduled land did not breach the petitioners' constitutional rights under Articles 27<sup>41</sup> and 31<sup>42</sup>. The Court also delayed the challenged lease documents for three months. Returnability was extended to four weeks.

**7. Bangladesh Environmental Lawyers Association (BELA) v Bangladesh<sup>43</sup> (Removing 'Khulshi' sluice gate Korotoa river, Bogra and Gaibandha):** North Bengalis depend on 'Karotoa' for life, work, and communication. Due to encroachment and random intervention, the Karotoa River has been reduced to a trickle near Bogra. The High Court ordered the defendants to show cause why they should not be ordered to safeguard the Karotoa River and restore its flow by demarcating its boundaries, removing the Khulshi sluice gate and other encroachments, and forbidding dumping. Respondent 20 was enjoined from depositing garbage into the Karotoa River until the Rule was heard. Respondents 8, 13, and 14 were ordered to do an EIA and EAR with sufficient public engagement to impartially examine the ecological effects

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<sup>40</sup> *Bangladesh Environmental Lawyers Association [BELA] v Bangladesh and others* [2002] WP No 4685/2002

<sup>41</sup> Constitution of the People's Republic of Bangladesh 1972, art 27

<sup>42</sup> Constitution of the People's Republic of Bangladesh 1972, art 31

<sup>43</sup> *Bangladesh Environmental Lawyers Association [BELA] v Bangladesh* WP No 6501/2015



of the Khulshi Sluice Gate with 3-volt regulators on Karotoa. The defendants were ordered to open the sluice gate with three-volt regulators to allow the Karotoa to flow freely.

## CASES ON LAND

**1. Dr. Mohiuddin Farooque v Bangladesh & Ors:**<sup>44</sup> BELA petitioned against Flood Action Plan-20 in Tangail in 1994. The petition argues against implementing the proposal. The Court first rejected the petition for lack of standing. The High Court heard the merits after the Appellate Division gave the petitioner standing. The petition accused the authorities of violating many rules for loss compensation and national heritage preservation. These laws were violated ‘when implementing the project, the respondents cannot with impunity breach the requirements of the law,’ the Court said on August 28, 1997. We think FAP-20 tasks should be legal.

**2. Bangladesh Environmental Lawyers Association (BELA) v Bangladesh and Ors**<sup>45</sup> **(St. Martin's Island):** The petition demanded that the defendants restrict commercial tourism on the ecologically sensitive island of St. Martins and cease the uncontrolled and unlawful expansion of accommodation enterprises. On October 18, 2009, the Honorable High Court issued a rule requiring the respondents to explain why they should not be obliged to regulate tourism on St. Martin and destroy any unlicensed, illicit, and illegal commercial home contractions. Respondents cannot build new commercial constructions without permission for three months. Return the Rule in four weeks. The injunction was prolonged until January 15, 2010, when the Rule was decided.

**3. Dr. Mohiuddin Farooque v Bangladesh & Ors**<sup>46</sup> **(Hill Cutting Case):** BELA has petitioned the Court to investigate the indiscriminate, unlawful, and unauthorised cutting and elevation of hills in the Chittagong City Corporation and surrounding areas. This illegality occurred in the city corporation and its surroundings. After hearing the petitioner, Dr. Mohiuddin Farooque, the Court directed the Director General of the Department of Environment to report on the alleged unlawful and indiscriminate hill cutting causing ecological imbalance and environmental damage in the city. The Court ordered the report to outline the Government's efforts to prevent such illegal activity. A petition-related application was filed.

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<sup>44</sup> *Dr Mohiuddin Farooque v Bangladesh* [1997] 17 BLD 1 [AD]

<sup>45</sup> *Bangladesh Environmental Lawyers Association [BELA] v Bangladesh and Ors* WP No 6848/2009

<sup>46</sup> *Dr Mohiuddin Farooque v Bangladesh & Others* [1997] WP No 6020/1997

**4. BELA, BLAST, Nijera Kori, ALRD, ASK, BAPA, Architect Mubasshar Hussain v Bangladesh:**<sup>47</sup> Dhaka Metropolitan Development Plan lists Suharawardi Udyan as a public central park. The Master Plan calls the Udyan a 'valuable heritage' for its historical, cultural, and aesthetic value. The Udyan is recognised since it was where the Language Movement and liberation battle began. Bangabandhu Sheikh Mujibur Rahman gave his historic address on March 7, 1971, from this Udyan. The petitioners filed their writ case after numerous leading media quoted certain respondents saying the trees were being cut as part of the 'Suhrawardi uddyane Shadhinota Stombho Nirman (3rd Phase)' project. Tree chopping for commercial interests and non-memorializing historical locations is needless, illegal, and harmful to the Udyan's ecosystem and Constitution.

Adjourned for four weeks on the AG's plea that the authority concerned of the respective ministry has suspended the further process of felling old, mature trees in the historic Suhrawardi Udyan to sit with the concerned citizens of the country, petitioners, environmentalists, experts to resolve the dispute and given the judgment and order passed in connection with the writ petition.

**5. Bangladesh Environmental Lawyers Association (BELA) v Bangladesh & Ors**<sup>48</sup> **(Protection and Conservation of Sunderbans):** On May 2, 2004, BELA petitioned the High Court Division (Writ Petition No. 2224 of 2004) seeking particular protections to conserve and maintain the 9285.15 sq km of the Sunderbans as an environmentally sensitive region (ECA). BELA petitioned the Secretaries of the Department of Environment (DoE), Ministry of Land, Ministry of Environment & Forest (MoEF), Chief Conservator of Forest, Divisional Forest Officer in Bagerhat, Divisional Commissioner in Khulna, Deputy Commissioner in Bagerhat, and Upazila Nirbahi Officer in Bagerhat for relief. The petition alleges that the Ministry of Property is unlawfully implementing its plan on the tract of property despite resistance from the Forest Department. According to the petition, the Government classified a 10-kilometer radius around the Sunderbans Reserved Forest as an Ecologically Critical Area (ECA) on August 30, 1999, prohibiting any actions that may harm the forest or wild animals. The ECA allows the Ministry of Land's initiative. After hearing from the petitioner, the High Court Division's Division Bench, composed of Mr. Justices Jubayer Rahaman Chowdhury and Shah Abu Naim Mominur Rahman,

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<sup>47</sup> *BELA, BLAST, Nijera Kori, ALRD, ASK, BAPA, Architect Mubasshar Hussain v Bangladesh* [2021] WP No 4644/2021

<sup>48</sup> *Bangladesh Environmental Lawyers Association [BELA] v Bangladesh & others* [2004] WP No 2224/2004

issued a Rule Nisi asking the Government to explain why the Adrasha Gram project should not be considered illegal. While the Rule is being heard, the Court has imposed injunctions barring the Secretary, Ministry of Land, Divisional Commissioner, DC, and UNO of Bagerhat district from settling anybody in the Sunderbans ECA.

**6. Bangladesh Environmental Lawyers Association (BELA) v Ministry of Land and Ors<sup>49</sup> (Protection and Conservation of Sonadia Island):** BELA petitioned the High Court Division to protect Sonadia Island's 4916 hectares as an environmentally sensitive region on July 6, 2003. (ECA). The petition introduced 'polluters pay'. The petition claimed that Sonadia Island's 4916 hectares of land were designated an 'ecologically critical area' (ECA) because the mangrove forest protects the island's char land from erosion and prevents tidal bores from sweeping nearby residents during natural disasters. The Ministry of Environment and Woodland removed the designation on the pretence that the forest was already a reserve and maintained according to Department of Forestry standards. According to BELA's assessment, the ECA classification was cancelled, leaving the forest unprotected. The High Court Division's Division Bench issued a Rule Nisi requesting the Respondents to justify why they should not be ordered to take special protective measures as required by Section 5 of the Environment Conservation Act, 1995, to protect and conserve the 4916 hectors of Sonadia Island as an Ecologically Critical Area as declared vi. The Court has also halted lease agreements and other changes to Sonadia Island's 4,916 hector forest. The Respondents have been instructed to identify and measure the areas within the 4,916 hectares of Sonadia Island where shrimp cultivation or forest clearing occurs.

## CASES ON AIR

**1. BLAST and others v Bangladesh and Ors<sup>50</sup> ('Vehicular Pollution' Case):** BLAST filed a writ action on behalf of two young petitioners to stop three-wheelers with two-stroke engines in Dhaka from polluting children and the elderly. They said a 1997 agreement banning the operation and sale of three-wheelers older than nine years in Dhaka and other metropolitan regions had not been enforced. Bangladesh Road Transport Authority, Dhaka City Auto Rickshaw Business Owners Association, and Ministry of Communications inked the deal. The

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<sup>49</sup> *Bangladesh Environmental Lawyers Association [BELA] v Ministry of Land and others* [2003] WP No 4286/2003

<sup>50</sup> *BLAST and others v Bangladesh and others* [2000] WP No 1694/2000

High Court ordered all two-stroke three-wheelers be phased out of Dhaka by 2002 and replaced with more ecologically friendly vehicles.

**2. Dr. Mohiuddin Farooque v Bangladesh & Ors<sup>51</sup> (Industrial Pollution Case):** In 1994, BELA filed this Writ Petition to stop 903 companies from 14 sectors from polluting air, water, soil, and the environment. The Ministry of Local Government, Rural Development, and Cooperatives (LGRDC) designated these polluters by Gazette notice dated 7 August 1986. BELA said these industries polluted without discriminating. The 14 sectors include tanneries, paper and pulp mills, sugar mills, distilleries, iron and steel, fertiliser, insecticide, and pesticide industries, chemical industries, cement, pharmaceuticals, textile, rubber and plastic, Tyre and Tube, and Jute. On August 7, 1986, the Department of Environment (DoE), Ministry of Environment and Forests (MoEF), and Ministry of Companies were ordered to ensure that selected sectors installed pollution control measures within three years. The announcement also required the authorities to ensure no new enterprises may be built without pollution control equipment. Unfortunately, the petition above was filed after eight years of inaction.

**3. BELA v Bangladesh and Ors<sup>52</sup> (Nimtoli-Fire, Dhaka):** The petitioners filed this writ petition because the concerned authorities failed to prepare adequately and effectively for preventing and fighting city fires, reconstructing/renovating/rearranging Old Dhaka to ensure the safety of its residents, and preventing the unauthorised expansion of hazardous industrial activities in the city, particularly in the high-density township of Old Dhaka. The Honorable High Court Division issued a Rule Nisi ordering the respondents to show cause why they should not be directed to take action and adequate measures to prevent and fight fire break-outs in the city, ensure safe and planned development of Old Dhaka, and prevent unauthorised setting up or use of buildings as godowns/warehouses/factories/industries, use of flammable or petroleum products or any hazardous substances, chemicals, or explosive.

**4. BELA v Bangladesh:<sup>53</sup>** The ‘Chita Mills’ were built in Sherpur, Bogra, without receiving environmental approval. They endangered the quality of life for the locals and particularly harmed children, women, and the elderly. They also caused considerable noise and air pollution.

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<sup>51</sup> *Dr. Mohiuddin Farooque v Bangladesh & Others* [1994] WP No 891/1994

<sup>52</sup> *Bangladesh Environmental Lawyers Association [BELA] v Bangladesh and others* [2010] WP No 4919/2010

<sup>53</sup> *Bangladesh Environmental Lawyers Association [BELA] v Bangladesh* [2014] Writ Petition No. 3508 of 2014

The High Court ordered the defendants to explain their failure to stop the installation of the mills after issuing a Rule Nisi.

## **LEGAL REGIME OF THE RIGHT TO SAFE ENVIRONMENT IN BANGLADESH**

Environmental injustice occurs when a person or group is subjected to disproportionate environmental risks, such as those posed by hazardous waste dumps, has unequal access to environmental benefits, such as clean air, or is given fewer opportunities to participate in environmental decision-making. In every country in the world, minorities and the poor are more vulnerable to environmental threats, have less access to environmental benefits, and are less able to defend themselves against environmental injustices.<sup>54</sup>

**Constitution:** The Constitution of Bangladesh does not include any provisions that directly safeguard the environment. Neither the basic rights nor the policies of the State explicitly refer to the right to a safe and healthy environment.

Every citizen has the right to protection from, as stated in Article 31, the 'action detrimental to the life, liberty, body, reputation or property unless these are taken by law.'<sup>55</sup> It was noted that residents and citizens of Bangladesh have the intrinsic right to be treated by the law and that this right cannot be taken away. In the event that these rights are infringed upon, restitution is obligatory. Article 32 states, 'No person shall be deprived of personal liberty given in accordance with the law.'<sup>56</sup> The preservation of one's right to life is included in these articles combined. The Constitution of Bangladesh does not recognise any kind of right to the natural environment. However, due to a protracted movement led by members of civil society and environmentalists, a provision on the preservation and development of the environment was included as a part of the fundamental principles of state policy in the Constitution of Bangladesh after it was amended for the 15th time. However, this clause places a duty on the State to safeguard and enhance the environment and maintain the protection and security of natural resources, biological variety, wetlands, and wildlife.<sup>57</sup> Therefore, it does not establish a right to a safe environment for individuals; rather, it proclaims it as one of the fundamental principles of state policies, which can be used as a guideline in the interpretation of the Constitution and of the other laws of

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<sup>54</sup> K. Shrader-Frechette, *Environmental Justice: Creating Equality, Reclaiming Democracy* (OUP 2002)

<sup>55</sup> Constitution of the People's Republic of Bangladesh 1972, art 31

<sup>56</sup> Constitution of the People's Republic of Bangladesh 1972, art 32

<sup>57</sup> Constitution of the People's Republic of Bangladesh 1972, art 18A

Bangladesh, shall be applied in the making of laws, and form the basis of the work of the State. In other words, it does not establish a right to a safe environment for individuals.<sup>58</sup> The State, its agencies, private citizens, or legal entities may fulfill this constitutional obligation to safeguard the natural environment. The Bangladeshi Government did not take advantage of the chance to add the right to the environment as one of the basic rights, even though this right has already been established via judicial interpretation.

In two well-known instances, the Appellate Division and the High Court Division used a holistic approach in their decision-making. In the case of *Dr. Mohiuddin Farooque v Bangladesh*<sup>59</sup>, the Appellate Division has explained that articles 31 and 32 of our Constitution safeguard the right to life as a basic right. It incorporates the conservation and maintenance of the environment within its purview, an ecological balance free from air and water pollution, and sanitation, without which it is difficult to take pleasure in life. Any action or omission that goes against these guidelines will be considered a violation of the aforementioned 'protection of the right to life'. The High Court Division in the case of '*Dr. Mohiuddin Farooque v Bangladesh and others*<sup>60</sup> stated that The right to life encompasses the right to clean air and water and a condition above and beyond the presence of animals where one may anticipate a normal lifespan. It is important to note that both of these cases were ones of public interest litigation. According to the decisions of several courts, it would seem that the right to a healthy environment has now developed into a basic right. However, putting environmental rights on an equal footing with basic rights has proven difficult because our judicial system was at a procedural disadvantage when attempting to uphold these rights. Before 1994, the Supreme Court of Bangladesh had never been required to rule on a case involving environmental concerns. BELA was the organisation that initiated the first case of its kind in January 1994. After that, many PILs were submitted for the protection of the environment, the health of the general public, the prevention of pollution, and other related issues; however, a judgment has not yet been made on any of them. There was no single instance where the 'locus standi' issue was raised.

The infamous 'FAP-20 case'<sup>61</sup>, in which the legitimacy of an experimental structure project associated with the enormous FAP was called into doubt, was the first time that the issue of

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<sup>58</sup> Constitution of the People's Republic of Bangladesh 1972, art 8(2)

<sup>59</sup> *Dr. Mohiuddin Farooque v Bangladesh* [1996] WP No 92/1996

<sup>60</sup> *Mohiuddin Farooque v Bangladesh* [2003] 55 DLR 69 [HCD]

<sup>61</sup> *Dr Mohiuddin Farooque v Bangladesh* (1997) 17 BLD 1 [AD]

whether or not the right to a healthy environment is a basic right was brought up. The HCD first turned down the petition because the person who submitted it did not have ‘standing’. After that, the petitioner filed an appeal with the Appellate Division, and the Court allowed it to determine the petitioner's locus standi in PIL. Finally, in July, the issue of locus standi was resolved by the Appellate Division, which ruled that any member of the public suffering a common wrong, common injury, or common invasion of fundamental rights of an indeterminate number of people or any citizen or an indigenous association exposing such cases has locus standi. This decision came down after the Appellate division heard oral arguments.

## **LEGISLATION REGULATING ENVIRONMENT**

Environmental laws have been in place in our nation since the 19th century. Still, they have largely not been followed, and most people and the governmental agencies responsible for enforcing them are only dimly aware of their existence.<sup>62</sup> In 1989, in order to address concerns about the environment, the Ministry of Environment and Forest was founded. The Government established a national conservation plan, approved the national environment policy of 1992, and enacted the Bangladesh Environment Conservation Act<sup>63</sup> in 1995 to modify the previous legislation and protect the environment. The Department of the Environment was also given a new organisational layout. In addition, the Ministry of Environment has completed the National Environment Management Action Plan, generally known as NEMAP, with the help of several non-governmental organisations and other organisations. In addition, in 1997, the Bangladesh Environment Conservation Rules became a complementary piece of legislation to the Act. The Conservation Act<sup>64</sup> and its corresponding Rules were revised in 2000 and 2002 to include crucial new provisions and to bring them into conformity with the evolving environment. A further piece of legislation known as the Environment Court Act<sup>65</sup> was also passed into law in 2000 to establish environmental courts in all six administrative regions of the nation to establish a distinct venue. In addition to these pieces of legislation, there are others, such as the Brick Burning Act of 1989<sup>66</sup>, the Paurashava Ordinance<sup>67</sup> of 1977, the Environmental Pollution Control

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<sup>62</sup> Badsha Mia and Kazi Shariful Islam, ‘Human Rights Approach to Environment Protection: An Appraisal of Bangladesh’ 22 (2014) *Journal of Law, Policy and Globalization* <<https://core.ac.uk/download/pdf/234649793.pdf>> accessed 10 August 2024

<sup>63</sup> Bangladesh Environment Conservation Act 1995

<sup>64</sup> *Ibid*

<sup>65</sup> Environment Court Act 2010

<sup>66</sup> Brick Burning Act 1989

<sup>67</sup> Paurashava Ordinance 1977

Ordinance<sup>68</sup> of 1977, the Territorial Water and Maritime Zones Act<sup>69</sup> of 1905, the Agricultural Pesticides Ordinance<sup>70</sup> of 1971, The Mines Act<sup>71</sup> of 1924, the Pure Food Ordinance<sup>72</sup> of 1959, the Marine Fisheries Ordinance<sup>73</sup>, the Forest Act<sup>74</sup>, and so on.

## **TRENDS OF JUDICIAL ACTIVISM ON THE RIGHT TO SAFE ENVIRONMENT: A CRITICAL ANALYSIS**

In this study, the PIL cases mentioned above are related to the three components of the environment – Water, land, and air. NGOs file all these cases, and their judgments have set some trends in the environmental regulation system in Bangladesh, such as the approach of including environmental rights into the right to life, the establishment of locus standi in the light of which the progressive development of this environmental jurisprudence is constantly being developed.

### **RECOGNITION OF THE RIGHT TO A SAFE ENVIRONMENT**

Some people believe that the first significant step toward securing environmental justice for everyone is acknowledging that people have an inherent right to an environment suitable for human habitation. Legal activists in Bangladesh have this position and have been working toward establishing this right in their country. Even though Articles 31 and 32 of the Constitution of Bangladesh protect the right to life, no particular provision in the Constitution of Bangladesh addresses the basic right to a decent environment. However, Articles 31 and 32 do guarantee the right to life. The campaigners took a wide view of this right to life and understood it to encompass the right to a decent environment. In this context, several writ petitions that BELA submitted resulted in some favourable developments. From the cases asserted above, a trend of acknowledging the right to a decent environment through the right to life under Articles 31 and 32<sup>75</sup> has been set up, and still, it is a valid ground and way to seek a remedy through the right to life. Since Article 18A<sup>76</sup>, even invoked through the 15<sup>th</sup> Amendment, is not a fundamental right. Rather, it is more of a duty of the State. A.B.M. Khairul Hoque J. expressed an opinion in a writ

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<sup>68</sup> Environmental Pollution Control Ordinance 1977

<sup>69</sup> Territorial Water and Maritime Zones Act 1905

<sup>70</sup> Agricultural Pesticides Ordinance 1971

<sup>71</sup> The Mines Act 1924

<sup>72</sup> Pure Food Ordinance 1959

<sup>73</sup> Marine Fisheries Ordinance 1983

<sup>74</sup> Forest Act 1927

<sup>75</sup> Forest Act 1927, art 32

<sup>76</sup> Forest Act 1927, art 18A



suit of industrial pollution that BELA submitted. He refers to living a ‘qualitative existence among people, free from environmental risks, as the definition of life. In that particular instance, BELA filed the lawsuit in its capacity as a ‘person aggrieved’ under Article 102 of the Constitution, arguing that the violation of basic rights includes a violation of the right to life. It maintained that despite the Government having identified factories and industrial units that caused ecological imbalance due to the discharge of various industrial wastes into the air and water bodies through its survey, the Government had failed to implement the decision in light of the survey. BELA argued that this went against the legislative responsibilities that the Government was required to uphold.<sup>77</sup> The Court ruled in accordance. Moreover, with the PIL cases, legal activity has assisted in the recognition of the human right to a decent environment in Bangladesh. The activist attorneys' point of view was accepted by the Supreme Court, which resulted in a liberal interpretation of the basic right to life, which now includes the right to a good environment.

### **THE CONCEPT OF LOCUS STANDI ESTABLISHED**

Early environmental cases mostly involve the locus standi issue. Environmental legal activists in Bangladesh made a major contribution to environmental justice by solving this issue. The Appellate Division of the Supreme Court granted environmental activists and other civil society groups locus standi in the FAP-20 Case. It construed ‘person aggrieved’ to enable BELA, represented by Dr. Mohiuddin Farooque, to bring a writ petition under Article 102 of the Constitution on behalf of those impacted by a governmental flood control pilot project. Compartmentalization Pilot Project (CPP) under Flood Action Plan (FAP) Number 20. The High Court Division dismissed BELA's Writ Petition because the project directly impacted neither Dr. Farooque nor BELA and hence did not qualify as a ‘person aggrieved’ under Article 102 of the Constitution. The Supreme Court's Appellate Division granted Dr. Farooque standing after overturning the High Court Division's limited interpretation of this constitutional requirement. A ‘person aggrieved’ is offended or feels sorry for others because the Government or a local authority failed to perform its constitutional or statutory responsibilities. Given Bangladeshi courts ' standing history, BELA's success in getting the courts to provide standing to an environmental civil society organisation for the first time is notable. Kazi Moklesur Rahman v

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<sup>77</sup> Mia (n 62)

Bangladesh and others may have been the first Bangladeshi locus standi case.<sup>78</sup> The Supreme Court ruled that the appellant may file the claim despite not living in Bangladesh's treaty-affected territory. This competence is based on the danger to the appellant's basic freedom of mobility throughout Bangladesh. The Court called this a crucial constitutional problem.<sup>79</sup>

However, in the case of FAP 20, just such a petitioner was given standing. It was possible, in no small part, because BELA refused to allow the existing legal situation to discourage it from seeking environmental justice. The judgment that the Court came to in that particular instance was influenced by the fact that BELA was fighting for the rights of the oppressed and the significance of the basic right to life, which incorporates the ability to live in an acceptable setting. Not only did the decision make it possible to file writ petitions to protect environmental rights, but it also made it possible to protect all other basic rights.

### **PROGRESSIVE DEVELOPMENT OF ENVIRONMENTAL JURISPRUDENCE**

In a jurisdiction where the official endorsement and application of internationally recognised environmental principles is slow, judicial pronouncements appear to be one way to introduce internationally recognised environmental principles into the national discourse because the law influences the actions and cultures of society. A review of the cases already decided in Bangladesh reveals that the activists held this point of view. It is because one of the outcomes of the type of legal activism covered in the preceding paragraphs is the growth of Bangladesh's environmental jurisprudence, including, in particular, the recognition of emerging international environmental laws and norms in the domestic arena. Intergenerational Equity, the Polluter Pays Principle, and the Precautionary Principle are some of the international environmental law principles introduced in Bangladesh. They are all international environmental laws.<sup>80</sup>

In the Radiated Milk Case, the Supreme Court recognised the rights of future consumers, which was also an indirect acknowledgment of the 'Precautionary Principle'.<sup>81</sup> Furthermore, from the mentioned cases, in one of the writ petition cases, the government authorities have been directed to investigate, identify, and measure the areas within a pristine island called Sonadia where shrimp cultivation or forest clearing is taking place or has taken place. This investigation is to

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<sup>78</sup> 26 DLR [SC] 44 [1974]

<sup>79</sup> Karim (n 10)

<sup>80</sup> Razzaque (n 30)

<sup>81</sup> *Ibid*

identify and measure the areas where shrimp cultivation occurs or has taken place. In addition to this, the Government is required to compile a list of those who are involved in such cultivation/clearing and the arrangements that make it possible to determine, in monetary terms, the number of forest resources that are lost as a result of such individual shrimp cultivation/forest clearing; and submit a report to the Court within two months.<sup>82</sup> There is hope that the Court will uphold the idea that the polluter should pay. Although it may not be accurate to say that intergenerational justice, the precautionary principle, and the polluter pays concept have all become firmly entrenched legal principles in Bangladesh, these dicta constitute significant steps in the right direction.

## **MAJOR FINDINGS**

Judicial activism on environmental protection has broadened the sphere of questioning the Government's stands on the environment in general. The cases and the principles that evolved from those cases have established a place for arguing and for getting remedies where it is only a duty of the State to safeguard the environment. The impact is almost positive in all cases discussed above, which is a good sign.

The judiciary is well-equipped to deal with environmental issues in Bangladesh. Most cases come from NGOs, such as those with more expertise on environmental issues. BELA or Other NGOs filed all the cases discussed, and that's how the laws and boundaries were changed.

The judiciary is welcoming international principles with the PIL cases. Though the approaches are not expressly stated to follow international principles, the rules, directives, or mandates indicate that the principles are on their way to being implemented expressly.

The study shows that the PIL cases have broadened the environmental standards and the definition of the Right to Life. On this matter, if activists wanted to pursue a lawsuit tactic, they had limited choices. In this way, whether the status quo should be preserved is distinct from any other question that may be asked. Without a shadow of a doubt, it would be preferable for any given jurisdiction to adopt laws, policies, and an enforcement atmosphere that backed healthy environmental protection in addition to court-mediated settlements.

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<sup>82</sup> *Bangladesh Environmental Lawyers Association [BELA] v Ministry of Land and others* (2003) WP No 4286/2003

The definitions are less clear. The right to a safe environment is also not defined and unclear. Even with judicial activism, the right to a safe environment is being proven through the right to life, and there is no separate and strong place for it in the Constitution because of its unenforceability.

BELA's actions and efforts have been essential in Bangladesh's establishment of PIL as both a concept and a weapon for ensuring that social justice is achieved. However, many delicate concerns about human rights have not yet been adequately addressed, and these issues should be considered by PIL cases brought forth by NGOs and the Court. At this point, human rights defender groups and the Court have the potential to play a crucial role by initiating PIL and *Suo moto* actions and instructing the Government to pursue policy measures that are alternatives to the hartal.

It is possible to conclude that judicial public interest and constitutional activism in Bangladesh have started progressing and reaching milestones but have not yet lived up to their promises. It appears that a significant portion of the future of this PIL-based judicial activism depends on an ongoing fine-tuning process of the PIL movement in Bangladesh, which still has a significant distance to travel before it can achieve the social and political justice that the Constitution guarantees.

There has been a failure on the part of the judicial branch to create and strengthen its ability to effectively execute its judgments and hold the executive branch accountable. It is a more difficult and intimidating job for the legal system in Bangladesh to just give excellent orders, but this work is much more difficult.

In certain situations, legal activists were successful in getting favorable court rulings and gaining favorable replies from the Government regarding the execution of judicial decisions. This accomplishment was achieved in several different circumstances.

## **RECOMMENDATIONS**

Incorporating the right to a safe and healthy environment into the Constitution of Bangladesh will increase environmental protection and provide a solid foundation for environmental justice.

Environmental issues need an active judiciary. Bangladeshi judges should prioritize judicial action for environmental justice. Judges should also get environmental legal training. Training and research may be funded. The Government may also make the PIEL appealing to the public by including more NGOs in policy making and selecting environmentally conscious justices for the higher courts.

A separate judicial bench should be set up to address these concerns specifically. With this approach, the judges will promptly entertain cases and expect to dispose of them quickly.

The public does not file PIELs because they cannot afford them. No one will want to invest their money in this public interest problem. No one wants to proceed since it's expensive. Bangladesh's Legal Assistance Act of 2000 does not include PIL, human rights, or environmental protection. If environmental concerns get legal aid, people will be more likely to sue polluters.

NGOs active in environmental preservation can compile a database of attorneys willing to give free legal advice to persons afflicted with environmental issues, at least for the first consultation. As a result, the general public will understand their environmental rights and the alternatives that are open to them.

Although ignorance of law is no excuse, lack of understanding of law and rights, especially environmental laws and rights and duties, is a serious issue that has yet to be remedied. Environmental rights awareness and education campaigns may improve judicial effectiveness.

## **CONCLUSION**

Our legal system does not recognize the right to a healthy environment. We have many laws, but their ambiguities hinder environmental justice. Bangladesh values environmental conservation. A constitutional guarantee of a judicially enforceable and thoroughly defined environmental right may resolve many environmental problems in the nation. Bangladesh leads global environmental discussions through aggressive environmental policies, activities, and initiatives. However, the 2011 15th Amendment to the Bangladeshi Constitution recognized, while not judicially enforceable, the conservation and enhancement of environment and biodiversity in Article 18A. It is a pioneering achievement for pro bono NGOs, attorneys, and civil society members who protect and improve the environment. While environmental litigation has supported environmental arguments, the right to life remains unresolved. Environmental NGOs

and attorneys in multiple public interest litigations convinced the Supreme Court of Bangladesh to expand the right to life to encompass a pollution-free, healthy environment for full life enjoyment. This understanding of the right to life cannot fully address the right to environment, an autonomous and fundamental right with considerable concerns. Article 18A's constitutional inclusion hasn't changed anything. The legal interpretations of Article 18A may help Bangladesh comprehend a secondary right to the environment. But a genuine right to the environment is still long off.