

The Right to a Healthy Environment as a Fundamental Right in Bangladesh: Judicial Interpretation of Article 32

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Abstract- *This doctrinal study examines the constitutional status of the right to a healthy environment in Bangladesh, with particular attention to Articles 31, 32 and 18A of the Constitution and the environmental public-interest litigation jurisprudence associated with Dr. Mohiuddin Farooque. Although Article 18A expressly directs the State to protect and preserve the environment, it is located in Part II of the Constitution and is not independently enforceable as a fundamental right. The Supreme Court of Bangladesh has nevertheless connected environmental protection with the enforceable right to life under Articles 31 and 32. This paper analyses that judicial development through leading Farooque cases, including the FAP-20 litigation and the radiated milk case, and considers the role of public-interest standing in bringing collective environmental harms before the courts. It further places Bangladesh's approach within the wider development of environmental human rights, including the United Nations Human Rights Council's 2021 recognition and General Assembly Resolution 76/300 of 2022. The study finds that Bangladesh's constitutional jurisprudence provides meaningful protection against environmental harms, but that the protection remains principally implied through the right to life rather than expressly formulated as a standalone fundamental right. The paper argues that stronger environmental governance requires both effective judicial remedies and clearer institutional and constitutional foundations, while avoiding the assumption that litigation alone can deliver durable environmental protection.*

Index Terms—*Right to a healthy environment; Article 32; Article 18A; Bangladesh Constitution; environmental justice; public-interest litigation.*

I. INTRODUCTION

Environmental degradation increasingly affects the enjoyment of fundamental human rights, particularly life, health, food, water and human dignity. Modern environmental-rights discourse therefore treats environmental quality not merely as a matter of regulatory policy but as closely connected to the effective enjoyment of human rights. International

developments have reinforced this connection: in 2021 the United Nations Human Rights Council recognized the human right to a clean, healthy and sustainable environment, and in 2022 the UN General Assembly adopted Resolution 76/300 recognizing the same right at the international level [1], [2].

In Bangladesh, the constitutional position is more complex. The Constitution does not expressly place a standalone ‘right to a healthy environment’ among the enforceable fundamental rights. Article 18A, inserted by the Fifteenth Amendment in 2011, directs the State to endeavour to protect and improve the environment and to safeguard natural resources, biodiversity, wetlands, forests and wildlife for present and future citizens [4]. Because Article 18A is located in Part II, it operates primarily as a fundamental principle of state policy rather than as an independently enforceable fundamental right.

At the same time, Articles 31 and 32 provide enforceable protection of life and personal liberty [4]. The Supreme Court has interpreted the concept of life more broadly than mere physical survival. In environmental litigation, the Court has connected the right to life with environmental quality, ecological balance, sanitation and protection from harmful pollution. The jurisprudence surrounding Dr. Mohiuddin Farooque is therefore central to understanding how environmental interests have acquired constitutional protection in Bangladesh [3], [5], [6].

This paper examines whether, and to what extent, the judicial interpretation of Articles 31 and 32 has effectively incorporated environmental protection into Bangladesh's fundamental-rights framework. It also considers the limits of relying on judicial interpretation when environmental protection requires long-term institutional implementation.

II. RESEARCH OBJECTIVES

The study has five objectives: (1) to identify the constitutional basis for environmental protection in Bangladesh; (2) to examine how Articles 31 and 32 have been interpreted in leading environmental cases; (3) to analyse the relationship between Article 18A and enforceable fundamental rights; (4) to assess the contribution and limitations of public-interest environmental litigation; and (5) to place Bangladesh's jurisprudence within the broader international development of the human right to a clean, healthy and sustainable environment.

III. LITERATURE REVIEW

Existing scholarship generally identifies environmental public-interest litigation as an important route through which Bangladeshi courts have developed environmental rights. Karim, Vincents and Rahim examine environmental legal activism in Bangladesh and explain how litigation helped environmental advocates establish standing and persuade courts to read environmental protection into the right to life. Their analysis also cautions that litigation alone is not a sustainable substitute for broader environmental governance [7].

Mia and Islam similarly examine the human-rights approach to environmental protection in Bangladesh and describe the relationship between environmental quality and constitutional rights [8]. Their work is useful for understanding the transition from environmental regulation based mainly on state duties toward a rights-based approach.

Mahmudul Islam's Constitutional Law of Bangladesh provides the broader constitutional framework for understanding fundamental rights, constitutional interpretation and the relationship between enforceable rights and the Fundamental Principles of State Policy [9]. Comparative studies of public-interest environmental litigation across South Asia, including Razzaque's analysis of India, Pakistan and Bangladesh, situate the Bangladeshi experience within a wider regional pattern of judicial receptiveness to environmental claims brought under broadly framed fundamental-rights provisions [12]. Internationally, the UN Special Rapporteur's Framework Principles on

Human Rights and the Environment explain how environmental harm can interfere with the enjoyment of human rights and identify state obligations concerning environmental protection, information, participation and access to effective remedies [10].

The literature therefore supports a central proposition of this paper: Bangladesh has developed significant constitutional environmental protection through judicial interpretation, but the doctrinal position is different from having an express, self-standing constitutional environmental right.

Research Gap

The reviewed literature establishes, individually, that Bangladeshi courts have read environmental protection into the right to life and that public-interest standing has enabled this development, but three gaps remain. First, existing accounts (e.g., [7], [8]) tend to treat the Farooque jurisprudence as a single undifferentiated body of case law rather than tracing how successive decisions on standing (FAP-20), health-based harm (the radiated milk case) and urban pollution (the vehicle-emissions case) progressively broadened the constitutional meaning of 'life'. Second, the domestic literature was largely written before the UN Human Rights Council's 2021 recognition and the UN General Assembly's 2022 Resolution 76/300, so it does not assess whether this international development changes the case for a standalone constitutional environmental right in Bangladesh. Third, prior work stops short of specifying what an express constitutional or legislative reform would need to contain — duties, remedies and institutional responsibilities — if litigation-based protection is to be supplemented rather than merely repeated. This paper addresses these gaps by reading the Farooque cases as a connected doctrinal sequence, situating that sequence against the 2021–2022 international developments, and deriving concrete institutional recommendations rather than a general call for stronger environmental rights.

IV. METHODOLOGY

This research adopts a doctrinal legal research methodology. Primary legal materials include the Constitution of Bangladesh, reported decisions of the Supreme Court of Bangladesh and relevant

international instruments. Secondary materials include peer-reviewed legal scholarship, constitutional-law literature and authoritative publications of the United Nations and UN human-rights mechanisms.

The analysis focuses on the legal reasoning connecting environmental protection with Articles 31 and 32, rather than attempting to measure environmental outcomes statistically. The study compares the constitutional status of Article 18A with the enforceability of fundamental rights and evaluates the contribution of public-interest litigation to environmental governance.

Limitations should also be acknowledged. A doctrinal study cannot by itself establish whether court orders have produced consistent environmental improvements in every locality. The study therefore distinguishes between judicial recognition of an environmental interest and the practical implementation of environmental protection. It also does not claim that the international recognition of a right to a healthy environment automatically creates a directly enforceable constitutional right in Bangladesh.

V. CONSTITUTIONAL FRAMEWORK OF ENVIRONMENTAL PROTECTION IN BANGLADESH

Article 18A is the Constitution's express environmental provision [4]. It requires the State to endeavour to protect and improve the environment and to preserve and safeguard natural resources, biodiversity, wetlands, forests and wildlife for present and future citizens. The provision gives constitutional importance to environmental protection, but its placement in Part II means that it is not framed in the same manner as the fundamental rights in Part III.

Articles 31 and 32 provide the principal constitutional route for enforceable protection [4]. Article 31 guarantees protection of law and protection against action detrimental to life, liberty, body, reputation or property except in accordance with law. Article 32 provides that no person shall be deprived of life or personal liberty save in accordance with law. The Supreme Court's environmental jurisprudence has

treated 'life' as encompassing conditions necessary for meaningful human existence.

This distinction is legally important. It is more accurate to describe Bangladesh's environmental right as an implied or judicially protected aspect of the right to life than to suggest that Article 18A itself creates an independently enforceable fundamental right. The distinction also explains why the courts have relied on Articles 31 and 32 in environmental public-interest litigation.

VI. JUDICIAL INTERPRETATION: DR. MOHIUDDIN FAROOQUE AND RELATED CASES

The jurisprudence of Dr. Mohiuddin Farooque is central to Bangladesh's constitutional environmental law. In the FAP-20 litigation, environmental concerns were brought before the Supreme Court in relation to the Flood Action Plan. The reported Appellate Division decision is cited as Dr. Mohiuddin Farooque v. Bangladesh, 49 DLR (AD) 1 (1997). The Court treated environmental protection, ecological balance, freedom from air and water pollution and sanitation as falling within the ambit of the right to life protected by Articles 31 and 32 [3].

The importance of the FAP-20 decision is not limited to substantive environmental protection. It also contributed to the development of public-interest standing. The Court accepted that an organization genuinely concerned with environmental protection could have sufficient interest to challenge actions affecting the public, reducing the practical difficulty of requiring every person affected by a collective environmental harm to appear individually before the court [3], [7].

The radiated-milk litigation, Dr. Mohiuddin Farooque v. Bangladesh, 48 DLR (HCD) 438 (1996), provides another important illustration. The petitioner challenged the importation of milk alleged to contain excessive radiation, and the High Court Division connected the right to life with protection of health and normal longevity from man-made hazards [5]. This demonstrates that the constitutional protection is not limited to conventional pollution of air or water; it can

extend to environmental and health risks capable of threatening meaningful life.

Other Farooque litigation concerning urban air and noise pollution further illustrates the use of Articles 31 and 32 to address environmental health risks. In the decision reported as 22 BLD (HCD) 345 (2002), the High Court Division considered pollution from unfit vehicles and hazardous emissions in the context of the right to life [6]. Taken together, these three decisions show a developing and cumulative judicial pattern — moving from procedural standing, to health-based harm, to routine urban environmental risk — in which environmental harm becomes constitutionally reviewable where it threatens protected aspects of life and health.

The jurisprudence should nevertheless be stated carefully. These cases do not mean that every environmental grievance automatically constitutes a violation of Article 32. The constitutional claim depends upon the nature of the harm, the applicable law, the evidence presented and the judicial assessment of the connection between environmental harm and protected rights.

VII. PUBLIC-INTEREST LITIGATION AND ENVIRONMENTAL JUSTICE

Environmental harm frequently affects communities rather than a single identifiable individual. Public-interest litigation is therefore particularly significant in environmental law. The Farooque cases illustrate how environmental organizations can use constitutional remedies to raise issues involving pollution, ecological imbalance, public health and natural resources.

Karim, Vincents and Rahim argue that environmental legal activism in Bangladesh successfully influenced constitutional jurisprudence and expanded the role of civil-society organizations in environmental protection [7]. Bangladeshi scholarship on judicial activism more broadly, including Haque's account of a 'golden mean' approach to constitutional adjudication and Ahmed's analysis of constitutional issues and remedies in public-interest litigation, situates this development within a pattern of measured judicial activism rather than unconstrained judicial policymaking [13], [14]. This development is

important because environmental rights are often difficult to enforce through purely private litigation: the injury may be diffuse, cumulative or shared by a large population.

However, public-interest litigation has institutional limits. Courts can interpret rights, review unlawful decisions and issue appropriate remedies, but they cannot alone substitute for environmental monitoring agencies, scientific regulation, administrative enforcement and long-term policy implementation. Judicial recognition is therefore best understood as one component of environmental governance rather than a complete governance model.

VIII. INTERNATIONAL AND COMPARATIVE DEVELOPMENT

International environmental-rights law has developed rapidly. The UN Human Rights Council's 2021 Resolution 48/13 recognized the right to a clean, healthy and sustainable environment. The UN General Assembly subsequently adopted Resolution 76/300 on 28 July 2022 by a vote of 161 in favour, none against and eight abstentions [1], [2]. The resolution recognizes the right as a human right and links it with other rights and existing international law.

The UN Special Rapporteur's Framework Principles on Human Rights and the Environment provide further guidance. They emphasize that environmental harm can interfere with the enjoyment of human rights and identify obligations concerning protection from environmental harm, access to information, participation and access to effective remedies [10].

UNEP reports that more than 150 countries have binding legal obligations concerning the right to a healthy environment through constitutions, legislation, jurisprudence or regional human-rights instruments [11]. This comparative development provides useful context for Bangladesh, but international recognition should not be treated as automatically altering Bangladesh's constitutional text. Domestic constitutional interpretation and legislative action remain necessary.

India offers a relevant regional comparison. The Indian Supreme Court has developed environmental

protection through the interpretation of Article 21, particularly in cases involving pollution and environmental degradation [12]. Bangladesh's Article 32 jurisprudence shows a comparable rights-based technique, although the constitutional text and institutional context are different. Comparative law is therefore useful as an interpretive reference, not as a substitute for Bangladesh-specific constitutional analysis.

IX. FINDINGS AND DISCUSSION

The doctrinal analysis produces four principal findings. First, Bangladesh already possesses a constitutional foundation for environmental protection through both Article 18A and the judicial interpretation of Articles 31 and 32. The protection is therefore not absent; rather, it operates through different constitutional routes.

Second, Article 32 has become particularly important because the Supreme Court has treated meaningful life as requiring conditions compatible with health and environmental well-being. The Farooque jurisprudence demonstrates that environmental protection can therefore enter the domain of enforceable fundamental rights when environmental harm threatens life or health.

Third, public-interest litigation has played a significant procedural role. Environmental organizations have been able to present collective harms that would otherwise be difficult to litigate through conventional individual standing. This has strengthened access to constitutional review.

Fourth, judicial protection has limitations. Environmental governance involves continuous scientific monitoring, administrative enforcement, public participation, access to information and implementation over long periods. These functions cannot be performed exclusively through litigation. The literature therefore supports a complementary approach in which courts protect constitutional rights while administrative institutions implement environmental standards and legislation [7], [10], [11].

The international recognition of the right to a clean, healthy and sustainable environment strengthens the

normative importance of environmental protection, but it does not eliminate the need for domestic constitutional and legislative clarity. For Bangladesh, the most legally significant issue is consequently not whether environmental protection can ever be connected with fundamental rights — it already has been — but how consistently and institutionally that protection can be implemented.

X. RECOMMENDATIONS

First, courts should continue to apply Articles 31 and 32 consistently in cases where environmental harm demonstrably threatens protected interests such as life and health.

Second, environmental agencies should strengthen monitoring, disclosure of environmental information and enforcement of existing environmental legislation so that constitutional litigation is not the primary mechanism for routine environmental compliance.

Third, public participation and access to environmental information should be strengthened in accordance with the broader procedural dimensions of environmental human rights recognized internationally [10].

Fourth, future constitutional or legislative reform may consider whether a more explicit formulation of the right to a clean, healthy and sustainable environment would improve legal clarity. Any such reform should clearly define duties, remedies and institutional responsibilities rather than relying only on a broad declaration.

Finally, legal researchers should continue comparative and empirical research on the implementation of environmental judgments. Doctrinal recognition and practical environmental outcomes should be studied separately so that claims about the effectiveness of environmental rights are supported by evidence.

XI. CONCLUSION

Bangladesh's constitutional jurisprudence demonstrates a significant judicial connection between environmental protection and the fundamental right to life. Article 18A establishes an express constitutional

commitment to environmental protection, while Articles 31 and 32 provide the principal enforceable basis through which environmental harms can be challenged. The Farooque cases are particularly important because they show how the judiciary has interpreted meaningful life to include environmental conditions necessary for health, ecological balance and human well-being.

The resulting legal position should nevertheless be described precisely. Bangladesh does not presently rely solely on an express, standalone constitutional provision declaring a fundamental right to a healthy environment. Instead, environmental protection has been developed through the interaction of Article 18A, fundamental rights and judicial interpretation. This approach has created important avenues for environmental justice, especially through public-interest litigation, but it also leaves implementation dependent on institutional capacity and continued judicial protection.

The international recognition of the right to a clean, healthy and sustainable environment provides a broader normative context. It supports the proposition that environmental quality is closely connected with human rights, while leaving domestic constitutional structures to determine the precise legal form of protection. For Bangladesh, durable environmental justice will therefore require a combination of constitutional rights, effective legislation, administrative enforcement, public participation and carefully reasoned judicial remedies.

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