

# **The Emergence of Environmental Right as a Constitutional Right in Bangladesh: Reflection of Global Perspectives in National Legal Regime**

***Moumita Das Gupta***

Advocate, Supreme Court of Bangladesh  
Research Fellow, Centre for Climate Justice, Bangladesh

## **Abstract**

*From the history of legal development in Bangladesh, a close alignment can be found between global perspectives of providing recognition for environmental rights through several international legal documents and the inclusion of these concerns within the legal and constitutional framework of Bangladesh. After around forty years of independence and thirty-nine years of adoption of the original instrument, a new article, namely Article 18A, was inserted in the Constitution of the People's Republic of Bangladesh, which introduced an inevitable discussion of environmental rights within the constitutional purview of Bangladesh. In spite of the lack of any definite mechanisms for implementation of the newly inserted provision here, it is an endeavour to analyze the history of development and scopes for legal implementation for the environmental rights in Bangladesh.*

**Key-words:** *Article 18A, Environmental Rights, Public Interest Litigation or PIL.*

## **1. Introduction**

Originally, the Constitution of the People's Republic of Bangladesh, 1972 (hereinafter referred to as the Constitution or as the Constitution of Bangladesh) was concerned neither about the natural environment nor the relationship between human rights and the environment. Even so, in consonance with the emergence of international concerns, subsequent legal and Constitutional developments in Bangladesh have significantly initiated a close connection between environmental concerns and Constitutional guarantees. The year 2011 is significant in the history of the development of environmental law in Bangladesh. This year a new article, *i.e.*, Article 18A, was inserted in the Constitution by the Constitution (Fifteenth Amendment) Act, 2011 (Act XIV of 2011), Section 12. This Article has provided for 'Protection and improvement of environment and biodiversity and has become one of the fundamental principles of State policy of Bangladesh consequently. By insertion of this new Article, it has become one of the duties and responsibilities of the State to endeavour for protection and improvement of the environment along with preservation and safeguard of biodiversity, natural resources, forests, wetlands and wildlife in the interests of the present as well as the future citizens of the country.<sup>1</sup> The way of emergence and receiving such recognition of this concern was not so straight.

## **2. Period of Initiation up to 1972**

Legislations of the pre-independent era were more concerned about regulating how natural resources are consumed and utilizing the same to serve life and livelihood. The Alluvion and Diluvion Regulation, 1825 declared "the rules to be observed in determining claims to lands gained by alluvion, or by dereliction of a river or the sea".<sup>2</sup> The Canals Act, 1864, has

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

<sup>2</sup> The Alluvion and Diluvion Regulation, 1825 (Bengal Regulation XI of 1825)

focused on navigation for toll collection and construction and improvement of navigation lines.<sup>3</sup> The Alluvion (Amendment) Act, 1868 was enacted to establish control of the Government over the lands gained gradually through accession to the island and secure revenue collection.<sup>4</sup> The Irrigation Act, 1876 provided provisions to facilitate the irrigation system of the area.<sup>5</sup> Until then, provisions regarding natural resources were focused on collecting revenues and monitoring the resources by the Government without any concern about environmental conservation or rights of people in general to consume those resources. The Indian Fisheries Act, 1897 attempted for the first time to protect fishery resources both in inland waters and on coasts.<sup>6</sup> Following the concept, the Protection and Conservation of Fish Act, 1950 (East Bengal Act) came into force for the conservation and protection of fish in East Pakistan, Bangladesh.<sup>7</sup> To protect lands from erosion, floods and other damage caused by water and to construct, remove, manage, maintain and control embankments besides controlling water courses aiming towards better drainage, the Embankment and Drainage Act was enacted by the year 1952.<sup>8</sup> Urge for expansion, development and improvement of Dhaka, Narayanganj and Tongi caused the enactment of the Town Improvement Act, 1953 (East Bengal Act) with concerns towards regulating building construction and securing open spaces of these areas for recreation and ventilation purpose.<sup>9</sup> Thus, the concern regarding environmental soundness was evolving. This journey has shown the gradual transformation of concerns of the Government administration from regulation of natural resources and revenue collection to protection and conservation of the same.

By this time, international concerns about the natural environment were also increasing in various forms. In 1899, as the International Peace Conference of Hague took place, the first-ever instrument of international law banned the use of mass destructing chemical weapons by considering those to be great threats to human health and the natural environment. Also, the following International Peace Conference, 1907, which took place in Hague again, had emphasized the prohibition of poisonous and poisoned weapons. By the Geneva Protocol, 1925 use of biological and chemical weapons in war became prohibited.<sup>10</sup> A treaty was also signed between the UK and the USA by prohibiting the pollution of boundary water by the year 1909. Contemporarily several regional agreements were concluded by the countries to protect the commercially valuable species like fur seals, birds useful in agriculture, migratory birds of America and Canada and wild animals, birds and fish of Africa within the first two decades of the twentieth century. Regional agreements aiming to protect flora and fauna continued up to the first half of the last century. From 1950 to 1970, concerns about marine pollution by oil and civil liabilities for nuclear damages were evident in the international arena. Later, an African Convention of 1968 had focused on the conservation of both nature and natural resources and broadened the area of concern. In 1971, the Ramsar Convention on

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<sup>3</sup> The Canals Act, 1864 (Act No. V of 1864), Long Title and Preamble.

<sup>4</sup> The Alluvion (Amendment) Act, 1868 (Act No. IV of 1868), Sections 2 & 3.

<sup>5</sup> The Irrigation Act, 1876 (Act No. II of 1876), Long Title and Preamble.

<sup>6</sup> The Indian Fisheries Act, 1897 (Act No. 4 of 1897).

<sup>7</sup> The Protection and Conservation of Fish Act, 1950 (East Bengal Act) (Act No. XVIII of 1950), Section 1.

<sup>8</sup> The Embankment and Drainage Act, 1952 ((East Bengal Act) (Act No. I of 1953)

<sup>9</sup> The Town Improvement Act, 1953 (East Bengal Act) (Act No. XIII of 1953), Long Title, Preamble and Section 1.

<sup>10</sup> Diana Sima and Cristian Deme, 'Conventional And Unconventional Weapons That Can Produce Destructive Effects On The Natural Environment', 2014, May, in: International Scientific Conference" Strategies XXI" (Vol. 2, p. 181). "Carol I" National Defence University

Wetlands was an attempt to protect the habitat of the waterfowls.<sup>11</sup> Still, none of these instruments accrued any rights for human beings regarding the environment.

On the other hand, contemporary remarkable international instruments on human rights, *i. e.*, The Charter of the United Nations (UN Charter),<sup>12</sup> the Universal Declaration of Human Rights (UDHR),<sup>13</sup> the International Covenant on Civil and Political Rights (ICCPR)<sup>14</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>15</sup> also have not included environmental rights within the purview of human rights. As a result, both concerns regarding environmental elements and concerns regarding human rights were growing worldwide without any intersections between them. The first-ever instance of considering the 'environment' was the United Nations Conference on the Human Environment, 1972, commonly known as the Stockholm Conference of 1972. This conference witnessed the establishment of the United Nations Environment Programme or UNEP. Also, a declaration came out due to this conference, namely, the Stockholm Declaration, 1972, by setting principles to introduce international cooperation for addressing environmental issues.<sup>16</sup> The world witnessed a dramatically increased awareness following this declaration regarding environmental issues even in legal regimes.<sup>17</sup>

All these international issues got their reflections in the Constitution and the post-liberation legal regime of Bangladesh, the newly born country of 1971. The Constitution of Bangladesh has tried to assure rights for the citizens of this country in two parts. The third part, headed as the "Fundamental Rights", has included the civil and political rights enforceable through the High Court Division by filing a writ petition. On the other hand, the second part, headed as the "Fundamental Principles of State Policy", has included the economic, social and cultural rights which are not so enforceable by any Court of law. It reflected the international concept

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<sup>11</sup> Edith Brown Weiss, *The Evolution of International Environmental Law*, 2011, Georgetown University Law Centre, Washington DC, USA; available at: <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2684&context=facpub> last accessed on 29.11.2020

<sup>12</sup> United Nations, *Charter of the United Nations and Statute of the International Court of Justice, 1945* (adopted 26 June 1945, entered into force 24 October 1945), UNTS; available at: [https://treaties.un.org/doc/Publication/UNTS/No%20Volume/Part/un\\_charter.pdf](https://treaties.un.org/doc/Publication/UNTS/No%20Volume/Part/un_charter.pdf) last accessed on 30.11.2020

<sup>13</sup> United Nations, *Universal Declaration of Human Rights, 1948* (adopted 10 December 1948), United Nations; available at: [https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf) last accessed on 30.11.2020

<sup>14</sup> United Nations, *International Covenant on Civil and Political Rights, 1966* (adopted 16 December 1966, entered into force on 23 March 1976) 999 UNTS 171 available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf> last accessed on 30.11.2020

<sup>15</sup> United Nations, *International Covenant on Economic, Social and Cultural Rights, 1966* (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%20993/volume-993-I-14531-English.pdf> last accessed on 30.11.2020

<sup>16</sup> Pamela Chasek, *Stockholm and the Birth of Environmental Diplomacy* 2020, in: Still Only One Earth: Lessons from 50 Years of UN Sustainable Development Policy, International Institute for Sustainable Development; available at: [www.iisd.org/system/files/2020-09/still-one-earth-stockholm-diplomacy\\_0.pdf](http://www.iisd.org/system/files/2020-09/still-one-earth-stockholm-diplomacy_0.pdf) last accessed on 30.11.2020

<sup>17</sup> Gunther Handl *Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 1972 and the Rio Declaration on Environment and Development 1992*, 2012, United Nations Audiovisual Library of International Law, United Nations; available at: [https://legal.un.org/avl/pdf/ha/dunche/dunche\\_e.pdf](https://legal.un.org/avl/pdf/ha/dunche/dunche_e.pdf) last accessed on 30.11.2020

of the ICCPR's immediate enforceability and aimed to the progressive realization of the ICESCR.<sup>18</sup> However, it has not included environmental rights amongst human rights.

### 3. Period of Growing Concerns from 1972 to 1992

Post-liberation legal enactments started to focus on the protection and conservation of environmental elements more and more. Concerns about management, preservation and conservation of the wildlife in Bangladesh evolved through the Bangladesh Wild Life (Preservation) Order, 1973, repealed by a new enactment afterwards.<sup>19</sup> Provisions for establishing conservation zone and prevention and control of marine pollution were focused on in the Territorial Waters and Maritime Zones Act, 1974.<sup>20</sup> Enactment of the Marine Fisheries Ordinance, 1983 to provide for conservation, management and development of marine fisheries has added more to this development.<sup>21</sup> Remarkably, the emission of smoke using motor vehicles was declared an offence by the Motor Vehicles Ordinance, 1983.<sup>22</sup> Though these enactments were focused on one or more specific elements of the environment, all these legal developments have signified gradually increasing concerns about the environment as a whole.

In the meantime, the world was also witnessing rapid development in international environmental laws. In 1982, the United Nations Convention for the Law of the Sea (UNCLOS) had provided for the protection and preservation of the marine environment.<sup>23</sup> From a World Conference convened by the World Meteorological Organization (WMO) in 1988, the Intergovernmental Panel on Climate Change (IPCC) got established as a panel of scientists and experts. Based on the First Assessment Report of the IPCC, submitted to the General Assembly of the United Nations by the year 1990, the world got united to protect the environment and thus fight with the results of climate change. All these procedures have paved the way for the Earth Summit of 1992, resulting in the adoption of the Rio Declaration, setting of Agenda 21 and adoption of the United Nations Framework Convention on Climate Change (UNFCCC) by establishing a monitoring body naming after the Convention as the UNFCCC.<sup>24</sup> Also, the Convention on Biological Diversity (CBD) was adopted by this year, objecting to sustainable use of the components of global biodiversity and for an equitable and fair share of genetic resources.<sup>25</sup> Both the Stockholm Declaration of 1972 and the Rio Declaration of 1992 were focused on the prevention of environmental harm and tried to relate between development and the environment. However, none of those has set the right to the

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<sup>18</sup> M Jashim Ali Chowdhury, 'Claiming a 'Fundamental Right to Basic Necessities of Life' : Problems and Prospects of Adjudication in Bangladesh', 2011, The Indian Journal of Constitutional Law, 2011 & 12, Volume 5, Nalsar University of Law, Hyderabad, India; available at:

[www.researchgate.net/publication/336409491\\_Claiming\\_a\\_Fundamental\\_Right\\_to\\_Basic\\_Necessities\\_of\\_Life\\_Problems\\_and\\_Prospects\\_of\\_Adjudication\\_in\\_Bangladesh](http://www.researchgate.net/publication/336409491_Claiming_a_Fundamental_Right_to_Basic_Necessities_of_Life_Problems_and_Prospects_of_Adjudication_in_Bangladesh) last accessed on 01.12.2020

<sup>19</sup> The Bangladesh Wild Life (Preservation) Order, 1973 (President's Order) (President's Order No. 23 of 1973), Preamble.

<sup>20</sup> The Territorial Waters and Maritime Zones Act, 1974 (Act No. XXVI of 1974), Sections 6 & 8

<sup>21</sup> The Marine Fisheries Ordinance, 1983 (Ordinance No. XXXV of 1983), Preamble

<sup>22</sup> The Motor Vehicles Ordinance, 1983 (Ordinance No. LV of 1983), Section 150

<sup>23</sup> *Supra Note*, 11

<sup>24</sup> Erin Roberts and Saleemul Huq, 'Coming full circle: the history of loss and damage under the UNFCCC' (2015). International Journal of Global Warming, 8(2), 141-157; available at: [www.inderscienceonline.com/doi/pdf/10.1504/IJGW.2015.071964](http://www.inderscienceonline.com/doi/pdf/10.1504/IJGW.2015.071964) last accessed on 01.12.2020

<sup>25</sup> United Nation, 'Convention on Biological Diversity, 1992' (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79

environment as a human right. Even the Rio Declaration, 1992 is less suggestive of any such rights than the Stockholm Declaration, 1972.<sup>26</sup>

#### 4. Period of Developing Integrated Approach After 1992

All these international perspectives got their reflections in the national legal development of Bangladesh, and this country started to think about the environment as a whole besides protection and conservation of various elements of the environment. In 1992, Bangladesh got its first-ever Environment Policy to fight various adverse impacts on the environment due to too frequent natural disasters and thus deal with relevant sectoral aspects of development in the long run.<sup>27</sup> With specific objectives of conservation of the environment, mitigation and control of environmental pollution and standard development of the environment, the Environment Conservation Act, 1995 got enacted. This law was the first-ever national attempt to deal with the concept of the environment as a whole through legal enactments.<sup>28</sup> While supplementing this Act, the Environment Conservation Rules, 1997 has determined standards of air, water, sound, odour, emissions, discharges, wastes, etcetera and set procedural matters of implementation like the declaration of ecologically critical area and issuance of the environmental clearance certificate.<sup>29</sup>

In the meantime, the Rio Declaration got recognized by the Appellate Division of the Supreme Court of Bangladesh. In the famous case of *Dr. Mohiuddin Farooque Vs. Bangladesh*, commonly known as the FAP case or the Flood Action Plan Case. By referring to the Rio Declaration, the Court has observed Bangladesh as a welfare State and took the scope of social engineering through judicial intervention.<sup>30</sup> For the trial of the offences relating to environmental pollution, the Court of Environment was established by the Environment Court Act, 2000.<sup>31</sup> This law got repealed and re-enacted by the Environment Court Act, 2010.<sup>32</sup> Though these laws have tried to ensure the betterment of the environment, indirectly for the betterment of human lives, none of them has provided any scope to claim the right to a sustainable environment as a human right. Then by the year, 2011 the insertion of the new Article, namely Article 18A in the Constitution of Bangladesh, has recognized the relationship of improvement and protection of biodiversity and environment with the interests and welfare of both the present and future citizens of the country. By inserting this Article in the second part of the Constitution, it became one of the Fundamental Principles of the State Policy acting as a guideline for administering the State though no scope for direct implementation through the Judiciary.<sup>33</sup>

By this time, the international legal regime got the Kyoto Protocol of 1997, which focused on limiting Green House Gases (GHGs) emissions to reduce the impacts of climate change and

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<sup>26</sup> Gunther Handl, 'Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 1972 and the Rio Declaration on Environment and Development, 1992', (2012) United Nations Audiovisual Library of International Law, United Nations, available at:

[https://legal.un.org/avl/pdf/ha/dunche/dunche\\_e.pdf](https://legal.un.org/avl/pdf/ha/dunche/dunche_e.pdf) last accessed on 01.12.2020

<sup>27</sup> The Environment Policy, 1992 and Activities for Implementation, Ministry of Environment and Forest, Government of the People's Republic of Bangladesh, available at:

<http://nda.erd.gov.bd/files/1/Publications/Sectoral%20Policies%20and%20Plans/Environment%20Policy.%201992.pdf> last accessed on 01.12.2020

<sup>28</sup> The Environment Conservation Act, 1995 (Act No. 1 of 1995)

<sup>29</sup> The Environment Conservation Rules, 1997

<sup>30</sup> 49 DLR (1997) (AD) 1

<sup>31</sup> The Environment Court Act, 2000 (Act No. 11 of 2000)

<sup>32</sup> The Environment Court Act, 2010 (Act No. 56 of 2010)

<sup>33</sup> The Constitution of the People's Republic of Bangladesh, 1972, Article 18A

global warming. Later on, perspectives of differentiated responsibilities of the developing countries and the developed world caused the adoption of the Paris Agreement by the year 2015.<sup>34</sup> This Agreement has recognized that climate change is causing loss and damage to human life.<sup>35</sup> However, it has established no mechanism for redressing the violation of environmental rights as part and parcel of human rights or the necessities of the human.<sup>36</sup>

## 5. Relation between Environmental Rights and Human Rights

The Twentieth century has witnessed rapid international obligations towards protecting human rights and dignity throughout the second half of the century. By the end of the last century concept of protection of the environment got seriously emphasized. The Twenty-First century is witnessing a rapid growth of international environmental law from the very beginning of this century, being joined with human rights law in the international platform. Primarily it recognized the necessity of negative human interference for protecting the natural environment. However, with laps of time, the notion of environmental protection got increasingly linked with the concerns of human rights. This linkage can be described from three different levels, and those are sometimes overlapping with each other. First of all, rights to the environment should be substantially identified. Suppose any of the substantive rights are violated by allowing proper participation and access to information. In that case, procedural rights should be ensured by ensuring adequate procedural rights in the second place.

Lastly, beyond utility to humans, the intrinsic value of environmental protection should be secured through providing rights for the environment by evaluating the significance of nature. Both national and international laws are focused on “rights for the environment” at present by ignoring the idea of ‘rights to the environment’, which is causing serious obstacle in the way of assurance of procedural rights as the procedure for the protection of nature can be followed by the human only and not by nature itself. However, human rights and environmental protection should share a common platform. Without protecting the environment, neither the right to health nor the right to life can be protected. Those rights are widely accepted as basic human rights being prerequisites for human survival. Large-scale harms to the environment may severely hamper basic human rights by obstructing accessibility and enjoyment.

Similarly, some basic human rights like freedom of speech and assembly can be considered effective weapons for protecting environmental rights if pro-environment organizations or campaigners can properly use them. Still, the legislators' common tendency is to emphasize the concepts of rights for the environment by leaving alone the contents of rights to the environment at large.<sup>37</sup> Unfortunately, Bangladesh is not out of this worldwide tendency,

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<sup>34</sup> Caroline Zimm and Nebojsa Nakicenovic, ‘What are the implications of the Paris Agreement for inequality?’, (2020) *Climate Policy*, 20(4), 458-467; available at: [http://pure.iiasa.ac.at/id/eprint/15775/1/ZimmNaki\\_2019\\_ParsiCarbonGiniandLorenz-final-cl.pdf](http://pure.iiasa.ac.at/id/eprint/15775/1/ZimmNaki_2019_ParsiCarbonGiniandLorenz-final-cl.pdf) last accessed on 01.12.2020

<sup>35</sup> United Nations, ‘The Paris Agreement, 2015’ (adopted 12 December 2015, entered into force 4 November 2016), available at: [https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf) last accessed on 01.12.2020

<sup>36</sup> Sam Adelman, ‘Human Rights in the Paris Agreement: Too Little, Too Late?’ (2018), *Transnational Environmental Law*, 7(1), 17-36, available at: [www.researchgate.net/profile/Sam\\_Adelman2/publication/322082106\\_Human\\_Rights\\_in\\_the\\_Paris\\_Agreement\\_Too\\_Little\\_Too\\_Late/links/5c7ccfab92851c69505223e3/Human-Rights-in-the-Paris-Agreement-Too-Little-Too-Late.pdf](http://www.researchgate.net/profile/Sam_Adelman2/publication/322082106_Human_Rights_in_the_Paris_Agreement_Too_Little_Too_Late/links/5c7ccfab92851c69505223e3/Human-Rights-in-the-Paris-Agreement-Too-Little-Too-Late.pdf) last accessed on 01.12.2020

<sup>37</sup> Ole W. Pedersen, ‘European environmental human rights and environmental rights: a long time coming’, (2008), *Geo. Int'l Envtl. L. Rev.*, 21, 73; available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1122289](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1122289) ; last accessed on: 25.05.2021

which is evident from reading the supreme law of the land, *i. e.*, the Constitution, by considering the way it has developed to date.

## **6. Quest for Implementation of Environmental Rights**

Thus, it may be observed that both national and international laws are mainly environment-centric and not human-centric. As the second part of the Constitution “shall not be judicially enforceable” as per provision of Article 8 is included in this part, Article 18A is also to be construed as not so enforceable by any court of the country.<sup>38</sup> However, the history of judicial activism in Bangladesh may provide some guidance to ensure rights to the environment for the country's citizens. The Supreme Court of Bangladesh has explained the right to life in favour of the citizens of this country, so widely that safeguard against natural disasters, right to health with normal longevity of life and right to safe food are also included within the purview of the right to life even before insertion of Article 18A in the Constitution. Appellate Division of the Supreme Court of Bangladesh has elaborated the definition of the right to life in such a way that even the public functionaries of the country are described to be obligated for taking sufficient measures for pollution control and preservation of ecological and environmental balance through numbers of remarkable and well-established judgements and orders and thus turned those rights to be enforceable through judicial proceedings, like Public Interest Litigation or PILs.

Thus, both the Appellate Division and High Court Division of the Supreme Court of Bangladesh have remarkably used the second part of the Constitution or the Fundamental Principles of State Policy as interpretative tools for the constitutional provisions regarding Fundamental Rights third, the Constitution numerous times.<sup>39</sup> Here it is worth mentioning that, Article 32 of the Constitution has provided “Protection of right to life and personal liberty” to all and contains that “No person shall be deprived of life or personal liberty save in accordance with the law”. As a result, this provision of the constitutional right to life is ensured for Bangladesh and the persons without having such citizenship. By considering the right to the environment as part and parcel of the right to life, judicial activism has paved the way for claiming the right to the environment through judicial mechanisms even before receiving any recognition through the Constitution. However, very recently, the Appellate Division of the Supreme Court of Bangladesh has started to make some decisions based on the newly inserted Article 18A and paved the way for assurance of environmental rights within the scopes of the Constitution of Bangladesh.

One of those issues arose when Bangladesh Tea Board attempted to chop down standing trees, being 2096 in number, from Jhemai Tea Estate situated at Jhemai Punjee, Kulaura, Moulavibazar. The Assistant Commissioner (Land) of Kulaura reported that no harm would be there in chopping those trees. The Directorate of Environment of Sylhet Division issued a no-objection certificate. So the Headman of Jhemai Punjee filed the writ petition, which the High Court Division rejected. As such, the writ petitioner applied for leave to appeal, and after getting such leave, the appeal was considered by the Appellate Division. It was claimed that the ancestors of the petitioner-appellant and other tribe members are inhabitants of the Jhemai Punjee area for over a hundred years. Implementation of the impugned decision to chop down the trees will cause ecological imbalance and environmental degradation of the area. Moreover, by following their ancestors, the tribal people grow betel leaf to earn their livelihood by using the trees in question, mostly grown naturally and partly planted by their

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<sup>38</sup> *Supra Note*, 1

<sup>39</sup> Mahmudul Islam, ‘*Constitutional Law of Bangladesh*’, 2012, Third Edition, First Published in 1995, Mullick Brothers, Dhaka, Bangladesh. Section 2.111A

predecessors. These aspects are overlooked by the authorities while permitting them to chop down those trees. While deciding this matter, the Appellate Division has referred to Article 18A of the Constitution and recalled the duty of the State to “endeavour to protect and improve the environment” and taken into consideration that these trees “are also causing the emission of oxygen in the atmosphere and absorbing carbon-di-oxide.” In addition to that, by considering the aspects of sustainable development, it was found that permission to chop the trees may be given subject to the terms and conditions as set by the court. To quote those terms and conditions – “(1) Immature trees cannot be cut down. (2) Before cutting down each tree, two saplings are planted in suitable places in the Jhemai Punjee area. (3) After nourishing newly planted saplings for at least three years, the leave respondent no. 7 would be entitled to chop down old and matured trees only from Jhemai Punjee under the supervision of the Local Officials of the Department of Environment and the Department of Forest”.<sup>40</sup>

The other issue arose at Cox’s Bazar regarding a plot situated at Kolatoli Road. The Government leased out this plot by the year 2003 for 99 years, and the leaseholder, by following all due processes, transferred it to a third party transferee. At one part of the plot, a Motel was constructed and rented out to the tourists. At the other part, no objection certificate was obtained from the Civil Aviation Authority for constructing a hotel. At the stage of getting approval of the construction plan by keeping the application for extension of the project as pending, the government authority has cancelled the lease agreement with direction to hand over the land to the Government without issuing any prior show-cause notice. So the third party transferee filed the writ petition. In reply, the Government authority has claimed that the disputed land is empty and no construction is found there. Due to a breach of the specified terms and conditions of the lease deed, it was so cancelled by the authority. The High Court Division has decided the matter favouring the writ petitioner, and the State in the Appellate Division challenged that decision. By remarking the disputed land to be situated within Ecologically Critical Area (ECA) as a part of the environmentally protected zone, the Appellate Division has set aside the decision of the High Court Division and directed the Government authority “to return the consideration money mentioned in the lease deed to both the writ-petitioners if they approach the Secretary, Ministry of Land.” By this time, the court took the opportunity to quote a Native American leader of the 19<sup>th</sup> century, named Chief Seattle, stating, “We do not inherit the Earth from our ancestors. We borrowed it from our Children.” As a result, in the words of the court, “We will have to return the Earth to our descendants so that they can return it to their future generations.”<sup>41</sup>

Through these two wonderful judgements, Article 18A of the Constitution has started the journey of being practically implemented. Remarkably it is being implemented by the court even without joining it with any other Article(s) of the Constitution. As per the decision of the FAP case, the second part of the Constitution of the People’s Republic of Bangladesh is considered to be the interpretative tool of the Constitution. By being included in this part, Article 18A became one of the essential tools of interpretation of the Constitution. As a result, more environment-friendly judgements are expected from the apex court of Bangladesh in the days to come by facilitating assurance of enjoying environmental rights.

Moreover, with liberal explanations of the provisions of the Constitution, it is expected that the right to the environment shall be able to pave the way for claiming the right to the

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<sup>40</sup> *Rana Surong vs. Government of Bangladesh and others*, 72 DLR (AD) (2020) 153.

<sup>41</sup> *Government of the People’s Republic of Bangladesh and others vs. Md Mushfaque Rahman and another*, 72 DLR (AD) (2020) 211.

environment through the court over time. By this time, no interpretation of the Constitution is found by reading Article 32 and Article 18A. In future, it is expected that the interpretation of Article 32 in light of Article 18A shall lead us towards the journey from recognizing the right for the environment to ensuring the right to the environment by way of liberal interpretation of the Constitution.

## **7. Conclusion**

The inclusion of Article 18A in the Constitution has initiated the scope of adopting supporting legislations by the National Parliament of Bangladesh. By considering the Constitution as a basic framework, substantive and procedural laws can be adapted to facilitate the enjoyment of environmental rights by the present generation and comply with the commitment towards the future generation to ensure a healthy environment for the descendants.

To summarise, formal recognition of considerations regarding sustainable environment by the Constitution of Bangladesh has initiated a wide range of opportunities for implementation of environmental rights through legal actions. Even in the absence of such recognition, the Supreme Court of Bangladesh was conscientious enough to uphold the environmental rights of the people through liberal judicial interpretations. Presently, it is high time to observe the judicial output of specific inclusion of environmental considerations within the purview of the Constitution of Bangladesh.