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Rajshahi University Journal of Law and Land Administration (RUJLLA) is a peer-reviewed bi-annual academic journal published by the Department of Law and Land Administration, University of Rajshahi, Bangladesh. The journal aims to promote scholarly research, critical legal analysis and interdisciplinary academic discourse on contemporary legal and socio-legal issues. It provides a platform for academics, legal practitioners, researchers and other scholars to contribute original research that advances legal knowledge, examines existing legal frameworks and addresses emerging challenges in law, governance and society. RUJLLA welcomes contributions addressing a broad range of legal disciplines, including constitutional law, international law, human rights, criminal law, commercial law, intellectual property law, environmental law, land administration, comparative law and other related fields.The journal is committed to maintaining academic integrity, intellectual independence and rigorous scholarly standards. Through the publication of original and critically engaged research, RUJLLA seeks to contribute to legal scholarship and the development of law and legal institutions in Bangladesh and beyond.

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- Accept;
- Accept subject to minor revisions;
- Revise and resubmit; or
- Reject.

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Accepted manuscripts undergo copyediting, proofreading and final formatting before publication. The final decision on publication rests with the Editorial Board.

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Chief Editor's Message

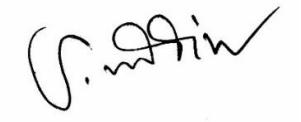
It is with great pleasure that we present the inaugural issue (Volume 1, Issue 1, September 2026) of the **Rajshahi University Journal of Law and Land Administration (RUJLLA)**, published by the Department of Law and Land Administration, University of Rajshahi, Bangladesh. The establishment of RUJLLA marks an important step towards strengthening the culture of legal research and academic publication within the University of Rajshahi and beyond. The journal has been conceived as a scholarly platform for promoting rigorous legal inquiry, critical engagement with contemporary legal developments and meaningful contributions to legal scholarships. We aspire to create an academic space where established scholars, early-career researchers and emerging legal minds can exchange ideas, challenge existing assumptions and contribute to the development of law, legal institutions and public policy.

The inaugural issue features ten contributions addressing a wide range of legal and socio-legal concerns, including constitutional development, property rights, human rights, environmental justice, migrant workers' protection, indigenous land rights, access to justice and legal aid. The diversity of these contributions reflects the importance of examining law from different methodological and disciplinary perspectives. It also demonstrates the value of scholarly engagement with legal questions that have direct implications for institutions, communities and society.

The publication of this inaugural issue would not have been possible without the contributions and support of many individuals. I express my sincere appreciation to all the authors who entrusted their scholarly work to RUJLLA. I am equally grateful to the reviewers for their time, expertise and constructive assessments, which have been instrumental in maintaining the academic quality of the published contributions. I also acknowledge the members of the Editorial Board, the editorial team and everyone who contributed to the review, editing and publication process. Especially, I am very much grateful to Abuzar Gifari, the executive editor of the journal, for his tireless work in circulating call for papers, receiving manuscripts, communicating and coordinating with authors, reviewers and editors for which this issue has finally come into light.

As a newly established journal, RUJLLA recognises that building academic credibility is a continuous process requiring commitment, transparency, academic integrity and consistent scholarly standards. We remain committed to maintaining a rigorous review process, encouraging original research and providing a fair and constructive publication environment for contributors from Bangladesh and abroad.

With the publication of this first issue, we take our first step towards that aspiration. We look forward to the journey ahead and to the continued support of the academic and legal communities.



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Executive Editor's Note

I am very happy to present the publication of the inaugural issue of the *Rajshahi University Journal of Law and Land Administration (RUJLLA)*. It is obviously both a significant milestone and a rewarding academic endeavor. As the Executive Editor, I am delighted to present this first issue, which represents the collective efforts of authors, reviewers, editors and others who have contributed to bringing this journal into publication.

Establishing an academic journal involves more than creating a platform for publishing research. It requires developing an editorial framework, maintaining scholarly standards, ensuring a fair review process and fostering an environment in which academic ideas can be examined critically. From the initial stages of manuscript submission and editorial screening to reviewer coordination, revision management and final preparation for publication, each stage has required careful attention and collective commitment. The experience has reinforced my belief that a credible academic journal is built not merely through the publication of articles, but through the integrity and consistency of the processes that support them.

One of our principal considerations throughout the editorial process has been to ensure that submitted manuscripts receive appropriate academic attention and constructive evaluation. For the review process, we tried to rigorous review by the expert reviewers from the renowned institution of Bangladesh. Along with the double anonymous peer review, we have evaluated the revised version and conducted a post review process before preparing the proof the article.

I extend my sincere gratitude to all the authors who chose RUJLLA as a platform for presenting their research. My appreciation also goes to the reviewers, whose expertise, time and constructive feedback have contributed significantly to the quality of this issue. I am immensely grateful to the Editors including the Editor in Chief for their guidance, cooperation and support throughout the publication process.

I hope that this inaugural issue will encourage further research, stimulate critical discussions and inspire scholars, particularly early-career researchers, to contribute to the development of legal scholarships. We warmly welcome future submissions from researchers and academics in Bangladesh and beyond.

It is my sincere hope that RUJLLA will continue to grow as a credible and inclusive platform for rigorous legal research and meaningful academic exchange.



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Rethinking Constitutional Borrowing and Transplants: Receptive Soil, Judicial Posture, and the Regime-Contingent Reception of Article 102 in Bangladesh

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ABSTRACT: This article develops a recipient-centred account of constitutional borrowing through the Bangladeshi reception of judicial review under Article 102 of the Constitution. It argues that borrowed constitutional doctrines do not become meaningful simply because they originate in prestigious jurisdictions or migrate through formal texts. They become meaningful when received through a changing environment of institutional deficiency, professional translation, political opportunity and judicial posture. The article therefore offers a four-part Receptive Soil framework: institutional vacuum, intellectual milieu, regime-specific political opportunity and judicial posture. Bangladesh is a particularly instructive case because judicial review there developed not through a single founding moment, but through repeated constitutional cycles: liberation constitutionalism, formal concentration of power, military legality, autocratic rule, democratic restoration, dominant-party constitutionalism and the post-July/August 2024 reconstructive moment. By reading leading Article 102 cases against these cycles, the article shows that Bangladeshi judicial review is neither a simple transplant from the United States nor a derivative copy of India. It is a hybrid and politically situated jurisdiction formed through Indian-filtered constitutional ideas, Pakistani aversive experience, local rights litigation and successive judicial postures ranging from caution and accommodation to retrospective correction, structural guardianship and reconstruction. The post-2024 materials, including the Article 106 advisory-legality episode, are treated cautiously as an emerging rather than settled constitutional moment. The central claim is that constitutional borrowing succeeds not when the recipient faithfully imitates the donor, but when the borrowed doctrine is repeatedly reworked to meet the receiving order's own crises of state power.

KEYWORDS: Constitutional Borrowing; Legal Transplants; Receptive Soil; Judicial Review; Judicial Posture; Basic Structure; Abusive Constitutionalism.

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1. Introduction

Comparative constitutional law usually starts with movement, where a doctrine, an institution, or a constitutional formula moves from one jurisdiction to another. But movement does not fully capture what happens to constitutional ideas as they move. Ideas about constitutions are not just transported to a new jurisdiction. They are received, interpreted, challenged, diluted, expanded, domesticated, and sometimes stripped of their normative character. This issue is particularly clear in the South Asian reception of American-style judicial review, because India, Pakistan, and Bangladesh all share the same colonial legal tradition, common law education, courts, parliaments, and exposure to American-style higher law constitutionalism. Nevertheless, judicial review developed differently in each jurisdiction. India translated it into a parliamentary constitution with enforceable rights and writ remedies; Pakistan repeatedly allowed formally constitutional courts to accommodate executive and military rupture; Bangladesh reconstructed judicial review under Article 102 as a flexible jurisdiction of liberty review, public interest litigation, structural constitutional review and judicial independence.[1]

For this article, the important factor is neither the sending doctrine nor the donor country's prestige but the receptive environment into which it enters. The prestige of *Marbury v Madison*, the allure of written constitutional supremacy, or even the migration of the doctrine through written constitutionalism cannot alone account for the fact that like constitutional material can generate unlike outcomes. The better question is one of what kind of receptivity environment receives the doctrine, how such an environment was formed, and how it changes over political time. In this article, the Receptive Soil is the name for that environment. This metaphor is not meant to imply that constitutional evolution is naturalistic, or that the environment in which the doctrine takes root is simply a matter of background or unchanging conditions. Soil is something that can be built, nourished, exhausted, poisoned and restored. In constitutional

[1] PK Tripathi, "Perspectives on the American Constitutional Influence on the Constitution of India" in Lawrence Ward Beer (ed), *Constitutionalism in Asia: Asian Views of the American Influence* (Maryland Series in Contemporary Asian Studies 1988); Manoj Mate, "The Origins of Due Process in India: The Role of Borrowing in Personal Liberty and Preventive Detention Cases" (2010) 28 Berkeley Journal of International Law 175; *Marbury v Madison* 5 US (1 Cranch) 137 (1803).

terms, it is made and remade by institutions, lawyers, judges, political actors, crises and memories. It is therefore a shorthand for a changing institutional and political configuration, not a deterministic account of legal growth.

The article defines the Receptive Soil theory using four interconnected factors, namely institutional vacuum, intellectual milieu, regime-specific political opportunity and judicial posture. Institutional vacuum provides an answer as to why borrowing of a particular constitutional idea is required at all in the first place. Intellectual milieu provides an explanation for the process by which such an idea is transformed into something else through translation, interpretation and localization performed by various groups of people, including lawyers, judges, academics, politicians and constitution drafters. Regime-specific political opportunity shows when such a borrowed idea could be borrowed, transformed and used. Judicial posture explains how courts relate to the political order within which they operate and how that relationship affects the practical meaning of the borrowed doctrine. Courts may accommodate power, avoid structural confrontation, retrospectively correct authoritarian legality after regime change, defend institutional autonomy, or reconstruct constitutional meaning during a transition.

Bangladesh represents the main example due to the fact that the acceptance of judicial review in this country was not completed by 1972. This is true since Article 102 could be accessed politically and legally in various political environments, which include the foundational era of 1971-72, centralization of power via the Fourth Amendment, the military-constitutional reconstruction during the rule of Ziaur Rahman, the autocratic era of Hussain Muhammad Ershad, parliamentary democracy from 1990 onward, the emergency and caretaker regime of 2007-08, the post-2008 era of dominant-party constitutionalism, and finally the post-July/August 2024 revolution and reform period.[2] Each phase altered the relationship between political power and judicial authority. The same constitutional provision therefore had different meanings in political life. Article 102 must be read not only through its text or through foreign models, but through the changing judicial postures that made it more or less effective in particular moments.

[2] Ridwanul Hoque, 'The Founding and Making of Bangladesh's Constitution' in Kevin YL Tan and Ridwanul Hoque (eds), *Constitutional Foundings in South Asia* (Hart Publishing 2021); Aratrika Choudhuri and Shivani Kabra, 'Determining the Constitutionality of Constitutional Amendments: A Comparative Inquiry into India, Pakistan and Bangladesh' (2017) 10 NUJS Law Review 764.

The analysis is decidedly not triumphalist. Judicial review in Bangladesh was not one of unbroken judicial heroism against the odds. Much of the significant judicial challenge against martial law and authoritarian changes to the Constitution was done in the wake of those who had brought about that authoritarianism leaving office.[3] Public interest litigation has thrived in times when there was a restoration of democracy and activism from civil society organisations.[4] The cases on the Sixteenth Amendment are to be understood within the context of post-2008 concentration of powers.[5] The cases on Article 116 and the caretaker government have emerged during a period of reconstruction and should be seen as provisional. That unevenness does not make the Bangladeshi case a bad one for theoretical purposes. It is the reason the case is theoretically valuable. It shows that constitutional reception is regime-contingent and that judicial posture is part of the receiving soil itself.

The article is structured in the following manner. Section II places the analysis within the context of literature on constitutional borrowing and outlines the contribution that the Receptive Soil framework makes in this area of discussion concerning transplantation, legal irritants and constitutional migration. Section III outlines the four components of the framework and operationalises judicial posture. Section IV reconstitutes the regional context through colonial absence, Indian constitutional filter, and aversion from constitutionalism as the case of Pakistan. Section V periodizes the reception environment in Bangladesh. Section VI analyses the selected case law on Article 102 through the framework. Section VII considers the post-2024 material as a possible reconstructive epilogue focusing particularly on Article 106. Section VIII states the comparative payoff. Section IX draws conclusions.

2. From Donor Prestige to Receptive Soil

The literature on legal transplants is divided between portability, impossibility and mediation. Alan Watson's classical account usefully recognizes that legal rules often move across systems

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[3] Cynthia Farid, 'The Supreme Court of Bangladesh and Defensive Judicial Review' in Swati Jhaveri and Michael Ramsden (eds), *Judicial Review of Administrative Action Across the Common Law World* (CUP 2021) 157, 172, 177.

[4] Sarah Tasnim Shehabuddin, 'Bangladeshi Politics Since Independence' in Mohammad Sajjadur Rahman and Ali Riaz (eds), *Routledge Handbook of Contemporary Bangladesh* (Routledge 2016); David Lewis, 'Non-governmental Organisations and Civil Society' in Mohammad Sajjadur Rahman and Ali Riaz (eds), *Routledge Handbook of Contemporary Bangladesh* (Routledge 2016).

[5] Po Jen Yap and Rehan Abeyratne, 'Judicial Self-Dealing and Unconstitutional Constitutional Amendments in South Asia' (2021) 19(1) International Journal of Constitutional Law 127; Ridwanul Hoque, 'Judicialisation of Politics in Bangladesh' in Mark Tushnet and Madhav Khosla (eds), *Unstable Constitutionalism: Law and Politics in South Asia* (Cambridge University Press 2015.

through elite choice, professional convenience and institutional imitation.[6] The problem lies in the fact that constitutional law does not lend itself to the transportability of rules. A writ, a rights clause or a supremacy clause can be adopted by form but will lack substance. Constitutionality needs a receiving process that can imbue the borrowed notion with political and juridical force.

The culturalist critique, associated with Kahn-Freund and Legrand, moves in the opposite direction. It warns that law is embedded in political culture, institutional habits and social meaning.[7] The necessity of such caution cannot be overstressed in the field of constitutional law, since the courts, the parties, the executives, the legislatures, and the legal profession do not mechanically reproduce the donor's meanings. But the impossibility thesis is equally an overreach. Postcolonial constitutionalism is necessarily a hybrid. It includes remedies from the common law, supremacy clauses, parliamentary systems, directive principles, emergency powers, judicial review, and the constitutional memories of the local context. If transplantation must be judged by its purity, then almost every post-colonial constitution is deficient. The better question is not whether reception is pure, but whether it becomes functional.

The development of intermediate theories has helped refine the debate. In Teubner's theory of legal irritants, he describes how foreign law might irritate and change the receiving legal system rather than seamlessly copying it. The same applies to Choudhry's theory of constitutional migration which emphasises interpretive dialogue and transformation.[8] Strategic and empirical approaches explain why actors look abroad: prestige, coercion, legal family, professional networks and institutional incentives all matter.[9] This approach goes beyond mere glorification of donors. However, it does not quite explain how similar borrowing leads to distinct doctrinal

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[6] See Alan Watson, *Legal Transplants: An Approach to Comparative Law* (2nd edn, University of Georgia Press 1993).

[7] O Kahn-Freund, "On Uses and Misuses of Comparative Law" (1974) 37 Modern Law Review 1; Pierre Legrand, "The Impossibility of Legal Transplants" (1997) 4 Maastricht Journal of European and Comparative Law 111.

[8] Gunther Teubner, "Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergencies" (1998) 61 Modern Law Review 11; Sujit Choudhry, "The Lochner Era and Comparative Constitutionalism" (2004) 2 International Journal of Constitutional Law 1.

[9] Frederick Schauer, "The Politics and Incentives of Legal Transplantation" in Joseph S Nye Jr and John D Donahue (eds), *Governance in a Globalizing World* (Brookings Institution Press 2000); Vlad Perju, "Constitutional Transplants, Borrowing, and Migrations" in Michel Rosenfeld and Andras Sajo (eds), *The Oxford Handbook of Comparative Constitutional Law* (OUP 2012); Tom Ginsburg and Mila Versteeg, "Why Do Countries Adopt Constitutional Review?" (2014) 30 Journal of Law, Economics, and Organisation 587; Michele Graziadei, "Comparative Law, Transplants, and Receptions" in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (2nd edn, OUP 2019).

lives in different regimes, and how the same doctrine is transformed over political time in a particular country.

The Receptive Soil theory is precisely where it can be applied. The originality of this theory does not depend on the idea that the context is essential. This point has been proved before. The uniqueness of this framework is based on defining the concept of context as a collection of interrelated and variable conditions and the addition of judicial posture as one more institutional category. Teubner explains that transplantation causes irritation; Choudhry explains that migration involves interpretative involvement; culturalists explain that the law is embedded. Receptive Soil answers to four more specific questions: what deficiency triggered the demand, what legal community transferred the doctrine, what particular opportunity in the regime triggered the process, and what court posture was adopted towards political power. These questions make the framework capable of explaining not only cross-national divergence but also intra-national transformation over time.

Negative learning forms part of the conceptual scheme as well. Constitutions learn not just from positive models but from negative examples as well. Aversive constitutionalism captures the manner in which the constitutional imagination is formed through a community's desire not to emulate certain things. [10] In the context of Bangladesh, for instance, the Indian example provided a practical regional filter for judicial review, whereas the Pakistani example provided a cautionary memory of rights without effective remedies, courts without sufficient independence, federalism without equality and legality without constitutional supremacy. This double movement - borrowing from one model and against another - is central to the Bangladeshi reception of Article 102.

3. The Four Elements of Receptive Soil

The Receptive Soil Theory comprises four ingredients. The first of these is institutional vacuum. The reason why a foreign ideology appears very appealing is that there exists an emptiness in the order accepting it, which cannot be cured by the current institutions. In South Asian context, the most important vacuum historically was the vacuum of colonial legality without constitutional rights accountability.[11] There were courts and legislation, but all these

[10] Kim Lane Scheppele, "Aspirational and Aversive Constitutionalism: The Case for Studying Cross-Constitutional Influence through Negative Models" (2003) 1 International Journal of Constitutional Law 296.

[11] Arvind Elangovan, '"We the People?"' in Udit Bhatia (ed), *The Indian Constituent Assembly: Deliberations on Democracy* (Routledge 2018); Mohammad Shahabuddin, 'The Ideology of the Postcolonial State in Indian Constituent Assembly Debates (1946-50)' (2021) 32(1) Dhaka University Law Journal 266; Shiv Ranjan, Chetan

operated within the framework of imperialism instead of constitutionalism and popular sovereignty.[12] Afterwards, in the case of East Pakistan, the vacuum took the form of executive centralization, military involvement, and failure of federal equality.[13] In Bangladesh, the post-liberation Constitution responded to that vacuum by entrenching constitutional supremacy, fundamental rights and Article 102 review.[14]

Intellectual milieu constitutes the second characteristic. The process of borrowing cannot be confined to mere legislative imitation; it is a translation effort undertaken by lawyers, judges, scholars, politicians, and constitution-makers. Before a doctrine can be used, it must first be thought about. In South Asia, the American concept of judicial review found itself translated through common law education, Indian constitution-making, Pakistani decisions, comparative law writing and legal practice.[15] The introduction of judicial review into the Bangladeshi legal system cannot simply be attributed to its American origins. It encountered a regionalized vocabulary consisting of written supremacy, enforceable rights, writ jurisdiction, parliamentary government, directive principles and constitutional adjudication.

The third component is regime-specific political opportunity. A doctrine needs a particular period of constitutional choice or crisis when it can be either taken up or rearticulated. Political opportunity is regime-specific since it does not come and go once. In Bangladesh, political opportunity first emerged at independence in 1971/72, was constrained by the Fourth Amendment, was perverted by military legality, came again upon the return to democracy, was

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Mohan, and Prashant Panwar, 'Incorporation of Due Process of Law in India: An Evolution Through the Gate of Constitutional Silences' (2023) 21(5) Russian Law Journal 765.

[12] Jean-Louis Halpérin, 'Western Legal Transplants and India' (2010) 2(1) Jindal Global Law Review 14; Upendra Baxi, '"Ordering" Constitutional Transfers: A View from India' in Günter Frankenberg (ed), *Order from Transfer: Comparative Constitutional Design and Legal Culture* (Edward Elgar 2013).

[13] Md Zobayer Akon, ASM Mahmudul Hasan, and Md Minhajul Abedin Chowdhury, 'Borrowing and Transplant in South Asian Constitutionalism: Comparative Analysis' (2024) 44(1) Public and Private International Law Bulletin 149; M A Sayeed and Lima Aktar, 'Between a republican and a Bengalee state: Confronting exclusionary constitutionalism in Bangladesh' (2023) 12 Global Constitutionalism 562; Sujit Choudhry, 'How to Do Comparative Constitutional Law in India: Naz Foundation, Same Sex Rights, and Dialogical Interpretation' in Sunil Khilnani, Vikram Raghavan, and Arun K Thiruvengadam (eds), *Comparative Constitutionalism in South Asia* (OUP 2013); Ran Hirschl, *Constitutional Theocracy* (Harvard University Press 2010); Ridwanul Hoque, 'Constitutional Identity in Bangladesh: Complexity and Contestations' in Ran Hirschl and Yaniv Roznai (eds), *Deciphering the Genome of Constitutionalism: The Foundations and Future of Constitutional Identity* (CUP 2024).

[14] Muhammad Ekramul Haque, 'Formation of the Constitution and the Legal System in Bangladesh: From 1971 To 1972: A Critical Legal Analysis' (2016) 27 Dhaka University Law Journal 41; Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012) 619; Muhammad Ekramul Haque, 'The Bangladesh Constitutional Framework and Human Rights' (2011) 22(1) Dhaka University Law Journal 57–62.

[15] Muhammad Munir, 'The Legal Profession and Legal Education in Pakistan' (2021) SSRN Journal; William O Douglas, 'The Bill of Rights, Due Process, and Federalism in India' (1955) 40(1) Minnesota Law Review 1.

challenged under dominant-party constitutionalism, and is now resurfacing again in July/August 2024 in a provisional way.[16] The interpretation of Article 102 shifted as opportunities shifted.

The fourth is judicial posture. In using the term judicial posture in this article, the meaning is the institutional attitude of the courts towards the political system within which they exist. The focus is not on psychological analysis of individual judges. Judicial posture is simply a method of relating case law to political time. There are five ideal types. Accommodating posture recognizes or accepts the power of the ruling regime. Avoiding posture protects legality at its borders without confronting the political structure head-on. Retrospective-corrective posture invalidates the authoritarian legality once the political conditions supporting it are gone. Guardianship posture uses constitutional supremacy for the purpose of preserving structural elements such as rights, democracy and judicial independence. A reconstructive posture operates during transition, when courts contribute to the rebuilding of constitutional order under conditions of legal uncertainty.

Table 1: Receptive Soil as a Four-Part Framework

Element	Analytical question	Bangladeshi indicator	Doctrinal manifestation
Institutional vacuum	What deficiency made borrowing attractive?	Colonial legality without enforceable rights; Pakistani military-bureaucratic domination; later party-state concentration.	Demand for Article 102 review, public interest litigation, basic structure review and judicial independence.
Intellectual milieu	How was the doctrine translated?	Indian-filtered judicial review; common-law writs; Pakistani precedents; Dhaka Bar, constitutional debates and comparative legal reasoning.	Broad drafting of Article 102 through “orders” and “directions” rather than confinement to rigid Latin writs.

[16] Ridwanul Hoque, ‘Constitutional Identity in Bangladesh: Complexity and Contestations’ in Ran Hirschl and Yaniv Roznai (eds), *Deciphering the Genome of Constitutionalism: The Foundations and Future of Constitutional Identity* (CUP 2024); Ali Riaz, ‘Political Parties, Elections, and the Party System’ in Mohammad Sajjadur Rahman and Ali Riaz (eds), *Routledge Handbook of Contemporary Bangladesh* (Routledge 2016); Ali Riaz, 'The Pathway of Democratic Backsliding in Bangladesh' (2021) 28(1) Democratization 179.

Element	Analytical question	Bangladeshi indicator	Doctrinal manifestation
Regime-specific political opportunity	When did the doctrine become usable, urgent or contestable?	1972 founding; 1975 constitutional concentration; military rule; 1990 democratic restoration; post-2008 dominant-party constitutionalism; post-2024 constitutional reset.	Different waves of liberty review, public interest litigation, amendment review, Article 116 litigation and caretaker-government litigation.
Judicial posture	How did courts relate to political power?	Accommodation, avoidance, retrospective correction, guardianship and reconstruction.	Article 102 became effective unevenly, often through post-authoritarian correction rather than continuous judicial confrontation.

And this is precisely the fourth element which helps to avoid determinism in the theory. If the receiving environment was considered the immutable soil, the doctrine would seem to develop out of context. However, the example of Bangladesh demonstrates that reception is a result of agency and timing. Courts can be hesitant when there is authoritarian rule and assertive when such a rule ceases to exist. They can protect their institutional independence before they protect democracy in its totality. And they can reform the public law after civil society acquires the ability to litigate collectively. Judicial posture therefore turns Receptive Soil from a static context theory into a dynamic theory of constitutional reception.

The framework is also capable of accommodating abusive constitutionalism. Abusive constitutionalism refers to the use of constitutional forms to weaken constitutional democracy.[17] Bangladesh has gone through some similar instances as well, where the Fourth Amendment created a consolidation of power, the practice of martial law was validated by subsequent amendments, and the practice of constitutional amendments was utilised through

[17] David Landau, “Abusive Constitutionalism” (2013) 47 UC Davis Law Review 189.

institutions in a situation of one-party dominance.[18] These were not instances that simply altered the text of the Constitution. They changed the reception environment in which Article 102 operated and the posture that courts could adopt.

Table 2: Judicial Posture and Leading Bangladeshi Constitutional Moments

Judicial posture	Political-constitutional context	Leading illustrations	Analytical significance
Avoidance or constrained legality	Early post-founding period and authoritarian pressure.	Early detention review; limited real-time resistance to military rule.	Article 102 remained formally available, but its operation was constrained by a restrictive political environment.
Guardianship / institutional self-defence	Ershad period and later judicial-independence disputes.	*Anwar Hossain Chowdhury*; Sixteenth Amendment litigation.	Courts protected the institutional conditions of judicial review, especially the integrity and independence of the judiciary itself.
Retrospective correction	Post-authoritarian review of military legality.	Fifth Amendment litigation; Seventh Amendment litigation.	Courts condemned martial-law constitutionalism after the relevant authoritarian regimes had departed, showing that judicial review often operated as constitutional repair rather than real-time resistance.
Public-law guardianship	Democratic restoration and civil society mobilization.	*Dr Mohiuddin Farooque*; *Ekushey Television*; HRPB	Standing and remedies expanded when political opportunity, civil society litigation and judicial willingness aligned.

[18] Habib Zafarullah, 'Public Administration and Bureaucracy' in Mohammad Sajjadur Rahman and Ali Riaz (eds), *Routledge Handbook of Contemporary Bangladesh* (Routledge 2016); Nizam Ahmed, 'The Parliament' in Mohammad Sajjadur Rahman and Ali Riaz (eds), *Routledge Handbook of Contemporary Bangladesh* (Routledge 2016).

Judicial posture	Political-constitutional context	Leading illustrations	Analytical significance
		litigation; *Mohammad Tayeeb*.	
Reconstructive posture	Post-July/August 2024 legal uncertainty and constitutional reset.	Article 106 interim-government opinion; *Saddam Hossen* Article 116 litigation; caretaker-government revival litigation.	Courts participated in stabilizing and reworking constitutional order after rupture, although this moment remains provisional and doctrinally unsettled.

4. Regional Formation: Colonial Absence, the Indian Filter and Pakistan as Aversive Experience

A. Colonial absence

The colonial state in British India created the first layer of the institutional vacuum. Courts, laws, councils, and administrative procedure existed, but these elements did not constitute a republican constitutional structure for governmental institutions.[19] Parliamentary sovereignty, which has meaning in the domestic British context, given the existence of political representation and cabinet government, took an odd form in colonial India due to the absence of control by the governed population over the imperial legislature and executive.[20] The outcome was not lawlessness but legality without constitutional constraints.

[19] Arun K Thiruvengadam, 'India's Constitutional Founding: An Enduring but Mixed Legacy' in Kevin YL Tan and Ridwanul Hoque (eds), *Constitutional Foundings in South Asia* (Hart Publishing 2021); Upendra Baxi, 'Modelling "Optimal" Constitutional Design for Government Structures' in Sunil Khilnani, Vikram Raghavan and Arun K Thiruvengadam (eds), *Comparative Constitutionalism in South Asia* (OUP 2013); Ian Copland, *India 1885-1947: The Unmaking of an Empire* (Routledge 2014) 3–5, 24–26.

[20] Manjeet Ramgotra, 'India's Republican Moment' in Udit Bhatia (ed), *The Indian Constituent Assembly:*

Dyarchy was brought into being by the Government of India Act of 1919; however, it created separation of responsibility and power, whereby certain subjects were assigned to Indian ministers while other subjects were kept under coercion, finance, and strategy. The new arrangement allowed for the rehearsal of responsible government without loss of sovereign powers. Similarly, the Government of India Act of 1935 provided for more complex constitutional arrangement and even a Federal Court, but there was no bill of rights and no constitutional court protecting rights. The central absence remained: who would enforce constitutional limits against state power?[21]

This is what accounts for the attraction of American-style judicial review. The United States mattered not simply by dint of prestige but because higher law constitutionalism offered a language within which a constitution could be supreme, rights could constrain the state, and courts could strike down ultra vires action. The doctrine provided an answer to a South Asian lack. Yet before it came to Bangladesh, it had been filtered through the prism of Indian constitutionalism.

B. The Indian filter

India became the first region where the concept of American-style judicial review got transformed into a South Asian constitution. The Indian Constitution was not inspired by the US Constitution. The Indian framers were against the idea of presidentialism; they opted for a parliamentary system of governance, took certain provisions from the Government of India Act of 1935, introduced justiciable fundamental rights, and made provision for writs under Articles 32 and 226. Instead of American-style due process of law, they opted for procedure established by law, partly because of concern that broad substantive due process might obstruct socio-economic legislation.[22]

The Indian filter is crucial since Bangladesh did not get the American judicial review in its pure form but a regionalized vocabulary in terms of constitutionalism in which the written supremacy of the constitution, rights, writs, parliamentary system and directive principles were

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Deliberations on Democracy (Routledge 2018); William O Douglas, 'The Bill of Rights, Due Process, and Federalism in India' (1955) 40(1) Minnesota Law Review 1.

[21] MP Jain, *Indian Constitutional Law* (9th edn, LexisNexis 2025) 17, 184; Arun K Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Hart Publishing 2017) 44-50.

[22] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Clarendon Press 1966) 104, 120-23; Madhav Khosla, *India's Founding Moment: The Constitution of a Most Surprising Democracy* (Harvard University Press 2020) 64-66; HM Seervai, *Constitutional Law of India: A Critical Commentary* (3rd edn, NM Tripathi 1983) 692-93.

in harmony. Articles 13, 32 and 226 of the Constitution of India illustrated how higher law constitutionalism can be institutionalized in a parliamentary post-colonial state. Bangladesh drew from that vocabulary, while avoiding mechanical reproduction.

C. Pakistan as conduit and caution

Pakistan was the closest constitutional experience that preceded Bangladesh. This was both its conduit and lesson. This experience gave courts, rights, writs, constitutional language, and federal ideas. But Pakistan also illustrated how such constitutional mechanisms could be used under executive domination, military rule and judicial complicity.[23] Pakistan thus provided an experience of the negative variety; the example to learn from, not to follow.

Maulvi Tamizuddin case shows that the formalism of judicial decisions helped to consolidate executive power at the expense of constituent power by dissolving the Constituent Assembly by the Governor-General. *State v Dosso* went even further by providing the constitutional approval to a military takeover in terms of revolutionary legality. Even though *Asma Jilani* dismissed the precedent established in the *State v Dosso* and called Yahya Khan a usurper, the damage was done.[24] Judicial review had proved capable of legitimating rupture rather than resisting it.

This failure in East Pakistan was not just one of ideology but also of politics, that is, federalism without equality, representation without power, rights without guarantees, and courts without independence.[25] Since the democratic mandate had been denied, and since the state was dominated by the military and bureaucratic establishment, the question of form was always suspect until the constitution could impose restraints on power.[26] Bangladesh's 1972

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[23] *Federation of Pakistan v Moulvi Tamizuddin Khan* PLD 1955 FC 240; *Governor General's Reference No 1 of 1955* PLD 1955 FC 435; *State v Dosso* PLD 1958 SC 533; Gowher Rizvi, 'Democracy and Constitutionalism in South Asia: The Bangladesh Experience' (Ash Institute for Democratic Governance and Innovation 2005) 8–9, 32; Sadaf Aziz and Moeen Cheema, 'From Nation to State: Constitutional Founding in Pakistan' in Kevin YL Tan and Ridwanul Hoque (eds), *Constitutional Foundings in South Asia* (Hart Publishing 2021); Mohammad Waseem, 'Constitutionalism in Pakistan: The Changing Patterns of Dyarchy' (2006) 212 Diogenes 102.

[24] *Asma Jilani v Government of Punjab* PLD 1972 SC 139.

[25] Willem van Schendel, *A History of Bangladesh* (Cambridge University Press 2009) 107–109, 134–137; Ridwanul Hoque, *Judicial Activism in Bangladesh: A Golden Mean Approach* (Cambridge Scholars Publishing 2011) 87–88; Habibul Haque Khondker, 'Nationalism and the "Politics of National Identity"' in Mohammad Sajjadur Rahman and Ali Riaz (eds), *Routledge Handbook of Contemporary Bangladesh* (Routledge 2016).

[26] Srinath Raghavan, *1971: A Global History of the Creation of Bangladesh* (Harvard University Press 2013) 17–18; Hamza Alavi, 'The State in Post-Colonial Societies: Pakistan and Bangladesh' (1972) 74 New Left Review 59; Ayesha Jalal, *The State of Martial Rule: The Origins of Pakistan's Political Economy of Defence* (Cambridge University Press 1990) 136; Paula R Newberg, *Judging the State: Courts and Constitutional Politics in Pakistan* (Cambridge University Press 1995) 225.

Constitution was therefore not a clean transplant. It was a diagnostic reconstruction after observing the failure of constitutional legality in Pakistan.

5. Bangladesh as a Regime-Contingent Reception Environment

A. 1972-1975: founding aspiration and constitutional concentration

The Constitution of 1972 was a constitution of liberation constitutionalism. The Constitution embodied the principles of popular sovereignty, fundamental rights, secularism, democracy, constitutional supremacy, and judicial review. Articles 7, 26, 44, and 102 provided the mechanisms for constitutional remedies. Article 7 proclaimed supremacy of the Constitution; Article 26 nullified laws which were inconsistent with fundamental rights; Article 44 provided for the right to approach the High Court Division for enforcement of fundamental rights; and Article 102 contained the mechanism of jurisdiction.[27]

There was considerable openness about the drafting of Article 102. As explained by Kamal Hossain in the Constituent Assembly, there was a deliberate effort on the part of the framers not to confine the jurisdiction of the Court to the Latin names for the English prerogative writs.[28] This drafting choice is strong evidence of reception rather than copying. Bangladesh received the idea of writ-based judicial review but reformulated it as an open remedial jurisdiction.

The process of founding constitutionalism, however, was shortly followed by constitutional concentration. The Fourth Amendment of 1975 introduced the presidential form of government, replacing the parliamentary form, reduced political pluralism in terms of the national party structure in relation to BAKSAL, and transformed the status of the judiciary including that of the subordinate judiciary under Article 116.[29] Structurally, this was Bangladesh's first instance of abusive constitutionalism in its formal sense. This is not a matter of morality or party politics but of constitutional structures. In this regard, Bangladesh's founding regime saw the adoption of a formal amendment that consolidated power and narrowed the circumstances under which judicial review could operate.

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[27] Constitution of the People's Republic of Bangladesh 1972, arts 7, 26, 44 and 102.

[28] Bangladesh Constituent Assembly Debates, 30 October 1972 (speech of Kamal Hossain); Kamal Hossain, *Bangladesh: Quest for Freedom and Justice* (University Press Limited 2013) 142-43.

[29] Constitution (Fourth Amendment) Act 1975.

B. 1975-1981: military legality and retrospective correction

After the assassination of Sheikh Mujibur Rahman, Bangladesh entered a period in which military power moved from background influence to direct constitutional control.[30] The ascendance of Ziaur Rahman occurred through martial-law legality and later civil legality.[31] The fifth amendment made martial law pronouncements and constitutional amendments made between 1975 and 1979 legitimate.[32] During this phase, Article 102 continued in the constitution, but in the political setting, constitutional legality was subordinated to military authoritarianism.

The significance of this phase can be understood only retrospectively. The judiciary did not challenge the military-constitutional order at that time. The most severe criticism came later when the validity of the Fifth Amendment was decided following changes in political circumstances. It is an example of a retrospective-corrective approach to judicial posture. The later judgment remains doctrinally important precisely because it shows Article 102 and constitutional supremacy being used to repair, rather than contemporaneously prevent, authoritarian legality.

C. 1982-1990: Ershad, autocracy and institutional guardianship

The Ershad era brought yet another dimension of authoritarian constitutionalism, wherein martial law was restored; later, the regime tried to seek constitutional sanctioning via the Seventh Amendment, while the Eighth Amendment tried to reorganize the High Court Division through permanent benches. The latter gave birth to the landmark case of Anwar Hossain Chowdhury – the first basic structure case of Bangladesh. In it, the Appellate Division held that the amending power of Parliament is limited and cannot destroy the basic structural pillars of the Constitution.[33]

The case shows a guardianship attitude, but a certain type of guardianship: that of self-defence of institutions. Through this case, the Court defended the integrity and unity of the High Court Division, rule of law, and supremacy of constitution. However, judicial corrective action

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[30] Srinath Raghavan n (26) 271; Sayeed Ferdous, *Partition as Border-Making: East Bengal, East Pakistan and Bangladesh* (Routledge 2022) 140; Anam Zakaria, *1971: A People's History from Bangladesh, Pakistan and India* (Penguin Random House 2019).

[31] Ibid.

[32] Sheikh Hafizur Rahman Karzon and Abdullah Al Faruque, "Martial Law Regimes: Critically Situating the Validity of the Fifth and Seventh Amendments" (1998) 2(2) Bangladesh Journal of Law 152.

[33] *Anwar Hossain Chowdhury v Bangladesh* (1989) 41 DLR (AD) 165.

against the martial-law regime of Ershad would come at a later point in time through the challenge to the Seventh Amendment.[34] The distinction matters. Bangladeshi courts could be assertive when judicial structure was directly threatened, yet broader authoritarian correction often depended on later political opportunity.

D. 1991-2006: democratic restoration and public-law expansion

The fall of Ershad and the reinstatement of parliamentary democracy paved the way for public-law litigation. The Twelfth Amendment reestablished the parliamentary system.[35] Civil society, public interest lawyers and the Supreme Court Bar made sure that Article 102 was converted into a public-law jurisdiction. The concept of standing was broadened; administrative accountability was constitutionalized; and there was an increase in litigation on public duties and environment. The judicial posture of this period was not uniformly activist, but the leading cases show a movement toward public-law guardianship.

E. 2007-2008: emergency legality and the problem of necessity

However, the transition under military tutelage that occurred in 2007-08 was characterized by a form of legality that was neither equivalent to conventional democratic legality nor martial law in its classic sense.[36] This transitional legality presented courts with the enduring South Asian dilemma of necessity – that is, how to ensure the continuity of legality where political regularity has been compromised. What matters for this article is not an exhaustive examination of that period but simply the observation that emergency legality poses a question regarding the gap between constitutional language and judicial attitude. Article 102 may remain formally available, but its practical effectiveness depends on whether courts confront or avoid the conditions of emergency power.

F. 2009-2024: dominant-party constitutionalism and structural review

The post-2008 period brought another constitutional context. It entailed parliamentary majorities, constitutional amendments, centralization of party authority and institutional capture. The Fifteenth Amendment abolished the caretaker government system following the Thirteenth Amendment judgment, upheld some of the original founding tenets and entrenched

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[34] See Mohammad Rafiqul Islam, "The Seventh Amendment to The Constitution of Bangladesh: A Constitutional Appraisal" (1987) 58 The Political Quarterly 312-329.

[35] Rounaq Jahan and Inge Amudsen, *The Parliament of Banglaesh: Representation and Accountability* (CPD 2012) 10.

[36] Moudud Ahmed, *Bangladesh: A Study of the Democratic Regimes* (The University Press Ltd 2017) 467-472.

other parts.[37] The Sixteenth Amendment sought to reverse the process of taking away the power to remove judges from the Supreme Court and transfer it to Parliament.[38] This should be viewed against the background of dominant-party constitutionalism – where formal democratic structures remained but amendment power, electoral engineering and appointments were key to consolidation of the regime.

The Sixteenth Amendment case is not only about the issue of judicial removal. It is about the institutional soil in which judicial review takes place. Where a dominant legislative body disciplines the judiciary that reviews its acts, then Article 102 becomes vulnerable from within. By adopting a guardianship approach towards judicial independence, the Court was seeking to secure the context in which judicial review could take place.[39]

6. Article 102 in Judicial Practice: Applying the Framework

A. Liberty review

Article 102 has traditionally been used to guarantee personal freedom as its first role. This role was specifically tailored to fill the gap in the institutional framework that was caused by the detention laws in the colonies and Pakistan during the emergency period following independence. In Mrs Aruna Sen, the High Court Division of the Supreme Court applied Article 102 to cases involving detention as a part of the new Constitution. The case shows Article 102 functioning as a mechanism for constitutional discipline over executive detention rather than as a mere ornamental adoption of habeas corpus.[40]

The argument has been even more clearly stated by Bilkis Akhter Hossain. According to the Court, detention restricts fundamental rights relating to liberty, movement and expression, and the injured party can ask for remedy in accordance with Article 44 in conjunction with Article 102. This is another way of saying that the executive satisfaction was not the final word on the

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[37] Arafat Hosen Khan, "Judicial Authority and Democratic Legitimacy: Bangladesh's Caretaker Government Judgment and the Question of Prospective Application" (*Blog of the International Society of Public Law*, December 4, 2025) <https://www.iconnectblog.com/judicial-authority-and-democratic-legitimacy-bangladeshs-caretaker-government-judgment-and-the-question-of-prospective-application/> accessed June 21, 2026.

[38] Kawser Ahmed, "Revisiting Judicial Review of Constitutional Amendments in Bangladesh: Article 7B, the Asaduzzaman Case, and the Fall of the Basic Structure Doctrine" (2023) 56 Israel Law Review 263.

[39] *Advocate Asaduzzaman Siddiqui v Bangladesh*, Writ Petition No 9989 of 2014 (HCD, 5 May 2016); *Government of Bangladesh v Advocate Asaduzzaman Siddiqui* (2017) 71 DLR (AD) 52.

[40] *Mrs Aruna Sen v Government of the People's Republic of Bangladesh*, Writ Petition No 4602 of 1974, 3 CLC (HCD) 4602.

matter.[41] The examples of Prof. Ghulam Azam and Korban are pertinent in this regard. In Korban, the issue related to being detained again on the jail gate when he was released by the court order, showing the need for judicial control to avoid colourable legality.[42] In Professor Ghulam Azam's case, the court held that the detention of Professor Ghulam Azam was illegal as the detaining authority had not informed him about the reasons for his detention, as mandated in Article 33(5). This shows that even detention carried out under preventive detention laws should be subject to constitutional justification under Article 102.[43]

The liberty cases thus illustrate the four components at work. The institutional void consisted of the fact of detention in the absence of an effective constitutional check. The intellectual milieu encompassed habeas corpus of common law, detention practices in India and Pakistan, and local rights activism. The political opening was represented by the new Constitution and subsequent instances where judicial review of executive action became possible. The judicial attitude started out as legality-promoting rather than structure-challenging, but even this attitude rendered Article 102 an efficacious remedy for arbitrary detention.

B. Standing and public interest litigation

The second major development was that of standing. The phrase used in Article 102 was "person aggrieved". While under the narrow private law interpretation, the provision would apply only to those whose individual interests had been affected, a public law interpretation of the same provision opened up a broader scope of action, including collective injury, environmental harm, administrative illegality and constitutional wrongs affecting diffuse communities.

The Kazi Mukhlesur Rahman case opened up this door by permitting a citizen to challenge a public issue related to a constitutional question in relation to a treaty. The latter case of Bangladesh Sangbadpatra Parishad took a narrower view, saying that an association of newspaper owners was not acting for the good of the general public. This dichotomy indicates that PIL was not something that was preordained. It had to be doctrinally constructed within the text of Article 102.[44]

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[41] *Bilkis Akhter Hossain v Bangladesh* (1997) 17 BLD 395.
[42] *Md Korban v Government of Bangladesh*, Writ Petition No 912 of 2003, 32 CLC (HCD) 4391.
[43] *Professor Ghulam Azam v Bangladesh*, Writ Petition No 1148 of 1992, 22 CLC (HCD) 9003;
[44] *Kazi Mukhlesur Rahman v Bangladesh* (1974) 26 DLR (SC) 44; *Bangladesh Sangbadpatra Parishad v Government of Bangladesh* (1991) 43 DLR (AD) 126.

The decisive construction came in Dr Mohiuddin Farooque. The Appellate Division held that public law injury cannot always be reduced to personal grievance and that Article 102 must be read in light of constitutional purpose.[45] In this way, the notion of "person aggrieved" became a constitutional doorway rather than a private one. This is an example of reception in a technical sense, wherein inherited writ jurisdiction was fitted to the realities of Bangladesh, where poverty, environmental vulnerability and administrative inefficiency make individual litigation inadequate.

The case of Ekushey Television and Mohammad Tayeeb contributed to this orientation of public law. In ETV, the Appellate Division associated Article 102 with transparency, equality, and rule of law, and held that gross violation of fundamental rights may serve as grounds to waive procedural requirements.[46] In Tayeeb, the Court emphasized the duty of the High Court Division to dispense justice where dignity, rights, and the Constitution are involved.[47] HRPB litigation then consolidated public interest practice through cases concerning disaster preparedness and civic public duties.[48]

The PIL cases illustrate how judicial posture is a product of political opportunity. The institutional void was the inadequacy of individual standing in a country characterized by diffuse violations. The intellectual context included Indian PIL, environmental law and the Supreme Court Bar. The political opportunity was that of democratic revival and the rise of civil society after 1990. The judicial posture was one of public law custodianship, not because the courts were activist in an abstract sense, but due to Article 102 being the institutional channel for collective constitutional accountability.

C. Remedies and functional public authority

Thirdly, there is the matter of remedial flexibility. Article 102 was fashioned by way of "orders" and "directions," which helped in preventing too much technicality in the process from being involved, as in classical writs. In the right cases, courts have made provision for compensation and assessed functional public authority while shaping directions in order to deal with any wrong doing of public-law nature. This must be made clear; Article 102 has not led

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[45] *Dr Mohiuddin Farooque v Bangladesh* (1997) 49 DLR (AD) 1.

[46] *Ekushey Television Ltd v Dr Chowdhury Mahmood Hasan and others*, 31 CLC (AD) 254 (2002).

[47] *Mohammad Tayeeb and others v Government of Bangladesh*, Civil Appeal Nos 593-594 of 2001 (AD, 12 May 2011).

[48] *Human Rights and Peace for Bangladesh v Government of Bangladesh*, Writ Petition No 9329 of 2008, 38 CLC (HCD) 6741; *Human Rights and Peace for Bangladesh v The Mayor, Dhaka City Corporation*, Writ Petition No 3134 of 2010, 41 CLC (HCD) 8554.

to the creation of a complete and systematic damages system in public law. However, the cases clearly indicate that the jurisdiction cannot be limited only to quashing orders.

Bilkis Akhter Hossain is important because the court recognized that the special original and extraordinary jurisdiction of the High Court Division can also, in certain situations, include monetary compensation for constitutional wrongs. Abdul Hakim and AF Shahab Uddin Ahmed provide another similar functional development whereby the courts examined whether bodies not necessarily governmental, but whose actions had effects on the public could be subject to judicial review because their actions operated in the public domain or carried public consequences.[49] Bangladesh Beverage and ZI Khan Panna reflect the broader remedial concern with state responsibility, illegal public action and compensation.[50]

These examples of case law have a clear relation to the framework itself. The institutional void is the disjuncture between the formal legal categories of the state and modern public power. The intellectual environment includes public-law instrumentalism in England, public law remedies in India and Bangladesh, and administrative law in Bangladesh. The political opportunity was the developing practice of Article 102. The posture was pragmatic guardianship: courts expanded review enough to prevent public power from escaping constitutional control, while not yet converting every public wrong into a constitutional damages claim.

D. Basic structure and amendment review

What stands out most about Bangladesh's adaptation of judicial review is the review of constitutional amendments. The basic structure doctrine came to Bangladesh via the Indian filter, but its purpose in Bangladesh became uniquely Bangladeshi. Where the doctrine originated in tensions between the Parliament, courts, rights, and social change in India, in Bangladesh, the doctrine evolved to be used as a way of defending the constitution's identity from attempts at authoritarian amendment, martial-law validation, and institutional capture.

Anwar Hossain Chowdhury is the founding authority. On the face of it, the case involved permanent benches of the High Court Division. However, on the whole, it was about the protection of the judiciary's unity, rule of law, and supremacy of the Constitution. This case

[49] *Abdul Hakim v Government of Bangladesh* (2014) 34 BLD 129; *AF Shahab Uddin Ahmed v National Shooting Federation, Bangladesh*, Writ Petition No 3494 of 2010 (HCD, 12 December 2010).
[50] *Bangladesh Beverage Industries Ltd v Rowshan Akhter and others*, 39 CLC (HCD) 7279 (2010); *ZI Khan Panna v Bangladesh* (2017) 37 BLD 271.

was one of guardianship since the structure of the judiciary was regarded as a basic structure of the constitution. At the same time, this case was one of institutional self-defence because the threatened structure was the judiciary itself.[51]

The Fifth Amendment case supplied retrospective correction. Bangladesh Italian Marble Works invalidated the constitutional validation of martial-law proclamations and extra-constitutional changes between 1975 and 1979.[52] This decision should be seen as a case of constitutional memory. The decision denies the Pakistani model of tolerating usurpation and declares that martial law legality will never be accepted as constitutional supremacy. The Seventh Amendment case served the same purpose with respect to the Ershad era.[53] The timing of these cases is central: they condemned authoritarian legality after the relevant regimes had departed. This is not incidental. It is evidence of retrospective-corrective judicial posture.

The Thirteenth Amendment case is more complicated. The Appellate Division prospectively declared the non-party caretaker government system void while permitting transitional elections under it.[54] The case clearly illustrates the nature of institutional prudence, democratic concern and political consequences that may be at play during the basic structure test. This case also laid the foundation for subsequent conflicts over the issue of electoral neutrality and the rise of the caretaker model after 2024. The point is not that amendment review always produces clear answers. It is that Article 102 and Article 7 made constitutional amendments themselves judicially contestable.

Sixteenth Amendment cases linked amendment adjudication with judicial independence. Independence of the judiciary was seen by the Court as an elementary principle. In light of the post-2008 era of a dominant-party system, such a judgment holds special importance. Judicial independence was never considered as a favour granted to judges but rather as a condition for constitutional adjudication. Without it, the judiciary cannot uphold constitutional supremacy over political power.[55]

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[51] *Anwar Hossain Chowdhury v Bangladesh* (1989) 41 DLR (AD) 165.

[52] *Bangladesh Italian Marble Works Ltd v Bangladesh*, Civil Petition for Leave to Appeal Nos 1044 and 1045 of 2009 (AD, 2 February 2010); *Bangladesh v Bangladesh Italian Marble Works Ltd and others*, Civil Review Petition Nos 17 and 18 of 2011 (AD, 29 March 2011).

[53] *Siddique Ahmed v Government of Bangladesh*, Writ Petition No 696 of 2010 (HCD, 26 August 2010); *Siddique Ahmed v Government of Bangladesh*, Civil Appeal No 48 of 2011 (AD, 15 May 2011).

[54] *Abdul Mannan Khan v Government of Bangladesh*, Civil Appeal No 139 of 2005 with Civil Petition for Leave to Appeal No 596 of 2005 (AD, 10 May 2011).

[55] *Advocate Asaduzzaman Siddiqui v Bangladesh*, Writ Petition No 9989 of 2014 (HCD, 5 May 2016); *Government of Bangladesh v Advocate Asaduzzaman Siddiqui* (2017) 71 DLR (AD) 52.

E. Judicial independence as receptive soil

Judicial independence is both an objective and a precondition for Article 102. Judicial independence is an objective since the parties are able to bring judicial independence to a challenge by invoking the mechanism of constitutional review. Judicial independence is a precondition since Article 102 will not operate if the judiciary is institutionally subordinate to the branches of government whose actions it is being asked to review. Idrisur Rahman and Justice Syed Md Dastagir Hossain cases concerned appointment and confirmation of judges, the role of the Chief Justice's opinion and executive discretion. They show that judicial independence became a litigated constitutional value within the Article 102 tradition.[56]

Together with the Anwar Hossain case and the Sixteenth Amendment case, these decisions indicate that the reception of judicial review in Bangladesh was no longer only about the protection of individual rights. Instead, it was about the establishment of conditions conducive to the maintenance of constitutional supremacy. The judiciary did not simply utilize the imported doctrine; it helped create the conditions for its application.

7. The Post-2024 Reconstructive Moment: Article 106, Article 116 and Electoral Neutrality

The most recent and least resolved constitutional moment occurred during the July/August 2024 uprising.[57] This does not represent an ended settlement, and academic caution should be exercised due to the ongoing development of case law. Rather, it can be seen as a provisional reconstructive moment, wherein courts, political actors, and reform institutions have tried to restabilise constitutional legality following a breakdown in the normal course of democratic succession.

It is in the context of Article 106 that this constitutional moment is situated. The article empowers the president to refer to the Appellate Division any question of law of such nature and public importance as to make it desirable to obtain the opinion of the court.[58] With Sheikh Hasina resigning from office, there was no Parliament and elected executive, hence the

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[56] *Idrisur Rahman (Md) v Bangladesh*, Writ Petition No 3228 of 2003, 37 CLC (HCD) 3993; *Idrisur Rahman (Md) and others v Secretary, Ministry of Law, Justice and Parliamentary Affairs*, Writ Petition Nos 1543, 2975 and 3217 of 2003, 37 CLC (HCD) 4326; *Justice Syed Md Dastagir Hossain and others v Md Idrisur Rahman and others*, 38 CLC (AD) 3431.

[57] See Saimum Parvez, "Why Did They Join?: Understanding the Protesters of Bangladesh's July Uprising" (2025) 27 Journal of Bangladesh Studies 179; Sakir Ahmad, "Political Dynamics of the July Revolution in Bangladesh: Party Roles and Responses" (2025) 7 CenRaPS Journal of Social Sciences 26.

[58] The Constitution of the People's Republic of Bangladesh, art 106, Laws of Bangladesh.

President sought the advisory opinion of the Appellate Division on whether an interim government could be constituted. Contemporary reporting of the Supreme Court Registrar General's statement indicates that the Appellate Division advised that, in the circumstances, an interim government could be formed with a Chief Adviser and advisers to carry out executive functions.[59]

The significance of this from the perspective of judicial posture theory is that it was not merely an invalidation of an Act ex post facto. This Court has actually been involved in legalising an entirely new process through its advisory jurisdiction in an era of constitutional vacuum. Subsequently, the High Court rejected a challenge to the formation and oath of the interim government, describing it as supported by legal instrument and by the will of the people; the Appellate Division subsequently dismissed a leave petition challenging that conclusion.[60] For present purposes, their theoretical significance is clear: they illustrate reconstructive posture, in which courts assist in preserving constitutional continuity when ordinary constitutional mechanisms are inoperative.

This incident also challenges straightforward understandings of judicial dependence. The composition of supreme courts does not necessarily shift if there is regime transition. However, there could be a new judicial stance as a result of changes in the political opportunity structure. A Supreme Court which was less likely to stand up to an incumbent dominant regime becomes a component of the reconstruction process after the incumbent regime falls. This is not to make a conjecture about the mindset of individual judges but rather a comment on political time: the same court structure may behave differently when the risk, audience and constitutional task have changed.

The reform commissions operate in the same reconstructive environment. The interim government set up commissions in relation to, among others, constitutional reform, the judiciary, elections, public administration, policing and corruption prevention.[61]

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[59] Star Digital Report, "President formed interim govt after SC's nod" The Daily Star (Dhaka, 9 August 2024) <https://www.thedailystar.net/news/bangladesh/news/president-formed-interim-govt-after-scs-nod-3673196> accessed 20 June 2026; TBS Report, "Dr Yunus-led interim govt legal: SC" The Business Standard (Dhaka, 9 August 2024) https://www.tbsnews.net/bangladesh/court/supreme-court-legitimises-interim-govt-912966 accessed 20 June 2026.

[60] Staff Correspondent, "Interim govt backed by the will of people" The Daily Star (Dhaka, 12 February 2025) <https://www.thedailystar.net/news/bangladesh/news/interim-govt-backed-the-will-people-3823181> accessed 20 June 2026; Bangladesh Sangbad Sangstha, "Full bench declares Interim Govt legal" (4 December 2025) <https://www.bssnews.net/news-flash/338524> accessed 20 June 2026.

[61] Bangladesh Sangbad Sangstha, "Govt constitutes five reform commissions" (4 October 2024) <https://www.bssnews.net/news-flash/214053> accessed 20 June 2026.

Recommendations from the Constitution Reform Commission include judicial financial independence, a judicial secretariat under the jurisdiction of the Supreme Court, and improved measures for judicial administration. [62] These proposals show that the post-2024 moment is not limited to leadership change. It concerns the institutional soil of constitutionalism: appointments, elections, judicial administration, accountability and the distribution of power.

This makes the case of Saddam Hossen not just another case under Article 116. In his petition, he challenged the replacement of the word "Supreme Court" with "President" in Article 116 through the Fourth Amendment and later changes and requested that the 1972 design be restored and a separate Judicial Secretariat established.[63] The case links the current time period to the founding vision and to the aftermath of constitutional concentration in 1975. The case is reconstructive since it seeks to determine whether a post-2024 constitutional framework can reinvigorate the institutional autonomy mandated by Article 102.

Similar reconstructionist logic can be seen in *Dr Badiul Alam Majumdar v Government of Bangladesh* where the Fifteenth Amendment along with the abolition of the Non-Party Caretaker Government System was analyzed with reference to Article 7, Article 142, democracy, fair election, and the basic structure theory.[64] The importance of the case does not lie simply in its repetition of the Thirteenth Amendment resolution in the past. Instead, what it demonstrates is that electoral neutrality has returned as a factor of democratic legitimacy in constitutional adjudication. In this respect, the approach of the Court is not only backward-looking but also forward-looking, since it seeks to understand how electoral legitimacy can be restored following the 2024 breach.

Thus, the constitutional environment following 2024 cannot be taken to demonstrate a completed process of democratic transformation. This can be said to reveal an approach that is being taken up as a reconstructive posture. This can be illustrated by the provisions of Article 106, Article 116, and the case of caretaker government. This demonstrates the ongoing process of constitutional reception following rupture. The receiving soil is being reworked again

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[62] Constitution Reform Commission, Summary of Recommendations (2025) <https://constitutionnet.org/sites/default/files/2025-09/2025-02-22-11-20-1d7141a3f13ce7353d13c0223ef65b40.pdf> accessed 20 June 2026.

[63] *Mohammad Saddam Hossen and others v Bangladesh*, Writ Petition No 10356 of 2024 (HCD, 2 September 2025).

[64] *Dr Badiul Alam Majumdar and others v Government of Bangladesh and others*, Writ Petition No 9935 of 2024 with Writ Petition No 12431 of 2024, 20 SCOB [2025] HCD 97 (HCD, 17 December 2024), paras 27, 37, 154–58, 180 and 312.

through judicial reasoning, reform proposals and renewed contestation over the institutional conditions of constitutional democracy.

8. Comparative and Theoretical Payoff

The Bangladesh example yields four comparative insights. First, it illustrates that constitutional borrowing is a process of reception and not of donation. The prestige of the donor can help account for the recognition of the doctrine, but not its effectiveness. The effectiveness of Article 102 results from the fact that Bangladesh's constitutional actors have put the doctrine to use to solve their domestic concerns: detention, poor accountability, public grievances, legitimacy of martial law, judicial independence, electoral neutrality, and constitutional void.

Secondly, the example demonstrates that negative learning plays an important role in constitutional borrowing. Bangladesh has borrowed from India but also borrowed against Pakistan.[65] The two cases of the Fifth and Seventh Amendments are better understood in terms of rejection of an aversive regional tradition: judicial legitimation of usurpation, doctrine of necessity and rights devoid of institutional safeguards. This aspect would remain overlooked in a theory limited to admired donors.

Thirdly, this example demonstrates how the receiving context shifts over time. While the founding constitution establishes the power of judicial review, an amendment might limit it; while the military government used legality for its own ends, democratic government may have expanded PIL; while dominant-party constitutionalism led to structural review, the revolution forced re-examination of fundamental issues. The doctrine thus remains doctrinally constant but politically discontinuous. It is for this reason that judicial attitude needs to be included in the constitutional reception process.

Fourthly, the framework is applicable to jurisdictions other than Bangladesh. In all jurisdictions, one can ask four questions. What deficiency in the receiving institutions led to attraction of the borrowed doctrine? Who translated the doctrine? What political opportunity activated or constrained the doctrine? And what was the judicial attitude toward the borrowed doctrine? Through such questions, one could understand the nature of constitutional review in other post-colonial legal orders, where similar doctrinal materials function differently because

[65] See Dina M Siddiqi, "Secular Quests, National Others: Revisiting Bangladesh's Constituent Assembly Debates" (2018) 49 Asian Affairs 238; Rounaq Jahan, "Genocide in Bangladesh" in Samuel Totten and William Spencer Parsons (eds), *Centuries of Genocide: Essays and Eyewitness Accounts* (Routledge 2013).

of the different political contexts. The framework therefore moves beyond single-case description without losing the density of local history.

It is a rethinking of hybridity, too. The Bangladesh system of judicial review is neither American, nor Indian, nor wholly indigenous. It is a hybrid jurisdiction constituted through common law writs, Indian constitutional filtering, Pakistani adverse memory, liberation constitutionalism, democratic restoration and post-authoritarian rectification. Hybridity is not an indication of transplant failure. Hybridity is the means by which transplanted constitutional concepts are localized.

9. Conclusion

The present discussion has thus shown that any study of constitutional borrowing must take into account the conditions of reception. The Receptive Soil Approach identifies four such conditions – institutional vacuum, intellectual atmosphere, regime-specific political opportunity, and judicial posture. They help explain the differences between the lives of doctrinally similar constitutions in different jurisdictions and changes in the functionality of a particular doctrine in one and the same jurisdiction over time.

A particularly powerful example of this would be Bangladesh, where Article 102 has evolved through cycles of politics rather than gradual institutional growth. In the first place, the Constitution of 1972 established broad remedial jurisdiction; next came the Fourth Amendment to consolidate the power of the Constitution; military regimes used legality as an instrument; restoration of democracy led to public interest litigation; post-authoritarian Courts have revised the constitutional practice of martial law; the dominant-party system since 2008 caused structural conflicts regarding judicial independence and election procedure; and the post-2024 period raised issues of interim legality, Article 116 and election neutrality. The meaning of judicial review in Bangladesh is therefore regime-contingent.

It is not a claim that the borrowing was flawless or the role of the judiciary was ever heroic. Rather, it is a more nuanced claim and a stronger one. In a process of historical reception, Bangladesh reimagined the borrowed judicial review, sometimes accommodating, sometimes resisting, sometimes correcting, sometimes protecting and, in the most recent period, sometimes reconstructing. Through such an uneven set of reactions, Article 102 became the site for Bangladesh to renegotiate the supremacy, rights and judicial authority.

The post-2024 moment proves that the process of reception is still far from completion. From the opinions on interim government, litigations on Article 116, proposals for reform commissions and caretaker government revival, one sees the attempts made by constitutional actors to reinvent the conditions under which the supremacy would function. Whether this would be successful in creating a sustainable form of constitutionalism is doubtful. Yet, doubt is what makes the moment important. The borrowing of constitutional ideas is possible only through repeated efforts to invent the conditions of reception. Bangladesh's Article 102 jurisprudence shows that reception is not a single act of adoption. It is an ongoing struggle over the institutional life of constitutional power.

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THE DOCTRINE OF PRE-EMPTION AND THE CONSTITUTIONAL RIGHT TO PROPERTY: A CRITICAL APPRAISAL OF BANGLADESH'S PRE-EMPTION LAWS

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ABSTRACT: Pre-emption is a well-established mechanism in the legal system of Bangladesh. It is so well established that sometimes its various aspects go unchallenged. As a result, there is an apprehension that it is infringing the constitutional right to property of the people of Bangladesh. The evolution of pre-emption in different stages of the Bangladeshi legal system has given it such a nature that any introduction of change requires a deep understanding of its historical roots. And the historical root of it is so strong that the mechanism seems irreplaceable in Bangladesh. However, despite having a similar socio-economic context, the question regarding the reasonableness of pre-emption has been raised in India. Also, the judiciary of Bangladesh has from time to time, expressed its critical views regarding pre-emption. The vast amount of literature carries rich views regarding the mechanism of pre-emption. But there is a lack of coherence as to the ways to solve the existing problems of the mechanism of pre-emption. This article critically examines the philosophy and scope of the constitutional right to property under Article 42 of the Constitution of Bangladesh, and evaluates the doctrine of pre-emption against this constitutional standard through a doctrinal, historical, and comparative analysis. A critical comparison of the differences between the existing laws provides us with vital guidelines regarding making the existing system a better one. Again, socio-economic input of the reality as well as the real-life status of the related aspects to pre-emption provides us

solutions of the existing problem. No solution is to be adopted without criticism. And the found solutions of the problems related to pre-emption provide a sound base for future research and law reform and ensure a hopeful future for the Land Laws of Bangladesh.

KEYWORDS: Pre-emption, *Shufa*, *Hanafi,* Co-sharer, Vested Property, *Bargadar,* Pre-emptee, Preemptor.

1. INTRODUCTION

The citizens of Bangladesh have an unalienable right of owning property that is protected by the supreme law of the country. However, such a privilege is subject to legislatively imposed reasonable constraints.[1] Pre-emption is a legal process that inhibits a Bangladeshi citizen's unrestricted ability to dispose of land in his possession. As time has passed and numerous sociological and legal developments have occurred, the existing system's reasonableness has come into doubt. In today's world, pre-emption is frequently abused, and the system has become a means of harassing landowners. Consequently, the mechanism's fairness is now under dispute. If the faults of the current system of pre-emption can be identified, plausible alternatives may be proposed, the implementation of which will make the pre-emption mechanism reasonable and appropriate for the present.

1.1 Research Questions

As for this purpose, the following questions have been addressed in this research:

RQ1. Does the doctrine of pre-emption, as applied under Bangladeshi law, constitute a reasonable restriction on the constitutional right to property under Article 42, or does it amount to an unjustified infringement of that right?

RQ2. Has the doctrinal and socio-economic rationale historically underpinning pre-emption retained its validity in contemporary Bangladesh, or has it been eroded by changing land-use, ownership, and market realities?

RQ3. What legislative or judicial reforms, if any, are necessary to reconcile the pre-emption mechanism with constitutional property rights while preserving its legitimate socio-economic functions?

1.2 Aim and Implications

[1] Constitution of People's Republic of Bangladesh, art 42.

Now, based on these questions, the aim is looking for **t**he reasonableness of the existing system and viable solutions are the core concern of this research as there are ample of incidents arising everyday related to the mechanism of pre-emption. Current unreasonable form of the system causing a great suffering for the citizens. And this research will contribute to establishing the constitutional right to property of the citizens. It will focus on present infraction of right to property under the constitution of Bangladesh and it would be useful to the law-making bodies to restructure the land legislation to protect the citizens' land rights. It will show us how ancient legal provisions like pre-emption can be turned into obsolete and illegal because of a lack of reform. Also, it will provide us with solutions to mitigate the problem and with suggestions on how to implement such solutions in a better way.

1.3 Methodology

The research has been conducted following doctrinal legal methodology accompanied with historical and comparative approaches. The work has been done based on the data collected from primary legal sources, such as the Constitution of Bangladesh, the State Acquisition and Tenancy Act 1950, the relevant provisions on pre-emption under the Muslim Personal Law (Shariat) Application Act 1937, and the Non-Agricultural Tenancy Act 1949, along with reported case laws from the higher judiciary of Bangladesh and, where doctrinally relevant, colonial-era Privy Council and subcontinental precedents. As per the historical method part, the research traces preemption's historical evolution from Mughal-era application through colonial codification to its present statutory form in order to assess whether the socio-economic rationale that originally justified the doctrine still holds in contemporary Bangladesh. Again, in order to test the reasonableness of Bangladesh's current framework, the research has drawn a limited comparison with Indian arrangement of pre-emption, particularly the Indian judiciary's approach to reconciling pre-emption with the constitutional right to property under Article 300A of the Indian Constitution. This comparison is used interpretively in order to illuminate possible reform pathways rather than as a systematic comparative-law study. Again, the research has largely relied on secondary and archival materials such as statutes, law reports, and existing scholarly literature like books, journal articles, and case commentaries on pre-emption and constitutional property rights. And as a consequence of using the doctrinal approach, the research does not empirically measure the socio-economic impact of pre-emption on affected parties and its conclusions on reasonableness are drawn from case law patterns and

existing scholarship rather than original empirical evidence. This is acknowledged as a limitation.

For a better understanding of the readers, it can be observed that all the headings of the research can be divided into four large segments; although no such division has been illustrated explicitly. In the first segment, the researcher introduced the problem with statement of problems, elaborated the research objectives. The researcher has also compared the existing literature on the subject matter, raised the research questions, and described the methodology that is to be followed. Also, the first segment contains the scope and limitation of the research. The second segment contains the description of the related concepts. A historical description of pre-emption is there in the second part along with the description of the statutory provisions and case laws related to the subject matter. In the third segment, the problems of the existing system of pre-emption have been identified and solutions have been provided to overcome the problems. And in the final segment, an overall conclusion has been drawn along with discussions regarding the effective implementations of the provided solutions.

1.4 Scope and Limitations

It is important to clarify the scope and limitations of this research. The research has incorporate a case-to-case instances of the pre-emption. As it is largely based on doctrinal methodology, no empirical or field data, such as interviews, surveys, or primary data collection has been used and the research is confined to doctrinal and textual analysis. Again, the research is limited to Bangladeshi context and the research result will be only applicable for Bangladesh. Furthermore, the research is mainly focused on the effects of pre-emption and does not include all the aspects related to pre-emption. And there might limitation regarding language of the research and the knowledge of the researcher. The researchers beg to pardon these limitations and to consider it as a scope of further future research on the subject matter.

2. CONCEPTUAL FRAMEWORK

At first, we must have a thorough understanding of the relevant concepts before jumping into main discussion. Pre-emption is the first significant notion related to this study. The arrangement where someone accrue a right in the land to procure before another person is called pre-emption. The term has been originated from latin *prae*, which means "before" and *emptions*, which means "purchasing." Dr. A.R. Biswas defines pre-emption as "the legal right

to purchase an item before all others."[2] In Arabic, pre-emption is referred to as *shufa*. "*Shufa*" means conjunction; in this context, it refers to the right of the owner of a property that is adjacent to another. Haq means accurate. Therefore, *haq-shufa* refers to the right to acquire a property adjacent to one's own from a new buyer. In practice, it signifies the right to displace a new purchaser and assume his position in relation to an adjacent property.[3] One has the right to prevent strangers from entering their neighborhood. Pre-emption does not attribute the action of rebuying but substituting one buyer through another because of their better right. This notion was reflected in *Bishan Singh v. Khazan Singh*, where Subba Rao, J., held that pre-emption is a right of being offered a land before it was offered to anyone else. It is known as a supplementary right to follow the sold land by the pre-emptor. And he has obligation as if he was the original purchaser.[4] Again, the right is over in case of buying the whole land not any fraction of so. As the whole mechanism is a sort of preferential arrangement, that is why the status of pre-emptor will be higher than his alternate. It is a right of an adjacent possessor to buy the property adjacent to him that is being sold. Now, co-sharer is an important idea connected to pre-emption. A person who is the owner of any portion of a given parcel of land under same land record is called co-sharer. It is held that he is owner with all the same authority of each point of the land in spite of another person having his name recorded as such manner.[5] The primary purpose of this mechanism is to prevent stranger owner from irritating co-sharers rather giving them the whole ownership to be in peace. Now, let's examine the historical evolution of pre-emption for the proper understanding of the subject matter.

3. HISTORICAL EVOLUTION OF PRE-EMPTION

Pre-emption can be traced back to ancient Roman law.[6] However, the Muslim rulers of the Indian subcontinent introduced pre-emption in this land.[7] It is significant to note that Pre-Islamic customs and later changes by the prophet and Muslim scholars comprised the whole of Muslim religious provision as we know.[8] Thus the exact origin of pre-emption is still unknown

[2] Syed Rahman, *Pre-emption Laws in Bangladesh* (1st edn, Ain-Grantha Prokashak 1984).
[3] Khalid Rashid, *Muslim Law* (4th edn, Eastern Book Company 2004) 283.
[4] *Bishan Singh v. Khazan Singh* [1958] AIR 838 (SC).
[5] Legal Nestors, 'Disputes Between Co-Sharers' (*Legal Nestors*, 12 January 2020) <https://legalnestors.com/practice-area/disputes-between-co-sharers/> accessed 27 March 2026.
[6] Md Hossain, 'Pre-emption: Bangladesh Approach ' [2015] 3(2) Sociology and Anthropology 79.
[7] *Govind Dayal v. Inayatullah* (1885) 7 AIR 779.
[8] R Feener, Muslim Cultures and Pre-Islamic Pasts: Changing Perceptions of “Heritage” (Springer 2017).

to the Islamic scholars.[9] Some jurists consider pre-emption to be pre-Islamic.[10] Arabs were familiar with Jewish law and the Roman legal system at the time.[11] Therefore, some academics think that pre-emption may have its origins in Roman or Jewish law.[12] However, there is no agreement among researchers on this issue.[13] On addition, there is no reported information regarding exercise of pre-emption in the Indian subcontinent prior to the arrival of the Mughals. Only subsequent Moghul control promulgated pre-emption to all communities.[14] It was considered then that a Muslim and a person of other faith are both affected by the new arrangement.[15] As a result, the Hindus accepted pre-emption as a custom.[16] The Mughal application of pre-emption was primarily influenced by Hanafi philosophy.[17] According to Hanafi doctrine, land constitutes the majority of an immovable property.[18] On the land, all trees and structures are regarded to be mobile.[19] There are just a few cases in which a construction can be considered immovable, as we will see shortly.[20] Hanafis grants pre-emption rights to the four individuals listed below. (a) Co-owners (*shurak*), in the event that a section of jointly owned land is sold to a third party. Non-Hanafi legal experts limit application of emption as to this circumstance. (b) Those who retain a little portion of the land, such as former land co-owners who continue to jointly own a dividing wall and the land beneath it. Those who share a wall without the land beneath it cannot exercise pre-emption, as the wall is considered movable property and hence is not regarded to be part of the land. (c) Holders of a servitude (*aqq al-irtifq*) over the land sold, such as previous co-owners of land who continue to share highways or canals with the seller after the split of the land. The use of public roadways and rivers does not cause pre-emption. (d) Adjacent neighbors or lot owners who share a boundary with the for-sale property.[21] Former co-owners of the land who do not fit into the first two categories, such as co-owners of a wall, may exercise pre-emption if they meet this criterion. Although Hanafis frequently view co-owners as pre-emptors, they also grant pre-emption to

[9] Satoe Horii, 'Pre-emption and Private Land Ownership in Modern Egypt: No Revival of Islamic Legal Tradition' [2011] 18(1) Islamic Law and Society.
[10] Ibid.
[11] Ibid.
[12] Ibid.
[13] Ibid.
[14] Ausaf Malik, 'Right of Pre-Emption (Shuffa) Under Muslim Law' [2021] 11(1) Education Today.
[15] Ipleaders, 'Pre-emption under Muslim Law' (*IPleaders*, 11 May 2021) <https://blog.ipleaders.in/pre-emption-muslim-law/> accessed 25 March 2026.
[16] Ibid.
[17] Alan Guenther, Hanafi Fiqh in Mughal India: The Fatāwá-i ʻĀlamgīrī (Oxford University Press of India 2003).
[18] Feener (n 8) 182.
[19] Ibid.
[20] Ibid.
[21] Ibid.

those who are comparable to them in some way. Although the origin of pre-emption is uncertain, all legal academics agree that it was intended to prevent specific harms caused by an outsider entering a co-ownership relationship.[22] According to non-Hanafis, these are monetary or physical damages caused by division, as co-owners are more likely to end their relationship than accept an unwelcome newcomer.[23] According to Abbs' fatwas, co-owners are frequently inherited relatives. Non-Hanafis therefore restrict pre-emption to co-owners.[24] Pre-emption is designed to protect co-owners from the sale of a section of a property held in common that could lead to an adverse division.[25] Similarly, non-Hanafis restrict pre-emption to a share in anything divisible, both immovable and movable, such as a share in buildings, trees, or livestock sold separately from land held in common.[26] For Hanafis, the damages to be avoided through pre-emption include any inconvenience or misery stemming from a hostile relationship between neighbors, regardless of whether they share a common area or live in near homes.[27] Thus, co-owners are regarded as if they were nearby neighbors, in that they have equal rights to use or enjoy the property held in common and reside in close proximity.[28] Because such a scenario may be unbearable with an unwelcome "neighbor," co-owners have precedence over other categories of pre-emptors whose holdings are completely or partially segregated from bordering properties. However, Hanafis restrict the purpose of pre-emption to immovable property or a portion thereof, as the turnover of immovable property owners is less frequent, making any dispute between them all the graver. Today in Islamic law, however, the system has gained universal support and reached a level of development never before seen. The right known as "*shufa*" in Arabic is recognized by all schools of Islamic law, but with variations.[29] The codification of pre-emption as statutory provision was the result of British rule. It was a known concept in common law that became more relevant when the British were putting more emphasis on building rail connections around their empire in the nineteenth-century.[30] There was a provision in Lands Clauses Consolidation Act of 1845 that obliged the railway companies to sell the unused lands to the previous possessors.[31] Also, common law

[22] Ibid. 184.
[23] Ibid.
[24] Ibid.
[25] Ibid.
[26] Ibid.
[27] Ibid.
[28] Ibid.
[29] Ibid.
[30] AP Rose, 'Pre-Emption and Its Development in Palestine' [1981] 30(2) The International and Comparative Law Quarterly 297.
[31] Ibid.

always recognised pre-emption that arouse through contract.[32] After the Independence of Pakistan, the provisions were codified under section 24 of the Non-agricultural Tenancy Act of 1949 and section 96 of the State Acquisition and Tenancy Act of 1950. Section 24 governs the pre-emption of non-agricultural land, while section 96 governs the pre-emption of agricultural land. However, it is important to draw an analysis as to why and how the personal law has incorporated pre-emption.

4. REASONS IT BECAME PART OF PERSONAL LAW

As described in the preceding section, pre-emption was historically practiced by some Muslims in various area of the Indian subcontinent.[33] If there was no mention of it in local statutes or customs, Muslims followed it.[34] In the precedent *Audh Behari Singh v. Gajadhar Jaipuria,* it was determined that Muslims introduced the law of pre-emption to India.[35] There is no trace in Hindu law of such a notion.[36] As the new parts came into the reign of the Mughals the ambit of the practice of pre-emption kept growing and the people of other faiths were also subject to it.[37] As a result, the people of Hindu faith accepted the system for the sake of practical convenience.[38] It is still part of customs in Indian regions like Bihar and Gujarat which were once reigned by the Muslims.[39] Thus, it is evident that the application of pre-emption in personal law was primarily motivated by convenience. Again, the courts of the Indian subcontinent applied pre-emption to personal law on the basis of fairness, equity, and good conscience.

5. THE PHILOSOPHY AND SCOPE OF CONSTITUTIONAL RIGHT TO PROPERTY IN BANGLADESH

The right to property has been guaranteed in Article 42 of the Constitution of the People's Republic of Bangladesh.[40] Article 42 splits into two distinct guarantees. The opening clause entitles every citizen, subject to whatever restrictions the law imposes, to acquire, hold, transfer, or dispose of property, and bars compulsory acquisition, nationalisation, or requisition

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[32] Ibid.
[33] Malik (n 14).
[34] Ibid.
[35] *Audh Behari Singh v. Gajadhar Jaipuria (*1954) AIR 417 (SC).
[36] Ibid.
[37] iPleader (n 15).
[38] Ibid.
[39] Ibid.
[40] Constitution (n 1) .

except under legal authority.[41] The clause that follows attaches a condition to this guarantee. The condition is that acquisition or nationalisation is lawful only where the enabling statute itself builds in compensation. The compensation can be of a fixed sum or by laying down the method for calculating and paying it.[42] Taken as a whole, these two clauses fall short of an unqualified property guarantee. What they create instead is a right that exists only within the bounds the law sets for it, and that the State may lawfully extinguish so long as it acts under legal authority and provides a compensatory mechanism. This matters for the present study because pre-emption legislation draws its justification from exactly this "restrictions imposed by law" language, using it to override a purchaser's title in favour of a pre-emptor who is, notably, a private actor rather than the State. The constitutional philosophy behind this differs sharply from liberal traditions in which property is treated as a pre-political entitlement the State merely recognises. Bangladesh's Constitution instead folds property into a broader project of redistribution and welfare. It commits the country to a socialist order achieved by democratic means, and correspondingly recognises three modes of ownership: a) state, b) cooperative, and c) private. Among these the private ownership survives only to the extent the law permits.[43] Read in isolation, Article 42 misses this context and thus it needs to be understood alongside the Fundamental Principles of State Policy in Part II. The Fundamental Principles of State Policy State toward preventing wealth concentration and securing a more equitable distribution of resources. One consequence follows directly from this design. Because private property answers to the State's redistributive goals rather than standing apart from them, Bangladeshi courts have long treated the property right as among the more easily restricted fundamental rights. Article 47 reinforces this by insulating acquisition, nationalisation, and requisition legislation from Part III challenges altogether. Taken together, these provisions leave Article 42 nominally a fundamental right but one with comparatively little practical power to resist legislative encroachment.

Even so, courts have not treated Article 42 as a dead letter. In *A. Rouf Chowdhury v Bangladesh*, the High Court Division found that property held under a validly approved construction plan carried constitutional protection, and that the petitioners retained a

[41] Ibid. (n 1) art 42(1).
[42] Ibid. (n 1) art 42(2).
[43] Mohammad Towhidul Islam and Nurun Nahar Urmi, 'Realizing the Right to Property under the Constitution of Bangladesh: Myths and Realities' in Matthias Vanhullebusch, Steve Foster and Ben Stanford (eds), *The Asian Yearbook of Human Rights and Humanitarian Law*, vol 8 (Brill | Nijhoff 2025) ch 9.

constitutionally guaranteed right to hold and enjoy it despite later regulatory intervention.[44] *Chairman, Bangladesh Steel Mills Corporation v Masood Reza* likewise saw the Appellate Division treat the Article 42(2) compensation guarantee as generating real, enforceable claims once acquisition legislation comes into force, not as a merely aspirational promise.[45] That said, the courts' general posture has been to defer to statutory restriction: where a statute restricting or extinguishing property rights meets the "authority of law" requirement, the restriction is upheld, whether the party exercising the resulting power is the State or, as with pre-emption, a private party acting under statutory authorisation. It is rather a deference not any judicial resistance to property rights generally. And it opens the doctrinal space in which pre-emption statutes currently sit.

Two implications follow for this article. First, since Article 42(1) already builds in the possibility of legal restriction, a pre-emption statute cannot be said to breach Article 42 simply by limiting what a purchaser may do with acquired property. And the text itself contemplates that kind of limitation. The real constitutional question, then, is not whether restriction is permitted at all, but whether a particular restriction is reasonable and proportionate, judged against the due process and equal protection guarantees in Articles 27, 31, and 32, read together with Article 42. Second, because pre-emption works by substituting one private purchaser for another rather than by the State taking the property for itself, it may sit entirely outside the compensation guarantee in Article 42(2), which by its terms addresses only acquisition, nationalisation, or requisition carried out by or on behalf of the State. Whether pre-emption should instead be tested against the reasonableness standard implicit in Article 42(1) rather than the compensation standard in 42(2) is the question taken up in the subsequent parts of this research.

6. LEGAL CONCEPTS RELATED TO PRE-EMPTION

The pre-emption statute dates back to Roman law. In a purchase agreement, the Romans utilized their pre-emption right. In the Indian subcontinent, it was initially applied during the reign of the Mughal emperors, whose law had its origins in Islamic law. Constitution has ensured that Bangladeshi citizens have a fundamental right to own property. (1) "Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer, or

[44] *A Rouf Chowdhury v Bangladesh* (2000) 8 BLT (HCD) 277.
[45] *Chairman, Bangladesh Steel Mills Corporation v Md Masood Reza* (1978) 30 DLR (AD) 169.

otherwise dispose of property, and no property shall be compulsorily acquired, nationalized, or requisitioned except with the authority of law." (2) "A law enacted pursuant to paragraph (1) shall provide for the acquisition, nationalization, or requisition with compensation and shall either fix the amount of compensation or specify the principles on which and the manner in which the compensation is to be assessed and paid, but such a law shall not be challenged in court on the basis that any provision regarding such compensation is inadequate."[46] Thus, the sections of the Constitution pertaining to property rights provide citizens with the fundamental right to own, acquire, hold, transfer, or otherwise dispose of property. However, pre-emption right has restricted the application of the constitutional provision. As the constitution is the protector of people's rights and the highest law in Bangladesh, it appears from a comprehensive analysis of the various legal aspects and case laws that the law of pre-emption, in particular Shafi-I-Jar, exceeds the authority granted by Articles 28, 31, and 42 of the Constitution of Bangladesh. Regarding pre-emption, Bangladesh has three legal approaches: one under the Muslim Law and two under two current laws: section 24 of the Non-agricultural Tenancy Act of 1949 and section 96 of the State Acquisition and Tenancy Act of 1950. The pre-emption of non-agricultural land is covered by section 24, whereas agricultural land is covered by section 96. The pre-emption procedure will now be detailed.

6.1 Process of Pre-emption

As previously discussed, there are three sources of the pre-emption right in Bangladesh: a) Muslim law, b) local custom, and c) statutes. State Acquisition and Tenancy Act of 1950, Non-Agricultural Tenancy Act of 1949, Partition Act of 1893, Land Reforms Act of 2023, and Vested Property Return Act of 2001 are the statutory provision dealing with pre-emption.

Muslim Personal Law

In Bangladesh, Muslim law serves as the starting point for pre-emption. It is approved between two Muslims. It does not involve the other faiths. The right can be exercised in the following way of: a) *Shafi-e sharik* or a co-sharer in the property, b) Shafi-e khalit or a participant in immunities and appendages (a person with a right of easement, and c) *Shafi-e khalit* or a participant in immunities and appendages.

Now the right would only accrue if all the required actions are done within procedural time. These actions are sort of ceremonies and are known as the three requirements. Firstly, The

[46] Constitution (n 1).

Original Question (talab-e mowasibat): upon getting the notification regarding the property being sold, pre-emptor must ensure his intention to buy. There is no requirement of witness. Mere verbal expression is enough. But he cannot delay the process apprehending the original price to be lower than the asked one. Secondly, comes Second Demand (talab-e ishhad): Pre-emptor is mandated to submit his second demand as soon as possible. He is required to mention his previous demand in this. The task must be done in presence of the buyer. There must be two witness present and then the pre-emptor would accept him as the pre-emptor, and it is known as *talab-e taqrir*. However, when the pre-emptor is not personally present the second demand is to be made through agent or in letter. And in case of numerous purchasers, each of them is responsible to made demand. There is no requirement to enter into premise for demand. It is enough to reach near the abode and ask for pre-emption by touching walls to be enough for meeting the legal requirements. Thirdly, the third demand is actually an action of law. However, it does not become a must and is known as talab-e tamlik or talab-e khusumat (the demand of possession, or the demand where there is a dispute). The limitation period is one year from the buyer takes possession or the registration date if such property is incorporeal. Complete statement of claim must be presented to the court and the claim must be of the whole property. The position of pre-emptor is replaced with previous purchaser by the court and then possession all the profits of the land go to the pre-emptor.

State Acquisition and Tenancy Act 1950

The time limit to apply in the court is 4 months after getting the notification if it falls within section 89 or within 4 months of knowing about the sell. It is mandatory to make all the co-sharer a party of the application of pre-emption. The applicant must submit the whole value of the property with 10% compensation. If all the particulars are received appropriately then the court will notify the seller and all the other parties regarding the application and to be present at the fixed date. Also, the court evaluates the amount that was actually exchanged and any other particulars that has been paid during such transfer. The transferee is to only receive the money mentioned in the deed. If by two months period, the applicant or applicants fulfil all the requirements then they will be granted the pre-emption. However, one's right to claim pre-emption under Muslim law is not abrogated by the provision of SAT Act.

Partition act 1893

If the co-sharer is from a joint family, then an application can be made to the court regarding pre-emption of the property. If the subject matter is a dwelling house, then in case of a

nonfamily number acquiring the house would result in the pre-emption of the share of non-family member by a family member. The court would instruct regarding the valuation of such share and made such instructions as necessary. If there are multiple family members, then the court would sale to the one who offering a price that is higher to the court's price.

Restoration of Vested Properties Act 2001

Only two classes of people are allowed pre-emption under Restoration of Vested Properties Act of 2001. The first class is comprised of those people who are co-sharer of the property through inheritance. And the second class is comprised of people ii) If no such Co-shareholder exists, the person who has consistently leased the sold property for at least 10 years. If the sold property is agricultural land, the Land Reform Act of 2023 will apply.

Land Reforms Act, 2023

The Act gave the *Bargadar* right to pre-emption over the barga property. The owner of the property is required to notify the *Bargadar* his intention to sell the property. However, he is not obliged to do so if he is selling the property to his family. The *Bargadar* is obliged to express his intention within fifteen days. His intention must be communicated through writing. If *Bargadar* decides to buy the property, then he is entitled to negotiate the price and buy the land as per the price agreed upon between them. If the the owner is not communicated regarding the decision on *Bargadar*'s part within the limited time or if he is not at consent regarding the price of the land, then the owner is entitled sell the land to others. But the land cannot be sold below or the same price as was offered by the *Bargadar*. However, in case of ownership change the Barga contract and all its terms remains valid as before.

6.2 Comparison Between The Statutory Provisions

There are significant contrasts between the statutory provisions of pre-emption. SAT Act deals the pre-emption right of co-tenant and owner of nearby property, whereas co-sharer in a united property of dwelling is the subject matter of Partition Act. A person belonging to united family can exercise pre-emption against a stranger in the property under Partition Act. The intention of SAT act seems to maintain integrity and discouraging further divide of lands. Whereas Partition Act ensures the peaceful enjoyment of dwelling by an undivided family. On the other hand, the application is submitted actively by co-sharer in the court under SAT Act. Whereas it is an obligation of the owner to notify the *Bargadar* regarding Barga property in writing. So, law is made with such intentions to save the right of vulnerable *Bargadar*s in Barga property.

Again, SAT act requires the claimants to submit the money with the application whereas a *Bargadar* is not required to submit the money during his expression of interest. The limitation period is higher for co-sharer tenant under section 96 of SAT Act whereas the *Bargadar* gets only 15 working days to express their interest to buy. Co-sharer through inheritance excludes the right of the others in case of pre-emption but a *Bargadar* loses his right if the property is sold to the family of the owner. Although there is no right to second appeal under SAT Act but a *Bargadar* is entitled with second appeal under LRA. Again, the Restoration of Vested Properties Act of 2001 is applicable for the sale of lands by the governmental authority that has no owners. In this instance the individuals who are enjoying the property by way of rent for 10 years are entitled to pre-empt so. However, if the land in subject matter is an agricultural land then the Land Reform Act of 2023 (hereinafter 'LRA') and its regulations are applicable. The Restoration of Vested Properties Act does not incorporate the procedural rules and the rule is dependent upon other statutes like SAT Act or LRA. So, it is clear that the legal provision varies from each other in a wide range.

6.3 Case Analysis of Pre-Emption Laws

Numerous rulings highlight the unjust and negative characteristics of pre-emption. In *Younusco Textiles Ltd v. Jamuna Knitting 12 BLC 202*, the High Court Division ordered the pre-emptor to relinquish possession of the property to the pre-emptee. According to this ruling, Shafi-I-Jar is illegal, while the appeals court disagrees with the decision.[47] Pre-emption is the right to buy property before to others, depending on proximity. The Constitution of the People's Republic of Bangladesh provides the right to land as a fundamental right under the form of "right to property." In *Haji Tajamal Ali vs. Abdus Sattar 34 DLR (AD) 217*, the pre-emption of all land comprising a single compact block was again upheld. Nonetheless, it looks to be a technique that might cause economic hardship for certain people and violate the equal right to buy property of all neighboring landowners.[48] In *Raji Wahab Ali v. Kadam Ali, 14 DLR 204*, it was decided that infected landowners were required to join co-sharers in a pre-emption lawsuit.[49] Co-sharers were not needed to invite or inform infected landowners of the in-situ pre-emption. Thus, it seems that the present legislation is inconsistent. In addition, it was established in *Abdul Khalek v. Jadav Chandra Mali 20 DLR 562* that pre-emption cannot be invoked inside

[47] *Younusco Textiles Ltd v Jamuna Knitting* 12 BLC 202 (HCD).
[48] *Haji Tajamal Ali vs Abdus Sattar* 34 DLR 217 (AD).
[49] *Raji Wahab Ali vs Kadam Ali* 14 DLR 204.

a municipality.[50] There seems to be bias between rural and urban land. In *Abdul Hashem v. Faridunnesa Bibi et al*., it was established that minor procedural faults are to be dismissed if a party is successful in demonstrating a pre-emption defense; nonetheless, such a notion appears problematic for the maintenance of justice.[51] Therefore, the total pre-emption apparatus seems problematic from numerous aspects. However, choices in India, a nation with a similar socioeconomic base, are dominated by the same challenges. It was found in *Govind Dayal v. Inayatullah (1885), 7 AIR 779*, that "the law of pre-emption was not a component of Muslim personal law." In *Digambar Singh v. Ahmad (1914) PC 14*, it was ruled that "before to the establishment of Moghul Rule in India, the law of pre-emption did not exist."[52] The law of pre-emption was established and made applicable to all communities for the first-time during Moghul rule. The pre-emption law violates Article 19(1)(f) of the Indian Constitution, which safeguards the basic freedom to acquire and dispose of property. According to Article 19(1)(f) of the Indian Constitution, all Indian citizens enjoy the basic right to acquire, own, and dispose of property. In *Bhau Ram v. Baij Nath Singh (1962)*, the Supreme Court found that vicinage pre-emption, which limits the freedom to dispose of land and is not in the public interest, placed an unjustified restriction.[53] In addition, Article 15 of the Indian Constitution prohibits the segregation of society based on caste and religion. Article 42(1) of the Bangladeshi Constitution has a similar clause; hence pre-emption should be found unconstitutional in Bangladesh using the same argument. Under the new section 96 of the SAT Act, a co-tenant of a property obtained via inheritance is the only one eligible to apply; nonetheless, this provision discriminates against co-tenants of holdings acquired through purchase. The Bangladeshi constitution says in Article 42 that limitations must be fair. This violates the requisite. Again, in *Atma Prakash v. State of Haryana (1986)*, it was determined that pre-emption on the basis of consanguinity exceeded its power. The court ruled that the historical arguments for Pre-emption, such as maintaining the integrity of rural culture, the unity of family life, and the agnatic theory of succession, no longer apply.[54] The same holds true for the present socioeconomic climate in Bangladesh. Nonetheless, case law and publications sustain the existing structure. According to the *Hedaya*, Muslims and non-Muslims are on an equal footing in all cases concerning the pre-emption principle since they are equally affected by its

[50] *Abdul Khalek vs Jadav Chandra Mali* 20 DLR 562.
[51] *Govind Dayal (n 7)*.
[52] *Digambar Singh v. Ahmad* (1914) PC 14.
[53] *Bhau Ram v. Baij Nath Singh* (1962) SCR 358 (SC).
[54] *Atma Prakash v. State of Haryana* (1986) SCR 399 (SC).

underlying concepts and concerned with its operation. As a consequence, pre-emption became an acceptable practice among Hindus. Mahmood J. defined pre-emption in the case of *Govind Dayal v. Inaytullah (1885)* as "a right which the owner of certain immovable property possesses, as such, for the quiet enjoyment of that immovable property, to obtain, in substitution for the buyer, proprietary possession of certain other immovable property, not his own, on the same terms under which such latter immovable property is sold to another person."[55] According to *Syed Sayeeduddin Ahmed v. Haji Inunus Mia*, the goal of pre-emption in Islamic law is to avoid the unease that may result from the admission of an unpleasant stranger as a business partner or near neighbor. It is based on the notion of utility and tries to avoid potential discomfort from an unpleasant neighbor.[56] Consequently, it is obvious that the logic of pre-emption is a contentious subject, since there are several texts and case laws both in support of and against the current pre-emption mechanism**.**

7. ANALYSIS OF THE LAWS AND PRECEDENTS

The SAT Act was the first to include such protections, notwithstanding the presence of pre-emption rights in other acts. Because the SAT Act provides explicit, descriptive, and procedural language about pre-emption. In relation to sections 88 and 90, section 96 outlines the pre-emption right. The Bengal Tenancy Act of 1885 first substantially integrated the pre-emption right. The procedure under SAT Act Section 96 resembles a lawsuit. Upon successful application to the court, the party receives all the entitlement regarding the property and such determination by the court is final. But the other statute is unclear about the manner and procedures of pre-emption. The Partition Act recognizes the authority to pre-empt by a co-occupant in a home. The LRA enables *Bargadars* to be able to purchase the land in the event of sell before other buyers. And if the owner is missing then the co-sharer are entitled to apply for pre-emption under the Restoration of Vested Properties Act if it is being sold by the governmental authority. Again, to the person who had leased the sold property for at least 10 years previous to its sale or lease by a government organization with no owner. The previous reasoning leads us to infer that legislation other than the State Acquisition and Tenancy Act provide the pre-emption right solely to particular persons, while the State Acquisition and Tenancy Act gives both the pre-emption right and the procedures for exercising it. This part is

[55] *Govind Dayal (n 7)*.
[56] *Syed Sayeeduddin Ahmed v. Haji Inunus Mia* (1950) 12 DLR 93.

connected to Sections 89 and 90. Part 96 of the SAT Act details the time limit as well as who is eligible and how to apply for this benefit.

Now, in the part that follows, the basic problems with the current procedure will be highlighted.

8. PROBLEMS IDENTIFIED

Upon close inspection certain problems can be found in the existing system. The first problem that can be identified is that pre-emption seems like a mechanism that curtails the owner's convenience regarding selecting buyer.[57] There may be situations in which the owner's relationship with the co-owner or nearby landowner is strained. But he is bound to sell to such owner because of pre-emption. It can be regarded as a psychological coercion on the seller. Secondly, there are scenarios where the co-sharer or adjacent owner files false claim of pre-emption just to make the seller suffer. Furthermore, the provision of asking the *Bargadar* in writing is mostly a formal one. Till date in Bangladesh most of the *Bargadar* are illiterate.[58]In case of Agricultural land under SAT Act, only co-sharer by tenant has pre-emption right. But in NAT Act co-sharer tenant by purchase, co-sharer tenant by succession and adjacent property holder, all have a right to pre-emption. So, there seems to be a discrimination in this regard. So, there are possibilities of misusing the process. Incidents of force denial to purchase from *Bargadar*s' part are very common in Bangladesh. As the landowners are usually politically powerful and affluent persons, they easily disregard the bargardars' consent. Again, the time limit is 2 months for agricultural land but 4 months for non-agricultural land. This also seems discriminatory for the pre-emptor of agricultural land. Furthermore, the 15 days' time limitation for *Bargadar* is not just. Although, the 15 days limit is put excluding the weekly holidays, yet it is only 19 days limit in combined. As *Bargadar*s are generally of peasant class, they might not have the money to buy the property ready. So, taking such a big decision need more time for their part. Moreover, one needs to buy the entire block for pre-emption. But it is an approach that often causes economic hardship for some persons and vitiate equal right to achieve land of all the adjacent landowners. Again, the existing pre-emption mechanism requires the contagious landowners to make the co-sharers party of pre-emption suit. But co-sharers are not required to make the contagious landowners party or to notify them of the in-situ pre-emption. So, the existing system is not ensuring equal rights for all. Most importantly,

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[57] Bhau Ram (n 53).

[58] Mohammad Asadullah and Sanzidur Rahman, 'Farm Productivity and Efficiency in Rural Bangladesh: The Role of Education Revisited' [2006] 41(1) Applied Economics 21.

in *Bhau Ram v. Baij Nath Singh (1962)* case Supreme Court of India has pointed out if pre-emption is still a mechanism that ensures quiet and peaceful enjoyment in the changed socio-economic situation of the country or if it bears more trouble than good.[59] The similar question can be raised in Bangladesh. The fact that pre-emption is not there in certain metropolitan areas is of certain significance here. Because of economic development and societal changes, the difference between village and towns are rapidly decreasing in Bangladesh. Now the Bangladeshi villages are more like small towns.[60] The demands of the people of such villages have changed. The villages are now divided into 2 parts; in one part the people live in their houses and the other part is where there are lands for cultivation. But in *Chittaranjan Saha vs Md Mortaa Mollah and Ors* it was held that in case of village homestead property, the property will be counted as agricultural land.[61] But in metropolitan areas, such properties are excluded from the ambit of pre-emption as non-agricultural property. That's why the existing law that has no such division regarding the current nature of village land is problematic. As a result, the age-old provision of pre-emption is causing more trouble than good in the Bangladeshi society, Now, we shall discuss some ways to make the mechanism better.

9. RECOMMENDATIONS

As pre-emption is an important matter in the day-to-day life of the people of the land, the identified problems must be solved by taking certain measures. One of such measures might be, empowering the seller with the power to select buyer among a list of co-sharers rather than giving all the co-sharer chance to buy the land. It would further prevent any future divisions of land regarding ownership. Again, it would ensure the seller's dignity by not coercing him to sell to a person with whom his relationship is the opposite of friendship. Furthermore, punishment should be introduced for any false claim regarding pre-emption. Such punishment could be of the nature of punitive damages to the seller as well as short term imprisonment. Also, the provision that requires the *Bargadar* the consent in writing must introduce some sort of safeguard to protect the illiterate *Bargadars*. Presence of the government official could be made mandatory in such situations so that it could be ensured that such consent not to pre-empt was given free of any influence. In case of Agricultural land under SAT Act, only co-sharer by

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[59] Bhau Ram (n 53).

[60] Shihab Sarkar, 'The changing face of Bangladesh villages' (*The Financial Express*, 22 February 2018) <https://thefinancialexpress.com.bd/views/the-changing-face-of-bangladesh-villages-1519312249> accessed 26 March 2026.

[61] *Chittaranjan Saha vs Md Mortaa Mollah and Ors* 13 ADC 832.

tenant has pre-emption right but NAT Act enables co-sharer tenant by purchase, co-sharer tenant by succession and adjacent property holder with a right to pre-emption. This discrimination must be removed through empowering other types of co-sharers as well as adjacent tenant giving right to pre-emption for agricultural land. Again, the time limit discrimination between agricultural land pre-emption and non-agricultural land pre-emption must be removed. And the general time limit could be made 4 months for all sorts of land. The time limit regarding the *Bargadar*s' right to pre-emption is also inadequate. Where the SAT Act gives the co-sharer gives 4 months, the LRA gives the *Bargadar*s only 19 days including the holidays. This time should be extended in a reasonable manner and the *Bargadar* and the co-sharers should be brought to equal footing. Moreover, equal instance must be taken regarding making the seller obliged to notify the contagious landowner also regarding pre-emption and such contagious landowner should be awarded equal right to pre-emption so that equity in ensured regarding mutual rights. The law must be amended considering the changed societal reality of the country. Pre-emption right should be further limited only to farmlands and all the other parts of villages must be out of the ambit of this mechanism. Especially village homestead properties should be excluded from the ambit of pre-emption. Again, the legislations related to pre-emption are incorporated in multiple laws. A single law incorporating all the legal provisions related to pre-emption could make the mechanism more efficient by providing the general public, lawyers and judges with a time saving source to look for the law.

10.CONCLUSION

Pre-emption is a concept intended to minimize the division of land to increase productivity and economic development. But the existing system of pre-emption needs revision from the part of legislature as well as judiciary of Bangladesh. It is true that no one approach can be regarded as the approach for any legal development. But it is necessary to provide logical inputs regarding any certain subject matter so that the criticism and learning of the provided input can further the path of some major development. As the society of Bangladesh is rapidly changing the law needs to be changed too following social demand but maintaining the logic and reasonableness to provide justice. We hope that the legislature and judiciary would be able to apprehend the problems identified in this research and would be able to find effective solutions from the pathways presented here. And effective legal reforms would be introduced by them to make the pre-emption mechanism a better and efficient one to lessen the existing burden of cases upon judiciary as well to minimize the suffering of the general public.

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Causes and Remedies of Ragging in Gopalganj Science and Technology University: A Legal Review

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ABSTRACT: This study examines a significant analysis of ragging at Gopalganj Science and Technology University (GSTU) in Bangladesh and attempts to identify the current trend and regulatory mechanism through a qualitative research method. Interviewing the victims of ragging students and rag perpetrators, reviewing relevant laws, government circulars and court guidelines to form anti-ragging squads and committees and anti-bullying committees in Gopalganj science and Technology University countering the ragging culture by providing and recommending the formulation and implementation of timely and effective sample policies to prevent ragging. Through this study, by uncovering the causes of ragging in the Gopalganj Science and Technology University, to give recommendations to eliminate ragging from the institution and to recommend the amendment of the existing disciplinary rules and conduct rules and to form a ragging squad in accordance with the prevailing laws model policies will be formulated. As a result, it will be possible to control social crimes like ragging in Gopalganj Science and Technology University. Furthermore, in the absence of specific laws, victims of ragging do not know how to get redress for this crime. Apart from this, the educational institutions are not able to ensure a fair academic environment for the students as they are not able to take any effective steps or formulate policies to discover and prevent the real causes of ragging crime. In order to overcome all these issues, through this study, identifying the real causes of ragging, giving advice and formulating policies to solve the crime of ragging are recommended in all educational institutions, training institutes, various social organizations

and even other social institutions at the state level, it will also provide special guidance on crime prevention.

KEYWORDS: Ragging, GSTU, Administration, Legal Framework, Constitution, Judicial Decisions.

I. Introduction

Currently, students are being subjected to physical and mental torture in various educational institutions of Bangladesh. And a subculture and tool of this torture is a social disorder called ragging.[1] This ragging has become so rampant that fresher in educational institutions are falling prey to it and becoming mentally depressed. This kind of misculture creates a sense of fear among freshers.[2] Students coming to the university with new dreams and enthusiasm suffer from raging panic. In the name of improving senior-junior relationship, its main objective is to make juniors obedient. According to the rag perpetrators, rag is given in the name of teaching manners. There are reports of conflict between students on these issues. In some cases, ragging happens to attack the opponent for political purposes. As a result, many students become mentally disturbed and many are forced to leave the educational institution. Some were killed like Abrar Fahad,[3] Zubair Ahmed.[4] Sometimes the victim may experience long-lasting reactions like headaches, hypertension, nightmares and anxiety. For which inattention in studies, always have to spend the day in fear. It is not only the victims of ragging who suffer. Rag perpetrators are also subject to temporary or permanent expulsion from the university. As a result, the purpose of admission to the university is no longer fulfilled; rather they often become a burden to the family or society. Since, the incidence of ragging in Gopalganj Science and Technology University has also increased at an alarming rate, academic life of students who are victims of ragging is severely disrupted along with mental impairment. Therefore, through this research, we intend to uncover the causes of ragging in Gopalganj Science and

[1] Aashish Srivastava , Neerav Srivastava and D.K. Srivastava, *Hazing (Ragging) at Universities: A Legal Perspective* (1st edn. Springer, Singapore, 2023).
[2] Abha Yadav, *Ragging: Legal Aspects and Institutional Framework* (1st edn Universal Law Publishing India 2017)
[3] Abrar Fahad (1998–2019) was a second year student of Electrical and Electronic Engineering (EEE) Department at Bangladesh University of Engineering and Technology (BUET).On October 7, 2019, he attended the Sher-e-Bangla Hall of BUET, Dhaka. He was killed in this fatal attack. His death caused a stir in Bangladesh and led to national-level debates and agitations about student politics and violence on university campuses.
[4] Zubair Ahmed was a 37th batch student in the English department at Jahangirnagar University. On January 8, 2012, he was assaulted during a fight on the campus of the university. After being transported to a hospital in Savar and then to a hospital in Dhaka with severe injuries, he passed away on January 9. Protests against over campus violence were spurred by the incident, which created a stir across the nation.

Technology University and to provide recommendations to the university administration to take effective measures to prevent it.

II. Methodology

In this study qualitative and quantitative methods will be followed in this research on the causes and remedies of ragging in Gopalganj Science and Technology University. Data will be collected from students who are victims of ragging and analyzed. After observing the information and data received from the victimized students, decisions will be taken to find out the causes of ragging and find remedies to them.

The following procedure will be followed in determining the final remedy and taking decision. First, observing the implementation of journals, text books, criminal procedure codes, other related applicable laws, various government policies and notifications, prevailing disciplinary rules and code of conduct of Gopalganj Science and Technology University and related statutory laws. Secondly, interviewing the students studying in different years in the university who have been victims of various forms of ragging such as cyber bullying, physical, psychological and sexual abuse and who have been associated in any form with the ragging culture and in particular those who are the actual perpetrators of the crime of ragging. Finally, in GSTU, to find out the cause of ragging and determine the remedy, through field study, interviewing the victimized students, interviewing the ragging perpetrators, interviewing the relevant persons of the university administration in relation to the steps the administration has taken to prevent ragging and this is to verify their success or failure in settlement and redressed of related complaints. In addition, psychologists, criminologists and experts in this field will be interviewed for the prevention of this social crime raging. The final decision of this research will be taken after verifying the information obtained in the above method.

III. Literature Review

Numerous academics have completed significant research articles and projects on the causes and remedies of the atrocities of ragging in educational institutions. Studies consistently show that verbal, psychological, and physical abuse are prevalent elements of ragging, which has a negative impact on victims social, emotional, and academic well-being, according to Alude et al.[5] Allan and Madden noted that ragging are closely connected practices that expose students

[5] Aluede and others,'Bullying Behavior and Psychological Health Among School Students' (2006) Journal of

to negative behaviors, coercion, and humiliation under the pretense of fostering group connection.[6] Similarly, Srivastava et al. found that ragging lowers motivation, increases absenteeism, and decreases classroom involvement, all of which have a detrimental impact on students' academic performance. Because they are afraid of more harassment, victims frequently avoid interacting with classmates and teachers.[7] Hoover[8] says about ragging behaviors include psychological abuse, forced humiliation, and social marginalization in addition to physical violence. Depression, low self-esteem, and symptoms of post-traumatic stress disorder can all be exacerbated by such events. Scholars contend that rather than treating ragging as a disciplinary matter, institutions ought to acknowledge it as a serious public health risk. According to Olweus[9] ragging practices develop when power imbalances go unchecked. Even though the main focus of his work was institutional bullying, many of its theoretical ideas also apply to ragging in higher education, especially when it comes to prevention through institutional regulations and cultural change.

Furthermore, regarding ragging and its cures, Campo, Poulos and Sipple [10] noted that the very cyclical nature of ragging is a recurring subject in ragging studies. It has also been observed that the students who experience extreme humiliation or trauma during their first year often take on the roles of offenders in later years. However, the researchers did not demonstrate the proper way to address such offenses. Ragging frequently functions as a representation of structural power, according to Wickramasinghe et al., study on the phenomenon and its impact on university students.[11] Senior students may employ ragging to impose artificial social hierarchies and project power in highly stratified settings. Maria Cristina Pereira Lima[12] and her fellow think that offering social and psychological support implementing mental health support programs can help put an end to campus ragging, according to study. They also stated

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Instructional Psychology, 33(1). pp.1–8.

[6] Allan and others, 'Hazing in View: College Students at Risk' (2008) National Collaborative for Hazing Research and Prevention, pp.1-52.

[7] Srivastava and others, 'Psychological effects of ragging among students in higher educational institutions'(2016) Industrial Psychiatry Journal, 25(2) pp.147–153.

[8] Hoover, N. C, National survey: Initiation rites and athletics for NCAA sports teams, Alfred University, 1999, pp.8-19.

[9] Olweus, D, *Bullying at school: What we know and what we can do*, Malden, MA: Blackwell Publishing, 1993, pp-6-7.

[10] Campo and others, 'Prevalence and profiling: Hazing among college students and points of intervention' (2005), American Journal of Health Behavior, 29 (2), 137–149.

[11] Wickramasinghe and others, 'Ragging as an expression of power in a deeply divided society; a qualitative study on students perceptions on the phenomenon of ragging at a Sri Lankan university' (2022) Journal of Plos One, 17(7) pp.1-3.

[12] Lima and others, 'Hazing and the mental health of medical students' (2018) Journal of Revista Brasileira de Educação Médica, 42(3), pp.110-120.

that free psychological counseling and other forms of academic and social support should be made available to students who are affected by ragging.

There is still little but increasing empirical research on this subject. In a mixed-methods study conducted at Mawlana Bhashani Science and Technology University, Rahman and Sadik[13]polled 75 students from 15 departments and discovered that 52% had not been subjected to ragging. Of those who were subjected to ragging, 37% reported both verbal and physical abuse, 6% reported only physical harassment, and 57% reported only verbal mocking. This data point is helpful for establishing baseline prevalence estimates in our review, but we should be aware that the single-institution scope and small sample size limit the scope of generalization, which is a typical issue in this research.

Overall, prior research shows that ragging has detrimental social, intellectual, and psychological effects. Comparatively few studies have looked at the efficacy of institutional treatments and anti-ragging awareness initiatives in various cultural contexts, despite the fact that numerous studies have demonstrated its detrimental impacts. Thus, further study is required to assess preventive measures and pinpoint best practices for establishing inclusive and safe higher education settings.

IV. Existing Legal Framework for Addressing Ragging Culture

In the lack of explicit legal remedies, victims of the pervasive ragging culture in the education sector are unsure of who to turn to for redress.[14] Although Bangladesh has never made an effort to create anti-ragging legislation, the time has come to make such heinous activities illegal.[15] Even the accused does not know that such incidents have elements of criminal offense attached to them. The law does not mention the punishment or remedy for ragging separately. Since there is no specific law, the University investigates specific complaints through the proctorial body[16] or through the Inquiry Committee and results in temporary or permanent expulsion through the Disciplinary Committee.[17]

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[13] Mushfiqur Rahman & Nasif Sadik, 'Nature, Causes, and Consequences of Ragging at the Universities in Bangladesh: An Empirical Study, (2024) Journal of Scientific Reports,6 (1) pp.23-35.

[14] Naman Mohnot, *Law Relating to Ragging (2020th edn* Thomson Reuters India 2020) 20.

[15] Mohsena Akter Drishty, 'Bangladesh should introduce anti-ragging laws' The Daily Observer (2 November, 2019) Available at: https://www.observerbd.com/news.php?id=226098[Accessed 05 April 2026].

[16] Section 2(o) of the Gopalganj Science and Technology University Act 2001 (Act No. 36 of 2001) defines proctor as the university's proctor. Additionally, every teacher coordinator on the aforementioned team is regarded as a proctorial body.

[17] The University's disciplinary authorities are designated by the University's Board of Regents and may punish any student or group that violates University law as they deem appropriate.

The High Court division declared in 2020[18] that students who commit major offenses in any of the country's educational institutions may face criminal charges, despite the fact that Bangladesh has never attempted to pass anti-ragging laws. Despite the HCD declaration, the government was unable to amend the penal code to make ragging a crime. However, it can monitor ragging in Bangladesh and manage ragging cases under specific provisions of the Penal Code[19] in order to secure justice in this regard. Besides, university authorities or guardians can file a case under various sections including: abetment to ragging[20], criminal conspiracy to ragging[21], unlawful assembly to constitute ragging[22], obscene acts and songs[23], and bodily injury: Penalties for culpable homicide that does not qualify as murder[24]. Sexual offenses such as assault[25] or employing criminal force against a woman with the intention of offending her modesty, as well as ragging, assault, and illegal restraint[26] and confinement[27] of the victim. Extortion, criminal trespass[28], criminal intimidation[29], punsishment for criminal intimidation, words, gestures[30], or acts that amounted to degrading a woman's modesty, and violations of decency and morals by ragging under the Pornographic Control Act, 2012.[31] Remedies can also be found under the Information communication and Technology Act, 2006[32] for cyber bullying etc. in specific cases. Additionally, women and children victims of sexual harassment, assault and psychological abuse may claim compensation under the provisions of the Women and Children Repression Prevention Act of 2000.[33]

The first real initiation to stop ragging was taken in 2020 by the HCD to which witnessed a series of violent incidents of campus ragging. Guidelines on ragging were given following the writ filed on the event of the death of BUET student Abrar Fahad. [34] In this case squad will be formed to take advance measures to prevent ragging. And the committee will be formed to receive the complaints. Again, the Ministry of Education of the Government of the People's

[18] Abrar Fahad Case , Writ petition Nos. 14068/2019.
[19] The Penal Code, 1860 (Act no.XLV of 1860_
[20] Section 109 of the Penal Code, 1860
[21] Ibid, Section 120B.
[22] Ibid, Section 143.
[23] Ibid, Section 290.
[24] Ibid, Section 294.
[25] Ibid, Section 352.
[26] Ibid, Section 341.
[27] Ibid, Section 342.
[28] Ibid, Section 447.
[29] Ibid, Section 503.
[30] Ibid, Section 509.
[31] Act No. 9 of 2012.
[32] Act No. 39 of 2006.
[33] Act No. 8 of 2000.
[34] Writ petition Nos. 14068/2019.

Republic of Bangladesh issued a notification in 2023[35] with the aim of preventing, remedying and ending social crimes like bullying and ragging in educational institutions and instructed to form anti-bullying committees in every educational institution.

V. Constitutional Responsibility and Judicial Decision to Prevent the Ragging Crime

Although the Constitution does not specifically mention "ragging," courts and legislators regard a number of fundamental rights as expressly forbidding such activity, so preventing ragging in Bangladesh can be firmly based on constitutional protections.

The Constitution, which is the ultimate law of the land, is violated by ragging. Although free and mandatory education is stated in Article 17 of the Constitution, some children are unable to complete their education because of ragging.[36] Once more, Article 19 guarantees equality of opportunity; nonetheless, some students are forced to quit schools because of harassment, depriving them of their access to an education.[37] Additionally, Article 32 guarantees the preservation of the right to life and personal liberty, both of which are completely infringed by the act of ragging.[38]

However, if this right is violated by ragging, a remedy may be sought in Court. In addition, Article 31 guarantees everyone the right to equal protection under the law. However, in the event that a crime such as ragging results in the loss of one's life, liberty, or body, remedies are possible in court. Article 35(5) of Bangladesh Constitution preventing torture and inhuman treatment of severe ragging, such as physical abuse, humiliation, or coerced acts, may be considered inhumane or degrading treatment, which is considered as prohibited. It should be noted that junior, minority, or underprivileged students are frequently subjected to discrimination on the grounds of religion, caste, or color. Article 28 of the Constitution provides remedies for victims of ragging based on sex or place of birth. Treating every student equally is crucial in any educational institution. Ragging is always a possibility, especially for new pupils. In every educational institution it is important to treat all students equally. Especially fresh students are always under the risk of ragging. Additionally, by outlawing discrimination

[35] "Policy on Prevention of Bullying and Ragging in Educational Institutions-2023" issued by the Ministry of Education of the Government of the People's Republic of Bangladesh, dated 02 May 3023 (Number-37.00.0000.072.044.007.22.103).
[36] Article 17 of the Constitution of the People's Republic of Bangladesh, 1972.
[37] Article 19 of the Constitution of the People's Republic of Bangladesh, 1972.
[38] Article 32 of the Constitution of the People's Republic of Bangladesh, 1972.

against anyone, Article 27 of the Constitution ensures that everyone has the right to equal protection under the law.

Various judgments of the High Court have held that ragging is a violation of fundamental rights. By classifying ragging as a violation of fundamental rights and treating it as a criminal and constitutional issue, the High Court Division of the Supreme Court of Bangladesh has strengthened constitutional protection and made preventive measures (such as the 2023 anti-ragging policy) effectively enforceable. The High Court has mandated that anti-ragging committees be established at all colleges and universities across Bangladesh in order to prevent ragging and put the Ministry of Education's anti-ragging policies into effect. Concerned about instances of ragging in higher education, the HCD of Bangladesh has stated that it must be completely eradicated. Phulpari Khatun of Islamic University, Riyad Hossain of Haji Danesh Science and Technology University, and Siam of Begum Rokeya University are just a few of the dramatic violent incidents of campus ragging that have occurred recently. The High Court Division decided to take effective measures to stop such inhuman torture. Following the writ petition Nos. 14068/2019 filed in response to the death of BUET student Abrar Fahad, guidelines on ragging were issued. In this ruling, the Supreme Court ordered all colleges and institutions (under universities) to implement strict anti-ragging policies. As a result, all educational establishments, including colleges and universities, must adhere to the following policies or guidelines in order to safeguard against and stop actions carried out in the name of ragging:

1. Educational institutions are prohibited from permitting students to take part in any undesirable activity, including ragging-related events, meetings, or performances.
2. To keep an eye out for situations that might occur under the guise of ragging, every educational institution, including the university authorities, should create a "Vigilance Committee."
3. All educational institutions' authorities are required to disclose the penalties for engaging in ragging, especially at the main and conspicuous locations of the organization.
4. Posters warning students about the repercussions of engaging in ragging must be displayed on the websites of the relevant institutions.
5. Before the start of the new term, the students and their parents may be asked to sign an undertaking stating that any student discovered engaging in ragging will face consequences.

6. Regardless of the term "ragging" or any other term used, the authorities should take strict action under the university's disciplinary ordinance, such as permanently expelling the offenders, as well as legal action against the perpetrators when an incident involving elements of criminal offenses occurs.

It can also be mentioned that the Prevention of Bullying and Ragging Policy-2023 has been proclaimed a statute by the High Court. In order to stop bullying and ragging in schools, the High Court has issued 17 directives.[39] The Bullying and Ragging Prevention Policy in Educational Institutions-2023 has been declared as a law made by the appropriate authorities for the better future of the students, according to the court, until it is issued as a law by the appropriate authorities.

VI. Procedures for Filing and Redresses of Bullying and Ragging Complaints

The victim will file an application to the institution's head in accordance with the terms of the Policy on Prevention of Bullying, Ragging in Educational Institutions 2023.[40] The organization's head will establish an anti-ragging committee or any other group to look into any ragging-related complaints.[41] In this instance, the investigating officer has a maximum of seven days to provide the investigation report to the institution's head.[42] Following receipt of the investigation report, the organization's head will either present it to the management committee or take the right action by presenting it to the relevant authorities.[43] It is mentioned that the institution's head may forward it to the relevant police station.[44] Sections 354, 503, 504, and 509 of the Penal Code state that a lawsuit must be filed within seven working days of the head of the institution receiving the committee's investigation report on preventing bullying and ragging.

However, the relevant authority will release the head of the educational institution from his obligations if he does not fulfill the aforementioned responsibilities.[45]

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[39] All educational institutions must adhere to the Bullying or Ragging Prevention Policy 2023, according to a High Court Division bench made up of Justices JBM Hasan and Razik Al Jalil.
[40] The provisions of the Policy on Prevention of Bullying, Ragging in Educational Institutions 2023 Section 8(1)
[41] Ibid, Section 8(2).
[42] Ibid, Section 8(3).
[43] Ibid, Section 8(4).
[44] Ibid, Section 8(5).
[45] Honorable High Court declared Bullying and Ragging Prevention Policy as law, Views Bangladesh, 8 September 2025,
See also https://viewsbangladesh.com/hc-declared-bullying-and-ragging-prevention-policy-as-law/ Accessed 12 April 2026.

VII. Causes of Ragging in Gopalganj Science and Technology University

Ragging is caused by a number of factors. The majority of them has been identified by the researcher and is mentioned here:

Juniors are at risk because they rely on seniors for a lot of things. Sometimes first-year students are unsure if ragging is treatable. They have no idea how to report ragging. For fear of being called cowards and isolated, some people choose not to report ragging.[46] They will be barred from any campus events organized by the students if they do this.[47] Senior students who are involved in ragging have political clout. Victims are afraid of being complained about. They are afraid of greater suffering, therefore they don't complain. Students have cited a variety of motivations for ragging, such as being teased by seniors, feeling superior, and using it as an introduction.[48] Many other physical, behavioral, emotional, and social issues have been linked to victims of ragging. It raises the risk of suicide on its own.[49] According to this study, under-reporting and inaction are two of the main factors that promote ragging. Another type involves political emasculation, such as the death of Abrar, a BUET student. The following could be other factors contributing to the widespread occurrence of ragging in GSTU:

Seniors play a crucial role in the early stages of admission by assisting and directing new commerce for a variety of things when institutional mechanisms are lacking or inefficient. A common misperception among senior students is that ragging is a fashion statement that would make them stand out among their university's influential crowed. Senior students believe that by ragging juniors, they can control and dominate them. They do this or believe this way because they have experienced ragging themselves, which motivates them to inflict ragging on their juniors.

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[46] Ayanthi Wickramasinghe and others, 'Ragging, a Form of University Violence in Sri Lanka—Prevalence, Self Perceived Health Consequences, Help-Seeking Behavior and Associated Factors' (2022) 19 International Journal of Environmental Research and Public Health 8383.

[47] Ayanthi Wickramasinghe and others, 'Ragging as an Expression of Power in a Deeply Divided Society; a Qualitative Study on Students Perceptions on the Phenomenon of Ragging at a Sri Lankan University' (2022) 17 Journal of Plos One 17.

[48] R. Garg, 'Ragging: A Public Health Problem in India' (2009) Indian Journal of Medical Science 63: 263-271.

[49] Samson Nallapu, 'Students Perceptions and Feedback on Ragging in a South Indian Medical College' (2013) South-East Asian Journal of Medical Education, Volume 7, No-2: 33-39.

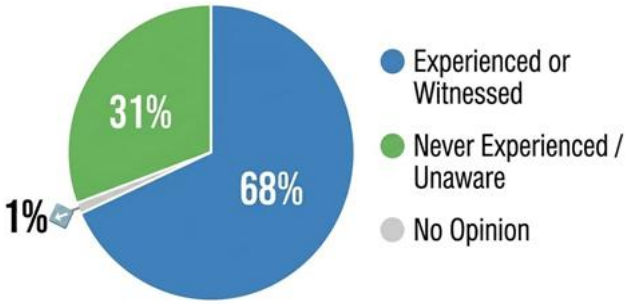
It should be mentioned that the university administration typically does not provide enough remedies for students who are the victims of ragging. Again, despite the administration's best efforts, it is challenging to prosecute ragging due to numerous political influences. The non-application of GSTU's ragging regulations has made the extent of ragging in this institution apparent.

VIII. Data Analysis

Through the use of interview questions, the opinions of over five hundred students from various departments at Gopalganj Science and Technology University were obtained. Only the opinions of the office of student welfare and guidance, the university proctors, and the provosts of the residence halls for men and women have been accepted. A table of information and data on the topic of ragging has been created based on the responses that were received.

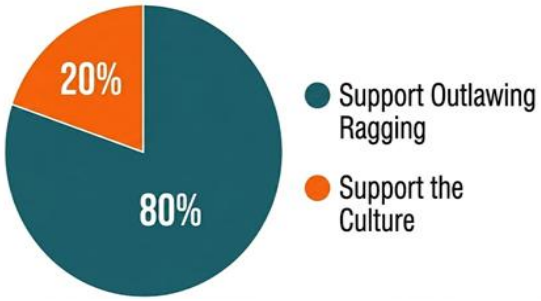
The information gathered from the interview questions is analyzed as follows:

Figure 1: Victims of Ragging or Witnesses of Ragging Incidents



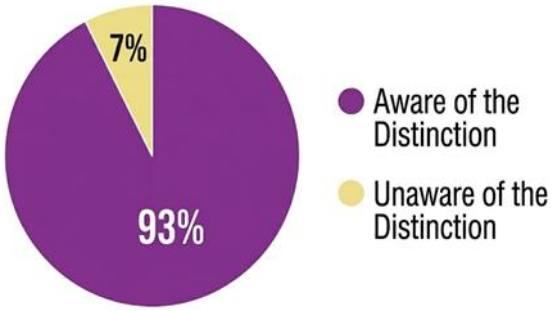
According to the aforementioned figure number 1, Gopalganj Science and Technology University's students are asked if they have experienced ragging themselves or if they have seen or heard of any instances of ragging occurring there. 68% percent of those surveyed had either experienced or witnessed ragging occurring within their university. However, 31% of the respondents said they had never experienced ragging or were unaware of any ragging-related incidents. Additionally, 1% of those surveyed had no opinion.

Figure 2: About putting an end to the ragging culture



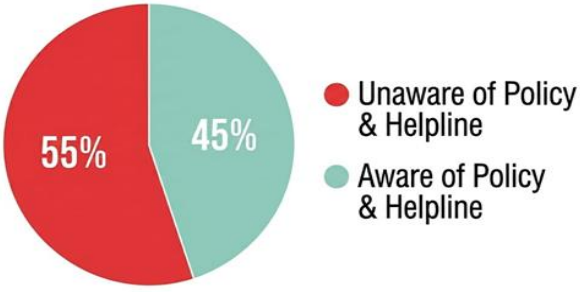
This figure displays the respondents' attitudes and desire to outlaw ragging because it is a serious crime. Additionally, they have emphasized their position on this subculture known as ragging. 80% percent of those surveyed supported outlawing the culture of ragging. 20% percent of the respondents, however, stated that they supported this culture.

Figure 3: Concerning the distinction between ragging and friendly behavior



This figure displays the respondent's awareness of the behavioral distinctions between ragging and friendly behavior. According to 93% of the respondents, they are aware of the distinction between friendly and ragging behavior. Conversely, 7% of the participants stated that they were unaware of any variation in the behavior in question.

Figure 4: About the GSTU Helpline and Anti-Ragging Policy



This figure shows whether or not university students are aware of the university's anti-ragging policy and anti-ragging support line.

45% percent of the respondents said they were aware of the university's anti-ragging policy and the assistance line number. Conversely, 55% of the participants stated that they were unaware of the GSTU anti-ragging policy and the helpline number.

IX. Recommendations

Examining the survey data, it is possible to draw the conclusion that ragging is a serious issue in GSTU that calls for robust legislation, cultural change, and consistent enforcement—not just catchphrases. When combined, the following practical, GSTU-appropriate recommendations work well:

1. GSTU needs to have a defined anti-ragging policy that complies with Supreme Court and UGC regulations. Clearly state what constitutes physical, verbal, psychological, and online ragging. Declare severe penalties (suspension, expulsion, hostel cancellation) in public. Enforce regulations without regard to senior students or politics.

2. The university administration must establish an efficient and proactive anti-ragging committee made up of teachers, psychologists, counselors, physicians, student representatives, freshers, proctorial team members, and hall provost team members in order to eradicate ragging from the university. Regularly, the common room inside the hall will subjected to surprise visits at different locations on campus to raise awareness among students about the need to prevent crimes related to ragging and to issue notifications and awareness campaigns.

3. To stop ragging crimes, service should be provided around-the-clock. It is necessary to set up a dedicated email address, a compliance hotline number, and the compliant forms on the university website. There are several public spaces and significant locations within the university where suggestion and complaint boxes can be placed. Additionally, in accordance with current regulations and standards, the university administration must guarantee students that incidents such as ragging would be rectified within 24 to 48 hours.

4. An institutional orientation program or phase can be held to change the ragging culture. Where the faculty will lead the initiative of the university to introduce seniors to juniors and mutual respect will be the basis for this, love and respect and no discrimination or abuse.

5. Ragging occurs in student residential halls at a comparatively high incidence.[50] Because of this university administration should increase the number of hostel guards, especially at night. Install security cameras in public spaces instead of private ones. Maintain current visitor records and forbid unapproved gatherings.

6. Every semester, an anti-raging workshop will be held. How to treat ragging, additionally, pupils can be made aware of where they should report. If a student is the victim of ragging, it can be prevented by giving them the right information about how to seek compensation and redress.

7. According to scholars, ragging is a criminal issue with psychological underpinnings and societal ignorance.[51] The psychological effects of ragging and other forms of abuse can be addressed by establishing strong mental health support systems within institutions.[52] Assist victims with counseling. Train teachers to spot symptoms of trauma or terror in their students. Encourage fresher students to join peer support groups.

8. Strictly prohibit intimidation of students and political influence in hall. Keep coercive power structures apart from acceptable student activities. Regardless of political affiliation, apply the rules equitably.

9. Make a particular anti-ragging statute that defines physical, psychological, and cyber-ragging, imposes harsh penalties, and supports the execution of the 2023 Policy. The 2023 Policy for the Prevention of Bullying and Ragging in Educational Institutions exists, but its application varies. The authorities should make better use of the Cyber Security Act, the Women and Children Repression Prevention Act of 2000, and the Penal Code of 1860. Additionally, according to UGC Policy 2023, ragging can be avoided by appropriately carrying out the High Court's orders as well as the pertinent Gopalganj Science and Technology university's disciplines and conduct regulations.

10. Inform guardians about anti-ragging rules during admission. Notify guardians immediately in serious cases. Share emergency contacts and reporting channels with families.

Establishing laws and policies alone won't be enough to end the wicked practice of bullying and ragging in higher education. Preventive measures recommended by the Hon'ble Supreme

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[50] Gunatilaka, Hemamalie, 'Ragging; Its Evaluation and Effects: A Literature Review with a Special Reference to Sri Lanka'(2019) International Journal of Research and Innovation in Social Science, Volume III, Issue X, pp.92-99.

[51] Nallapu.SSR, 'Student perception and feedback on Ragging in a South Indian Medical College' (2013) South East Asian Journal of Medical College.Vol.7 no.2, pp. 33-39.

[52] Aayush P and others,(2026)'Anti-Ragging: A Veil for Institutional Crime' Indian Journal of Law and Legal Research, Volume VIII, Issue II, pp.1257-1274.

Court in a number of cases, as well as guidelines issued through UGC regulations, must be implemented appropriately. Anti-ragging committees, squads, and patrols can be crucial in reducing the prevalence of ragging.[53] Ragging should also result in severe consequences, such as expulsion or suspension from the university, college, or classes, a fine, a public apology, denial of scholarships or other benefits, or suspension from the meal and hostel, among other things.

It should be noted that all the activities and methods adopted by the university administration to prevent ragging have proved to be not very effective methods. Ragging has evolved from common human practices to cruel, vicious, and inhumane ones in recent years, mostly as a result of inadequate supervision and instruction.[54]

As a result of which, the level of ragging in Gopalganj Science and Technology University has taken a terrible shape. Even though the university authorities have seriously considered the matter, anti-ragging squads and anti-bullying committees have not yet been formed due to lack of timely policy in some cases, preventing ragging is failing. Consequently, the safe academic life of students in Gopalganj Science and Technology University is being disrupted. Gopalganj Science and Technology University has disciplinary rules and code of conduct to ensure academic and administrative discipline of the institution, but it is very important to revise these rules and code of conduct in a timely manner.

Due to the widespread prevalence of the phenomena and its strong psychological, sociological, and political roots in the academic system, a simply punitive or legalistic strategy to addressing ragging will not be successful. In order to make a difference on the ground without politicizing the subject, further measures must be conceived and put into action. Strong regulatory measures established by university authorities and effective enforcement of the law are crucial.[55]

X. Conclusion

The study essentially highlights the complex issues related to the application and upholding of anti-ragging legislation in Gopalganj Science and Technology University. Even while these

[53] VG Shinde, 'The Menace of Ragging in Educational Institutes: A Human Right Perspective,(2017) International Journal of Advanced Research and Development 2, no. 6, 664-667.
[54] Ayesha Wajhat, 'Harassment due to ragging' (2014) Journal of Procedia Social and Behavioral Science, 113, pp. 129-133.
[55] Siri Gamage, 'Psychological Sociological and Political Dimensions of Ragging in Srilankan Universities'(2017) Journal of Social Affairs, 1(7), pp. 41-42.

policies have good intentions, there are often times when they are abused or misused, leading to unjust disciplinary procedures against innocent students, false charges, and retaliatory reporting. This misuse affects GSTU students' mental health and academic performance by fostering a culture of fear and mistrust among them and undermining the efficacy of anti-ragging measures.

Therefore, significant reforms and social interventions are urgently needed to address the systemic injustices that are sustained by ragging and the abuse of anti-ragging legislation. Important first efforts include increasing awareness of the appropriate application of anti-ragging laws, strengthening enforcement mechanisms, providing victim support services, and fostering an inclusive and respectful culture within Gopalganj Science and Technology University. Finding a balance between protecting the rights of people who have been wrongfully charged and helping harassed people is crucial. This necessitates resources for sides as well as clear reporting and investigative protocols. Cooperation among stakeholders, including university administrators, teachers, students, and lawmakers, is essential to ensuring the safety and rights of every GSTU students in educational settings.

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Human Rights Institutions under Scrutiny: A Comparative Study of Bangladesh and India

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ABSTRACT: The NHRIs are organizations formed in order to safeguard the human rights through ensuring that states adhere to international human rights standards. Most of these NHRIs have been accused of being ineffective, thus creating a major contradiction of the global human rights system. This problem has been identified mainly in developing nations grappling with political and economic difficulties. BNHRC stands out in terms of such an example. As such, this research will conduct a comparative analysis between the BNHRC and Indian NHRC in order to assess the effectiveness of BNHRC in tackling human rights violations in relation to their legal structures and institutional capabilities. This qualitative research makes use of both primary and secondary data from laws, legislations, ordinances, and policies. Being ex-British colonies with the common law system, Bangladesh adopted pre-1971 laws through the Law of Continuance Enforcement Order, as in India's legal continuity. Comparable socio-economic settings also support the analogy. Results show India's superiority in the mechanisms, with a specific Human Rights Court and prosecutors, an appointment process less influenced by the government, and strong operational procedures and shortcomings in the Bangladesh commission. The BNHRC does not have specialized judiciary, neutral appointment processes, or operational rules. Suggestions include legislative changes, such as improvements in rule-making, along with the Commission's active efforts to overcome challenges. Cooperation with the government is encouraged to create an enabling environment for the independent promotion and protection of rights of Bangladeshi citizens.

KEYWORDS: Human Hights Commission, Human Rights Institution, Comparison, Paris Principles.

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1. Background of Research

The National Human Rights Institutions (NHRIs) are rather new institutions that have been set up in order to promote and uphold human rights by ensuring collaboration between the government, civil society, and non-governmental organizations (NGOs). The NHRI can be defined as a quasi-judicial institution that is set up via constitutional or legislative means for the purpose of protecting human rights. The States have the liberty of choosing the institutional structure that is suitable for their legal/administrative system. The National Human Rights Institution could therefore be a range of institutions like ombudsman institutions, national human rights commission, hybrid commissions, and human rights institutes/research centers.[1] The human rights revolution began after the Second World War and still continues,[2] marked by the adoption of numerous international treaties[3] and national constitutional recognition concerning upholding of human rights and civil rights in all human endeavors across public and private domains.[4] Eventually, National Human Rights Institutions (NHRI) evolved in the 1970s.[5] The coming into being of new democracies in Eastern Europe after the fall of communist rule in the later part of the 1980s led to a rapid process of creation of the National Human Rights Institutions. Several models of institutions were used by countries in this era, among which were civil rights commissioner, human rights institute or center, human rights commission, legislative advocate, public defender or protector, and civil rights protector.[6]

The United Nations has persistently urged states to create NHRIs and define these institutions as independent and non-judicial bodies created by states through their constitutional and statutory powers for promoting and protecting human rights.[7] The United Nations organized a meeting in Paris in 1991 to develop the Paris Principles that provided

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[1] Dunja Mijatović, 'Paris Principles at 25: Strong National Human Rights Institutions Needed More Than (The Council of Europe,18 December 2018) <https://www.coe.int/en/web/commissioner/-/paris-principles-at-25-strong-national-human-rights-institutions-needed-more-than-ever>accessed 15 January 2026.
[2] Aharon Barak, The Judge in a Democracy (2008).
[3] H. J. Steiner, R. Goodman & P. Alston, "International Human Rights in Context: Law. Politics, Morals" (3rd edn. Oxford University Press 2008).
[4] ibid
[5] ibid
[6] ibid
[7] Office of the UN High Commissioner for Human Rights (OHCHR), National Human Rights Institutions, History, Principles, Roles and Responsibilities, 13 (2010).

guidelines for the formation of the structures and functions of National Human Rights Institutions (NHRIs). The principles have since been adopted by the United Nations General Assembly in 1993. Since then, there has been an increase in the number of NHRIs from very few to well over 120 institutions all over the world.[8] However, based on state, civil society, members, and employees the perseverance of effectiveness and independence of NHRIs vary across countries. It is essential to comprehend the variation due to rise of NHRIs. Few NHRIs, for instance, are financially and administratively independent contradicting the criteria of independence. To ensure the effectiveness of NHRI, providing room for robust national institutions might enhance regional rights protection. The NHRC was founded in Bangladesh in 2009 under The National Human Rights Commission Act of 2009 as independent statutory organization. Mandated to examine human rights infractions and eliminate legal discrimination, NHRC is intended to be a state-funded yet independent agency. However, in practice its roles extend to fact-finding, writing a report, and wait for official investigations for further action or conclusion.

In order to identify the merits and demerits of the National Human Rights Commission of Bangladesh, it is proposed in this paper that a comparison of the National Human Rights Commission of India be made using jurisprudence and statute. The choice of India is made due to several reasons, such as the fact that both the states have a similar history being former colonies of British Empire, common law system, legal continuity in the pre-independence period and similarity between their constitutional provisions. India and Bangladesh not only have fundamental rights that are justifiable but also have state policies which cannot be enforced by law. Furthermore, both states follow the concept of dualism in international law whereby international treaties and conventions should be enacted domestically in order to become part of the law of the land. In the context of similarities existing between the states, the Indian Commission offers more extensive practice and jurisprudence in the spheres of independence, investigation authority, victim centered remedies and cooperation with the government officials.

2. Statement of the Problem

[8] Linda C. Reif, "The Ombudsman, Good Governance, and the International Human Rights System" (Springer Science and Business Media Dordrecht 2004).

Under international law, especially the Paris Principles (1993), established by the UN General Assembly Resolution 48/134, it is stipulated that NHRIs should function independently, in a pluralistic way, and effectively. While there exists an established international human rights regime, many NHRIs in developing countries still encounter numerous difficulties in implementing their mandates into practical human rights protection. Such difficulties are especially pronounced in South Asia. As a dualist country and a state-party to both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), Bangladesh must incorporate international human rights norms into its national laws. In spite of the fact that the Bangladesh National Human Rights Commission (BNHRC) has been established through the National Human Rights Commission Act, 2009, its efficiency has been undermined by the government's control over the appointments process, lack of specialized Human Rights Courts, delayed implementation of rules for its implementation, and weak enforcement mechanism. Such shortcomings pose an inherent challenge of whether the BNHRC meets its international human rights obligations. Instead, India, having a similar legal tradition of colonial rule, a nearly similar constitutional structure, and a similar socio-economic environment, has another example in the Protection of Human Rights Act of 1993, which contains Human Rights Courts, a more balanced committee for selecting members, and effective procedural rules. Thus, the question is not whether the legal and institutional structure of the BNHRC is sufficient enough to comply with international norms, but which exact reforms should be introduced to make it so.

3. Research Gap

There is considerable work written about NHRIs and the Paris Principles, but there have been very few researches conducted which make an analytical comparison between the legal framework and effectiveness of BNHRC and INHRC due to their shared history of colonization and similar legal tradition. This research would explore the issues related to appointment process of BNHRC, rulemaking delays, non-enforcement of laws, and lack of Human Rights Courts in undermining its autonomy.

4. Evolution of the National Human Rights Institution

In 1946, the United Nations Economic and Social Council (ECOSOC) requested that its Member States think about the possibility of setting up national human rights mechanisms which would be able to assist the activities of the Commission on Human Rights.[9] The UN Economic and Social Council (ECOSOC), in its Resolution of 1960, recognized the potential contribution that national bodies can make in the field of human rights protection and promotion, and encouraged the member states to set up such organizations[10] including supports that NHRIs will offer in implementation of international human rights standards.[11]

During September 1978, a meeting was held in Geneva under the auspices of the United Nations' Commission on Human Rights, which established a set of guidelines that defined the functions and duties of the NHRI[12] which was later approved by Commission on Human Rights and the United Nations General Assembly.[13] In early 1980s, after U.N. Secretary General submitted several papers regarding the issue to U.N. General Assembly, the United Nations became involved in the process of establishment of NHRIs.[14] All these activities culminated in 1990 with the holding of a workshop by the Commission on Human Rights where representatives of national and regional human rights institutions participated in order to strengthen the NHRI framework[15] having goal to study the collaboration between national and international institutions and identify ways to improve efficiency NHRIs leading the outcomes as the "Paris Principles" in 1991.[16] These principles set standards in formation of NHRIs in general and the norms and principles for their efficient operation.[17]

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[9] Office of the High Commissioner for Human Rights, 'Fact Sheet No. 19: National Institutions for the Promotion and Protection of Human Rights (Archive)' (1993) < https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-19-national-institutions-promotion-and-protection-human> accessed 20 January 2026.
[10] ibid
[11] ibid
[12] ibid
[13] ibid
[14] C. Raj Kumar, 'National Human Rights Institutions: Good Governance Perspectives on Institutionalization of Human Rights' Vol 19 Issue 2 American University International Law Review (2003) pp 259-300. <https://digitalcommons.wcl.american.edu/auilr/vol19/iss2/2/> accessed 20 January 2026.
[15] n 9
[16] OHCHR, 'Paris Principles: 20 Years Guiding the Work of National Human Rights Institutions' (30 May 2013) <https://www.ohchr.org/en/stories/2013/05/paris-principles-20-years-guiding-work-national-human-rights-institutions> accessed 2 February 2026.
[17] Katerina Linos and Tom Pegram, 'Architects of Their own Making: National Human Rights Institutions and the United Nations' (2016) Human Rights Quarterly Vol. 38 No. 4, The Johns Hopkins University Press, pp. 1109-1134 <https://www.jstor.org/stable/44488961> accessed 3 February 2026

In 1993, the Vienna Declaration and Programme of Action[18] reaffirmed the significant role of NHRIs in promoting and preserving human rights through awareness and education.[19] The UN has been eager to build a regional human rights framework[20] in the East Asia[21] similar to the Council of Europe, the Organization of American States, and the Organization of African Unity but the Association of Southeast Asian Nations and the Asia Pacific Economic Cooperation were neither united nor enthusiastic. The Southeast Asia[22] showed dissent due to concerns over "Asian values" argument[23] and hesitation about compromising national sovereignty.[24]

5. Research Objectives

Three guiding objectives of this study-

I. To analyze the institutional and legal basis of the Bangladesh National Human Rights Commission in terms of the Paris Principles and international human rights law.
II. To compare the institutional composition, mandate, and activities of the Bangladesh National Human Rights Commission and the Indian National Human Rights Commission.
III. To evaluate the institutional and legal weaknesses of the Bangladesh National Human Rights Commission and suggest ways to improve its independence and effectiveness through legislation.

6. Research Methodology

[18] OHCHR, 'Vienna Declaration and Programme of Action' (25 June 1993) <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action> accessed 3 February 2026
[19] n 14
[20] Daniel A. Bell, 'The East Asian Challenge to Human Rights: Reflections on an East West Dialogue' (1996) Vol. 18, No. 3, The Johns Hopkins University Press pp. 641-667 <https://www.jstor.org/stable/762475> accessed 4 February 2026
[21] Li-ann Thio, 'Implementing Human Rights in ASEAN Countries: "Promises to keep and miles to go before I sleep"' (1999) Vol.2 Yale Human Rights & Development L.J. < http://hdl.handle.net/20.500.13051/5794> accessed 4 February 2026
[22]Yash Ghai, 'Human Rights and Governance: The Asia Debate' (2000) Asia Pacific Journal on Human Rights and the Law <https://www.researchgate.net/publication/248747531_Human_Rights_and_Governance_The_Asia_Debate> accessed 5 February 2026.
[23]ibid
[24]ibid

In conducting the present study, a doctrinal research approach using a comparative analysis method will be used to analyze the legal and institutional frameworks of the National Human Rights Commissions of Bangladesh and India. Sources of law used in this study are: the National Human Rights Commission Act, 2009 (Bangladesh), Protection of Human Rights Act, 1993 (India), Paris Principles, constitutional provisions, and international human rights instruments. Sources of secondary literature include academic books and articles, reports by the United Nations Human Rights Commission, United Nations Development Programme (UNDP), and the National Human Rights Commissions of both the countries. India has been chosen as a comparator country on account of the similarity in the common law system and constitution of the two countries.

7. Paris Principles and the formation and function of NHRIs

The UN General Assembly passed Resolution 48/134 entitled National Institutions for the Promotion and Protection of Human Rights on 20 December 1993; and the Paris Principles were annexed as an integral part of this resolution, urging all states to create their independent NHRIs. The full title of the document is Principles Relating to the Status of National Institutions. The Paris Principles set out the minimum standards required for the establishment of legitimate and effective NHRIs, which are based on three fundamental principles such as- independence, pluralism, and institution effectiveness. The Paris Principles specify the requirements for an NHRI in the following areas:

i. Broad mandate to promote and defend human rights;
ii. Broad functions to fulfill the mission of offering guidance, reporting, monitoring, addressing complaints, and promoting human rights education.
iii. Pluralism, to represent "social forces involved in the promotion and protection of human rights"
iv. Sufficient authority to inquire and investigate, collect evidence and documents, interact with NGOs and state agencies, and make their reports, conclusions, and recommendations public.
v. Sufficient resources for the budget, personnel, infrastructure, and institutional ability to carry out duties and fulfill roles.
vi. Collaboration with other State entities, NGOs, and civil society organizations

vii. International participation in international and regional human rights agencies and procedures to contribute knowledge and experience.[25]

These principles form the basic standards that would facilitate the creation of National Human Rights Institutions and ensure effective promotion and protection of human rights as well as human development in general. The Paris Principles were developed in connection with an international conference in Paris involving representatives of various governments and institutions who were worried about the increasing violation of human rights and necessity of having independent national institutions that would protect them. After being accepted, the principles were officially approved by the UN Commission on Human Rights and the UN General Assembly thus becoming the international standard of accreditation and activities of NHRIs[26] compelling member states to create NHRIs. NHRIs which comply with the Paris Principles are mandated by law to:

i. Advise parliaments, governments, and other bodies in matters relating to human rights;
ii. Monitor the human rights situation and provide an evaluation of policies in relation to human rights;
iii. Support victims of human rights violation, particularly in cases of discrimination based on race and ethnicity;
iv. Raise awareness through research on human rights;
v. Raise awareness through education on human rights;
vi. Raise awareness through communication on human rights.[27]

National Human Rights Institutions (NHRIs) were again affirmed by the World Conference on Human Rights as playing an important role in ensuring human rights through their roles of providing advice to governments, promoting remedy mechanisms, dissemination of information relating to human rights, and education on human rights[28] promoting the creation and development of NHRIs in accordance with the Paris Principles while respecting the right of each State to choose the structure most appropriate for them.[29] Bangladesh enacted

[25] GANHRI, 'Paris Principle' (GANHRI,2022) <https://ganhri.org/paris-principles/ > accessed 5 February 2026.
[26] UNGA Res 48/134 (20 December 1993).
[27] ENNHRI, 'What Role Can NHRIs Play in Non-Government Controlled, Non-Recognised and Other Disputed Territories?' (ENNHRI, 30 September 2020) <https://ennhri.org/news-and-blog/what-role-can-nhris-play-in-ngct/> accessed 12 February 2026
[28] Vienna Declaration and Program of Action 1993, art I (36).
[29] ibid

the National Human Rights Commission Act 2009 through its Parliament to create the National Human Rights Commission in pursuance of the international human rights treaties that bind the nation, to which the Commission is mandated to protect human rights.

8. Implementation Mechanism of Human Rights in Bangladesh

8.1. Domestic Implementation of Human Rights Obligations

Domestic implementation of decisions of human rights courts represents a demanding and sometimes intrusive form of state compliance with international standards, which requires states to address violations and conform their existing laws and practices to the underlying standards and values reflected in those decisions.[30] This process is inherently complex and political involving multiple national institutions and actors - executive, legislative, judicial, and social - with varying interests and goals, with conflicting interests in executing human rights judgements.[31] Governments vary in how they comply with international human rights standards and judgements, raising questions about the reasons for these differences.[32] Governments are principally responsible for implementing the human rights at the national level[33] where the people have always fought against the government for the execution of their rights, despite the fact that the state was created by the people themselves.[34] The notion of human rights demands that they be safeguarded by efficient governmental implementation procedures alongside access to justice and effective remedies for human rights breaches, the domestic human rights protection system depends on the availability of both.[35]

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[30] Dia Anagnostou, Alina Mungiu-Pippidi, "Domestic Implementation of Human Rights Judgments in Europe: Legal Infrastructure and Government Effectiveness Matter", Oxford University Press (2014) p.52. <http://anticorrp.com/publications/domestic-implementation-of-human-rights-judgments-in-europe-legal-infrastructure-and-government-effectiveness-matter/> accessed 14 February 2026

[31] Courtney Hillebrecht, 'The Domestic Mechanisms of Compliance with International Human Rights Law: Case Studies from the Inter-American Human Rights System', The Johns Hopkins University Press, Human Rights Quarterly vol 34. No 4 (2012) p. 959 <https://www.jstor.org/stable/23352236> accessed 14 February 2026

[32] Harold Hongju Koh. 'How Is International Human Rights Law Enforced?' (1999) vol. 74, issue. 4 Indiana Law Journal <https://www.repository.law.indiana.edu/ilj/vol74/iss4/9/> accessed 16 February 2026

[33] Wiston House, 'Addressing Implementation Gaps: Improving Cooperation between Global and Regional Human Rights Mechanisms (WP1291)' (2014) <https://www.wiltonpark.org.uk/event/wp1291/> accessed 19 February 2026

[34] Muhammad Ekramul Haque, 'Protecting Fundamental Rights through Restricted Legislative Competence: Application of the Doctrine of Eclipse and Severability' (2006) Vol. 17 no.1, Dhaka University Studies.

[35] Dr. Sarkar Ali Akkas, 'Judicial Independence and Protection of Human Rights in the Age of Globalization (2003) Empowerment Through Law of the Common People, pp 157-166.

8.2. Harmonization between National Law and International Human Rights Mechanisms

States may meet their international human rights commitments by making domestic law in conformity with international and regional human rights conventions. Protection of human rights within the domestic framework needs the creation of legal and institutional systems that are in accordance with the Charter of the United Nations and the Universal Declaration of Human Rights (UDHR) and other relevant international human rights instruments, in light of the political setting, legal tradition, cultural values, and socio-economic environment of the State.[36] Despite being a member of the United Nations since 1974, the International Bill of Human Rights, which includes the UN Charter, UDHR, ICCPR, ICESCR, and Optional Protocols to ICCPR, has greatly impacted the formation of its Constitution. Article 25 of its Constitution includes respect for international law as an aspect of state policy, which necessitates foreign relations to be carried out in conformity with the UN Charter of 1945. This is an aspect of limitation of sovereignty. In this context, it has also been seen how Bangladeshi courts have evaluated the legality of certain actions of its government in foreign relations in accordance with the UN Charter.[37]

8.3. Implementation of Human Rights under the Bangladesh Constitution

Human rights issues have been dealt with in the Constitution of Bangladesh in all its three distinct parts including the Preamble. However, rights that are provided for under Part II are not legally enforceable[38], human rights enshrined in the Part III are judicially enforceable[39]. The national system of human rights protection could be derived from the constitutional obligations outlined in Part III of the Constitution, which is judicially enforceable through the High Court Division of the Supreme Court under Article 102. Part III includes fundamental civil and political rights and their enforcement through judicial actions. Article 102(1) gives

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[36] Arif Ahmed, Md. Jahid Mustofa, 'Mechanisms for Implementation of Human Rights: A Critical Analysis in Bangladesh Perspective' (2016) Vol. 10, No. 1 Prime University Journal <https://www.academia.edu/33515807/Mechanisms_for_Implementation_of_Human_Rights_A_Critical_Analysis_in_Bangladesh_Perspective> accessed 19 February 2026

[37] Muhammad Ekramul Haque, 'The Bangladesh Constitutional Framework and Human Rights' (2011) vol. 22, no. 1 Dhaka University Law Journal <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjUmq_U2vr7AhVDcGwGHUatDScQFnoECA0QAQ&url=https%3A%2F%2Flaw.du.ac.bd%2Fen%2Fwp-content%2Fuploads%2F2017%2F09%2FVolume-22-Number-1-June-2011.pdf&usg=AOvVaw2UIfqb0_fsgkmwseKSs9UZ> accessed 21 February 2026.

[38] The Constitution of the People's Republic of Bangladesh 1972, art. 8(2).

[39] ibid art. 44.

the High Court Division the power to order the enforcement of fundamental rights, while Article 44(1) ensures the right to move the Court under Article 102 as a fundamental right itself.[40] These articles allowed aggrieved parties to file petition in HCD to enforce any of their constitutionally protected fundamental rights. Granting remedy under 102(1) is not discretion of the HCD; rather, mandatory if violation of a basic right is determined.[41]

8.4. Application of International Human Rights Law in Domestic Courts

The manner of applying international law in domestic jurisdictions will depend on the theory that is adopted in the respective legal system. The two main theories that dictate the application of international law and domestic laws include monism and dualism. The monist theory provides that international laws are directly applicable in domestic jurisdictions after the ratification of the international treaty.[42] In case of conflict, international law prevails.[43] Dualism, contrarily, suggested international and national legal rule as different entities, i.e., a clear separation is maintained in terms of their implementation. Bangladesh adheres to the dualistic viewpoint similar to United Kingdom, meaning international agreements are not immediately enforceable or followed domestically unless ratified and integrated into domestic law and local statutes[44] following proper procedure.[45]

The case of *BNWLA vs. Government of Bangladesh and Others*[46] reflected the dualist approach where the Court vehemently declared:

"Our courts will not enforce those covenants as treaties and conventions even if ratified by the State, as they are not part of the corpus juris of the State unless those are incorporated in the municipal legislation".

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[40] Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn. Mullick Brothers, 2019).
[41] Kochuni v. Madras (1959) AIR, (SC) 725
[42] I. A. Shearer, 'Starke's International Law'(11th edn. Butterworth 1994) <https://openlibrary.org/books/OL1201871M/Starke%27s_international_law.> accessed 21 February 2026.
[43] Martin Dixon, 'Textbook on International Law' (6th edn. Oxford University Press 2007) <https://global.oup.com/academic/product/textbook-on-international-law-9780199574452?cc=de&lang=en&> accessed 24 February 2026.
[44] M. Shah Alam, 'Enforcement of international human rights law by domestic courts: A theoretical and practical study' (2006) Netherlands International Law Review <https://www.researchgate.net/publication/231844588_Enforcement_of_international_human_rights_law_by_domestic_courts_A_theoretical_and_practical_study> accessed 24 February 2026
[45] Md. Mostafa Hosain, 'Application of UDHR by Supreme Court of Bangladesh: Analysis of Judgments' (2013) Chancery Research and Consultants Trust <https://www.clcbd.org/journal/13.html> accessed 24 February 2026
[46] *BNWLA v. Government of Bangladesh and Others* (2009) 14 BLC 703.

The Supreme Court has taken a liberal stance in the interpretation of treaties in the absence of clarity in the domestic law. However, the applicability of treaties in Bangladesh is restricted due to the scarcity of case law, ambiguous provisions, and the limited reliance of the judiciary on treaties. As most treaties ratified by the country are not directly applicable in the country, the applicability of international law is ambiguous.[47]

9. Historical Background and Formation of the NHRC

The establishment of an NHRI was the result of the civil society and the international community's demand in 1990 to ensure the State's responsibility.[48] This agency was expected to provide the State with the appropriate guidelines and recommendations for protecting human rights and human rights advocates. In 1996, initial steps of establishing the NHRC began.[49] In 1998, with the aid of UNDP, a draft Act was prepared. However, the previous administration's legacy of neglect and incompetence kept the problem unresolved and under investigation for a considerable length of time.

One of the major milestones was the creation of the National Human Rights Commission on 1 September 2008 under the National Human Rights Commission Ordinance, 2007. This three-person Commission officially began its functioning from 1 December 2008.[50] The NHRC was formed through the promulgation of the National Human Rights Commission Act 2009, which came into force on 14th July 2009. It commenced operations in June 2010. Bangladesh National Human Rights Commission leadership has undergone changes from one term to another. In case of the First Commission, the Chairperson was the retired Judge of the Supreme Court of Bangladesh. In the case of Second and Third Commissions, the Chairpersons were law professors. Fourth and Fifth Commissions have been led by former senior bureaucrats. And in case of the present Commission, the Chairperson is the retired Judge of the

[47] Abul Hasanat, 'Using International Law in National Courts: Bangladesh Perspective' (2013) vol. 13 no. 1 & 2 Bangladesh Journal of Law <https://www.researchgate.net/publication/328853696_Abul_Hasanat_%27Using_International_Law_in_National_Courts_Bangladesh_Perspective%27_2013_13_1_2_Bangladesh_Journal_of_Law_49-73_ISSN_1609-3593> accessed 25 February 2026.
[48] Ain O Salish Kendra, 'Report on Civil Society Dialogue with National Human Rights Commission Bangladesh' (2017) <http://www.askbd.org/ask/2017/12/10/report-civil-society-dialogue-nhrc/ > accessed 25 February 2026.
[49] ibid
[50] ibid

Supreme Court of Bangladesh. Thus, the National Human Rights Commission Act, 2009 has been adopted under the leadership of people with varied professional backgrounds.

The Commission has been actively contributing towards the advancement of the business and human rights agenda by advocating for the implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs) in Bangladesh. It strives to encourage State bodies as well as companies to adhere to international human rights norms through awareness generation, policy dialogues, advocacy work, and the establishment of grievance mechanisms which can be both judicial and non-judicial in nature. Furthermore, the Commission assists in developing National Action Plans on Business and Human Rights that are inclusive in nature.[51]

10. Institution of the Indian National Human Rights Commission

The setting up of the National Human Rights Commission (NHRC) by the Government of India demonstrates that India is serious about promoting and protecting human rights in accordance with its constitution and international human rights responsibilities. Being one of the earliest NHRIs in South Asia to have been set up in the early 1990s, the NHRC has made an important contribution in terms of human rights governance in the region. The NHRC came into being on 12 October 1993 through the Protection of Human Rights Act, 1993 and has the responsibility to protect and promote human rights in India. Fourteen Indian States[52] have been set up in the various states in India for the protection of human rights within their jurisdictions. The Protection of Human Rights Act, 1993 is an exhaustive law that lays down the rules regarding the constitution, function, and jurisdiction of the Commissions.[53]

The term "human rights" is defined in Section 2(d) of the Protection of Human Rights Act, 1993 as the rights concerning the life, liberty, equality, and dignity of an individual which are conferred by the Constitution of India or any international covenant and are enforceable by the Indian Courts. The fundamental rights provided in the Indian Constitution are mainly

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[51] National Human Rights Commission, Bangladesh <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Remedy/NHRC_Bangladesh.pdf> accessed 26 February 2026

[52] Manoj Kumar Sinha, 'Role of the National Human Rights Commission of India in Protection of Human Rights' (1998) Vol. 16 Issue 1, Netherland Institute of human Rights <https://doi.org/10.1177/092405199801600110> accessed 8 March 2026.

[53] NHRC (Procedure) Regulation 1997.

provided under Part III of the Indian Constitution.[54] Part IV outlines the Directive Principles of State Policy.[55] Whereas Fundamental Rights are conferred upon citizens as enforceable rights under Part III of the Constitution, Directive Principles of State Policy form Part IV, which outlines how the State should work in order to foster social and economic well-being. The term "Fundamental Rights" is used because the rights are recognized as intrinsic to every individual and as necessary requirement for the preservation of human dignity and development of human personality. However, in consideration of the ratification of the ICCPR and ICESCR by India, it is imperative that rights provided for in the Constitution be in consonance with these treaties. The Constitution itself provides for judicial review of fundamental rights.[56] In conformity with Article 32 and Article 226, the enforcement of the basic rights rests with the Supreme Court and the High Courts.[57]

11. Illustrative Cases from Indian Jurisdiction

11.1 National Human Rights Commission v. State of Arunachal Pradesh

The Commission has filed an appeal in public interest in the Supreme Court of India in conformity with Article 32 of the Indian Constitution.[58] Article 21 of the Constitution mandates the protection of the fundamental rights of around 65 thousand Chakma Hajong tribal members.[59] The development of the Kaptai Hydro Electric Power Plant saw many people being displaced from the then East Pakistan, with most of them seeking asylum in the states of Assam and Tripura in India during the 1960s. The problems which came up in this case were citizenship problems and fear of persecution by people of Arunachal Pradesh. The problems came up before the NHRC on account of intervention by two NGOs. As contended before the Court, the All–Arunachal Pradesh Students' Union had served a "quit notice" ordering the Chakmas to vacate the State, purportedly with the complicity or connivance of the State Government. Further, the State Government did not co-operate with the National Human Rights Commission (NHRC), thus delaying their proceedings unnecessarily and making way for the uprooting of the Chakmas from Arunachal Pradesh.[60] Based on the consideration of the

[54] Manoj Kumar Sinha, 'Implementation of Basic Human Rights' (Manak Publications New 1999), pp. 183-191.
[55] The Constitution of India 1950, arts. 38-51A.
[56] D.D. Basu, 'Human Rights in Constitutional Law' (3rd edn, Lexis Nexis Publishers, 1994).
[57] n 56
[58] National Human Rights Commission of India v. State of Arunachal Pradesh [1996] AIR (SC) 1235,
[59] The Constitution of India 1950, art. 21.
[60] Manoj Kumar Sinha, "National Human Rights Commission v. State of Arunachal Pradesh" (1997) 37 Indian Journal of International Law.

claims of both parties, the court instructed the Government of Arunachal Pradesh to protect the life and personal liberty of all the Chakma refugees living in the state. This decision assumes great constitutional importance in view of the fact that, for the first time, it was firmly established that the protection of Fundamental Rights, including the right to life and personal liberty under Article 21 of the Constitution of India, applies to non-citizens as well. The timely intervention of the Commission saved thousands of Chakma refugees from displacement.[61]

11.2. Indian Council of Legal Aid and Advice & others (Writ Petition Civil No.42/97)

This is based on a letter written on 3rd December, 1996, to the Commission by Chaturanan Mishra, the then Union Minister for Agriculture, regarding deaths due to famine in the Bolangir district of Orissa due to drought. In similar matter a Writ petition[62] has been filed before the Supreme Court of India by the Indian Council of Legal Aid & Advice on December 23, 1996, invoking the provisions of Article 32 of the Constitution of India. The petition has highlighted the issue that death due to starvation continues to happen in some areas of Orissa.[63] In its decision dated 26th July 1997, the Supreme Court of India stated that "the Petitioner could approach the National Human Rights Commission for appropriate relief," thus recognizing the jurisdiction of the Commission to interfere in cases where there are violations of human rights. In this regard, the NHRC took immediate action by instituting the case, putting in place interim measures to be followed for two years and setting up a committee by the Government of Orissa for land reform in KBK districts.[64] It has also had a Special Rapporteur in place to monitor the implementation of its directives. The Commission also noted that famine-related deaths in some areas were caused by governance failure that was marked by acts of omission and commission by those in authority.[65] The Commission reiterated that freedom from hunger is one of the fundamental rights of citizens. Hunger is one of the most serious violations of this right. In January 2004, the Commission convened a meeting of the

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[61] ibid
[62] Dr Mridula Mishra, 'Human Rights: Refugee Problem in India' (Vij Books India Pvt. Limited 2011) < https://books.google.com.bd/books?id=YPipCQAAQBAJ&pg=PA102&lpg=PA102&dq=Writ+petition+(civil)+No.42%5C97.+Sanjay+Parikh,+a+public-spirited+lawyer+on+behalf+of+the+Indian+Council+of+Legal+Aid+and+Advice+and+others,+filed+this+petition.&source=bl&ots=laLBpgruey&sig=ACfU3U1GBlDQ41ZHa5O-vK-kue1TVrRPBw&hl=en&sa=X&ved=2ahUKEwi9wLDA6vr7AhVcTWwGHTiJAxQQ6AF6BAgIEAM#v=onepage&q=Writ%20petition%20(civil)%20No.42%5C97.%20Sanjay%20Parikh%2C%20a%20public-spirited%20lawyer%20on%20behalf%20of%20the%20Indian%20Council%20of%20Legal%20Aid%20and%20Advice%20and%20others%2C%20filed%20this%20petition.&f=false> accessed 10 March 2026
[63] n 54
[64] National Human Rights Commission Report 2002-2003, (New Delhi, 2003), p.170.
[65] ibid

top experts to deliberate on the issues pertaining to the right to food.[66] Furthermore, the Commission has also decided to set up a Core Group for the Right to Food, whose duty would be to offer expert opinion on any matter that comes before it and suggest policy and institution measures accordingly. This measure shows how much emphasis is laid upon the economic, social, and cultural rights along with civil and political rights in the human rights regime of India. It also shows the realization by the Indian judiciary as well as the National Human Rights Commission that economic, social, and cultural rights are legally enforceable.[67]

12. Comparative study between Human Rights Law Framework in Bangladesh and India

This body, known as the National Human Rights Commission, is state-sponsored but independent and created in order to probe into any human rights abuses and injustices in the system. But its functions are mainly restricted to monitoring and reporting only.[68] Comparison of these two commissions from Bangladesh and India is provided hereunder in order to improve the functioning of Bangladesh Human Rights Commission.

12.1. Acknowledgement differences in terms of Definition

Under the law of 2009 of Bangladesh, “human rights” was defined narrowly as “rights guaranteed by the Constitution of Bangladesh and those declared in international instruments for which Bangladesh is a party and which are enforceable under existing domestic law.”[69] On the other hand, the "Protection of Human Rights Act, 1993" of India defines "human rights" in a much wider manner by including the rights relating to life, liberty, equality, and human dignity which are enshrined either in the Constitution of India or in the international covenants and are enforceable through the Indian courts.[70]

India has a distinct body or commission for separate sector under various sub-sections of Section 2 such as National Commission for Backward Classes, National Commission for Minorities, National Commission for Protection of Child Rights, National Commission for

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[66] ibid
[67] ibid
[68] Maliha Khan, 'How independent and effective is the NHRC?' (The Daily Star 12 July 2019) <https://www.thedailystar.net/star-weekend/cover-story/human-rights-how-independent-and-effective-the-nhrc-1769992> accessed 10 March 2026
[69] National Human Rights Commission Act, 2009 s 2
[70] Protection of Human Rights Act, 1993 s 2

Scheduled Castes, National Commission for Scheduled Tribes, National Commission for Women and Chief Commissioner for Persons with Disabilities for looking after the rights of separate people in specialized sectors which are lacking in Bangladesh NHRC Act.

12.2. Remuneration Frameworks

According to section 5(2) of the Act from Bangladesh, “Chairman and one Member of the Commission shall be full-time and other Members shall be honorary.” Honorarium and allowance will be given to the honorary members for discharging their responsibilities such as participating in the Commission’s meetings, etc., as per the rates fixed by the Commission, which is explained in Section 10(3). It is impossible to pay any member honorarium due to lack of budgetary support.[71] Whereas section 8 of the Indian Act states that the regulation would provide for the salary, allowances, and other conditions of services of Chairpersons and members under section 40, but in 1993, the Commission passed the Act entitled "NHRC Chairpersons and Members (Salary, Allowances, and other conditions of services) Rule 1993". However, no such rule has been made by the BD NHRC with regard to this issue.

12.3. Formation Default in Selection Committee

In Bangladesh, there remains a Minister and a Speaker in a Selection Committee according to section 7 but no Human Rights Expert is there to assist in selection. On the other hand, Section 4 of the Protection of Human Rights Act, 1993 has incorporated a more balanced appointment process through the constitution of the Selection Committee with both the representatives from the government in power as well as the opposition, consisting of the Prime Minister, Speaker of the House of the People and the Leader of the Opposition, hence making the appointment process less exclusive to the executive body. Moreover, the Act has also stated that there shall be no appointment of any sitting Judge of the Supreme Court or Chief Justice of a High Court in the Commission without the recommendation of the Chief Justice of India. In this regard, the appointment process through the Bangladesh model has made the control of the Selection Committee completely in the hands of the government.[72] Thus, the government's influence on the Bangladeshi NHRC is evident, as the selection committee is dominated by

[71] Sharifuzzaman, 'The Human Rights Commission Must Be Freed of Shackles' (Prothom Alo, 4 october 2020) <https://en.prothomalo.com/opinion/interview/the-human-rights-commission-must-be-freed-of-shackles> accessed 10 March 2026

[72] ibid

government appointees and the selection process is neither transparent nor inclusive.[73] There should be more civil society people to be made a part of the committee. Apart from the make-up of the committee and term limitations, there is nothing else mentioned in the act regarding the method of appointment, which makes the process unclear to others outside the government. The activists of human rights talk about the practices done in other countries; in Malaysia, for example, at least three out of five members of the National Human Rights Commission (NHRC) selecting committee are civil society members. In Thailand, there are even more representatives of different fields, where the committee includes five higher education institution members, ten human rights organization members, five political party members, and three from the media and business organizations.[74] In Bangladesh, however, the whole NHRC selection process is carried out secretly without any recruitment notice.

12.4. Appointment procedure

There have been complaints against the appointment procedure of the Chairperson and Members of the Bangladesh National Human Rights Commission on many fronts. The requirement of having expertise in human rights law is not provided in section 6(2) of the National Human Rights Commission Act, 2009. This means that people who lack the necessary knowledge of human rights law can become part of the Commission. This lack of qualifications can impact the operational capacity of the Commission to effectively discharge its responsibilities regarding human rights.[75]

On the other hand, the Protection of Human Rights Act, 1993 of India provides for the necessary qualifications which the National Human Rights Commission should have. As per Section 3, the Chairperson and some Members must have been former Chief Justice of India, Judges of Supreme Court of India, and Chief Justices of High Courts, while others must have knowledge of human rights or have experience in the same. In this way, this legal framework places great importance on the professional qualification of members of the NHRC, thus making the commission better able to meet its mandate of protection of human rights.[76]

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[73] N 68
[74] ibid
[75] A B M Asrafuzzaman, 'Strengthening the National Human Rights Commission of Bangladesh through a Legislative Amendment to Fulfill its Commitments Under Sustainable Development Goals (SDGs)' (Dhaka University Law Journal, Vol. 31, 2020)
< https://www.banglajol.info/index.php/DULJ/article/view/57013> accessed 22 June 2026
[76] ibid

Whereas in the matters related to appointments of officers and staff members too, as per Section 23 of the Bangladeshi Act, the Government, upon the request of the Commission, may depute any officer and staff members of the Republic to the Commission. Whereas on the other hand, where the matter of India is concerned, the Commission can make such appointments of additional administrative, technical, and scientific staff members as the Commission considers necessary, as per Section 11(2).

12.5. Regarding Creation of Rules Under This Act

Section 15 of the National Human Rights Commission Act, 2009 of Bangladesh provides for the procedure of appointment, powers, and functions of the mediators and conciliators to be provided by the rules. But since the formation of the Commission, no rules have been made in this regard. The Act further empowers the Commission, after obtaining the approval of the President and by notification in the Official Gazette, to make rules for the implementation of the objects of the Act. The lack of these rules is a major procedural deficiency.

In India, section 40 of the Protection of Human Rights Act, 1993 grants the power to the Central Government to make rules, in the manner of notification in the Official Gazette, for giving effect to the provisions of the said Act. Moreover, section 40A grants the power to the Government to give retrospective effect to rules made under section 40(2)(b) of the Act, but only in so far as it would not prejudice the interest of the person affected by such rules. Further, under the Act, the salary, allowances and conditions of services of the Chairperson and Members of the Commission shall be regulated by rules framed in accordance with the above provision. So, the commission framed some regulations including NHRC (Procedure) Amendment Regulations 1997, NHRC Chairperson and Members (Salaries, Allowances, and other Conditions of Service) Rules 1993, and Guidelines/instructions and Proforma to be followed by the local bodies for submission of information regarding deaths due to hazardous cleaning, etc.

12.6. Human Rights Court

The Indian legislation establishes the Human Rights Court in India. The State Government is permitted to notify that a Court of Sessions in each district may function as a Human Rights Court, with the permission of the Chief Justice, in order to facilitate speedy

disposal of offenses relating to human rights violation, as provided in section 30. Nevertheless, under the Bangladesh NHRC Act, the human rights commission can approach the High Court Division, but the procedure took a very long time and the commission did not have the means to lodge the writ petition.[77] A Public Prosecutor or an advocate with a minimum of seven years of experience as a Special Public Prosecutor needs to be appointed by the State Government for each of the Human Rights Courts in India under section 31. Although the commission has lawyers as members of its panel, yet it cannot make favourable decisions due to shortage of money, hence, the poor fee structure cannot lead to positive outcomes.[78] Human rights are an important and unique field of law that needs to be protected by an efficient system of institutions and courts. Specialized institutions may contribute to the determination of cases involving violation of human rights and remedy to the victims of such violations. But according to the National Human Rights Commission Act, 2009, no such provision was made to have Human Rights Courts. Thus, there is no special court in Bangladesh for determining human rights violations.[79]

12.7. Management of Fund for Continuing the Commission

According to Section 24 of the National Human Rights Commission Act, 2009, the sources of finance of the Bangladesh National Human Rights Commission Fund include yearly grant-in-aid from the Government and donations made by local government bodies. On the other hand, as per the provisions of Section 32 of the Protection of Human Rights Act, 1993, the Central Government in India is authorized to give grants-in-aid to the National Human Rights Commission out of funds allocated by the Parliament under the Act. The Indian Commission is entitled to spend the grants as it may find fit for discharging its obligations, which will be regarded as expenditure chargeable out of such grants. And similarly in India, the State Government will adopt the same process while making grants under section 33.

Since the budget of the human rights commission is granted by the law ministry, it lacks the element of administrative independence. Although there are separate secretariats of Anti-

[77] n71
[78] ibid
[79] N 75

Corruption Commission and Election Commission, but human rights commission has to do everything through the law ministry, where everything is improvised.[80]

12.8. Compensation Mechanism in NHRC

Other than the annual report as per the requirement of section 22 of NHRC Act, there will be a memorandum as to the reasons why any action was not taken or action taken by the government or other authorities in accordance with the recommendations made by the Commission. According to section 19, the Commission may recommend to the Government or the concerned authority for granting a temporary award to the victim or his relatives in a particular sum that is acceptable by the Commission.

However, the Indian Commission may recommend to the appropriate government or body to pay compensation or damages to the victim or to his family members as per the needs as per section 18, and the Commission may petition the Supreme Court or the appropriate High Court to issue any order or direction as may be deemed fit by the Court. After this, the concerned government or the body must furnish their comments on the report and the action which has been taken or is proposed to be taken in respect thereof, within one month or such further period as may be allowed by the Commission.

Therefore, the Bangladesh NHRC has no reparation process at all. The Commission cannot impose any penalties on anyone, although it can recommend penalties and compensation for the infringement of human rights. It is such a strong tool that it compels all organs of state to hold individuals accountable.[81] In the past 30 years, the National Human Rights Commission of India has recommended and facilitated the payment of a staggering Rs. 150 million in compensation for 9,220 cases of human rights breaches. The NHRC India only recommended compensation of Rs. 45,250,000 in September of 2020; Rs. 44,500,000 in August; Rs. 75,500,000 in July.[82] The National Human Rights Commission of Bangladesh has asked the Ministry of Home Affairs to provide Tk 1 lakh as interim relief to Muhammad Rasel Mia, a student at a school in Kurigram, whose eye was injured due to the shooting done by the

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[80] N 71
[81] Md. Abdul Halim 'A Decade of NHRC: Too Late Too Little' (TBT news, 10 December 2021) < https://www.tbsnews.net/thoughts/decade-nhrc-too-late-too-little-341572> accessed 25 June 2026.
[82] ibid.

troops of the Border Security Force of India.[83] Although this is still only an order, no actual implementation has yet occurred. But this action by the commission gives us optimism for the approval and implementation of a compensation mechanism in the NHRC system of our nation.

12.9. Procedural differences in Investigation or Inquiry Report

As per Section 19 of the National Human Rights Commission Act, 2009, the Bangladesh National Human Rights Commission is duty bound to furnish its report and recommendation to the Government or the concerned authority upon completion of the inquiry. After receiving the report from the Commission, the Government or the concerned authority shall give information within three months regarding any action which has been taken or is intended to be taken based on the recommendations made by the Commission. In cases where the Government or the concerned authority refuses to accept the recommendations made by the Commission or decides to adopt any different course of action in contrast to its recommendations, there is no obligation on the part of the Commission to approve of such action. The Commission has no right to force the government to comply with the recommendations and cannot take legal proceedings against the government either. But, despite having carried out an inquiry, the Commission ultimately gets into a situation where it has the report containing the finding and basic recommendation of the government. Following this is the unavoidable hurdle of the Home Ministry, where the letters of the Commission go unanswered or at best receive a brief response that an inquiry is already going on.[84]

However, in India, the Central Government is to give notification within three months, or any additional period allowed by the Commission to take action in response to the recommendations as provided for under section 19. Under the code, the government is required to respond to the follow-up recommendations made by the Commission. In this way, the Commission will be able to ensure that the government gets formal information about the recommendations.

Regarding the work of the Commission in Bangladesh, after carrying out investigations on the issue, the Commission has to submit a report to the Supreme Court within the period as prescribed in the citation as per section 13. However, there is no misleading about its binding

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[83] Muktadir Rashid, 'NHRC Asks Govt to Pay Tk 1 Lakh to Victim' (The New Age, 1 August 2022) <https://www.newagebd.net/article/177394/nhrc-asks-govt-to-pay-tk-1-lakh-to-victim> accessed 25 June 2026.
[84] N 68

nature or any natural method of implementation. While it has powers to investigate the allegations of human right violation, it cannot do anything beyond just investigating and making a report.[85]

However, the Indian laws have a separate process. As per section 37, where the Government feels the need to do so, the government can constitute one or more special investigation teams comprising such police officers as it thinks fit for the purpose of investigation and prosecution of offenses committed in violation of human rights, despite anything contained in any other law for the time being in force. This shows that the law enforcement agency shall be responsible to deal with the situation.

In the event that any individual or institution which was sent the recommendation by the Bangladeshi Commission does not submit the required report, or in the case where the Commission finds the action taken or proposed inadequate, the Commission, if it considers fit, should send the complete description of the problem to the President and the President shall make sure that the copies of this report are laid before the Parliament under section 14 of Bangladesh NHRC Act. Section 13 of the Bangladesh NHRC Act does not mention anything about the process of handling the proposal once it has been made to the Parliament, neither does it mention the time limit within which the Parliament should handle the issue. It is therefore a somewhat ambiguous section. In India, however, the Commission or the State Commission shall not inquire into any case more than one year from the date of occurrence of the alleged violation of human rights under section 36.

13. Findings of the Study

According to the comparative study of Bangladesh National Human Rights Commission Act, 2009 and India's Protection of Human Rights Act, 1993, there are some significant observations made, which include:

1. **Definition of Human Rights:** The BNHRC Act, 2009, gives a narrow definition of human rights that only encompasses such rights which are provided by the constitution and can be enforced through domestic laws, but in contrast to this, India's Act, 1993 provides a broad definition of human rights which includes such rights which pertain

[85] ibid

to life, liberty, equality, and dignity and which can be enforced through international covenants as well.

2. **Structure and Dominance of Executives:** Appointment committee of Bangladesh's NHRC comprises all executives, without even the slightest inclusion of an opposition member or civil society organization, which makes the process opaque and undemocratic. On the other hand, the selection committee of India's NHRC involves the opposition leader, and thus reduces executive dominance.
3. **Appointment and Qualification Criteria:** The NHRC act of Bangladesh does not provide any kind of qualification required in legal or human rights aspect for the chairman and members. However, the Protection of Human Rights Act 1993 of India specifies that both the chairman and the members should have served as chief justice of the supreme court or should be qualified in human rights issues. This lack of professional qualifications in Bangladesh undermines the credibility of the commission.
4. **Lack of Specific Judicial Measures:** Unlike India, where provisions for the setting up of specialized Human Rights Courts at district level, along with the provision of Special Public Prosecutors, exist, Bangladesh's NHRC does not have any such provision. The High Court Division, which is costly and procedurally unavailable to the aggrieved, thus creates a significant loophole in terms of enforcement.
5. **Failure to Make Rules:** Even after being statutorily empowered to make rules regarding important operational issues, such as the recruitment of mediators/conciliators and their salaries, Bangladesh's NHRC has been unable to do so since the time of its formation. India, on the other hand, has several such rules, such as NHRC (Procedure) Amendment Regulations, 1997, and NHRC Chairperson and Members (Salaries, Allowances and Other Conditions of Service) Rules, 1993.
6. **Capability in Compensation and Enforcement:** The NHRC of Bangladesh is capable of recommending financial help to the victims only in a temporary way without any kind of enforcement system. In contrast to this, the NHRC of India can recommend compensation to the Supreme Court or the High Courts and has been able to make more than Rs. 150 million in compensation for more than 9,000 cases in three decades, showing a clear difference in enforcement capacity.
7. **Financial Independence and Administrative Independence:** The NHRC of Bangladesh functions under the Law Ministry regarding administrative and financial matters unlike other constitutional bodies like Anti-Corruption Commission and

Election Commission, which have their own secretariat. In contrast to this, the NHRC of India, even being funded by the government, has more administrative independence in recruitment and expenditure.

8. **Powers to Investigate and Post-Investigation Procedure:** In Bangladesh, there is no legal duty imposed on the government to respond to the report of the NHRC, and no legal compulsion either for the government to take any action based on that report within an assigned time frame. However, the NHRC in India has the power to constitute Special Investigation Team (SIT) and require the government to give a response within three months.

14. Suggestions

With regard to the above observations, the following suggestions are made for the improvement of independence, effectiveness, and institutional credibility of the NHRC in Bangladesh in accordance with the Paris Principles and other international human rights standards:

1. **Enlarging the Conceptual Scope of Human Rights:** The concept of human rights under the NHRC Act of 2009 needs to be revised to correspond to international standards and include rights related to life, liberty, equality, and dignity as provided under the relevant international conventions adopted by Bangladesh, regardless of their enforceability under domestic law.
2. **Supplementary Amendments to the Selection Committee:** The selection committee needs to be changed to weaken the executive influence on the commission and include members from the opposition leader, civil societies, and human rights experts. Taking into account the comparative experiences, part of the committee needs to consist of members who represent nongovernmental organizations.
3. **Establishing Qualification Standards for Appointees:** The NHRC Act should be revised to incorporate qualification standards that will require that the Chairperson and the Members must possess legal expertise, experience as a judge, or knowledge of human rights law as required in India's framework as provided under the Protection of Human Rights Act of 1993.

4. **Establishment of Human Rights Courts:** Specialized Human Rights Courts should be established in each district using the same framework in India as provided under section 30 of the Protection of Human Rights Act of 1993. This should include special public prosecutors with at least seven years' experience in legal practice and would enable the victim to receive justice cheaply and quickly without relying on the High Court Division only.
5. **Instituting Mandatory Time Line for Rule-Making:** A binding time limit should be included in the NHRC Act for the Commission to formulate all its rules including the procedure for appointment, salaries and allowances, mediation and conciliation procedure, and inquiry procedure among others.
6. **Improving Compliance and Compensation Procedures:** The NHRC should have the authority to make applications to the High Court Division for compliance with the recommendations made by the Commission, and a statutory Victims' Compensation Fund should be set up to provide prompt and appropriate compensation to victims of violations. The government should be under an obligation to act on Commission's recommendations within three months, and cases of non-compliance may be brought before Parliament.
7. **Ensuring Financial and Administrative Independence:** An independent Secretariat should be provided to the NHRC which should be free from administrative dependency on the Executive through a separate budgetary allocation of funds for the NHRC by the national treasury after approval from Parliament. This is in line with the functioning pattern of other independent constitutional bodies of Bangladesh.
8. **Encouraging Legislative and Civil Society Cooperation:** The Commission should be able to reach out to NGOs, bar councils, educational institutions and civil society organizations to monitor human rights situation and develop policy recommendations. There should be an institutionalized consultative process between NHRC and parliamentary committees.

15. Concluding Remarks

Analysis of the two Acts related to protection of human rights of the above mentioned two countries reveals a significant deficiency in the institutions. Though India and Bangladesh are having common colonial legal background, dualist constitution and similar social economic

situation, NHRC in India has turned out to be more effective because of the availability of Specialized Human Rights Courts, an effective appointment procedure for the commission members, complete rule making procedures and effective enforcement procedures through accessing the superior courts directly. However, in case of Bangladesh, there is lack of independent appointment system, no compulsory professional qualifications for the commissioners, inability of the commission to make necessary rules for its operations, absence of specialized human rights courts and a recommendatory provision regarding compensation. All these factors have rendered the institution of BNHRC ineffective and questionable in regard to its Paris Principle and other human rights instruments like ICCPR and ICESCR. However, it must be recognized that BNHRC faces difficult socio-political conditions, and it seems as though the institution is aware of this reality. The work done by BNHRC on business and human rights under the UN Guiding Principles, its call for more inclusive National Action Plans and gradual enlargement of its mandate can be seen as evidence of changeability. Yet, good intentions are not enough.

What needs to be done is to introduce amendments to NHRC Act, ensure judicial cooperation for the direct enforcement of the recommendations of BNHRC and create a political will not to interfere with the activities of the Commission. Equally significant is the development of an accountability culture where government authorities react positively to BNHRC recommendations. Overall, the strength of the National Human Rights Institutions cannot be assessed based only on the legislation of their establishment, but also based on the willpower, resources and political environment. Bangladesh has a good legal framework and international obligations to establish an independent and effective human rights commission.

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Access to Environmental Justice through Public Interest Litigation (PIL) in Bangladesh: Prospects and Challenges

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ABSTRACT: Environmental justice has emerged as a significant component of sustainable development and human rights in environmentally vulnerable countries like Bangladesh. However, the journey toward achieving environmental justice in Bangladesh faced difficulty until 1994. This was largely due to restrictive standing rules that limited access to justice for affected communities and concerned individuals. This study explores the role of Public Interest Litigation (PIL) in facilitating access to environmental justice in Bangladesh from its formative years to the contemporary period. Adopting a qualitative doctrinal research design, it relies on document analysis of constitutional provisions, environmental laws, landmark judicial decisions, and other secondary sources. The study finds that lawyers have utilized PIL as a powerful tool to advocate access to environmental justice since the late 1990s, receiving support from a responsive judiciary. Its role has remained consistent even after the introduction of specialized environmental courts and the insertion of Article 18A in the Constitution. However, challenges persist, including habitual delays in implementing HC orders, power dynamics, and endless judicial oversights. Finally, the study not only offers practical recommendations to enhance the effectiveness of PIL in advancing access to environmental justice but also emphasizes that PIL should function as an auxiliary mechanism rather than a substitute for a robust and enforceable constitutional framework.

KEYWORDS: Environment, Environmental Justice, Public Interest Litigation, Writ, Constitution, Access to Justice

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1. Introduction

Environment refers to the surroundings or conditions in which a person, animal, or plant lives or operates. The environment and human rights are, therefore, closely interrelated because the complete enjoyment of some human rights requires a safe, clean, and healthy environment. In today's world, the weight of environmental challenges is not evenly shared among states or individuals. Thus, environmental justice emerged as a concept in the early 1980s in the United States to protect the environment as well as the poor and minority groups and has since spread to other regions of the world.[1]

Bangladesh deals with a broad spectrum of environmental challenges and pollution like most developing countries.[2] According to the statistics of the global Environmental Performance Index (EPI) for 2022, Bangladesh ranks 177 out of 180 countries in reducing environmental pollution.[3] The Constitution is the supreme law of Bangladesh.[4] There was no constitutional provision regarding environmental protection before the 15th Amendment. Article 18A was inserted in 2011 as one of the fundamental principles of state policy that is judicially unenforceable,[5] to protect and improve the environment and biodiversity. Other environmental laws and regulations, like the Environment Court Act, the Environment Conservation Act, etc., have also come into place at different times. Despite the existence of environmental laws and regulations, implementation and enforcement have been weak. This results in extensive environmental degradation that disproportionately affects vulnerable populations.[6] Furthermore, these populations frequently lacked the financial and logistical resources necessary to access the legal system. Against these circumstances, PIL has been an effective tool to advocate for access to environmental justice since the late 1990s. Previous studies have

[1] Md Iqbal Hossain, *International Environmental Law Bangladesh Perspective* (6th edn, Ain Prokashan 2017).
[2] Hossain (n 1) 475
[3] Tonmoy Wardad, 'EPI 2022: Bangladesh's Position Slips 15 Notches to 177th' (*The Financial Express*, 12 June 2022) <https://thefinancialexpress.com.bd/national/epi-2022-bangladeshs-position-slips-15-notches-to-177th-1654953295> accessed 4 April 2023.
[4] The Constitution, art. 7(2).
[5] The Constitution, art. 8.
[6] Hossain (n 1) 476

discussed many of these issues. However, most of them focus on developments before the last decade. Some recent studies have examined environmental PIL after the Fifteenth Amendment.[7] However, recent developments such as the legal-personhood ruling concerning rivers and the 2025 recognition of safe drinking water as a fundamental right have not yet received sufficient attention. This study seeks to address this gap.

The study places these recent developments within the existing three-phase account of the growth of PIL in Bangladesh. It also examines an issue that has received less attention in earlier studies: whether PIL has produced practical outcomes after achieving important legal and procedural developments, such as wider standing, recognition of legal personhood, and expansion of the right to life. The case of the rivers, discussed later in this study, raises questions about the extent to which such judicial developments have been implemented in practice. Therefore, the contribution of this study is not limited to adding recent cases to the existing literature. It also examines the gap between the development of PIL through judicial decisions and its practical implementation, covering both the earlier history and the most recent developments.

2. Conceptual Discussion

a. Environmental Justice

Environment, according to the Oxford Languages Dictionary, refers to the surroundings or conditions in which a person, animal, or plant lives or operates. It encompasses both living and non-living beings and how they interact with their surroundings.[8] A healthy environment is a basic right of all the Earth's inhabitants and reaffirmed by the Rio Declaration.[9] However, the distribution of environmental risks within and between communities is uneven and affects various groups differently.[10] This is known as environmental injustice. In contrast, environmental justice is a concept that seeks to redress these inequitable environmental burdens experienced by groups such as racial minorities and indigenous groups, women, residents of

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[7] Muhammad Ekramul Haque and Ali Mashraf, 'Public Interest Environmental Litigation (PIEL) to Tackle Climate Change in Bangladesh: Growth, Challenges, and Future' in Mahatab Uddin (ed), International Law, Climate Change and Bangladesh (Springer 2024) 351 https://doi.org/10.1007/978-3-031-71297-5_16 accessed 22 September 2026; Ali Mashraf and Tahseen Lubaba, 'Public Interest Litigation and the Constitution of Bangladesh: Past, Present and Future' in M Rafiqul Islam and Muhammad Ekramul Haque (eds), *The Constitutional Law of Bangladesh: Progression and Transformation at its 50th Anniversary* (Springer 2023) 401.

[8] Hossain (n 1) 8

[9] 'Agenda 21: Programme of Action for Sustainable Development: Rio Declaration on Environment and Development-Statement of Forest Principles' (UN-United Nations 1992) <https://digitallibrary.un.org/record/170126> accessed 13 September 2023.

[10] Susan L. Cutter, 'Race, Class and Environmental Justice' (1995) 19 Progress in Human Geography 111.

economically disadvantaged areas, or residents of developing nations.[11] According to Dr. Abdullah Al Faruque, 'Environmental justice implies the fair distribution of benefits of environmental resources, environmental laws and regulations be properly applied and enforced; and that environmental risk be distributed fairly throughout society.'[12] It exists when all people have access to information, participation in decision-making, and access to justice in environment-related matters.[13] The scope of this study is limited to the third component only.

b. Public Interest Litigation

Primarily, only an aggrieved party could seek redress. Others not personally affected were unable to go before courts to represent the victim or aggrieved party, even if certain actions were in violation of the law.[14] The concept of Public Interest Litigation has emerged in recent years, marking a considerable shift from traditional judicial proceedings.[15] The term 'Public Interest' refers to an act that benefits the general public, and litigation means the process of taking legal action. Thus, Public Interest Litigation refers to a legal action brought by an individual or entity to enforce the law in the public or general interest, in which the public or a class of the community has a pecuniary or other interest that affects their legal rights or liabilities.[16] Historically, it has been an innovative judicial mechanism for advancing the social and economic rights of underprivileged and marginalized people.[17] PILs are filed in Bangladesh as writ petitions under Article 102 of the Constitution of the People's Republic of Bangladesh. PIL, however, is a post-1991 phenomenon in Bangladesh since the constitutional order was disrupted in between.[18] Though initially rejected in the *Bangladesh Sangbadpatra Parishad vs. Govt. of Bangladesh*[19] case, PIL won its jurisprudential battle and was finally accepted in 1996 in the FAP 20 case.[20] Since then, a variety of environmental issues have been addressed through a number of different other PIL cases.

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[11] Hossain (n 1) 11
[12] Abdullah Al Faruque, *Environmental Law: Global and Bangladesh Context* (2nd edn, New Warsi Book Corporation 2021).
[13] Hossain (n 1) 12-13
[14] Badsha Mia and Kazi Shariful Islam, 'Human Rights Approach to Environment Protection: An Appraisal of Bangladesh' (2014) 22 Journal of Law, Policy and Globalization 59.
[15] Md Anisur Rahman, Sazzadur Rahman Titu and Jayanta Kumar Saha, 'Access To Justice Through Public Interest Litigation In Bangladesh' (2021) 20 Ilkogretim Online - Elementary Education Online 3490.
[16] Ibid, 3490
[17] Varun Gauri, 'Public Interest Litigation in India: Overreaching or Underachieving?' [2009] World Bank Policy Research Working Paper No. 5109 <https://papers.ssrn.com/abstract=1503803> accessed 13 September 2023.
[18] Rafiqul Islam Hossaini and Mohammad Shoeb Mahmud, 'Public Interest Litigation in Bangladesh: A Long Way to Go' (1997) 9 Social Change 61.
[19] [1991] 43 DLR (AD) 126
[20] *Dr. Mohiuddin Farooque vs. Bangladesh and others* [1997] 49 DLR (AD) 1, and *Dr. Mohiuddin Farooque vs. Bangladesh and others* [1996] 48 DLR (HCD) 438

3. Methodology of the Study

This study adopts a qualitative doctrinal research design. It analyzes the legal texts and judicial decisions to explore the role of PIL in advancing access to environmental justice in Bangladesh. Primary sources include relevant constitutional provisions, environmental laws, mostly the Environment Court Act of 2010, and landmark PIL cases concerning environmental issues. These sources form the core legal framework through which the evolution and practical application of PIL in environmental governance are examined. In addition, secondary sources such as books, journal articles, newspaper reports, and relevant online materials are utilized to provide contextual and theoretical insights. The study employs a document analysis method, through which both primary and secondary materials are systematically reviewed to identify recurring themes, patterns, and doctrinal developments.

Cases were selected based on two criteria. The first criterion is scope. The study includes only writ petitions filed as PIL under Article 102 of the Constitution and *suo motu* rules issued by the High Court Division. Cases under the Environment Court Act, 2010 were excluded because they concern statutory environmental offences rather than constitutional PIL and are outside the focus of this study. The second criterion is significance. Priority was given to cases in which the High Court Division or Appellate Division established or developed a legal principle relating to standing, the right to life, legal personhood, or the nature of remedies given. Cases that only applied an already established legal principle to routine facts were not given the same priority.

4. Prospects of PIL in the Formative Phase (Pre-Environment Court Act, 2000)

The Constitution of the People's Republic of Bangladesh is the supreme law of the Republic, and any other law that goes against the Constitution is void to that extent.[21] Part II of the Constitution outlines the fundamental principles of state policy, and Part III lists a number of fundamental rights. It is important to note that, whereas Part II is not subject to judicial enforceability in court,[22] Part III is.[23] Since its inception in 1972, the Constitution has undergone a total of 17 amendments to date.[24] The original Bangladeshi Constitution did not

[21] The Constitution, art. 7(2).
[22] The Constitution, art. 8.
[23] The Constitution, art. 44.
[24] Parban Chakma and Rafid Azad Saumik, '50 Years of Bangladesh Constitution In a Nutshell' *The Daily Star* (4 November 2022) <https://www.thedailystar.net/law-our-rights/news/50-years-bangladesh-constitution-nutshell-3160281> accessed 1 December 2023.

incorporate any provision related to environmental rights within either the fundamental rights, preamble, or state policies.

Before the emergence of PIL, public nuisance cases such as air and water pollution were addressed by existing criminal law provisions as contained in the Penal Code,[25] civil remedies under the law of torts, and procedural Codes. The Code of Civil Procedure (CPC) also provides for representative suit where a representative of the affected persons can present a petition in a court to seek rights vindication on behalf of the affected.[26] However, the complex and conservative legal system, coupled with procedural hurdles, could hardly provide any appropriate remedy for environmental wrongs.[27] Therefore, the approach has been twofold.[28] To put pressure on the government for environmental reform, lawyers sought to modify fundamental rights while NGOs urged the High Court to adopt a harmonious interpretation and effectively involving the judiciary to bypass the non-enforceability of state policies.[29] The Bangladesh Environmental Lawyers Association (BELA) took the pioneering role in introducing PIL in Bangladesh. It filed approximately 250 cases between 1994 and 2014 specifically to protect the environment on behalf of affected parties and communities.[30] This organization, along with Bangladesh Legal Aid and Services Trust (BLAST), Ain O Salish Kendra (ASK), Human Rights and Peace for Bangladesh (HRPB), and numerous lawyers, has undertaken a substantial number of PIL cases on environmental issues, contributing to the advancement of access to environmental justice.

The formative phase reveals several key prospects that significantly advanced access to environmental justice:

a. Liberalization of *Locus Standi*

One of the most transformative contributions of PIL during this period was the liberalization of *locus standi*, which expanded access to justice beyond directly affected individuals. Traditionally, the requirement of being a person aggrieved imposed a restrictive threshold. This limitation was fundamentally reconfigured in the FAP 20 case (*Dr. Mohiuddin Farooque vs. Bangladesh*), where the Appellate Division adopted a liberal interpretation of standing.[31]

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[25] Act No. XLV of 1860
[26] The Code of Civil Procedure, 1908 (Act No. V of 1908), Order I Rule 8.
[27] Faruque (n 12) 478
[28] Jona Razzaque, 'Access to Environmental Justice: Role of the Judiciary in Bangladesh' (2000) 4 Bangladesh Journal of Law 1.
[29] ibid.
[30] Hossain (n 1) 776
[31] [1997] 49 DLR (AD) 1

In this case, a writ petition was filed under Article 102(1) and (2) of the Constitution. It challenged the legality of a flood control program in Tangail District, with petitioners expressing concerns about potential environmental harm jeopardizing the lives, properties, livelihoods, vocations, and environmental security of over one million people.[32] Initially rejected by the High Court Division on the question of standing, the petitioner subsequently appealed to the Appellate Division of the Supreme Court. On hearing, Chief Justice A.T.M. Afzal noted that an organization with a countrywide presence, such as the appellant, carrying out studies and research of the disputed project, has to be granted threshold status, which is a person aggrieved, and has an opportunity to proceed with the writ petition.[33] Justice B.B. Roy Chowdhury, another member of the Bench, elaborated that 'person aggrieved' encompasses not only those who are personally aggrieved, but also one whose heart bleeds over his unfortunate fellow creatures because of an injustice done to them by the Government or the local authority in breach of constitutional duty. The Court therefore ordered that the respondents should not implement the project with consequences. As a result, the government reviewed the project, including the rejection of the original plan and the inclusion of an environmental impact assessment plan that sought consultation with the people residing in the project area.[34]

The FAP 20 case holds significance as it established the groundwork for subsequent PIL cases, not only unlocking the scope for writ petitions to protect environmental rights but also safeguarding all other fundamental rights.[35] Consequently, access to environmental justice was significantly democratized and transformed PIL into an inclusive mechanism capable of addressing large-scale environmental harms. However, this procedural development must be considered in light of what happened after the case. The judgment did not include continuing mandamus, a fixed reporting schedule, or a specific monitoring body. As a result, implementation was left mainly to the relevant government agencies, including agencies whose actions had led to the litigation.

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[32] 'Dr. Mohiuddin Farooque (Petitioner in Writ Petition No. 998 of 1994) and Sekandar Ali Mondol (Petitioner in Writ Petition No. 1576 of 1994) v. Bangladesh, Represented by the Secretary, Ministry of Irrigation, Water Development and Flood Control' (*UNEP-LEAP*) <https://leap.unep.org/en/countries/bd/national-case-law/dr-mohiuddin-farooque-petitioner-writ-petition-no-998-1994-and> accessed 1 December 2023.

[33] 'Farooque vs. Government of Bangladesh, WP 998 of 1994, CA 24 of 1995 (1996.07.25) (Flood Action Plan Case)' (*Environmental Law Alliance Worldwide*) <https://www.elaw.org/bd.farooque.FAP.1996> accessed 1 December 2023.

[34] Ali Mashraf, 'Landmark Environmental Law Verdicts' *The Daily Star* (4 June 2019) <https://www.thedailystar.net/law-our-rights/news/landmark-environmental-law-verdicts-1753354> accessed 1 December 2023.

[35] Faruque (n 12) 480

This can also be understood through David Schlosberg's distinction between the distributive, participatory, and recognition dimensions of environmental justice.[36] FAP 20 strengthened participatory justice by allowing wider access to the courts. However, the case did not itself ensure distributive justice in the form of compensation or other concrete remedies for the people affected by the project.

More than three decades later, the displaced people affected by the flood-control embankment have still not received the compensation. This remains the case despite a separate writ petition by BELA and the subsequent issuance of a *Rule Nisi* concerning the compensation issue. This implementation problem becomes more visible in the post-2011 cases discussed later in this study. Those cases introduced mechanisms such as continuing judicial oversight and the identification of specific bodies, including the NRCC, to play a monitoring role. These developments are relevant to the study's later proposal for an independent compliance mechanism.

b. Expansion of Judicial Role in Environmental Governance

During the formative phase, PIL also facilitated an expansion of the judiciary's role beyond traditional dispute resolution into the domain of environmental governance. In response to inadequate enforcement of environmental laws and administrative inaction, the courts frequently issued detailed directives aimed at regulating environmental practices. This is particularly evident in the case of *Dr. Mohiuddin Farooque vs. Bangladesh and others*.[37] Here, the issue of severe noise from hydraulic horns and smoke emissions from two-stroke motor vehicles in violation of the Motor Vehicles Ordinance, 1983 was addressed.[38] The High Court Division held that life is a qualitative life with others, and is without environmental hazards, and gave six directives to fight vehicular pollution.[39] The court directed the government to convert all its petrol and diesel-run vehicles in Dhaka Metropolitan City to vehicles powered by CNG, to end all its two-stroke three-wheelers by replacing them with cleaner transport alternatives, and take punitive measures against vehicle operators who do not remove hydraulic horns from buses and trucks, among other directives.[40] Such judicial activism played a crucial

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[36] David Schlosberg, *Defining Environmental Justice: Theories, Movements, and Nature* (Oxford University Press 2007).
[37] Writ Petition No. 300 of 1995
[38] 'Farooque v. Government of Bangladesh WP 300 of 1995 (1995.02) (Vehicle Pollution Case: Original Writ Petition)' (*Environmental Law Alliance Worldwide*) <https://www.elaw.org/content/bangladesh-farooque-v-government-bangladesh-wp-300-1995-199502-vehicle-pollution-case-origio> accessed 2 December 2023.
[39] Hossain (n 1) 781
[40] Hossain (n 1) 789

role in addressing environmental challenges in the absence of effective executive action, thereby enhancing access to justice.

c. Emergence of Preventive and Precautionary Environmental Jurisprudence

The evolution of PIL during this period also reflects a shift from a purely remedial approach to a more preventive and precautionary model of environmental protection. Traditional legal remedies often addressed environmental harm only after its occurrence, limiting their effectiveness in preventing long-term damage. Through PIL, the judiciary began to adopt a proactive stance, issuing directives aimed at preventing environmental harm before it materialized. This was evident in the case of *Dr. Mohiuddin Farooque vs. Bangladesh and others*.[41] Citing a government survey on widespread ecological damage, petitioners sought relief for industrial pollution and argued that the air and water are being contaminated by industrial waste.[42] The Court directed the respondents to make sure that no new factories or industrial facilities are established in Bangladesh without first setting up appropriate and sufficient pollution control measures.[43]

Similarly, in another case of *Dr. Mohiuddin Farooque vs. Bangladesh and others*,[44] several shipments of skimmed milk brought in by Danish Condensed Milk Bangladesh were discovered to contain more than the maximum approved level of radiation. The petitioner submitted that the use of food substances that have radiation levels exceeding the approved limit is a danger to the people of Bangladesh.[45] The High Court Division extended the meaning of right to life to include the protection of health and normal longevity of a human being.[46] This judgment also indirectly accepted the precautionary principle by accepting the rights of potential consumers of radiated food products and reducing the burden on affected parties to demonstrate actual damage.

d. Recognition of Environmental Harm as a Public Wrong

Finally, the formative phase of PIL contributed to a conceptual shift in understanding environmental harm as a public wrong rather than merely a private injury. Early cases demonstrate an increasing willingness of the courts to treat environmental protection as a

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[41] Writ Petition No. 891 of 1994

[42] *Farooque v. Government of Bangladesh* (*ECOLEX*) <https://www.ecolex.org/details/court-decision/farooque-v-government-of-bangladesh-8b264199-d4d6-498c-ae79-146bf7c80c67/> accessed 1 December 2023.

[43] Faruque (n 12) 483

[44] Writ Petition No. 92 of 1996

[45] F*arooque vs Government of Bangladesh*, WP 92 of 1996 (1996.07.01) (Radioactive Milk Powder Case)' (*Environmental Law Alliance Worldwide*) <https://www.elaw.org/content/bangladesh-farooque-vs-government-bangladesh-wp-92-1996-19960701-radioactive-milk-powder-cas> accessed 2 December 2023.

[46] Hossain (n 1) 780

matter of public interest. For instance, in the case of the *Bangladesh Environmental Lawyers Association vs. Bangladesh and others*,[47] judicial intervention was sought to save the Buriganga River against unlawful encroachment. The High Court Division instructed the appropriate statutory authorities to produce to the Court an action plan, outlining a specific timeframe and measures for the removal of encroachers.[48] In another case titled *Dr. Mohiuddin Farooque vs. Election Commission & others*,[49] petition was filed to contest wall writing on state property and use of rampant loudspeaker during the 1994 election campaign of the four Municipal Corporations of the country.[50] The court directed the Attorney General to take necessary measures to avoid the destruction of both state and private property in the name of election campaigning. By addressing environmental harm as a public wrong rather than an individual grievance, the judiciary reinforced the collective dimension of environmental justice.

Taken together, the formative phase of PIL in Bangladesh demonstrates a significant expansion of access to environmental justice. While these developments laid a strong foundation for environmental jurisprudence, they also highlight an increasing reliance on the judiciary.

5. From the Environment Court Act, 2000 to the Pre–15th Amendment Period

The Environment Court Act, 2000 was enacted in response to global commitments such as Agenda 21. It sought to establish a specialized adjudicatory framework capable of addressing environmental disputes more effectively than the traditional judicial system. The subsequent replacement by the Environment Court Act, 2010 further reflected an effort to ensure more efficient and timely resolution of environmental conflicts. However, despite the creation of this specialized mechanism, structural and procedural limitations within the environmental court system constrained its effectiveness in ensuring access to environmental justice. In this context, PIL continued to play a crucial and complementary role. This phase reveals several important prospects that highlight the enduring relevance of PIL even in the presence of specialized environmental courts.

a. Role of PIL Amid Institutional Limitations of Environmental Courts

While the Environment Court Acts of 2000 and 2010 were designed to provide a focused forum for environmental adjudication, their operational limitations significantly restricted access.

[47] Writ Petition No. 4098 of 1999
[48] Faruque (n 12) 482
[49] Writ Petition No. 186 of 1994
[50] Faruque (n 12) 482

One of the most critical barriers is the requirement of prior approval from the Director General of the Department of Environment before initiating proceedings.[51] This procedural condition ultimately reintroduces the restrictive standing and limits direct public access to the courts. Moreover, the Inspector has no independent power of investigation and has to obtain permission from the DG before preparing both preliminary and investigation reports.[52] Thus, in situations where the state itself violates environmental law, a conflict of interest arises since the Department of Environment is a constituent of the state apparatus.[53]

The Court also lacks *suo motu* or epistolary jurisdiction that restricts the proactive role of the Environment Court.[54] Last but not least, the Environment Court can exercise its jurisdiction in matters arising under 'environmental law', which includes the Bangladesh Environment Conservation Act of 1995, the Bangladesh Environment Conservation Rules of 2023, and all other laws specified by the government.[55] Although the government has assigned the Environment Court jurisdiction over offenses under the Brick Manufacturing and Brick Kiln Establishment (Control) Act of 2013,[56] the extension of its jurisdiction to offenses under the Forest Act of 1927, the Wildlife (Conservation and Safety) Act of 2012, the Bangladesh Biodiversity Conservation Act of 2017, etc., is yet to be accorded.

Comparative studies identify three main conditions for the effective functioning of Environment Courts: judicial expertise in environmental matters, accessible procedures, and institutional independence from the agencies being regulated.[57] However, Bangladesh's Environment Court does not fully meet these conditions. Its judges do not receive specialized training in environmental science and handle environmental cases alongside their general judicial responsibilities.[58] Access to the court also depends on the Department of Environment (DoE), while the institutional structure creates difficulties when action is required against govt. institutions.

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[51] The ECA of 2010, sec. 6.
[52] The ECA of 2010, sec. 12.
[53] Faruque (n 12) 474
[54] Md Khaled Miah, 'Effective Functioning of Environment Court' *The Daily Star* (25 August 2015) <https://www.thedailystar.net/law-our-rights/effective-functioning-environment-court-131956> accessed 2 December 2023.
[55] The ECA of 2010, sec. 2(c).
[56] Act No. 59 of 2013, sec 21.
[57] D Lie and M Alam, 'Legal Framework and Practical Challenges of Bangladesh Environmental Legislation: A Critical Examination of Climate Change Adaptation, Environmental Judiciary, and Enforcement' (2025) 37 *Environmental Claims Journal* 366 https://doi.org/10.1080/10406026.2025.2454662 accessed 22 September 2026.
[58] Farjana Afruj Khan Alin, 'The Effectiveness of Environment Courts' The Daily Star (Dhaka, 15 April 2019) https://www.thedailystar.net/law-our-rights/news/the-effectiveness-environment-courts-1730299 accessed 22 September 2026.

These limitations help explain why environmental grievances continued to reach the High Court Division through constitutional PIL. In practice, the two mechanisms operated more as alternative routes for environmental grievances than as complementary parts of the environmental justice system envisaged by the Environment Court Act.

b. Judicial Reinforcement of Environmental Governance through PIL

This is particularly evident in cases concerning ecologically critical areas, where judicial intervention was sought to address environmental degradation despite prior administrative recognition. In the case of *Bangladesh Environmental Lawyers Association (BELA) vs. Ministry of Land and others*, the petitioner sought judicial intervention to protect Sonadia Island, a designated Ecologically Critical Area (ECA).[59] Despite its protected status, influential actors allegedly cleared 9,000 acres of forest for shrimp farming and compromised the island's biodiversity and its role as a natural storm barrier.[60] The respondents were given instructions to investigate by the HCD and identify areas within the island involved in shrimp cultivation and forest clearing, list those responsible, estimate the economic loss of forest resources, and report within two months.[61] It is noteworthy that the petitioner invoked the principle of 'polluter pays' in this case, which reflects an evolving recognition of environmental liability and accountability.

c. Aligning Domestic Environmental Jurisprudence with International Standards

In 2003, BELA challenged the hazardous dumping of ship-breaking waste in Sitakunda, Chittagong.[62] The petitioners highlighted that no ship-breaking agencies possessed the mandatory environmental clearance required by the Environment Conservation Act, 1995. Upon hearing, the HCD issued a *Rule Nisi* on the matter. In another subsequent litigation, the HCD condemned the Ministry of Shipping for allowing the import of toxic materials without scrutiny and labelled it a blatant disregard for environmental and public health.[63] Furthermore, the court ruled that by signing the Basel Convention, Bangladesh is legally bound to its standards of integrating international waste management protocols as a precautionary means.[64]

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[59] Writ Petition No. 4286 of 2003
[60] 'BELA v. Secretary, MoEF & Others (WP ... of 2003) (Sonadia Island Case) (Original Petition)' (*Environmental Law Alliance Worldwide*) <https://www.elaw.org/content/bangladesh-bela-v-secretary-moef-others-wp-2003-sonadia-island-case-original-petition> accessed 3 December 2023.
[61] Hossain (n 1) 797
[62] Writ Petition No. 2911 of 2003
[63] Writ Petition No. 7260 of 2008
[64] Hossain (n 1) 796

Consequently, the court ordered the closure of unauthorized yards and mandated the creation of specific rules for hazardous waste management.[65]

d. Strengthening the Link between Environmental Protection and Fundamental Rights

The period also witnessed a continued strengthening of the relationship between environmental protection and fundamental rights, particularly the right to life. Through PIL, the judiciary reinforced the idea that environmental degradation directly impacts human health and well-being, thereby falling within the ambit of constitutional protection. For instance, in *Rabiya Bhuiyan MP vs. Ministry of LGRD and others*,[66] writ petition was filed in relation to the government failure to seal the arsenic-contaminated tube well. The Appellate Division recognized the positive relationship between environmental contamination and violation of the right to life, and the necessity to both enhance the natural and the artificial environment in order to preserve the right to life.[67]

e. Increased Judicial Activism

Courts increasingly intervened in cases to address systemic environmental risks. For instance, in another case of *BELA vs. Bangladesh and others*, the court examined the legality of the Modhumoti Model Town project, where Metro Makers and Developers Ltd. filled 550 acres of protected wetlands for a satellite township.[68] This action violated the Dhaka City Master Plan, which designated the area as a critical flood flow zone. BELA argued that unregulated earth-filling would cause intolerable waterlogging and permanent ecological degradation.[69] Concurring with the argument, the High Court Division found the project unauthorized, illegal, and contrary to the public interest and also instructed RAJUK to safeguard sub-flood flow zones from illicit earth-filling. In 2012, the Appellate Division affirmed the verdict. It emphasized that even in the absence of specific laws restricting the use of lowlands acting as reservoirs for flood and rainwater, affected individuals can compel authorities to undertake measures through judicial review to preserve health, environment, and ecology.[70]

In another writ petition filed by the Human Rights and Peace for Bangladesh (HRPB), the petitioner challenged systematic pollution, unauthorized encroachment, and landfilling of the

[65] Faruque (n 12) 484
[66] [2007] 59 DLR (AD) 176
[67] Hossain (n 1) 782
[68] Writ Petition No. 4604 of 2004
[69] Hossain (n 1) 786
[70] Ibid, 787

River Buriganga, Turag, Balu and Shitalakkha.[71] The petitioner sought the restoration of the rivers' original boundaries and the immediate removal of all permanent and temporary structures impeding their flow. The HCD in its judgment urged the government to take three steps: the creation of a National River Protection Commission, the initiation of short-term and long-term plans to develop all the rivers in the country on the basis of its recommendations, and implementing necessary and swift measures to restore the navigability of the four rivers.[72] Therefore, despite the establishment of specialized environmental courts, the period from 2000 to the pre–15th Amendment era demonstrates the continued centrality of PIL in advancing access to environmental justice in Bangladesh.

6. From the 15th Amendment to the Contemporary Scenario

Through the insertion of Article 18A to the fundamental principles of state policy, the Constitution formally acknowledged the obligation of the State to protect and improve the environment and conserve natural resources for present and future generations.[73] However, despite its normative significance, Article 18A remains non-justiciable and does not confer an enforceable individual right to a healthy environment. It predominantly serves a decorative role in the Constitution.[74] Consequently, the realization of environmental justice continues to depend largely on judicial interpretation and enforcement through PIL. This phase demonstrates that, even in the presence of constitutional recognition, PIL remains a central and dynamic mechanism for advancing access to environmental justice in Bangladesh.

a. Expansion of Judicial Engagement in Environmental Regulation

PIL in the contemporary phase continues to serve as an important mechanism for ensuring regulatory compliance and administrative accountability in environmental governance. Courts, through PIL, have actively intervened in cases where statutory provisions exist but are inadequately enforced. For instance, in a writ petition filed by BELA in the case of *BELA vs. Ministry of Environment, Forest and Climate Change and others*, the High Court Division issued a *Rule Nisi* demanding the Ministry explain its failure to enforce existing prohibitions on polythene and plastic bags, as well as its failure to regulate hazardous single-use plastics.[75]

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[71] Writ Petition No. 3503 of 2009
[72] Hossain (n 1) 786
[73] The Constitution (Fifteenth Amendment) Act, 2011 (Act No. XIV of 2011), sec. 12.
[74] Mahmudul Hasan and 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 International Journal of Law, Humanities & Social Science 15.
[75] Writ Petition No. 14941 of 2019

The Court issued immediate interim orders directing authorities to monitor markets and shut down factories manufacturing illegal polythene bags, imposing a total ban on single-use plastics in coastal areas and within the hospitality sector (hotels, motels, and restaurants), and setting a one-year deadline for these bans to be fully implemented, with a requirement for the Ministry to submit compliance reports directly to the court.[76] Such interventions demonstrate that PIL also functioned as a mechanism for activating dormant regulatory frameworks.

In another *BELA v. Ministry of Agriculture and others* case, the petitioner sought a judicial mandate to compel the government to strictly regulate pesticide use.[77] Specifically, the petition called for the suspension of licenses for glyphosate-based pesticides, the promotion of safer alternatives, and a formal investigation into pesticide-related deaths to provide compensation to affected families.

The High Court Division issued a *Rule Nisi* requiring the government to justify its regulatory inaction. Furthermore, the Court issued interim directives to notify the populace of the toxic impact of glyphosate-pesticides, along with preparing an action plan to phase them out and introduce safe alternatives.[78]

b. Enforcement through Continuing Mandamus and Monitoring

The contemporary phase also highlights the use of PIL as a tool for ensuring sustained enforcement of judicial decisions through mechanisms such as continuing mandamus and compliance monitoring. Unlike traditional litigation, where judicial involvement typically ends with the delivery of a judgment, PIL enables courts to retain jurisdiction and oversee the implementation of their directives over time. This is particularly evident in cases involving large-scale industrial pollution, such as the relocation of tanneries from Hazaribagh.

Upon a writ petition filed by BELA, the High Court directed tannery owners in June 2009 to relocate their tanneries from Hazaribagh to Savar.[79] Despite the deadline for relocation being extended to April 2011, the Secretary of the tannery industries further extended the time until 2017 without obtaining permission from the High Court. In a contempt petition filed by Advocate Manzill Murshid, the High Court directed the 155 tannery owners in April 2017 to

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[76] BELA v. Ministry of Environment, Forest and Climate Change and Others, Writ Petition No. 14941 of 2019 (20 January 2020)' (Environmental Law Alliance Worldwide) <https://elaw.org/plastic%5CBD_BELA_Plastic_20Jan20 > accessed 3 December 2023.

[77] Writ Petition No. 14614 of 2019

[78] 'BELA v. Ministry of Agriculture and Others, Writ Petition No. 14614 of 2019 (High Court Division of the Supreme Court) (5 January 2020)' (*Environmental Law Alliance Worldwide*) <https://www.elaw.org/BD_BELA_RoundUp_5Jan20> accessed 3 December 2023.

[79] 'SC Upholds Order to Close Hazaribagh Tanneries' *The Daily Star* (12 March 2017) <https://www.thedailystar.net/city/sc-upholds-order-close-hazaribagh-tanneries-1374694> accessed 3 December 2023.

pay BDT 50 thousand each per day for damaging the environment.[80] Subsequently, a petition was filed with the apex court requesting that the order of the HCD be stayed. The bench of the three-member Court led by Chief Justice Surendra Kumar Sinha affirmed the High Court's order to immediately shut down Hazaribagh tanneries, disconnect their utility services, and impose a BDT 50,000 fine each for environmental pollution to be paid within seven days.

c. Legal Personhood of Rivers and the Widening of the Right to Life

One of the most important developments after 2011 was the decision of the HCD in *Human Rights and Peace for Bangladesh vs. Government of Bangladesh and others*, which arose from a writ petition concerning encroachment on the Turag River.[81] Relying on the public trust doctrine and its *parens patriae* jurisdiction, the Court declared the Turag River, and consequently all rivers in Bangladesh, to be living entities and legal persons.[82] The Court also designated the National River Conservation Commission (NRCC) as the guardian of the rivers. The judgment issued seventeen directions. These included restrictions on bank loans and election candidacy for river encroachers, a requirement for a No Objection Certificate (NOC) from the NRCC for projects involving rivers, and measures to increase public awareness through school curricula.

The decision marked an important change in the development of environmental PIL in Bangladesh. Earlier cases mainly treated environmental harm as a violation of human rights. The Turag case went further by recognizing the river itself as a rights-holder. In this respect, Bangladesh joined a small number of jurisdictions that have recognized legal personality for natural features, including New Zealand's Whanganui River and, for a limited period, the Ganga and Yamuna rivers in India.

The decision was later considered by the Appellate Division in *Nishat Jute Mills Ltd vs. Human Rights and Peace for Bangladesh*.[83] The Appellate Division retained the finding that rivers have legal personhood but limited the effect of some of the seventeen directions.[84] In particular,

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[80] 'Full Text of Hazaribagh Tannery Eviction Verdict Released' *The Daily Star* (5 July 2017) <https://www.thedailystar.net/city/dhaka-hazaribagh-tannery-eviction-verdict-full-text-released-1428634> accessed 3 December 2023.

[81] *Human Rights and Peace for Bangladesh v Government of Bangladesh and others*, Writ Petition No 13989 of 2016 (HCD, 30 January 2019).

[82] 'Rivers Are Now "Legal Persons"' *The Daily Star* (Dhaka, 4 February 2019) https://www.thedailystar.net/law-our-rights/news/rivers-are-now-legal-persons-1697533 accessed 22 September 2026.

[83] *Nishat Jute Mills Ltd v Human Rights and Peace for Bangladesh*, Civil Petition for Leave to Appeal No 3039 of 2019 (Appellate Division, 17 February 2020) (also reported as (2021) 23 ALR (AD) 39).

[84] 'Appellate Division Upholds HC Order on Turag Land Recovery' *Dhaka Tribune* (Dhaka, 4 February 2020) https://www.dhakatribune.com/bangladesh/court/200531/appellate-division-upholds-hc-order-on-turag-land accessed 22 September 2026.

several directions requiring Parliament to enact new laws or imposing substantial penalties were treated as *obiter dicta* rather than binding orders.[85] Thus, while the principle of legal personhood remained, some of the measures intended to give practical effect to that principle were narrowed. The case therefore illustrates the difference between recognizing a legal principle and ensuring its implementation in practice. Concerns have also been raised about the NRCC's limited authority over other government agencies and its 2023 decision not to publish a survey that reportedly identified more than 37,000 illegal structures along riverbanks. These developments have raised questions about the practical enforcement of the Court's directions.[86]
Another important development came through the High Court Division's *suo motu* jurisdiction. In a rule issued in 2020 and finally decided in February 2025, the Court held that access to safe and potable water is a fundamental right under Article 32 of the Constitution as part of the right to life.[87] The Court directed the government to provide free drinking water at major public places within one year and to ensure affordable access to safe drinking water across the country within ten years, with annual reports on compliance. This decision builds on the right to life reasoning developed earlier in *Rabiya Bhuiyan MP vs. Ministry of LGRD and others*. However, the 2025 decision went further by expressly recognizing access to safe drinking water as a constitutional right and by setting specific timelines for government action.
Taken together, the judicial decisions during three different stages show an important change in the recent development of environmental PIL in Bangladesh. The focus has gradually moved beyond access to the courts and the expansion of standing. It now increasingly concerns the content of environmental rights and the practical implementation of judicial decisions.

7. Challenges Hindering the Realization of Environmental Justice through PIL

While PIL has played a transformative role in advancing access to environmental justice in Bangladesh, its effectiveness is not without limitations. The realization of environmental justice through PIL is constrained by a range of following interrelated challenges that operate across legal, institutional, and socio-political dimensions.

a. Trivial Environmental PILs

[85] Galib Mahmud Pasha, 'Bangladeshi Rivers' Legal Personhood Meaningless Without Enforcement' (East Asia Forum, 17 August 2025) https://eastasiaforum.org/2025/08/16/bangladeshi-rivers-legal-personhood-meaningless-without-enforcement/ accessed 22 September 2026.
[86] ibid.
[87] *Suo Motu Rule No 9 of 2020* (HCD, 27 February 2025); 'Ensure Free Drinking Water at Public Places within a Year: HC' *The Daily Star* (Dhaka, 28 February 2025) https://thedailystar.net/news/bangladesh/news/ensure-free-drinking-water-public-places-within-year-hc-3835511 accessed 22 September 2026.

One of the emerging challenges in the operation of PIL is the increasing tendency to file unmeritorious petitions under the guise of environmental concern. It is often driven by personal motives such as seeking fame, financial gain, personal grievances, or political interests, and is frequently filed by individuals posing as environmentally concerned parties.[88]

The filing of such PILs has multiple adverse implications. First, it leads to an inefficient allocation of judicial time and resources and diverts attention from pressing environmental issues requiring urgent intervention. Second, repeated exposure to unsubstantiated claims may contribute to judicial fatigue and make courts more cautious and, at times, skeptical towards subsequent genuine petitions. For instance, in the *Syeda Rizwana Hasan vs. Bangladesh & others* case, the writ petition was rejected because the court found no grievance and was just filed out of over-enthusiasm.[89]

b. Power Dynamics and Political Economy Constraints

Environmental disputes often involve competing interests between economic development, political incentives, and ecological protection These make enforcement of judicial decisions particularly challenging. Even where courts issue clear directives, for instance, in cases involving eviction of illegal encroachments or protection of natural resources, the implementation of such orders frequently encounters resistance. Political authorities may be reluctant to enforce decisions that could adversely affect influential groups or electoral constituencies. As a result, enforcement measures are delayed, diluted, or selectively applied.

Moreover, administrative actors who attempt to implement environmentally protective measures may face institutional repercussions, such as transfers or removal from office. This was evident in the transfer order of the Chairman of Bangladesh Inland Water Transport Authority (BIWTA) when the government was on the rampage in its forceful eviction efforts to clear the rural settlements along the banks of the Buriganga and Karnaphuli rivers.[90] This may discourage proactive enforcement of environmental laws within the executive branch. The challenge becomes even more pronounced in situations where the alleged violator is a state agency itself. While PIL can secure judicial recognition of environmental rights, it cannot overcome entrenched political and institutional resistance to implementation on its own.

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[88] Fahim Mahmud, "Public Interest Environmental Litigation in Bangladesh: Effectiveness, Abuse and Solutions," Law Help BD, 25 February 2018, https://lawhelpbd.com/international-law/environmental law/public-interest-environmental-litigation-in-bangladesh/ (accessed 3 December 2023).

[89] [2012] 9 ADC 816

[90] Md Saidun Nabi, 'BIWTA Chairman Transferred amid Intense Eviction Drives' *Dhaka Tribune* (16 February 2019) <https://www.dhakatribune.com/bangladesh/nation/168926/biwta-chairman-transferred-amid-intense-eviction> accessed 4 December 2023.

c. Persistent Implementation Gap and Executive Non-Compliance

While courts frequently issue detailed directives aimed at addressing environmental harm, the responsibility for implementation lies with the executive branch. In many instances, government authorities and enforcement agencies delay or inadequately implement judicial decisions, often citing administrative or logistical constraints. In the FAP 20 instance, affected individuals received no compensation, leading BELA to initiate another writ petition to challenge other government authorities to determine the compensation due.[91] Despite the issuance of a *Rule Nisi* by the High Court, compensation for those affected by the project is still pending realization.[92] In another Hazaribagh tannery case, the relocation process to Savar spanned almost a decade. More recently, the High Court, in response to a writ petition by HRPB, ordered the cabinet secretary to instruct all deputy commissioners nationwide to halt illegal brick kiln operations and wood usage as fuel within seven days, also demanding compliance reports within two weeks.[93] This results in a situation where legal recognition of environmental rights does not translate into visible improvements on the ground.

d. Prolonged Judicial Processes and Delayed Outcomes

Another significant constraint is the time-intensive nature of PIL proceedings. Extended judicial oversight, frequent adjournments, and prolonged litigation timelines can delay the resolution of cases. These undermine the effectiveness of PIL as a timely remedy. Prolonged court oversight not only burdens the court's time but also promotes a reactive rather than proactive approach to governance.[94] This situation is becoming more prevalent in the context of Bangladesh.[95] Consequently, a petitioner seeking environmental justice has to endure a prolonged waiting period for the desired decision, and by the time it is obtained, the situation worsens. The delayed implementation further aggravates the issue.

e. Limited Prioritization of Small-Scale Environmental Harms

Finally, the effectiveness of PIL is also limited by its tendency to prioritize large-scale or high-profile environmental issues, often at the expense of smaller, localized harms. Given the heavy caseload of courts and the volume of PILs, relatively minor environmental concerns may either not be brought before the judiciary or may not receive timely attention.

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[91] Writ Petition No. 1691 of 2001

[92] Hossain (n 1) 800

[93] 'Stop Operations of All Illegal Brick Kilns in 7 Days: HC' *The Daily Star* (13 November 2022) <https://www.thedailystar.net/environment/news/stop-operations-all-illegal-brick-kilns-7-days-hc-3168266> accessed 6 December 2023.

[94] Lavanya Rajamani, 'Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability' (2007) 19 Journal of Environmental Law 293.

[95] Hossain (n 1) 802

8. Recommendations and Concluding Remarks

The evolution of Public Interest Litigation (PIL) in Bangladesh demonstrates its enduring significance as a mechanism for advancing access to environmental justice. From its emergence in the mid-1990s to the contemporary period, PIL has enabled the liberalization of standing, expansion of environmental rights within the ambit of fundamental rights, and the development of innovative judicial remedies. However, several structural and practical challenges continue to hinder its full potential.

To address the growing concern of frivolous environmental PILs, courts must adopt a more rigorous scrutiny to ensure that petitions are genuinely filed in the public interest and are not driven by ulterior motives such as personal gain, publicity, or political considerations.[96] Judges and legal practitioners bear a collective responsibility in preserving the credibility of PIL by ensuring its responsible and effective use.

Mitigating power play and persistent delays in the implementation of judicial decisions necessitate several strategic measures. Firstly, it is important to ensure transparency and accountability in the enforcement process. This can be done by an independent monitoring system that would monitor the court order execution. Compliance reports can also be submitted regularly, either jointly or separately, by the public functionary and the respective elected representative of the area. Additionally, it is imperative to consider the concerns of the affected individuals. During the eviction of illegal structures in the old channel of the Buriganga in Kamrangirchar, as mandated by a High Court order, locals, who had been consistently paying holding taxes, electricity, water bills, and other utilities, questioned the sudden designation of the land as illegal.[97] Hence, giving due regard to these concerns, and if substantiated, adopting well-defined rehabilitation and adjustment plans becomes imperative for the affected individuals and establishments.

A similar model can be found in India.[98] Indian courts have used continuing mandamus to establish monitoring bodies for long-running environmental cases. For example, the Central Empowered Committee was established in the *Godavarman* forest-conservation litigation. The

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[96] *Ashok Kumar Pandey vs The State of West Bengal*, Writ Petition (crl.) 199 of 2003.

[97] 'BIWTA Faces Resistance to Buriganga Eviction Drive' *New Age* (30 December 2021) <https://www.newagebd.net/article/158672/biwta-faces-resistance-to-buriganga-eviction-drive> accessed 4 December 2023.

[98] Domenico Amirante, 'Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India' (2012) 29 Pace Environmental Law Review 441 <https://digitalcommons.pace.edu/pelr/vol29/iss2/3/> accessed 22 September 2026.

National Green Tribunal has also established monitoring committees from time to time to oversee compliance by state pollution-control authorities.

These bodies combine technical expertise with a duty to report directly to the court. Their reporting responsibility is therefore separate from the administrative agency whose actions are being monitored. A similar approach could be considered in Bangladesh. An inter-ministerial compliance body could be established to monitor implementation and submit reports to the High Court Division according to a fixed schedule. This would keep the monitoring function separate from the ordinary functions of the Department of Environment and address some of the concerns regarding institutional independence discussed earlier in this study.

Bangladesh's experience with the NRCC also shows why the structure of a monitoring body is important. The NRCC has faced concerns regarding its limited enforcement authority and its 2023 decision not to publish a survey concerning illegal riverbank structures. These concerns suggest that simply creating a monitoring body may not be sufficient. Its independence, authority, and direct reporting relationship with the court are also important for effective monitoring.

Addressing prolonged judicial processes and excessive oversight requires a more structural solution. The incorporation of environmental protection within the enforceable fundamental rights framework (Part III of the Constitution) could reduce overreliance on continuous judicial monitoring and strengthen the legal foundation of environmental claims. This recommendation is no longer purely aspirational. The Constitution Reform Commission's 2025 report proposed removing Article 18A from Part II and incorporating its substance into an enforceable right in vol. 1, chapter 2, para 11.[99] The Commission also noted in vol. 1, chapter 3, para 30 that courts in different countries, as well as in Bangladesh, have recognized the right to a healthy environment through broader interpretations of the right to life. On this basis, the Commission recommended that the Constitution guarantee the right of present and future generations to a safe, clean, healthy, balanced, and sustainable environment. It also recommended that economic policies should ensure the protection of land, rivers, forests, seas, and air so that they remain free from pollution and degradation. Until such a constitutional reform takes effect, PIL will remain an important means through which environmental harm can be brought before the courts.

[99] Constitution Reform Commission, Report of the Constitution Reform Commission (Government of the People's Republic of Bangladesh, February 2025) < https://objectstorage.ap-dcc-gazipur-1.oraclecloud15.com/n/axvjbnqprylg/b/V2Ministry/o/office-crc-legislativediv/2024/12/f4b3bc48222649ff9fdc3e40f235cb4a.pdf> accessed 22 September 2026.

Finally, efforts should be made to ensure that environmental justice is not limited to large-scale or high-profile cases. Amending the Environment Court Act is also essential for achieving a more inclusive system of environmental justice so that the two mechanisms can operate more as alternative routes for environmental grievances than as complementary parts of the environmental justice.

In conclusion, while Bangladesh did not initially provide a robust framework for environmental justice, the development of PIL over the past three decades has significantly transformed access to justice in this field. Despite the establishment of environmental courts and the constitutional recognition of environmental protection through Article 18A, PIL continues to play a central role due to persistent institutional limitations. However, its effectiveness is contingent upon addressing challenges such as implementation gaps and procedural delays. Ultimately, PIL should function as a complementary mechanism rather than a substitute for strong environmental laws and governance structures.[100] A comprehensive constitutional and institutional framework for environmental protection remains essential to ensure that the promise of environmental justice is not merely symbolic but meaningfully realized in practice.

[100] Sangeeta Ahuja, *People, Law, and Justice: Casebook on Public Interest Litigation*, vol 1 (Orient Longman 1997).

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Protection of Migrant Workers: A Comparative Analysis of Legal Frameworks and Regulatory Enforcement in Bangladesh, the Philippines, and Vietnam

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ABSTRACT

Foreign remittance coming from migrant workers each year is contributing significantly to the national economy in Bangladesh. However, migrant workers suffer from exploitation, recruitment fraud, and systemic neglect due to structural weaknesses and enforcement mechanisms in the legal frameworks. The objective of this study is to identify the regulatory gaps, examine the reasons behind persistent enforcement failures in Bangladesh and figure a way out. In doing so, this study explores structural solutions using a comparative study of the legal frameworks of Bangladesh, the Philippines and Vietnam. This study follows a doctrinal and functional comparative methodology in evaluating the statutory laws, regulatory rules, and institutional practices of the three jurisdictions. The methodology focuses on how legal mechanisms function in practice rather than merely summarizing their textual provisions. Findings show that the lack of regulation regarding informal intermediaries (*dalals*), the absence of mandatory private financial guarantees, and non-binding grievance redress systems are the major enforcement gaps in Bangladesh. In contrast, the Philippines enforces strict joint and several liability and mandatory commercial insurance. Vietnam ensures structural corporate escrow deposits and strict contractual verification. The study suggests transferable reforms for Bangladesh including the formal digitization of sub-agents, the introduction of mandatory commercial insurance, escrow security accounts, and speedy labor migration tribunals in order to ensure better enforcement mechanism.

KEYWORDS: Migrant workers, Labour Rights, Employment, Legal framework, Regulatory enforcement

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1. **INTRODUCTION:**

Overseas employment serves as a primary engine of macroeconomic stability, foreign exchange reserves, as well as poverty reduction for developing countries like Bangladesh. However, systemic operational risks, including recruitment fraud, deceptive practices, excessive fees, contract substitution, and wage theft, are prevalent in the international labour recruitment pipeline. Furthermore, prospective low-skilled migrants are often plunged into severe debt bondage before departure due to the involvement of multi-tiered, unregulated intermediaries.

The International Labour Organisation (ILO) emphasises that workers ought not to bear any recruitment fees or related costs, positioning fair recruitment as an indispensable part of human rights protection by acknowledging the above mentioned constant vulnerabilities.[1] Due to the prevalence of deceptive job proposals, hefty migration costs, and informal rural sub-agents (*dalals*) a huge number of prospective workers fight to secure foreign employment through formal channels in Bangladesh. These sub-agents conduct verbal negotiations and collect cash payments but do not issue official receipts or written agreements and operate outside formal regulatory oversight. Therefore, the workers returning on account of any fraud or breach of contract abroad are left without documented evidence, preventing them from establishing agency liability or securing legal remedies.[2] High recruitment costs and malpractices persist in Bangladesh as per the recent ILO assessments which underscore an urgent need for the strict enforcement of fair recruitment principles.[3]

Bangladesh's legal regime, the Overseas Employment and Migrants Act, 2013 (OEMA 2013), the Overseas Employment Migration Management Rules 2025, the following legislative amendments address these vulnerabilities.[4] This statutory architecture establishes processes for

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[1] International Labour Organisation (ILO), *General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs* (ILO 2019) 8-12.

[2] Kamran Siddiqui, 'Deceived Overseas Fortune Seekers Face Hurdle to Get Remedies' *The Business Standard* (Dhaka, 14 January 2024) <https://www.tbsnews.net/bangladesh/migration/deceived-overseas-fortune-seekers-face-hurdle-get-remedies-774514> accessed 18 June 2026; see also Tasneem Siddiqui, *International Labour Migration from Bangladesh: A Decent Work Perspective* (Working Paper No 66, ILO Policy Integration Department 2005) 18.

[3] ILO, 'Migrant Worker Recruitment Malpractices Persist in Bangladesh as Government Strives for Fairness, Accountability' (ILO News, 28 September 2025) <https://www.ilo.org/resource/news/migrant-worker-recruitment-malpractices-persist-bangladesh-government> accessed 18 June 2026.

[4] Overseas Employment and Migrants Act 2013 (Act No XLVIII of 2013) (Bangladesh), ss 19, 31-37; see also Overseas Employment and Migrants (Amendment) Act 2023 (Bangladesh) (amending Act No XLVIII of 2013 to recognise recruitment of sub-agents); Sub-Agent Registration and Conduct Rules 2025 and Amendment Rules 2026 (Bangladesh)).

agency licensing, migration clearances, and administrative dispute resolution. However, the existence of these rights on paper raises a critical question: are these legal securities functionally enforceable if infringements take place?

A constant enforcement gap is severely exhibited between law and reality in recruitment practice. Rural job seekers depend almost exclusively on informal sub-agents (*dalals*). Informal recruitment inherently lacks strict paper trails, leveraging contract substitution or job failure. Against this vice, the non-binding administrative mediation under Section 41 of OEMA 2013 fails to provide swift financial recovery, as an administrative measure.[5]

This research examines the comparative legal regimes of two peer labour-sending Asian nations, the Philippines and Vietnam. These two countries historically faced similar recruitment challenges but established proactive, market-backed statutory devices to evaluate how Bangladesh can overcome this structural failure.

The Philippines introduced specialised institution-building, culminating in the establishment of the Department of Migrant Workers (DMW) to tackle the prevalent illegal recruitment and contract substitution.[6] Section 6 of Republic Act No. 8042 criminalises illegal recruitment, fee overcharging, and unauthorised contract substitution as an offence amounting to economic sabotage.[7]Moreover, Republic Act No. 10022 introduced Section 37-A, mandating agency-paid obligatory commercial insurance along with fast-track dispute adjudication by the National Labor Relations Commission (NLRC) to guarantee financial recovery without prolonged court trials.[8]

On the contrary, Vietnam introduced Law on Vietnamese Workers Working Abroad under

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[5] Overseas Employment and Migrants Act 2013 (Bangladesh), s 41; Siddiqui, 'Deceived Overseas Fortune Seekers' (n 4); MB Mubde and A Karim, *The Hidden Costs of Migration: Evaluating the Bangladesh-Malaysia Corridor* (Winrock International and JDR3 2022) 3; Sanjana Prachee Rahman, 'From "Act" to "Action": Protecting Migrant Workers Through the Overseas Employment and Migrants Act' *The Business Standard* (Dhaka, 23 September 2023) <https://www.tbsnews.net/features/panorama/act-action-protecting-migrant-workers-through-overseas-employment-and-migrants-act> accessed 18 June 2026.

[6] Department of Migrant Workers Act 2021, Republic Act No 11641 (Philippines), ss 2, 6.

[7] Migrant Workers and Overseas Filipinos Act 1995, Republic Act No 8042 (Philippines), s 6.

[8] Republic Act No 10022 (2010) (Philippines) (amending RA 8042 to mandate agency-paid compulsory insurance under Section 37-A); Graziano Battistella and Maruja MB Asis, *Protecting Filipino Transnational Domestic Workers: Government Regulations and Their Outcomes* (Philippine Institute for Development Studies Discussion Paper Series No 2011-12, 2011).

Contract 2020 (Law No 69/2020/QH14) to tackle informal broker fees alongside agency defaults. The law requires the pre-registration of state-approved master Labour Supply Contracts, by which it expressly proscribes unaccredited local sub-agents and reduces contract substitution.[9] Moreover, the service enterprises are to maintain liquidatable corporate bank escrow accounts so that the state can draw upon them directly to provide damages to the defrauded workers immediately under Articles 24 and 25.[10]

The Philippines and Vietnam were selected for making a comparative study because of structural, socioeconomic, and functional grounds. These states are the major labor-exporting states in Asia which provide primarily low-skilled labor with overlapping destinations like the Middle East and East Asia. The objective of this comparison is to evaluate how specific statutory rules perform functionally to protect workers and identify the best practices.

To fulfil the objective of this research this study addresses three principal research questions: i) To what extent do the legal frameworks of Bangladesh, the Philippines, and Vietnam protect migrant workers from recruitment exploitation? ii) What significant enforcement gaps persist in Bangladesh and the reasons behind ? iii) Do the regulatory and institutional mechanisms in the Philippines and Vietnam provide any viable legal lessons for Bangladesh?

The recruitment crisis in Bangladesh requires transforming the traditional system toward proactive statutory mechanisms. Examining the peer mechanisms is a prudent way of contextualizing a viable roadmap to bridge the gap between formal legal rules and functional protection for Bangladeshi migrant workers.

2. LITERATURE REVIEW

The literature on labour migration from Bangladesh has examined migrant workers from a number of economic, social, and labour-rights perspectives. However, comparatively less attention has been given to a functional comparative analysis of the legal mechanisms through which countries of origin regulate recruitment.

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[9] Law on Vietnamese Workers Working Abroad under Contract 2020 (Law No 69/2020/QH14) (Vietnam), arts 7(5), (7), (8), (9), 17(3)(a), 19-20, 21(2), 22, 23, 26(2)(c); ILO, *Assessment of the Legal Framework Governing Labour Migration in Viet Nam* (ILO Country Office for Viet Nam 2018) 15-19.
[9] Law No 69/2020/QH14 (Vietnam), arts 24-25.
[10] ibid.

2.1 Labour Migration, Remittances, and Development in Bangladesh

Siddiqui's foundational study examines the development of short-term international labour migration from Bangladesh from a decent-work perspective, identifying the tension between the economic benefits of migration and the protection of labour rights.[11] The study is particularly relevant because it approaches migration from a decent-work perspective . Nath and Khawaja, [12] as well as Liton and others,[13] explore the relationship between overseas employment and remittance inflows, demonstrating the economic significance of migration. Islam examines migration within the context of the Overseas Employment Policy.[14] These studies establish the economic importance of overseas employment and provide an important background for understanding why migrant-worker protection is significant for Bangladesh. Chowdhury and Chakraborty highlight the impact of external shocks, such as COVID-19, on migrant vulnerability.[15] Karim similarly examines the relationship between overseas employment and the Sustainable Development Goals.[16] While these studies establish the economic importance of overseas employment, their primary emphasis rests on development rather than a systematic comparative assessment of legal protection mechanisms.

2.2 Recruitment Practices and Vulnerability of Bangladeshi Migrant Workers

A second body of literature focuses directly on the recruitment process. Abrar and Billah outline the structural challenges of labour recruitment in Bangladesh.[17] The specific problem of informal intermediaries is addressed by Siddiqui and Abrar in their work on dalals, arguing for greater transparency in recruitment.[18] This scholarship is rigorous since it acknowledges that the official appointment procedure cannot be intelligible without examining the

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[11] Tasneem Siddiqui, *International Labour Migration from Bangladesh* (n 4).
[12] Hiranya K Nath and A Mamun Khawaja, 'Workers' Migration and Remittances in Bangladesh' (2010) 27(1) Journal of Business Strategies 29.
[13] Muhammad Rabiul Islam Liton and others, 'Overseas Employment and Remittance: Exploring the Nexus in the Context of Bangladesh' (2017) 17(1) Global Journal of Management and Business Research 24.
[14] Md Nurul Islam, *Migration from Bangladesh and the Overseas Employment Policy* (Bureau of Manpower, Employment and Training 2010).
[15] Mamta B Chowdhury and Minakshi Chakraborty, 'The Impact of COVID-19 on the Migrant Workers and Remittances Flow to Bangladesh' (2021) 28(1) South Asian Survey 38.
[16] Mohammad Rezaul Karim, 'Interplay of Overseas Employment of Bangladesh and Sustainable Development Goals: An Introspective Analysis' (2021) 29(2) Bangladesh Journal of Public Administration 260.
[17] CR Abrar and M Motasim Billah, 'Challenges of Labour Recruitment for Overseas Employment: The Bangladesh Experience' in S Irudaya Rajan (ed), *South Asia Migration Report 2017: Recruitment, Remittances and Reintegration* (Routledge 2016) 165.
[18] Tasneem Siddiqui and CR Abrar, *Making Dalals Visible: Towards Transparency in Recruitment* (RMMRU 2019).

unauthorized actors working outside of it.

Farbenblum contends that migrant-worker work appointment need more than official regulation, offering a governance framework accommodating enforceable legal rights, actual implementing institutions, as well as meaningful involvement on the basis of a broader rights-based backdrop.[19] Recently, this is further validated by the ILO reports which demonstrate that recruitment fees and associated costs works as a major impediment to migrant-worker protection universally as well as in Bangladesh specifically.[20]

2.3 Legal and Institutional Protection of Migrant Workers

The existing literature shows that legal safeguards rely on both legislation and enforcement as well as their interaction. The Philippine framework provides an example of a highly specialized institutional approach under the Migrant Workers and Overseas Filipinos Act of 1995.[21] In Vietnam, the revision of the Law on Vietnamese Workers Working Abroad under Contract 2020 (Law No 69/2020/QH14) sought to strengthen fair recruitment.[22] However, recent scholarship by Nguyen cautions that Vietnam's framework is not free from implementation difficulties, identifying ongoing challenges in regulating intermediaries in the Vietnam-Japan migration corridor.[23] Bangladesh has enacted the Overseas Employment and Migrants Act 2013 and subsequent rules to regulate overseas employment. The existing literature, however, indicates that the presence of legal regulation does not necessarily eliminate recruitment fraud and exploitation.

The Philippine framework provides an important comparative reference in this regard. The Migrant Workers and Overseas Filipinos Act of 1995 established a policy of protecting the rights and welfare of Filipino migrant workers and created mechanisms for regulating recruitment.[24] The Philippine framework also developed specialised institutional arrangements, leading to the creation of the Department of Migrant Workers (DMW). The Philippine legal

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[19] Bassina Farbenblum, 'Governance of Migrant Worker Recruitment: A Rights-Based Framework for Countries of Origin' (2017) 7(1) Asian Journal of International Law 152.

[20] ILO, *Global Study on Recruitment Fees and Related Costs* (2nd edn, ILO 2024).

[21] Migrant Workers and Overseas Filipinos Act 1995, Republic Act No 8042 (Philippines).

[22] ILO, *Revision of the Law on Contract-Based Vietnamese Overseas Workers 69/2020/QH14* (UN Migration Network 2021).

[23] Thu Thuy Nguyen, 'Governance of Low-Skilled Labour Migration: Rethinking the Potential of Private International Law for the Promotion of Decent Work for Migrant Workers' (2025) 21(3) Journal of Private International Law 471.

[24] Migrant Workers and Overseas Filipinos Act 1995, Republic Act No 8042 (Philippines).

framework therefore provides an example of a more specialised institutional approach to overseas employment governance.

The literature and legal materials concerning Vietnam provide another useful comparative perspective. Vietnam's Law on Vietnamese Workers Working Abroad under Contract 2020 (Law No 69/2020/QH14) replaced its earlier 2006 framework and introduced a revised legal structure concerning deployment enterprises, contracts, financial obligations, and support mechanisms.[25] The ILO's assessment indicates that the development of the 2020 law sought to fundamentally strengthen rights-based labour migration governance and fair recruitment.[26]

Recent scholarship also suggests that Vietnam's framework should not be viewed as free from implementation difficulties. Recent comparative work by Nguyen on low-skilled labour migration between Vietnam and Japan highlights continuing difficulties in regulating intermediaries and employers throughout the migration process.[27] These studies are relevant because they caution against treating the existence of a detailed statutory framework as equivalent to effective protection in practice.

2.4 From Descriptive Legal Comparison to Functional Analysis

The literature reviewed above provides substantial information about the economic importance of migration, recruitment problems, and the legal frameworks of individual countries. However, the existing scholarship tends to examine these issues separately. Studies concerning Bangladesh primarily focus on migration trends, remittances, and *dalals*, while comparative legal materials concerning the Philippines and Vietnam generally focus on their respective domestic regulatory structures.

The present research hence addresses the literature from a separate perspective. It not only asks whether the statutory provisions of Bangladesh, the Philippines, and Vietnam are similar, but also what *legal function* specific mechanisms perform. Moreover, it enquires about the achievement of those functions. For instance, recruitment licensing may work as a device of accountability; traceability mechanisms may depend on the regulation of intermediaries;

[25] Law on Vietnamese Workers Working Abroad under Contract 2020 (Law No 69/2020/QH14) (Vietnam).
[26] ILO, *Revision of the Law on Contract-Based Vietnamese Overseas Workers 69/2020/QH14* (n 24).
[27] Nguyen (n 25).

criminal punishments may work as deterrence; financial guarantees may amount to a mechanism for compliance as well as compensation; besides, foreign labour institutions can function as a device for assistance plus grievance redress.

Albeit statutory provisions of these countries are similar, they procure separate levels of protection in praxis and hence this functional perspective is pivotal. By contrast, a similar protective function may be performed by different legal mechanisms. Therefore a comparative analysis must examine both the law and practice i.e. institutional arrangement, mechanisms for enforcement, as well as practical conditions under which the law operates.

2.5 Research Gap

Three different salient gaps are found in the existing literature. The first one is based on the single, functional analytical framework of Bangladesh, the Philippines, and Vietnam, little comparative legal research has been done indicating a geographical gap. Second, there is an analytical gap: existing studies often describe statutory provisions without evaluating why the existence of statutory safeguards fails to result in effective protection. Third, there is a transferability gap: there is insufficient analysis of which foreign mechanisms could realistically be adapted to Bangladesh given its unique socio-economic context. This study seeks to address these gaps.

This study seeks to address these gaps by undertaking a doctrinal and functional comparative analysis of Bangladesh, the Philippines and Vietnam. It reorganizes the comparison around four functional themes: (i) regulation and accountability of recruitment agencies and intermediaries; (ii) enforcement mechanisms, illegal recruitment and penal sanctions; (iii) financial security, welfare and compensation; and (iv) contractual protection, grievance redress and overseas assistance. The study then examines why statutory protection in Bangladesh does not always translate into effective protection and identifies selected mechanisms from the Philippines and Vietnam that may be adapted to Bangladesh.

The study is not showcasing which country’s law is better than the others. It strives to demonstrate why a specific legal mechanism functions and what the implementation challenges are, if any. By sorting this out this study attempt to explore the best practices that should be adopted to make migrant worker protection stronger in Bangladesh. To do this research shifts from a descriptive comparison of legal provisions to a functional and reform oriented

comparative analysis.

3. METHODOLOGY

The methodology employed in this research is doctrinal and comparative. The doctrinal portion analyses pertinent laws, rules, regulations, as well as institutional processes governing overseas employment. The initial legal materials encompass the Overseas Employment and Migrants Act 2013 of Bangladesh, Republic Act No 8042 and its amendments of the Philippine legal framework, and Vietnam's Law No 69/2020/QH14.

Instead of applying a mere textual comparison of statutory provisions, the study applies a functional comparative approach. It evaluates how legal mechanisms work to safeguard migrant workers as well as how their success is impacted by their respective institutional contexts.

The comparison is framed around four functional themes: (i) recruitment agencies and intermediaries' regulation and accountability; (ii) enforcement processes, illegal recruitment, as well as penal sanctions; (iii) financial safeguards, welfare, along with compensation; and (iv) contractual safeguards, redressal of grievances, and overseas assistance. The research then determines regulatory weaknesses along with comparative strengths to suggest sustainable reforms for Bangladesh.

4. COMPARATIVE FRAMEWORK

A. Regulation & Accountability of Recruitment Agencies and Middlemen

Bangladesh

The Overseas Employment and Migrants Act 2013 (OEMA 2013) primarily governs migration intermediaries in Bangladesh.[28] This law is supplemented by the Overseas Employment and Migrant Workers (Recruiting Agent's Licence and Conduct) Rules 2025[29]. It is required to obtain a formal license from the government fulfilling the terms and conditions mentioned

[28] Overseas Employment and Migrants Act 2013 (Bangladesh), preamble & ch iii.

[29] Overseas Employment and Migrants (Recruiting Agent License and Sub-Agent Registration and Conduct) Rules 2025 (Bangladesh), SRO No 23-Law/2025 (Bangladesh Gazette Extra, 14 January 2025).

there, provide financial solvency confirmation, and deposit a mandatory security amount of BDT 35,00,000 to operate private recruitment agencies.[30] Recruiting agents and their authorized representatives have to bear shared responsibility as per the Rules of 2025.[31] The continued operation of informal sub-agents (*dalals*) outside the purview of the 2013 Act and 2023 Amendment Act remains a critical regulatory challenge, albeit the statutory framework now formally recognises intermediaries. In practice, most of the licensed agencies rely heavily on an unregulated, informal network of rural middlemen to recruit workers and collect fees without issuing official receipts while operating not in their central urban based hubs.[32] Unfortunately the Overseas Employment and Migrants Act 2013 and 2023 Amendment Act do not mandate a comprehensive registration or tracking system for the informal sub-agents (those who work without being officially appointed as sub-agents). This results in a legal void. When any fraudulent activities happen to the migrant workers by the action of these informal middlemen , the recruiting agencies have a tendency to try to avoid the responsibility.[33] In these situations the prospective workers have little to no scope of seeking administrative remedies .

Philippines

The Philippine regulatory framework addresses recruitment accountability in a unique way. It ensures strict corporate ownership and comprehensive liability. Governed originally by the Labor Code of the Philippines and modernized under Republic Act No 8042 (as amended by RA 10022 and RA 11641)[34], the system limits recruitment licensing exclusively to Filipino citizens or corporate entities with at least 75% Filipino ownership.[35] Travel agencies and airline sales entities are explicitly barred from engaging in recruitment.[36]

To enforce corporate accountability and eliminate middleman evasion, Philippine law establishes the doctrine of joint and several liability. The licensed private recruitment agency

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[30] Overseas Employment and Migrants Act 2013 (Bangladesh), ss 10-12; Rules 2025 (n 31), r 3 and sch 1; Recruiting Agent License and Sub-Agent Registration and Conduct (Amendment) Rules 2025 (Bangladesh), SRO No 04-Law/2026 (Bangladesh Gazette Extra, 2026), r 3.

[31] ibid r 2.

[32] ILO, *Promoting Fair Recruitment Practices in Bangladesh: Analysis of the Legal and Regulatory Framework Governing Recruitment Sub-Agents* (ILO Country Office for Bangladesh 2020).

[33] ibid.

[34] Republic Act No 8042 (Philippines), as amended by Republic Act No 10022 and Republic Act No 11641.

[35] Labor Code of the Philippines (Presidential Decree No 442, as amended), art 27.

[36] ibid art 26.

is held jointly and severally liable with the foreign employer for any claims, wage theft, or violations arising from the contract.[37] The placement of fees and substantial capital reserves to ensure financial recovery for aggrieved workers is a strict requirement of the laws of the Philippines.[38]

Vietnam

In Vietnam, provisions relating to direct state supervision, stringent capitalization, and statutory worker-guarantee mechanisms are available to ensure accountability.[39] Besides ensuring accountability there is also a requirement for licensing. Licensing is now issued by the Ministry of Home Affairs (MOHA), into which MOLISA was merged on 1 March 2025, through its Department of Overseas Labour (DOLAB).[40] Licensed enterprises must provide specialized training before departure and they need to ensure money deposit in a bank account with limited access and transactions.[41] This training can help with capacity building and increase confidence in potential workers.

The legal inclusion of state owned non-profit organizations with commercial enterprises in the Vietnamese system is quite unique.[42] Vietnamese law utilizes a mandatory deposit and guarantor mechanism that requires licensed agencies to maintain direct physical orientation infrastructure.[43] Through this the system can bypass reliance on informal brokers which ensures a strong grip by the government on governance.

Critical Comparative Analysis and Reform Pathways

The Philippines and Vietnam maintain direct legal control over recruitment intermediaries. On

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[37] Republic Act No 8042 (Philippines), s 10; *ATCI Overseas Corporation v Echin* GR No 178551 (SC Philippines, 11 October 2010).

[38] Republic Act No 8042 (Philippines), ss 6(a), 10, 37-A; Labor Code of the Philippines, arts 28, 31-32.

[39] Law No 69/2020/QH14 (Vietnam), arts 8(1), 10(1)(a), (b), 12(2), 16(2), (3), 20(1), 24-25, 55-59, 66-71.

[40] ibid arts 7(5), 8(1), 10(1), 11, 12(2), 70(2); see also art 9. Before 1 March 2025, the Ministry of Labour, Invalids and Social Affairs (MOLISA) administered licensing via DOLAB (Decision No 398/QD-BLDTBXH). From 1 March 2025, Vietnam's Ministry of Labour, Invalids and Social Affairs (MOLISA) was merged with the Ministry of Home Affairs (MOHA), with the resulting ministry retaining the name Ministry of Home Affairs. Decree No 25/2025/ND-CP took effect on that date and transferred responsibility for labour and Vietnamese workers abroad to MOHA and following institutional restructuring, this regulatory authority was transferred to the Ministry of Home Affairs (MOHA) under Decision No 119/QD-BNV, with DOLAB retaining its administrative function.

[41] ibid arts 9(4), 10(1)(b),10(1)(dd), 24(1), 25(2), 26(2)(d).

[42] ibid arts 2(3), 5(1), 42-43, 49, 72.

[43] ibid arts 10(1)(b), (d), 10(1)(dd), 17(2)(d), 24-25, 55, 56, 58, 59, 65.

the other hand the legal architecture of Bangladesh exhibits a structural enforcement disconnection. Bangladesh imposes licensing conditions on main agencies. Unfortunately this structural way fails to actively monitor the rural supply chain where recruitment actually occurs. By holding the urban agency fully liable in the Philippines for all pee-departure representations via joint and several liability, middleman frauds are neutralized.[44] Vietnam bypasses broker dependency by requiring agencies to maintain direct orientation infrastructure and financial guarantees.

B. Enforcement Mechanisms and Penal Sanctions

Bangladesh

The Overseas Employment and Migrants Act 2013 establishes its own enforcement mechanism applicable to Bangladesh. The mechanism is structurally constrained. It treats most recruitment offenses as statutory misdemeanors subject to summary trials. The Act penalizes unlawful recruitment, unauthorized advertising, or unlawful means of document collection, recruitment activities after cancellation of license, illegal recruiting branch office running and working as unregistered sub-agents which may amount from 1 to 7 years of imprisonment and fines ranging between BDT 50,000 to 5,00,000.[45] The maximum penalty under the enactment is for the *actus reus* of arranging departures through unauthorized ports which may amount to 10 years of rigorous imprisonment and minimum fine of BDT 5,00,000.[46] Section 40 authorises the incorporation of the sections 32, 33A, 35, 35A into the schedule of the Mobile Courts Act 2009 which would ensure prompt action by Executive Magistrates.[47] Unfortunately the terminology 'illegal recruitment of several migrant workers' was not defined or described as an economic sabotage. Fraud complaints are processed through ordinary criminal courts or executive mobile courts in the absence of provisions for special evidentiary rules or speedy tribunals. This framework is thus not in the capacity to order comprehensive restitution. Unlicensed middleman networks may as a result operate with relative impunity as ordinary criminal prosecutions are rarely completed within the statutory time frame. This results in a never to delayed justice to the potential remittance sending migrant workers.

[44] Republic Act No 8042 (Philippines), ss 6, 10.; Labor Code of the Philippines, art 29.
[45] Overseas Employment and Migrants Act 2013 (Bangladesh), ss 31-35A.
[46] ibid s 34.
[47] ibid s 40; Mobile Courts Act 2009 (Act No 59 of 2009) (Bangladesh).

Philippines

The Philippines enforces labor migration regulations through Republic Act 8042 which tries to establish a comparatively strict anti-illegal recruitment regime. Section 6 of the Act broadly defines illegal recruitment as any recruitment or fee collection activity conducted by non-licensees, as well as specific prohibited acts committed by licensed agencies.[48]

Philippine law regards severe recruitment fraud as the category of Economic Sabotage which is quite unique. As per the law any illegal recruitment committed by a syndicate (three or more persons collaborating) or on a large scale (committed against three or more persons) constitutes economic sabotage.[49] Under the Act, simple illegal recruitment may amount to imprisonment of 12 to 20 years while illegal recruitment constituting economic sabotage carries non-bailable life imprisonment and heavy fines.[50]

Vietnam

Vietnam has strict regulatory enforcement through an administrative compliance framework backed by state-monitored licensing conditions. The Law on Vietnamese Workers Working Abroad under Contract 2020 (Law No 69/2020/QH14) under article 7 explicitly prohibits unlicensed operations, license-lending, and the charging of unauthorized broker fees.[51]

Regular judicial trials are available in the legal framework. However the legal enforcement system mostly emphasizes immediate administrative revocation, monetary sanctions, and asset liquidation. If any type of engagement in deceitful recruitment is found by any enterprise then the scope of immediate license revocation by MOLISA which is now MOHA is available.[52] In case of severe non compliance by the agencies, provisions for the compulsory liquidation of bank deposits are available in order to direct reimbursement to victimized workers.[53]

Critical Comparative Analysis and Reform Pathways

The statutory enforcement mechanism in Bangladesh heavily relies on conventional criminal

[48] Republic Act No 8042 (Philippines), s 6; Labor Code of the Philippines, art 38.
[49] Republic Act No 8042 (Philippines), s 6 (m).; Labor Code of the Philippines, art 38(b).
[50] Republic Act No 8042 (Philippines), s 7(a)-(b); *People v Chowdury* GR Nos 129577-80 (SC Philippines, 15 February 2000).
[51] Law No 69/2020/QH14 (Vietnam), art 7(5), (7), (8), (9).
[52] ibid arts 7(1), (7), 16(2)(a), (d), 16(3), 27(a).
[53] ibid arts 24(1), (3), 24(2), 25(4), 27(2), 29(3)(b).

procedure and mobile courts to penalize infractions. Apart from that, alternative specialized statutory remedial actions to address organized recruitment networks are limited. The Philippines tried to check predatory syndicates by regarding large scale fraud as economic sabotage.[54] On the other hand Vietnam achieves immediate deterrence through administrative license revocation and direct financial deposit liquidation.[55] These types of scopes are narrowly available in the legal framework of Bangladesh.

C. Financial Security, Welfare, and Compensation

Bangladesh

The legal framework regulating financial safeguards for Bangladeshi migrant workers depends initially on state-run mechanisms, unlike stringent private enterprise liability. The financial security is arranged for migrant workers by ss 22, 27, 29, and 30 of OEMA 2013 and the Wage Earners' Welfare Board Act 2018.[56] Basic social support, transport assistance for deceased bodies, death gratuities, and emergency medical aid, etc., are provided by this fund.[57]

However, provisions like compulsory corporate financial guarantee mechanisms or comprehensive private insurance coverage are absent in Bangladesh's statutory system, which showcases a critical structural omission. The government welfare fund is directly contributed to the prospective migrant workers. However, there is no statutory mechanism that mandates recruitment agencies to produce third-party insurance policies. If workers encounter wage theft or unredressed workplace injuries, they can get a meagre or substantial financial redress after the accident and like events happen, which is less than full legal indemnification or may be full one based on migrant worker capacity to enforce the terms of the employment contract.[58]

Philippines

The financial protection architecture of the Philippines is dual-layered. All migrant workers hired by an agency of the Philippines are lawfully entitled to have obligatory insurance coverage at zero cost pursuant to Section 37-A of RA 8042 (inserted by RA 10022). This

[54] Republic Act No 8042 (Philippines), ss 6, 7(b), 12; Labor Code of the Philippines, art 38(b).
[55] Law No 69/2020/QH14 (Vietnam), arts 16(2), (3), 24(1), (2), 25(3), 27(1), (2).
[56] Overseas Employment and Migrants Act 2013 (Bangladesh), ss 22, 27,29,30; Wage Earners' Welfare Board Act 2018 (Bangladesh).
[57] Wage Earners' Welfare Board Act 2018 (Bangladesh), ss 7-9.
[58] ibid s 8; Overseas Employment and Migrants Act 2013 (Bangladesh), ss 22, 27, 29, 30.

obligatory insurance gives hefty financial guarantees, encompassing a subsistence allowance during active employment litigation, direct coverage for repatriation costs, US$7,500 for permanent disablement, and US$15,000 for accidental death.[59] In addition to private compulsory insurance, workers are covered by the Overseas Workers Welfare Administration (OWWA) Fund, financed via a mandatory fee paid by employers/agencies, ensuring continuous state and market-backed indemnification.[60]

Vietnam

Vietnam secures migrant worker compensation through a hybrid system combining mandatory corporate escrow deposits and state support funds. Under Law No 69/2020/QH14, financial security relies on a statutory escrow deposit scheme.[61] Licensed deployment enterprises must maintain a permanent monetary deposit in a designated bank account. If an enterprise defaults on its obligations such as failing to pay worker wages or delaying repatriation, MOLISA which is now MOHA is authorized to draw directly from this escrow deposit to indemnify workers.[62] This is complemented by the state-managed Overseas Employment Support Fund.[63]

Critical Comparative Analysis and Reform Pathways

While Bangladesh relies on a centralized state fund financed primarily by migrant worker fees, it lacks mandatory private market insurance mechanisms. The Philippines transfers financial risks off the state onto private insurance providers and recruitment agencies via mandatory, no-fault insurance policies. Vietnam ensures immediate compensation liquidity through compulsory bank escrow accounts that can be liquidated without protracted civil litigation.

D. Contracts, Grievance Redress, and Overseas Protection

Bangladesh

Under Section 22 of OEMA 2013, a written employment contract between the migrant worker and foreign employer is mandatory prior to departure.[64] Chapter VI mandates the establishment of Labour Welfare Wings in foreign diplomatic missions, and Section 41 establishes an

[59] Republic Act No 8042 (Philippines), s 37-A(a)-(e), as inserted by Republic Act No 10022.
[60] ibid ss 15, 21, 24, 25, 37-A; OWWA Omnibus Policies 2016 (Philippines).
[61] Law No 69/2020/QH14 (Vietnam), arts 24-25, 36(2), 66, 67(1), 68.
[62] ibid arts 10(1)(b), 24(1), (2), 26(2)(dd), (g), (h), 27(2), 29(3)(b).
[63] ibid arts 6(1)(e), 6(2)(i), 7(17), 51(1)(c), 51(2)(dd), 26(2)(i), 66(1)-(3), 67(1)-(4), 68, 71(6).
[64] Overseas Employment and Migrants Act 2013 (Bangladesh), s 22.

administrative grievance mechanism permitting workers to submit formal complaints to the government.[65]

Albeit rural workers most of the time sign standard contracts in Bangladesh, upon arrival in host states, they are compelled into low-wage, non-obligatory contracts. Moreover, the grievance-resolving mechanism in section 41 gives neither procedural timelines nor a fast-track arbitration rule.[66]

Labour Welfare Wings have some shortcomings, such as a severe lack of staff. Moreover, there is a lack of diplomatic enforcement capacity in foreign jurisdictions. They offer limited legal aid, compelling migrant workers into protracted civil suits or coerced settlements.

Philippines

A robust statutory regime regulates not only employment contracts but also grievance resolution in the Philippines. Contractual safeguards are engineered by the state by verifying the obligatory Standard Employment Contracts (SECs). If there is any unilateral contract substitution, it is termed illegal recruitment and economic sabotage.[67]

There are specialised administrative frameworks for grievance redress. The statutory mandates warrant a strict 90-day timeframe within which the National Labor Relations Commission (NLRC)'s specialised Labour Arbiters, not the ordinary courts, directly adjudicate contract breaches and money claims resulting in binding judgments.[68] Furthermore, immediate on-site legal aid and foreign trial defence funding are provided by Migrant Workers Offices (MWO) and a statutory Legal Assistance Fund (LAF).[69]

Vietnam

Prior to recruitment, removing downstream contract substitution, licensed enterprises are required to sign official Labour Supply Contracts with overseas employers and get them

[65] ibid ch VI and s 41.
[66] ibid.
[67] Republic Act No 8042 (Philippines), ss 6, 6(i), 7(b), 10, 23(b.1); Labor Code of the Philippines, arts 21(c), 34(i), 38(b).
[68] Republic Act No 8042 (Philippines), s 10; Labor Code of the Philippines (Presidential Decree No 442, as amended), art 224 [formerly art 217].
[69] Republic Act No 8042 (Philippines), ss 19, 24, 25, 26.

registered outright with MOLISA, which is now MOHA, as per Law No 69/2020/QH14, which showcases contractual integrity.[70]

If there is any contract dispute in host countries, the enterprises are bound to deploy active representative offices or accredited managers to resolve the dispute, indicating overseas protection of the migrants.[71]

Critical Comparative Analysis and Reform Pathways

Bangladesh depends on an administrative model which does not provide the workers with fast-track legal relief in case contracts are breached overseas. Specialised labour arbitration as well as state-funded overseas defence of the Philippines ensures swift restitution for the migrant. By contrast, Vietnam, before sending workers abroad, requires the deploying enterprise to register master contracts and maintain on-site management capacity.

5. WHY BANGLADESH'S ENFORCEMENT GAP PERSISTS

The unwavering legal enforcement gap regulating the relevant migration in Bangladesh emanates from both structural statutory lacunas as well as institutional capacity limitations:

a. **Regulatory Capture and Institutional Governance:** The Ministry of Expatriates' Welfare and Overseas Employment along with the Bureau of Manpower, Employment and Training (BMET) encounter severe resource limitations. Regulatory oversight is often compromised by the syndicates of recruitment agencies having economic and political influence, ushering in lax enforcement of licensing standards.
b. **Unofficial Intermediary Networks:** The huge majority of rural would be migrants depend on local unofficial sub-agents. They historically work outside the purview of the law, creating a void where contract substitution, wage deception and fraud thrive.
c. **Meagre Legal Remedies:** Section 41 of OEMA 2013 does not provide a fast-track statutory arbitration tribunal. Instead it gives an administrative grievance mechanism which is non-binding, has non-obligatory procedural deadlines and where allegations stall in bureaucratic procrastination.
d. **Lack of Obligatory Corporate Guarantees:** Unlike statutory systems that mandate

[70] Law No 69/2020/QH14 (Vietnam), arts 18(1), 19(1)-(2), 20(1), (3), 21(2), 23(2)(c), 26(2)(c).
[71] ibid arts 19(2)(q), (r), 26(2)(e), (g), 71(5), 72(1)-(3).

compulsory private insurance paid by agencies or statutory escrow bank accounts, Bangladesh banks relies heavily on the state-run, worker-funded Wage Earners' Welfare Board (WEWB), which means workers are to bear the primary economic brunt of failed migrations.

e. **Incommensurate Bilateral Labor Agreements:** Signing Memorandums of Understanding (MoUs) with host countries are asymmetric in nature. They are non-obligatory political instruments in lieu of lawfully enforceable treaties, that leaves Bangladeshi diplomatic missions scant legal recourse if alien employers breach contract terms.

6. TRANSFERABLE LEGAL REFORMS FOR BANGLADESH

Bangladesh can adapt functional devices from the Philippines and Vietnam by adopting the following aimed reforms of the law and policy to fill in the void of the structural loopholes in the OEMA 2013, which may usher it to international best practices.

a. Digital Sub-Agent Registration and Formalisation

The BMET should establish an obligatory digital registry to ensure biometric verification and binding registration for all rural sub-agents, linking them directly to an underlying licensed agency. This suggestion builds on the latest *Overseas Employment and Migrants (Amendment) Act 2023* as well as the *Sub-Agent Registration and Conduct Rules 2025*, to ensure that middlemen are strictly supervised by the government.[72]

b. Statutory joint and several liability

Insert express joint and several liability clauses into OEMA 2013, making Bangladeshi underlying recruitment agencies lawfully and economically liable for misrepresentations, other cognate acts and financial transactions run by their local sub-agents as well as foreign principals.

c. Codification of Economic Sabotage

OEMA 2013 should officially incorporate the criminal offence of "Illegal Recruitment," rendering recruitment fraud performed by a syndicate or against several victims as "Economic Sabotage," ushering in a non-bailable offence leading to severe prison terms.

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[72] see (n 6).

d. **Summary License Revocation as well as Asset Liquidation**

To bypass the lengthy criminal trial and to compensate the defrauded workers directly, the BMET should be granted administrative authority so that it can immediately freeze agency assets and liquidate their security deposit.

e. **Mandatory Commercial Insurance Framework**

Section 37-A of the Philippine *Republic Act No. 8042* can be followed to usher in an obligatory, agency-paid commercial insurance requirement for all departing migrant workers. It can be accommodated through the amendment of the Migrant Workers' Insurance Policy 2019[73]. This offers the workers insurance at zero cost, covering emergency repatriation, medical evacuation, permanent disability, and accidental or natural death by obliging the licensed recruitment agencies to make third-party insurance policies. By this way, it shifts the primary financial risk away from the state welfare fund (WEWB) onto the commercial insurance market.

f. **Financial Guarantees through Agency Escrow Accounts**

Based on Articles 24 and 25 of Vietnam's *Law No 69/2020/QH14* Bangladesh can amend the present recruiting agent license rules to liquidate an agency's escrow account' to immediately satisfy unpaid worker wage claims, emergency repatriation costs, or contract failure damages by granting the BMET statutory authority without awaiting civil court trials.[74]

g. **Fast-Track Labor Migration Arbitration Tribunal**

To replace non-obligatory administrative complaint mechanisms with a specialised, fast-track statutory arbitration body, Bangladesh can reform Section 41 of OEMA 2013 to adopt and adapt the Philippine National Labor Relations Commission (NLRC) model.[75] By eliminating bureaucratic delays, this speedy mechanism prevents uncompensated informal settlements of wage claims, breach of contract suits, and illegal recruitment complaints while it establishes a specialized, fast-track statutory arbitration body that provides binding procedural deadlines requiring a strict 60 to 90 day trial window within which the above mentioned issues are to be adjudicated.

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[73] Ministry of Expatriates' Welfare and Overseas Employment, 'Official Circular/Memorandum No 49.00.0000.201.00.009.16.1192' (8 December 2019) (issued following Memorandum No 1098 of 25 November 2019).

[74] See n (11).

[75] Modelled on Republic Act No 8042 (Philippines), s 10, and Labor Code of the Philippines (Presidential Decree No 442, as amended), art 224 [formerly art 217].

h. **Anti-Substitution Safeguards by digital Master-Contract Verification**

To mandate pre-recruitment digital registration of master Labor Supply Contracts, Bangladesh can amend Chapter V of OEMA 2013 by adopting and adapting Articles 13 to 20 of Vietnam's *Law No 69/2020/QH14*. Before any local recruitment, the enterprise or agency will need primary foreign supply agreements to be registered and verified on a centralized BMET portal. If, upon departure or arrival of the worker, there is a subsequent deviation or contract substitution presented, it must be categorised as a strict liability offense rendering immediate license cancellation.

i. **Legal Defense Support by Statutory On-Site Corporate Representation**

To mandate on-site corporate accountability and establish a statutory Legal Assistance Fund (LAF), Chapter VI of OEMA 2013 may be amended, taking lessons from the Philippine and Vietnamese frameworks.[76] To handle employer disputes on-site the recruitment agencies who deploy a benchmark number of workers in overseas countries are required to deploy acknowledged representative officers. Furthermore, for Bangladeshi migrants facing judicial proceedings abroad, dedicated funds within the WEWB may be earmarked to facilitate hiring foreign legal counsel, post-court bail, and provide translation services.

7. CONCLUSION

The comparative legal analysis throughout the study identifies the pros and cons of Bangladesh's migrant-worker protection regime. The recruitment governance, penal enforcement, financial security, and contractual dispute resolution system remain fundamentally administrative, post-facto, and reactive. The Bureau of Manpower, Employment and Training (BMET) and the Wage Earners' Welfare Board (WEWB) disproportionately allocate the operational, legal, and financial burdens of migration failure onto the workers. This study shows that the law enforcement gap is not merely a consequence of administrative resource deficits. The root of this problem originates from permitting unregulated rural intermediaries (*dalals*) to operate in a legal void. Besides the absence of mandatory corporate financial guarantees and relatively non binding administrative grievance procedures make the

[76] Republic Act No 8042 (Philippines), ss 19, 24-28; Law No 69/2020/QH14 (Vietnam), arts 19(2)(p)-(r), 26(2)(e), (g), 67(1)(a)-(dd), 71(5).

enforcement mechanism a little weak. In contrast to Bangladesh's system, the Philippines and Vietnam regulatory regimes provide two distinct models which this study believes are effective in safeguarding legal protection. Those systems empowered the state authority to enforce commercial accountability and institutionalize stronger migrant worker protection.

Transferring legal and financial liability away from the shoulders of the state or the migrant to commercial recruitment actors is a unique and effective arrangement which may be highlighted from the Philippine Model. Besides enforcing strict joint and several liability between local placement agencies and foreign principals is an addition to the efficacy of the system. Apart from that classifying syndicated and large-scale recruitment fraud as economic sabotage punishable upto life imprisonment, mandating agency-paid private insurance works as deterrence to detrimental activities to these workers. Specially by establishing specialized speedy labor arbitration tribunals (NLRC), the Philippine system guarantees direct and enforceable financial restitution. Preventative statutory controls and corporate liquidity are an important feature of the Vietnamese model. Mandatory corporate escrow deposits , pre-recruitment registration of master labor supply contracts, and on site enterprise representation in host jurisdictions are effectively curtailing middleman contract substitution. This system secures immediate financial reserves for worker indemnification without requiring prolonged civil litigation.

To fulfill the existing gaps in the statutory system aligning with international fair-recruitment standards, Bangladesh can become more just to the migrant workers . It needs to formulate a legislative policy shifting from passive administrative facilitation toward proactive statutory accountability. The Overseas Employment and Migrants Act 2013, the 2025 Amendment Act and 2026 amendment Licensing Rules need futher amendment to include provisions for formal registration and licensing of sub-agents, regard syndicated recruitment fraud as economic sabotage, institute dynamic corporate escrow accounts, mandate commercial insurance by the agencies, and establish dedicated speedy labor migration tribunals. This pragmatic and legal roadmap is necessary for more effective governance. Through adopting these comparative best practices into the domestic legal order, Bangladesh’s framework may transform from a symbolic safety net into an enforceable system of structural defense in securing justice, ensuring financial safety, and providing dignity for its overseas workforce.

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Structural Impediments to Indigenous Land Justice in the Chittagong Hill Tracts: Legal Pluralism, Power, and Institutional Reform

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ABSTRACT: Land disputes in the Chittagong Hill Tracts (CHT), in Bangladesh, present one of the most complex and long-standing governance problems in the area. Stemming from historical colonial land practices, post-colonial settlement policies, and inconsistent laws, such disputes particularly affect the indigenous people through limiting their access to justice and denying their rights to land and identity. This paper seeks to critically analyze the structural obstacles that impede efficient handling of land disputes in the Chittagong Hill Tracts. Using doctrinal and socio-legal methodologies, the research considers the consequences of legal pluralism, insufficient implementation of land governance policies, power asymmetries, and socio-economic marginalization of the indigenous peoples. Legal pluralism and its negative consequences, the failure to implement Chittagong Hill Tracts Peace Accord 1997 and the limitations of the structure of the Land Dispute Resolution Commission (LDRC) have been identified as the main reasons for the development of land disputes in the region. In light of the results, a number of recommendations on how to resolve the problem have been offered. These recommendations are based on lessons drawn from other pluralistic jurisdictions and seek to develop a coherent rights-based process for resolving land disputes in the CHT.

KEYWORDS: Chittagong Hill Tracts, Land disputes, Legal pluralism, Indigenous peoples' rights, Land administration, Institutional reform, Bangladesh

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1. Introduction

The Chittagong Hill Tracts (CHT) is a geographical-culture zone of Bangladesh where different indigenous groups reside, having been practicing their customary system of land ownership for centuries.[1] Land of the CHT is not merely an economic factor; rather, it is something that is directly associated with the very existence of indigenous people.[2] Yet, land-related conflicts have always been present in the area due to its rich history, legal and political background.[3] Even though in 1997, the CHT Peace Accord was signed, which was supposed to settle the long-standing issues, land conflicts are still present and even intensified in certain aspects.[4]

The core argument of this paper is that the land conflict in the Chittagong Hill Tracts is not just an issue of property conflict; rather, it is indicative of a much larger problem of structural inefficiency within the structures of law, administration, and politics that control the area. The structural challenges that arise in the form of legal pluralism, structural fragmentation, power disparity, and partial implementation of the Peace Accord all lead to an unjust system.

The contributions of this article to the current body of literature include three aspects. Firstly, it conducts an analysis of the interrelated nature of structural barriers by explaining how they are supported by each other to continue the existence of the land dispute. Secondly, it evaluates the current capability of the LDRC institution using the recent governance data from 2025-2026. Finally, it suggests a holistic reform agenda for resolving the issue that includes law harmonization, capacity building, and community involvement based on the experience in other jurisdictions.

2. Methodology

The research methodology employed in this study is that of doctrinal and socio-legal research to understand the structural obstacles of resolving land disputes in the CHT.[5] Doctrinal research

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[1] Oliver Tirtho Sarkar and Sharif A Mukul, 'Challenges and Institutional Barriers to Forest and Landscape Restoration in the Chittagong Hill Tracts of Bangladesh' (2024) 13(4) *Land* 558.

[2] Shapan Adnan, 'Migration, Discrimination and Land Alienation: Social and Historical Perspectives on the Ethnic Conflict in the Chittagong Hill Tracts of Bangladesh' (2007) 1(2) *Contemporary Perspectives* 1.

[3] Md Sarwar Hossain, 'Chittagong Hill Tracts (CHT) Land Issue: Challenges and Way Ahead' (2015) 14(2) *NDC E-Journal* 17.

[4] Rafiqul Islam, Susanne Schech and Udoy Saikia, 'Violent Peace: Community Relations in the Chittagong Hill Tracts (CHT) in Bangladesh after the Peace Accord' (2022) 22(3) *Conflict, Security & Development* 271.

[5] Reza Banakar and Max Travers, *Theory and Method in Socio-Legal Research* (Hart Publishing 2005).

includes the critical examination of the primary laws like the Chittagong Hill Tracts Regulation 1900[6], Chittagong Hill Tracts Land Dispute Resolution Commission Act 2001[7] (amended 2016), and Chittagong Hill Tracts Peace Accord 1997[8]. Socio-legal research helps in understanding the functioning of the aforementioned legal framework in its social, political, and institutional settings through the use of secondary sources like academic studies, government reports, human rights reports, and newspaper articles.[9]

2.1 Research Objectives

1. To study and analyze the structural obstacles – legal, administrative, and political – which have prevented an effective resolution of land disputes in the CHT region.
2. To examine the capability and performance of the Land Dispute Resolution Commission and other institutions
3. To review the implementation of the CHT Peace Accord of 1997 regarding land administration.
4. To recommend changes based on the above analysis.

2.2 Research Questions

1. In what ways does legal pluralism lead to jurisdictional disputes and land disputes in the CHT region?
2. Which obstacles prevent the effective resolution of land disputes?
3. What power relations and political factors play an important role in resolving land disputes?
4. What changes are needed for an effective land governance system in the CHT region?

The theoretical perspective used in this study is the concept of legal pluralism, which offers an analytical tool through which one can appreciate the dynamics of the interactions of customary and statutory law systems and their implications for indigenous peoples' land rights.[10] Legal pluralism theory is complemented by institutionalist analysis in which one analyzes the role played by institutions and inter-institutional relationships in dispute resolution. Legal pluralism is the theoretical model used in this research because it gives an insight into the interface between customary and statutory law systems as well as the impact of such interaction on the land rights of indigenous people. Institutional analysis will be applied to the process to identify

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[6] Chittagong Hill Tracts Regulation 1900

[7] Chittagong Hill Tracts Land Dispute Resolution Commission Act 2001 (Bangladesh), as amended by the Chittagong Hill Tracts Land Dispute Resolution Commission (Amendment) Act 2016.

[8] Chittagong Hill Tracts Peace Accord (Bangladesh–Parbattya Chattagram Jana Sanghati Samity) (signed 2 December 1997).

[9] Elinor Ostrom, *Understanding Institutional Diversity* (Princeton University Press 2005).

[10] Franz von Benda-Beckmann, 'Who's Afraid of Legal Pluralism?' (2002) 34(47) *Journal of Legal Pluralism and Unofficial Law* 37.

the extent to which institutional arrangements, capacities, and relationships influence the dispute outcomes. The study is qualitative in nature because it will use only documentation and interpretation as sources of data without conducting fieldwork. Such an approach has its drawbacks in terms of generalizability but it is relevant in this case of policy and legal analysis.[11]

3. Evolution of Land Governance in the Chittagong Hill Tracts

History of land management in CHT may be explained based on the interaction between customary laws, colonial laws, post-colonial state policies, and modern statutory laws.[12] While lands in the plains of Bangladesh are governed only by statutory laws passed by the government, lands in the CHT are governed by both statutory laws and customary laws of the indigenous population - a unique combination that has greatly influenced the nature of land disputes and their solutions.[13] Before colonisation, lands were managed according to the customary laws of indigenous communities such as the Chakmas, Marmas, and Tripuras.[14] The idea of individual property rights was unknown to these people; the lands were communal in nature and were used for jhum cultivation.[15]

However, the formal legal system was introduced through the Chittagong Hill Tracts Regulation 1900, which acknowledged the uniqueness of the area socially and culturally but maintained customary systems of land ownership within a structured administrative system.[16] After the partition of India in 1947, when the CHT became a part of Pakistan, state policies led to the weakening of the customary systems of land ownership in the area. However, the introduction of the Kaptai Hydroelectric Dam in 1960 brought about a major blow to the system, as it submerged large portions of land and displaced thousands of indigenous people.[17] After the emergence of Bangladesh in 1971, further changes in land management came about through post-independence state policies.[18] The coexistence of customary law and formal law

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[11] Sally Engle Merry, 'Legal Pluralism' (1988) 22(5) *Law & Society Review* 869.
[12] Gopal B Thapa and Golam Rasul, 'Implications of Changing National Policies on Land Use in the Chittagong Hill Tracts of Bangladesh' (2006) 81(4) *Journal of Environmental Management* 441.
[13] Fariba Alamgir, 'Land Politics in Chittagong Hill Tracts of Bangladesh: Dynamics of Property, Identity and Authority' (PhD thesis, University of East Anglia 2018).
[14] Md Ashrafuzzaman, 'The Tragedy of the Chittagong Hill Tracts in Bangladesh: Land Rights of Indigenous People' (2014).
[15] Masheli Chakma and others, 'An Assessment of Landscape and Land Use/Cover Change and Its Implications for Sustainable Landscape Management in the Chittagong Hill Tracts, Bangladesh' (2023) 12(8) *Land* 1610.
[16] Parban Chakma, 'The Chittagong Hill Tracts Regulation and Its Constitutional Status' *The Daily Star* (Dhaka, 28 February 2022).
[17] Sadeka Halim and Khairul Chowdhury, 'The Land Problem in the Chittagong Hill Tracts: A Human Rights Anatomy' (2015) *JAMAKON Year Book 2015* 36.
[18] Tamina M Chowdhury, 'Raids, Annexation and Plough: Transformation through Territorialisation in Nineteenth-Century Chittagong Hill Tracts' (2016) 53(2) *The Indian Economic & Social History Review* 183.

in the region generated numerous conflicts, particularly involving indigenous and settler populations. Indigenous peoples found formal courts difficult to access for resolving land tenure disputes.[19] The signing of the Chittagong Hill Tracts Peace Accord in 1997 stands as a landmark event, as it sought to integrate customary laws and statutory laws in land management.[20] Among its provisions was the establishment of the CHT Land Dispute Resolution Commission, recognition of customary land tenure, resolution of land disputes, and rehabilitation of displaced persons.[21]

4. Legal Pluralism and Jurisdictional Conflicts

The Chittagong Hill Tracts is yet another instance of classic legal pluralism where more than one legal system works at once. The legal systems include the Chittagong Hill Tracts Land Dispute Resolution Commission Act 2001 (amended 2016). These include: state statutory law under the CHT Land Dispute Resolution Commission Act 2001 (as amended in 2016);[22] customary indigenous land governance systems such as the Circle Chiefs and Headmen institutions under the CHT Regulation 1900; administrative control mechanisms involving Deputy Commissioners, Hill District Councils, and military-influenced governance structures; and informal power structures shaped by settler communities and local political actors. This multiplicity of legal systems generates considerable fragmentation in jurisdiction, where no one body has full and exclusive jurisdiction over land dispute resolution.[23]

The Chittagong Hill Tracts Land Dispute Resolution Commission continues to be partially operational and institutionally hindered due to lack of adequate regulations, with more than 23,000 unresolved land disputes left pending.[24] It also holds meetings irregularly and often gets interrupted by the prevailing political-security situation. The major impediments to land dispute resolution in the CHT persist as: (a) jurisdictional contradictions between customary land tenure laws and official cadastral law, evidenced by the lack of harmonised dispute

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[19] Raja Devarsish Roy, 'Challenges for Juridical Pluralism and Customary Laws of Indigenous Peoples: The Case of the Chittagong Hill Tracts, Bangladesh' (2004) 21 *Arizona Journal of International and Comparative Law* 113.
[20] Mohsin Amena, 'Chittagong Hill Tracts Peace Accord, 1997' in *Banglapedia: National Encyclopedia of Bangladesh* (2012) 43.
[21] Ibid.
[22] Md Zahid Hassan, 'Institutional Responsiveness to Indigenous Rights: The Case of Chittagong Hill Tracts Land Dispute Resolution Commission' (Master's thesis, UiT The Arctic University of Norway 2011) <https://munin.uit.no/handle/10037/3554\> accessed 24 April 2026.
[23] Md Atiqur Rahman, 'Understanding the Developmental Approach to Legal Pluralism and Access to Justice in Bangladesh' (2024) 25 *Australian Journal of Asian Law* 17.
[24] Ministry of Chittagong Hill Tracts Affairs, *Annual Administrative Coordination Report* (2025); see also Mohammad Moin Uddin, 'Settlement of Indigenous Land Disputes by the CHT Land Dispute Resolution Commission of Bangladesh: Challenges and Possible Solutions' in *The Indian Yearbook of Comparative Law 2018* (Springer Singapore 2019) 251.

resolution guidelines; (b) contestations between hill district institutions and central government bureaucracies, despite occasional coordination calls by the Ministry of CHT Affairs in 2025–2026; and (c) conflicting land registration practices, in which District Land Offices continue to challenge the authority of customary record-keepers.[25] The 2026 context of land disputes in the CHT is further characterised by the politics of land, with disputes firmly entrenched within processes of settlement-making, identity politics, and demography. Administrative reviews conducted during 2025–2026 have exposed persisting contradictions involving indigenous land rights claims on one hand and state developmental and infrastructural projects on the other, as well as conflicting perspectives between local/regional autonomy and territorial governance.[26] Administrative fragmentation persists in 2026 involving the Ministry of Chittagong Hill Tracts Affairs, the Ministry of Land, district administration, the Regional Council, and an informally influential security presence. This is confirmed by continuing overlapping approval mechanisms in land-related decisions reported in 2025 governance monitoring updates, which produce a lack of unified land authority, conflicting administrative directives, and recurring delays or blockage in dispute resolution processes.[27] Moreover, the CHT Land Commission is institutionally restricted because of its ongoing inability to have complete enforcement powers, its reliance on the good will of the executive to implement the commission's decisions, and the persistent political contestation regarding the commission's composition and powers owing to the failure of the reform process that took place in 2025-2026.[28]

5. Power Dynamics and Political Influences

Power dynamics and political influences constitute a central structural barrier to land dispute resolution in the CHT, where land governance remains deeply embedded in broader questions of state control, identity politics, and security governance. According to national data, around 60% of all litigation cases in Bangladesh are land-based, highlighting the extent to which land issues have been politicised in Bangladesh.[29] At the regional level, these dynamics are intensified by the persistence of conflict and militarised governance structures. Recent analyses (2025) highlight that the CHT continues to experience low-intensity conflict conditions and

[25] Chittagong Hill Tracts Land Dispute Resolution Commission Act 2001 (Bangladesh); Ministry of Chittagong Hill Tracts Affairs, *Administrative Circulars on Land Coordination in CHT* (2025–2026); Roy (n 13).
[26] Barkat and others (n 8); Halim and Chowdhury (n 11).
[27] Ministry of Chittagong Hill Tracts Affairs, *Annual Administrative Coordination Report* (2025); Government of Bangladesh, *Land Administration Reform Policy Documents* (Ministry of Land 2024–2026); Chittagong Hill Tracts Regional Council, *Reports* (2025–2026).
[28] Chittagong Hill Tracts Land Dispute Resolution Commission Act 2001 (as amended 2016); Hassan (n 16); *The Daily Star*, 'CHT Land Commission Reform Updates' (2025–2026).
[29] Bertelsmann Stiftung, 'BTI 2026 Country Report: Bangladesh' (BTI Project 2026) https://bti-project.org/en/reports/country-report/BGD accessed 19 April 2026.

risks of insurgency revival, despite the 1997 Peace Accord, thereby linking land disputes directly with security and political stability concerns.[30]

Statistical evidence from 2025 demonstrates the effect of these power struggles on individuals that 268 instances of human rights abuses involving 606 people were reported in the CHT, with perpetrators including security personnel, settlers, and armed groups often directly involved in disputes over land and territories.[31] It is also important to note that these figures indicate the role of economic power, as more than 300 acres of land were encroached in 2025, with many of these encroachments involving powerful figures or development activities such as tourism and plantation projects.[32]

Moreover, political conflicts over land are intimately related to demographic changes, where shifts in the demographic profile and settlement patterns continue to play an important role in determining security and resource management, thereby causing tension between the indigenous population and state-sponsored developmental policies.[33] The inability of the dispute resolution system—particularly the Land Commission—to implement its mandate has exacerbated these power struggles, as thousands of unsettled land disputes maintain a fragile environment that has enabled powerful political figures to hijack the land dispute process.[34] The findings suggest that the issues relating to the CHT cannot simply be resolved by the legal approach because they have deep roots in political and power relations.

6. The Role of the CHT Peace Accord 1997

The Peace Accord 1997 still acts as the major political-legal accord for resolving issues of land disputes within the CHT region. Nevertheless, empirical evidence gathered from research until 2025 shows that the process of implementation has been significantly poor, and only one-third of the major parts have been successfully implemented, especially regarding the resolution of land disputes, demilitarization, and decentralization of administration.[35] From an institutional

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[30] S M Abdur Rouf, 'Conflict Transformation in the Chittagong Hill Tracts: Bridging Peace Theory and UN Practice' (2025) *National Defence College E-Journal* https://ndcjournal.ndc.gov.bd/ndcj accessed 19 April 2026.

[31] Parbatya Chattagram Jana Samhati Samiti (PCJSS), *Annual Report of 2025 on Human Rights Situation in CHT* (PCJSS, 1 January 2026) <https://www.pcjss.org/pcjss-annual-report-of-2025-on-human-rights-situation-in-cht/\> accessed 20 July, 2026

[32] Ibid.

[33] MH Kabir, R Karim and MM Alam, 'Demographic Transitions in the Chittagong Hill Tracts: Implications for Environmental Degradation and Human Security' (2025) 46(3) *BIISS Journal* 339 https://doi.org/10.56888/BIISSj2024V45n3a1 accessed 19 April 2026.

[34] 'No commission in place to resolve Chittagong Hill Tracts crisis' *The Business Standard* (Dhaka, 18 August 2025)https://www.tbsnews.net/bangladesh/no-commission-place-resolve-chittagong-hill-tracts-crisis-biplobi-workers-party-1214731 accessed 19 April 2026.

[35] 'Human rights situation in CHT worsened in 2025: PCJSS' *The Daily Star* (Dhaka, 1 January 2026) https://www.thedailystar.net/news/bangladesh/news/human-rights-situation-cht-worsened-2025-pcjss-4070901 accessed 19 April 2026.

perspective, several studies reveal that although the agreement created important institutions—namely the Regional Council, Hill District Councils, and Land Commission—the functioning of these organisations has been ineffective due to limited delegation of power.[36]

Empirical analyses related to governance through 2025 further show that although the Land Commission was established to be the principal mechanism for dispute settlement, it is yet to become fully functional, with thousands of cases unresolved due to delays and lack of enforcement powers, among other factors.[37] The security and governance dimension also shows that while demilitarisation was expected after the Accord, it was not entirely achieved, as security presence remains visible in vital areas and causes an overlap of administrative and security mechanisms, complicating the land adjudication process.[38]

Moreover, assessment reveals little achievement in relation to land restitution and rehabilitation, as questions related to land occupation, expansion of settlement areas, and disputes among indigenous groups and settlers continue to create problems for the implementation of the law. In summary, from the data collected through 2025, it can be concluded that despite the Peace Accord of 1997 being the primary legal document providing the foundation for peace and land governance in the CHT, its lack of full implementation has led to several obstacles.

7. Reform Proposals and Way Forward

Given the existence of barriers to the settlement of land disputes in CHT, there will be a requirement of a strategy that addresses the issues of legal pluralism, institutional segmentation, and power dynamics. Below are recommendations that draw upon the experiences of India, Philippines, and Canada where similar dilemmas regarding the harmonization of customary and statutory land systems have been experienced.

7.1 Legal Harmonisation

Harmonisation of statutes dealing with land rights and customary land tenure systems is desirable through formal recognition of customary land tenure systems within the framework of the national legal system so that the problem of dual jurisdiction does not arise. This is illustrated by the practice of formal recognition of the ancestral domain rights in the Philippines by way of Indigenous Peoples' Rights Act 1997 wherein CADTs (Certificates of Ancestral

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[36] 'Chittagong Hill Tracts Peace Accord' *Peace Accords Matrix* (University of Notre Dame) https://peaceaccords.nd.edu/accord/chittagong-hill-tracts-peace-accord-cht accessed 19 April 2026.

[37] 'Human rights situation in CHT worsened in 2025: PCJSS' (n 33).

[38] Shadia Afrin, 'Resisting Displacement: The Mro Community Stands for Land Justice against Corporate Intrusion in the Chittagong Hill Tracts of Bangladesh' (MA thesis, University of Manitoba 2026).

Domain Titles) are issued in order to integrate the ancestral domain rights in the national system of land administration. Canada also provides an excellent example where the recognition of the Aboriginal title takes place through judicial decisions of the Supreme Court of Canada such as Delgamuukw v. British Columbia [1997]. Harmonisation of laws in CHT will involve: (a) recognition of the customary land tenure as a legitimate form of property right; (b) creation of a hierarchical order of precedence in case of conflict between customary and statutory laws; and (c) uniform land registration procedures.

7.2 Strengthening the Land Commission

The proper creation and enhancement of the Chittagong Hill Tracts Land Dispute Resolution Commission is needed, which includes the creation of proper guidelines and procedures, more powers and independence to ensure proper and timely resolution of disputes. With regard to the example of India's Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 which has a multi-level dispute resolution process with timelines provided, the LDRC should have the ability to: (a) give binding decisions enforceable by the civil courts; (b) create circuit benches for better accessibility; (c) create statutory time limit for case disposal; and (d) be composed of indigenous people.

7.3 Strengthening Administrative Cooperation

The administrative coordination can be improved by adopting an integrated system of land administration system that does not create jurisdictional overlaps involving the Ministry of CHT Affairs, Ministry of Land, district administration, and the Regional Council. It will include (a) adopting a common land information system for all concerned agencies; (b) identifying one agency that will be in charge of the land record management system in the CHT; (c) adopting interagency coordination bodies with their respective terms of reference; and (d) creating memoranda of understanding among the customary bodies and the government agencies on their respective functions. The case of the Australian Native Title Representative Bodies (NTRBs) is relevant for comparison purposes.

7.4 Comprehensive Land Survey and Digital Record System

There is a need to conduct an effective land survey that will assist in solving problems related to land rights and help clear ownership issues. The development of a digital land records system must be considered. The steps that must be taken include: (a) the conduct of a cadastral survey that maps both customary and statutory land; (b) creating a digital database that brings together customary and statutory land records; (c) having the involvement of the community during the process of the land survey; and (d) offering training to customary record holders on how to

manage digital records. Some lessons can be learned from the Cadastral Resurvey Project of South Korea. It was implemented to address "cadastral nonconformity," meaning the 15 percent of lands whose boundaries did not match the colonial-era paper maps that were created—a situation directly mirroring the CHT's own problem of making sense of its colonial era record against customary tenure systems. South Korea passed the Act on Special Cases concerning Cadastral Resurvey 2011 to provide legal clarity, with the implementation done by MOLIT in collaboration with local government units and Korea Land and Geospatial Informatix Corporation (LX). This project had a well-outlined roadmap consisting of preparation phase (2012-2015), pilot execution (2016-2020), full-scale execution (2021-2025) and finalization (2026-2030) phases. This provided ample time for trial and error and then moving forward. Modern technologies like drones, satellites, and RPA were used to collect "smart cadastre" data. Most importantly, digital cadastral data is made to interface with Korea Real Estate Administration System (KRAS), consolidating 18 property records into a "Real Estate Comprehensive Certificate" for the citizen.

7.5 Community Participation

The frameworks for land governance need to be made participatory through the inclusion of indigenous peoples in land settlement, relocation, and development projects. This can be achieved through: (a) creation of consultation procedures that would demand that there is free prior and informed consent (FPIC) from indigenous peoples for any development project taking place on their land; (b) creation of community land councils that have the power to make decisions regarding local land governance issues; (c) representation of indigenous women and marginalized people within land governance structures; and (d) capacity building of indigenous communities to enable them to participate in the legal and administrative process.

Taken together, these recommendations will contribute to an improved and rights-based method of dispute resolution on issues relating to the CHT’s land, from both the legal and political perspectives. The reform agenda is based on the realization that legal reforms are not enough; capacity building, political will, and empowerment are equally crucial parts of the process.

8. Conclusion

Land disputes that have emerged in the Chittagong Hill Tracts are a consequence of past injustices, legal complexities, and disparities in power between people in the area. Land disputes emerge out of the structural inadequacies present in the system rather than being disputes in themselves. Effective resolution of such issues cannot take place merely by means

of the law alone but must be accompanied by political and socio-administrative transformation as well. Only in such an approach will it be possible to implement the Peace Accord and ensure the rights of indigenous peoples to their lands and their cultures. The recommendations made in this article are a way forward towards achieving such a transformation based on lessons learned from elsewhere in the world and suited to the particular legal and cultural context of the CHT. Whether such transformation takes place will be the true test of its success in terms of enabling indigenous peoples to gain justice and control of their lands.

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Legal Recourse for Cheque Dishonour Cases in Metropolitan Subordinate Judiciary, Dhaka: An Empirical Study

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ABSTRACT: This research offers a descriptive empirical and doctrinal analysis of cheque dishonour litigation pursuant to the Negotiable Instruments Act, 1881 (NI Act) in the Metropolitan Subordinate Judiciary of Dhaka. Utilising an exploratory mixed-methods framework, this study examines n=200 trial court case files (2018–2024) in conjunction with qualitative perspectives from legal professionals, bank legal representatives, and judicial clerks (n=23). The empirical evidence indicates that inadequate funds constitute 73% of dishonoured instruments, with signature inconsistencies (19%) and premature presentation (8%) as the leading factual bases in trial records. Anchored in Legal Positivism and Deterrence Theory, the article rigorously analyses the operational pressure of inflexible legislative presumptions under Sections 138 and 140 in light of significant Appellate Division rulings regarding contractual consideration. It underscores critical systemic impediments such as extended trial durations of 18 to 36 months, delays in process serving, and evidentiary complications regarding digital banking records, while advocating for specific structural reforms like obligatory security check registries, pre-trial mediation, and direct API-integrated electronic verification systems.

KEYWORDS: Negotiable Instruments Act 1881, Cheque Dishonour, Metropolitan Subordinate Judiciary, Dhaka, Financial Litigation, Empirical Legal Studies.

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1. Introduction

A cheque is a basic negotiable document that constitutes an unconditional written directive instructing a designated bank to disburse a specific amount of money upon request. Notwithstanding the prevalence of cheques in enabling business dealings and corporate credit throughout Bangladesh, cheque dishonour continues to be a significant trigger for legal disputes, imposing considerable pressure on the lower courts. According to the Negotiable Instruments Act of 1881, a cheque is considered dishonoured when the drawee bank refuses payment due to inadequate funds, account termination, signature inconsistencies, or payment cessation directives, thereby undermining economic confidence and the smooth flow of credit. The legal structure established in Sections 138, 140, and 141 of the NI Act imposes stringent punitive measures for defaults, however trial tribunals at the initial level often face intricate substantive and procedural challenges. Current national scholarship on negotiable instruments legislation is primarily theoretical, emphasising Supreme Court appellate rulings, while mainly neglecting trial court records, empirical patterns of dishonour, and practical operational challenges. This research tackles this significant empirical void by investigating cheque dishonour adjudication in the Metropolitan Subordinate Judiciary of Dhaka. In accordance with the legal provisions of the Negotiable Instruments Act, 1881, complaints regarding cheque dishonour are submitted to the Chief Metropolitan Magistrate (CMM) Court for preliminary acknowledgement and the issue of process. Nonetheless, in accordance with the allocation of statutory jurisdiction and local case management procedures, the trial of Section 138 offences within the Dhaka metropolitan area is carried out by a court of no lesser standing than that of a Joint Metropolitan Sessions Judge when the cheque's face value surpasses Tk. 5 (five) lac; all other offences subject to Section 138 shall be adjudicated by a Metropolitan Magistrate's court.[3] Rooted on Legal Positivism and Deterrence Theory, the study examines n=200 trial court case files (2018–2024) in conjunction with qualitative perspectives from advocates, bank legal representatives, and judicial clerks (n=23). This research connects formal legal statutes with actual courtroom situations by methodically classifying the reasons for dishonour, which include liquidity shortfalls (73%), signature discrepancies (19%), and early presentation (8%).

[3] The Negotiable Instruments Act 1881 s 141(c) as inserted by the Negotiable Instruments (Amendment) Act 2026 s 2.

Additionally, it assesses the conflict between inflexible legal presumptions and evolving burden-of-proof criteria as established by significant Appellate Division decisions (for instance, *Md. Abul Kaher Shahin v Emran Rashid*). This research ultimately highlights critical systemic impediments, such as extended 18-to-36-month trial durations, delays in process serving, and challenges related to digital banking documentation, while advocating for specific legislative changes, including obligatory security cheque registries, pre-trial mediation periods, and direct API-integrated electronic verification systems.

2. Literature Review

The enforcement of dishonoured cheques under the NI Act has sparked considerable legal debate concerning judicial efficacy and credit oversight in Bangladesh. Previous legal research has thoroughly investigated the procedural obstacles under Section 138, including statutory notification durations, evidential criteria, and enforcement strategies. Current studies often emphasise structural impediments, such as lengthy trial durations, challenges in obtaining bank testimonies, and procedural holdups in executing statutory summonses. Nevertheless, a significant portion of the current domestic literature is predominantly doctrinal, devoid of empirical support from primary trial court documentation. Although appellate rulings from the Supreme Court of Bangladesh are extensively scrutinised, there is a scarcity of research offering quantitative analyses of trial court dockets or investigating the practical application of statutory presumptions at the Metropolitan Sessions tier. This study tackles this deficiency by integrating case file coding with stakeholder interviews in the metropolitan area of Dhaka.

3. Research Scope and Objectives

This study employs an exploratory and descriptive empirical framework to investigate cheque dishonour litigation in the Metropolitan Subordinate Judiciary of Dhaka. This research prioritises establishing a detailed, contextual foundation of dockets and procedural dynamics within Dhaka's main commercial court, instead of engaging in macro-level temporal time-series or multi-regional comparative modelling. The research specifically targets the following four refined objectives:

1. To classify and measure the principal factual reasons for cheque dishonour within active court records.

2. To examine the legal stipulations outlined in Sections 138, 140, and 141 of the NI Act, and to assess qualitatively the actual implementation of the burden-of-proof criteria modified by significant appellate rulings in trial court discussions.
3. To methodically discern operational, evidentiary, and administrative impediments encountered by practitioners, financial institutions, and the judiciary during trial processes.
4. To develop evidence-based policy suggestions focused on enhancing trial efficiency and mitigating malicious predatory submissions.

4. Methodology and Theoretical Framework

4.1 Data Sampling Protocol

This research utilises a descriptive mixed-methods framework that integrates quantitative case-file examination and qualitative stakeholder interviews.

Quantitative Sample: A selection of n=200 NI Act case files (including both ongoing/pending trials and resolved matters out of approximately 1200 cases) was extracted from the master filing registers and docket archives of the Metropolitan Subordinate Judiciary in Dhaka, encompassing filings from 2018 to 2024, utilising a Simple Random Sampling method with a Computer Generated Random Number Table to guarantee an impartial representation. The sample consisted of 114 completely resolved case files (57%) and 86 ongoing/pending cases (43%). Instances were chosen using simple random selection to exemplify standard trial pathways. To uphold statistical integrity and avert temporal distortion, the entire trial period (18 to 36 months) was assessed solely from fully resolved case files. Active and pending dockets were excluded from the overall lifecycle computations; instead, they were scrutinised solely to assess stage-specific adjournment trends, notice adherence, and intermediate procedural impediments. Owing to inherent archival constraints—where physical records for active cases solely document current stage-wise postponements and numerous closed files lack comprehensive outcome summaries—the audit concentrated on confirmed procedural durations and grounds for dishonour instead of overall judgement results.

Qualitative Sample: To provide context for case-file data and identify procedural challenges at the grassroots level, semi-structured qualitative interviews were performed with essential legal participants: practicing advocates (n=15), legal officers from commercial banks (n=5), and judicial clerks (n=3), resulting in a total qualitative sample of n=23.

4.2 Data Analysis

Quantitative data were categorised and organised into tables to ascertain descriptive percentage distributions of reasons for dishonour. Qualitative content and topic analysis were utilised on interview transcripts, court order documents, and judicial filings to assess litigation strategy, evidentiary requirements, and procedural impediments.

Table 1: Qualitative Stakeholder Interview Sample and Key Thematic Insights (*n*=23)

Stakeholder Category	Sample Size (*n*)	Primary Qualitative Themes & Key Operational Insights Identified
Practicing Advocates	*n*=15	•Frequent use of signature mismatch as a defense against exploitative lenders. •Extended postponements resulting from unsuccessful execution of summons or warrants. •Trial judges exhibit reluctance to acknowledge digital/EFT clearing logs without physical signatures.
Bank Legal Officers	*n*=5	•Operational pressure resulting from incessant court summons to authenticate standard dishonour notifications. •Working capital liquidity deficits as the leading driver of corporate default. •Need for direct API clearing verification to reduce manual testimony.
Judicial Clerks	*n*=3	•Acute backlog caused by lack of specialized benches for NI Act complaints. •Process-server accountability gaps resulting in 3 to 6 months delay in securing initial appearance. •Incomplete physical court registers lacking post-judgment conviction/acquittal summaries.

4.3 Theoretical Framework

The research is guided by Legal Positivism and Deterrence Theory.

Legal Positivism[4]: Offers a critical perspective for scrutinising Section 138 as a clear legal mandate that establishes stringent criminal culpability in cases of technical default, predominantly detached from subjective ethical or contractual contexts.[5]

Deterrence Theory[6]: Argues that punitive measures, particularly incarceration and monetary penalties, function to ensure adherence to transactions and discourage deliberate financial noncompliance.[7]

This paper assesses the practical conflict that emerges when rigid positive regulations are enforced without considering the foundational contractual elements, leading to susceptibilities for exploitative legal actions.

4.4 Ethical Considerations and Research Approval

All personal identifiers, business designations, and account information obtained from court records and interview transcripts have been rendered anonymous in compliance with academic research protocols. Informed verbal consent was acquired from all 23 interviewees before initiating semi-structured interviews, adhering to an authorised institutional consent policy.

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[4]John Austin (1790–1859) was a British legal philosopher of the 19th century who fundamentally established the principles of legal positivism. Austin's particular variant of optimism is referred to as the Command Theory. He characterised "law properly so called" by means of three distinct, interconnected components:

• Directive: Statutes are manifestations of aspiration or intention supported by the potential for coercion. They are authoritative instructions guiding individuals on permissible and impermissible actions.

• The authority of these directives must originate from a politically dominant entity—the sovereign. Austin characterised the sovereign as an individual or entity that the majority of a community routinely follows, yet does not consistently submit to any other human authority.

• A directive is deemed a law solely when the authority possesses both the capability and the will to impose a detriment (a penalty or punishment) for noncompliance.

According to Austin, the absence of any of the three elements—command, sovereign, or sanction—renders it not positive law. H.L.A. Hart (1907–1992) entirely transformed and updated legal positivism with his seminal work, The Concept of Law, published in 1961.Hart contended that Austin's "Command Theory" was excessively basic, since it equated law to a "gunman scenario on a grand scale," implying that individuals comply with the law solely due to the fear of punishment, akin to a bank teller yielding to an armed robber. Hart formulated the idea by redirecting attention from force to societal norms. He contended that a developed legal framework comprises two separate categories of regulations.

[5] Austin J, *The Province of Jurisprudence Determined* (John Murray 1832); HLA Hart, *The Concept of Law* (Clarendon Press 1961).

[6]Jeremy Bentham (1789) and Gary Becker (1968) epitomise the initial two phases of Deterrence Theory. Bentham established the intellectual foundation through Enlightenment-era utilitarianism, but Becker contemporised it almost two hundred years later by employing mathematics and microeconomic principles. Deterrence theory fundamentally regards the prospective offender as a rational evaluator. It posits that individuals engage in criminal activities due to the anticipation that the advantages surpass the drawbacks. To deter criminal activity, the government must elevate the penalties beyond the incentives.

[7]Bentham J, *An Introduction to the Principles of Morals and Legislation* (1789); Becker GS, *Crime and Punishment: An Economic Approach* (1968) 76(2) Journal of Political Economy 169.

5. Statutory Framework of the NI Act

5.1 Section 138: Criminal Liability and Procedural Conditions

Section 138(1) of the Negotiable Instruments Act, 1881 renders the dishonour of a cheque a criminal offence primarily due to insufficiency of funds or where the amount exceeds the arrangement with the bank.[8] Upon conviction, the drawer faces imprisonment for up to one year, or with fine which may extend to thrice the value of the cheque, or both.[9] To initiate prosecution under Section 138, strict procedural preconditions must be met:

- The cheque must be presented to the bank within its validity period (six months from the date of issue).[10]
- The payee or holder in due course must issue a formal legal notice of demand in writing to the drawer within thirty (30) days of receiving notification of dishonour from the bank.[11]
- The drawer must be granted thirty (30) days from the receipt of the notice to pay the demanded sum.[12]
- If payment is not made, a formal complaint must be filed in court within thirty (30) days following the expiry of the statutory payment window.

5.2 Mandatory Appellate Deposit ("Pay-to-Appeal")

Under Section 138A, a convicted drawer seeking to prefer an appeal against a trial court judgment must first deposit at least 50% of the fine amount awarded by the trial court. This statutory deposit requirement aims to prevent frivolous appellate delays and secure partial recovery for the complainant during appellate pendency.[13]

5.3 Section 140 and Corporate Liability

Section 140 applies penal liability to corporate entities.[14] Section 140 clarifies that if the person committing the offence under Section 138 is a company or corporate body, every person who, at the time the offence was committed, was in charge of and responsible to the company for the conduct of its business shall be deemed guilty alongside the corporate entity.[15]

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[8] The Negotiable Instruments Act 1881, s 138(1).
[9]NI Act (n 8).
[10]Ibid s 138(1)(a).
[11]Ibid s 138(1)(b).
[12]Ibid s 138(1)(c).
[13]NI Act (n 8) s 138A, as inserted by the Negotiable Instruments (Amendment) Act 2006, s 3.
[14]NI Act (n 8) s 140.
[15]Ibid.

6. Empirical Findings: Categorization and Descriptive Insights

Examination of the selected case files (n=200) uncovers three fundamental factual bases for instrument dishonour within the Metropolitan Subordinate Judiciary of Dhaka. Table 2 establishes the quantitative foundation for grounds of dishonour, whereas the functioning of statutory presumptions and the shifting standards of burden of proof are examined qualitatively via stakeholder interviews and case order-sheet discussions (section 8), since court records do not quantify evidentiary responsibilities. The percentage distribution of dishonoured grounds remained uniform across both resolved and pending subsets.

Table 2: Empirical Breakdown of Dishonour Grounds (n=200)

Categorical Ground for Dishonour	Case Count (n)	Percentage Proportion (%)
Insufficient Funds / Account Liquidity Deficit	146	73%
Signature Discrepancy / Authorization Dispute	38	19%
Premature Presentation of Post-Dated Cheques	16	8%
Total	200	100%

Note on Categorical Classification and Digital Clearing Architecture:

(1) **Conceptual Classification:** Insufficient amounts and signature discrepancies are significant banking grounds for dishonour, whereas the early presentation of post-dated cheques indicates a temporal contention regarding the legitimacy of the presentation. Nonetheless, as bank return memos and official court documents clearly designate premature presentation as a separate operational basis for returning instruments unpaid, it is incorporated here as a principal factual impetus in trial dockets.

(2) **Digital Payments & Clearing Framework:** According to Section 138 of the NI Act 1881, criminal responsibility is exclusively linked to tangible negotiable cheque instruments, not to direct electronic fund transfers like debit or credit card transactions or mobile financial services. Contemporary commercial banking in Bangladesh handles physical cheques via automated clearing systems, namely the Bangladesh

Automated Cheque Processing System (BACPS) and the Bangladesh Electronic Funds Transfer Network (BEFTN). As a result, although the digital payment framework manages the backend clearing process, the official legal bases outlined in bank dishonour memos continue to fall under conventional banking categories (such as insufficient funds, signature inconsistencies, or timing-related presentation issues) as demonstrated in Table 2 above.[16]

6.1 Insufficient Funds (73.0%)

Inadequate financial resources represent the predominant portion of the sample instances (73%). Qualitative interviews with five bank legal officers indicate that these issues predominantly arise from defaults in working capital, postponed cash flows from enterprises, and unfulfilled credit lines. A senior legal officer of a bank noted that in more than 70% of commercial default instances, debtors typically do not want to engage in fraud; instead, systemic cash-flow delays across the supply chain lead to unforeseen shortfalls on the due date, resulting in automatic technical dishonour.

6.2 Signature Discrepancies (19.0%)

Discrepancies in signatures represent 19% of the examined cases. Such occurrences transpire when the drawee bank refuses payment because of discrepancies between the drawer's recorded specimen signature and the actual instrument submitted. Although categorised under the official banking designation of 'Signature Differs' in the dishonour memorandum, this basis is significantly presented in trial arguments as a defence against unauthorised execution or fabrication. Defence attorneys (n=15) indicated that discrepancies in signatures are often presented as key defences to assert fabrication, unauthorised execution of documents, or coercion. A seasoned defence attorney remarked that discrepancies in signatures frequently serve as our primary line of defence. In numerous cases, non-bank financiers or business associates acquire signed blank checks under coercion or as informal security, subsequently entering unauthorised sums. Emphasising signature discrepancies compels the court to transcend the strict presumption of proper execution.

[16]Bangladesh Bank, Operating Rules and Procedures for Bangladesh Automated Cheque Processing System (BACPS) (Payment Systems Department, Bangladesh Bank) https://www.bb.org.bd accessed 15 September 2026.

6.3 Premature Presentation of Post-Dated Cheques (8.0%)

Comprising 8% of the dataset, these conflicts pertain to post-dated cheques that are presented before their designated maturity date or submitted subsequent to the termination of the contract. These instances illustrate procedural discord between foundational commercial agreements and legal presentation deadlines.

6.4 Case Trial Duration and Contextual Docket Realities

Despite the absence of standardised outcome metrics in official court records, empirical examination of a sample of 200 case files reveals that the typical duration of an NI Act case within the Metropolitan Subordinate Judiciary of Dhaka spans from 18 to 36 months from the initial filing to its current status. This extended timeframe, which sharply contrasts with the legal requirement for expedited resolution, is chiefly caused by delays in executing summonses and the absence of official bank witnesses.

Methodological Clarification on Duration and Disposition Metrics: A significant structural constraint in court archives is the lack of standardised outcome indexing. Among the analysed n=200 dockets, cases were systematically categorised into active/pending processes (exceeding 40%) and resolved matters to assess litigation timelines precisely. Active dockets were scrutinised solely to measure stage-specific delays, including the issuance of summons and witness participation, without inferring the overall trial length from unfinished cases. In contrast, comprehensive trial lifespan projections (spanning 18 to 36 months) were derived exclusively from archived case information. Among the discarded documents, order sheets often concluded with procedural dismissals, out-of-court Section 138 settlements, or transfers, without definitive final judgements that specify the bases for conviction or acquittal. As a result, although this sample effectively delineates the empirical disaggregation of dishonour grounds (Table 2) and sequential delay factors, deriving a statistically correct ratio of ultimate conviction to acquittal rates was impracticable from the accessible docket records. Future investigations employing specialised post-judgment monitoring are advised to differentiate these disposition criteria.

7. Systemic Procedural Bottlenecks: Qualitative Stakeholder Synthesis

Data synthesized from court record evaluations and semi-structured discussions with legal participants (n=23) reveal four principal procedural impediments within the Metropolitan Subordinate Judiciary, Dhaka:

7.1 Summons and Warrant Service Delays

Qualitative interviews conducted with judicial clerks (n=3) and practicing advocates (n=15) indicated that process-serving procedures constitute the most significant pre-trial impediment inside the Metropolitan Subordinate Judiciary, Dhaka. Judicial clerks highlighted that physical process-servers sometimes neglect to deliver legal summonses in a timely manner because of antiquated address databases, unverified party information, and deficiencies in administrative oversight. Interviews with clerks reveal that this phase typically results in a procedural delay of 3 to 6 months, necessitating multiple postponements to ensure the accused's official court appearance or to obtain arrest warrants in accordance with Code of Criminal Procedure guidelines.

7.2 Evidentiary Proof and Bank Witness Attendance

Acquiring certified bank return memos and necessitating the physical presence of commercial bank representatives to validate dishonour logs generates significant operational friction. Legal officers from the bank (n=5) indicated that branch managers and operational officers are frequently summoned to various metropolitan courts on the same day. A legal officer from a commercial bank observed that branch personnel dedicate considerable time travelling to court merely to validate physical signatures on standard computerised dishonour slips. This operational pressure leads to unavoidable delays, as bank officials often seek rescheduled dates owing to competing business responsibilities.

7.3 Caseload Volume and Administrative Docket Strain

Interviews with all three stakeholder categories (n=23) highlighted the systemic pressure resulting from excessive docket burdens. Judicial clerks (n=3) verified that initial NI Act grievances are categorised with general criminal cases instead of specialised commercial dockets. Proponents (n=15) noted that trial judges are compelled to oversee more than 100 scheduled cases daily, resulting in a mere 2 to 3 minutes allocated per case during procedural hearings. This bureaucratic impediment directly obstructs speedy trials and necessitates regular postponements.

7.4 Digital and Internet Banking Integration and Evidentiary Friction

The growing dependence on digital payment systems, corporate online banking, and automated clearing networks, such the Bangladesh Electronic Funds Transfer Network (BEFTN) and National Payment Switch Bangladesh (NPSB), has revolutionised the cheque clearing process.[17] Nonetheless, this digital advancement generates considerable operational and evidential discord within trial courts. Table 2 classifies dishonours according to conventional statutory criteria indicated on physical bank memos, however the essential proof needed to substantiate these defaults increasingly depends on computer-generated clearing records[18], digital metadata, and electronic transaction slips. In the Metropolitan Subordinate Judiciary, trial judges exhibit a continual reluctance to accept computer-generated clearing receipts without manual seal verifications and physical witness testimonies from banking officials. The Evidence (Amendment) Act, 2022 introduced new regulations to officially acknowledge electronic and digital evidence,[19] necessitating stringent certification of computer-generated bank logs and digital dishonour slips to establish data integrity and admissibility; however, subordinate trial courts presently do not possess uniform practice directives or judicial guidelines for authenticating digital clearing metadata and API logs. As a result, trial judges frequently summon branch managers to provide in-person testimony exclusively to validate automated clearing memos, leading to extended trial delays and undermining the expedited purpose of Section 138 procedures.

8. Judicial Interpretation, Burden of Proof, and Abuse of Process

8.1 Consideration and Rebuttable Presumptions: *Md. Abul Kaher Shahin v Emran Rashid*

Section 118(a) of the NI Act creates legal assumptions that a cheque was issued for legitimate consideration, albeit these assumptions can be challenged. In the pivotal ruling of *Md. Abul Kaher Shahin*, the Appellate Division of the Supreme Court of Bangladesh elucidated the relationship between Section 138 of the NI Act and the overarching tenets of contract law as stipulated in the Contract Act of 1872.[20] The Court determined that when a defendant presents evidence that creates reasonable doubt about the presence of underlying consideration (such unmet land contracts or undelivered loan payments), the legal presumption reverts to the

[17]Ibid
[18]The Evidence Act 1872 s65B as inserted by the Evidence (Amendment) Act 2022.
[19] Ibid ss 22A, 65A, 65B as inserted by the Evidence (Amendment) Act 2022.
[20]*Md. Abul Kaher Shahin v Emran Rashid and Another* (2020) 72 DLR (AD) 145.

complainant.[21] If the plaintiff does not establish the foundational debt or consideration, criminal responsibility under Section 138 cannot be upheld. From a Legal Positivist viewpoint, this decision inhibits the automatic application of formal legislative language in the absence of foundational contractual duties. This doctrine was later validated by the High Court Division in *Mahmudul Hasan v The State*.[22]

This legal trajectory underlines a clear operational conflict with Austinian Legal Positivism. From a rigorous legal positivist perspective, Section 138 functions as an inflexible directive from the sovereign, whereby the dishonour of a technical instrument invariably results in criminal culpability, regardless of any foundational contractual considerations. Nevertheless, the stance of the Appellate Division in *Md. Abul Kaher Shahin* mitigates this strict positivism by permitting trial courts to consider factors outside the explicit statutory directive. Allowing defendants to counter the presumptions of Section 118(a) with evidence of absent consideration, the judiciary tacitly acknowledges that rigid positivism in negotiable instruments disputes encourages process misuse, necessitating the interpretation of explicit statutory language in conjunction with overarching equitable contract principles.

8.2 Security Cheques and Banking Remedies: *Nure Alam Siddique (Tulu) v State*

In *Nure Alam Siddique (Tulu) v State*, the High Court Division addressed the practice of commercial banks obtaining blank or security cheques prior to disbursing loan facilities.[23] The Court affirmed that financial institutions must primarily exhaust civil remedies for outstanding claim under the Artha Rin Adalat Ain, 2003[24] by auctioning mortgaged assets before pursuing supplementary criminal litigation under Section 138 of the NI Act for remaining deficits. This hierarchical approach aligns with Deterrence Theory by limiting penal criminal sanctions to genuine, unrecovered bad-faith defaults.

8.3 Predatory Litigation: Illustrative Composite Case Study

To investigate the potential misuse of stringent statutory responsibilities, contemplate a representative composite case profile derived from stakeholder interviews and legal documents:

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[21]Ibid.
[22]*Mahmudul Hasan v The State and Another* (2022) 74 DLR (HCD) 310.
[23]*Nure Alam Siddique (Tulu) v State and Others* (2019) 71 DLR (HCD) 570.
[24]'The Implication of Recent Landmark Decision of Apex Court on Cheque Dishonour Cases' Dhaka Courier, November 20, 2020.

Composite Profile: *A fictional composite profile depicts a business borrower seeking immediate liquidity who has turned to an informal third-party lender. The lender acquired two signed blank security cheques as a prerequisite for loan processing. The creditor neglected to provide the stipulated loan funds, withheld the collateral cheques, submitted them to the bank to acquire dishonour notifications, and thereafter lodged criminal charges pursuant to Section 138. As a result of the preliminary legal presumption established in Section 118(a), the borrower underwent trial and was convicted, so incurring the obligatory 50% deposit requirement under Section 138A to initiate an appeal. Subsequent investigations disclosed that the lender had initiated multiple such proceedings utilising kept security cheques.*
This composite profile demonstrates how malicious individuals might take advantage of legislative presumptions under Section 138 without first judicial scrutiny.

Examining Bentham's Deterrence Theory, the observation that 73% of instances stem from working-capital liquidity shortages instead of deliberate fraud indicates a significant structural discord. Deterrence theory posits that stringent punitive measures dissuade malicious defaults; however, when financial defaults arise from widespread macroeconomic illiquidity, the prospect of incarceration under Section 138 proves ineffective as a behavioural deterrent, merely exacerbating trial docket congestion. In contrast, during cases of exploitative lawsuits and improper enforcement of security cheques (illustrated by the 19% signature variance threshold), the deterrence mechanism collapses completely—punitive measures are manipulated by malicious individuals to extort settlements, transferring the responsibility of deterrence from deliberate fraud to susceptible market players. This composite dynamic explicitly relates to the 19% signature discrepancy level noted in Table 2, illustrating that defence parties often reference the judicial principles of *Abul Kaher Shahin* to substantiate absent consideration for retained security cheques.

8.4 Institutional Friction between Automated Banking Frameworks and Judicial Formalism

In addition to the procedural lag in the delivery of summons, there is a significant operational discord between Bangladesh's updated financial clearing system and the trial court's evidence standards as stipulated in Section 138 of the NI Act. Commercial banking activities extensively employ the Bangladesh Electronic Funds Transfer Network (BEFTN), National Payment

Switch Bangladesh (NPSB), and automated digital payment systems, however trial adjudication is still reliant on traditional proof criteria. Trial courts in the Metropolitan Subordinate Judiciary often exhibit a profound adherence to formalism, refusing to acknowledge electronic delivery confirmations or automatic digital dishonour records absent physical signatures and conventional bank seal verification. This organisational discord results in a systemic lag: whereas financial exchanges transpire immediately in the digital realm, establishing technical misconduct in court necessitates lengthy manual witness appearances just to comply with outdated evidentiary protocols. Reconciling this gap necessitates a direct correlation between the digital clearing requirements of Bangladesh Bank and the evidentiary statutes outlined in Section 138.[25] Moreover, the extended duration of trial processes (18 to 36 months) and the rigid opposition to digital/API clearing logs further diminish the deterrent effectiveness of Section 138. Deterrence Theory is fundamentally dependent on the promptness and reliability of punishment; when legal proceedings are prolonged for years due to manual summons delivery and strict compliance with physical evidence criteria—a characteristic of formalist procedural positivism—the legal system's ability to deter financial defaults diminishes, resulting in systemic friction within urban commercial courts.

8.5 Operationalization of Theoretical Framework with Empirical Case Data

The empirical results from the n=200 trial court case files explicitly illustrate the analytical conflict between Legal Positivism and Deterrence Theory within the Metropolitan Subordinate Judiciary of Dhaka. Instead of perceiving procedural delays as mere administrative setbacks, the case evidence converts theoretical legal principles into quantifiable practical metrics. The conceptual framework of 'Systemic Institutional Friction' within Austinian Positivism is exemplified by the extended interval between initial awareness and witness testimony, during which 73% of liquidity-related defaults and 19% of signature discrepancy conflicts encounter significant trial delays due to recurrent postponements for manual bank seal validations. Moreover, the notion of 'Procedural Asymmetry' is implemented via process-serving measures; in a significant number of examined dockets, non-compliance with summons service resulted in an artificial pre-trial postponement of 3 to 6 months. This research illustrates that procedural delays represent a structural expression of theoretical friction, which diminishes the prompt deterrent effectiveness of Section 138 proceedings, by systematically aligning verifiable order-

[25]Bangladesh Bank (n 16).

sheet entries—like time-petitions, unexecuted warrants, and manual witness subpoenas—with fundamental theoretical dimensions.

9. Recommendations for Legislative and Policy Reforms

This research suggests three specific modifications based on empirical evidence to address procedural impediments and mitigate exploitative lawsuits:

- **Mandatory Registration of Security Cheques:** The NI Act ought to be revised to mandate that commercial agreements containing security cheques expressly document cheque numbers in a centralised registry or banking portal, therefore averting unauthorised submissions.
- **Pre-Trial Screening and Mediation Windows:** Mandatory 30-day pre-trial mediation periods for initial financial defaults would alleviate court congestion and facilitate peaceful debt resolution.
- **Integration of Modern Digital Verification and Electronic Notice Protocols:** To eradicate administrative impediments and update trial processes, Section 138 of the NI Act and pertinent service regulations must be revised to acknowledge validated electronic summonses (via confirmed email and SMS monitoring). Moreover, banking authorities, in collaboration with the Ministry of Law, ought to create a cohesive digital verification system that facilitates direct API-driven transfer of dishonour return slips and clearing logs from commercial banks to trial courts. This institutional transformation will eradicate the requirement of physically summoning bank officials only for standard manual seal verification, therefore accelerating evidential processes.

10. Conclusion and Theoretical Implications

This research has conducted a detailed empirical analysis of cheque dishonour litigation in the Metropolitan Subordinate Judiciary of Dhaka, integrating empirical data (n=200 case files, n=23 qualitative interviews) with doctrinal scrutiny.

Theoretical and Policy Implications:

The empirical and qualitative evidence bolsters Austinian Legal Positivism by demonstrating how rigid statutory directives under Section 138 function as inflexible orders from the sovereign, establishing stringent criminal responsibility for technical infractions. Nonetheless,

the courtroom dynamics and exploitative behaviours illustrated in this research reveal the functional constraints of Bentham's Deterrence Theory. Solely relying on formal criminal penalties is insufficient to dissuade deliberate defaults or avert exploitative filings when procedural impediments, including delays in summons, hinder prompt resolution. Genuine deterrence necessitates a well-rounded framework in which affirmative legal mandates are moderated by first judicial examination of foundational contractual considerations, along with advancements in procedural structure.

Limitations: The results of this research are confined to a singular regional sample inside the metropolitan area of Dhaka. The results of this research establish essential empirical benchmarks concerning cheque dishonour adjudication in Dhaka's main commercial center; however, the sample size (n=200) sourced solely from the Metropolitan Subordinate Judiciary, Dhaka, imposes intrinsic geographic and methodological constraints. The Metropolitan Subordinate Judiciary addresses a substantial volume of institutional and corporate financial conflicts, yet the operational characteristics, trial lengths, and frequency of delays in non-metropolitan or rural District and Sessions Judge Courts can vary considerably due to regional business customs, differing docket demands, and unique administrative frameworks. As a result, although the qualitative and quantitative findings presented here accurately depict initial commercial litigation in Dhaka, caution should be exercised when extrapolating these conclusions to wider national patterns without additional multi-district comparison verification. Aside from the spatial limitation to the Dhaka metropolitan region, a significant empirical constraint is to the organization of court record archives. Due to trial registries monitoring daily postponements instead of substantive judicial results, and given that a significant number of the sampled dockets were ongoing matters, precise statistical ratios concerning final conviction rates compared to overturned acquittal rates could not be delineated in distinct tabular formats. The archival records of the Metropolitan Subordinate Judiciary in Dhaka monitor intermediate procedural delays instead of consolidated post-judgment results. As a result, a consolidated quantitative comparison of convictions to acquittals could not be discerned, indicating a fundamental data constraint inside trial court records.

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Revisiting the Legal Frameworks and Judicial Decisions against Discrimination in Bangladesh: An Intersectional Critique

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ABSTRACT: Though Bangladesh has become a party to major international human rights treaties that prohibit discrimination, its legal system still looks at the concept of discrimination in a limited way, focusing on only one factor at a time. Because of this, it cannot properly address the combined disadvantages faced by women, persons with disabilities, and other marginalized groups. This article undertakes a critical analysis of Bangladesh's constitutional and statutory anti-discrimination framework, and of the relevant jurisprudence of the Supreme Court of Bangladesh, through the theoretical lens of intersectionality as developed by Kimberlé Crenshaw and systematized for legal analysis by Shreya Atrey. Intersectional discrimination refers to the discrimination faced by a person based on multiple identities at the same time. Utilizing a mixed methodology, this paper finds five major weaknesses in Bangladesh's approach and shows how these problems affect real cases. Finally, the article suggests legal, policy, and institutional reforms to help Bangladesh move toward a fairer and more inclusive system that properly recognizes overlapping forms of discrimination.

KEYWORDS: Intersectional Discrimination, Anti-discrimination Law, Human Rights, Comparative Constitutionalism,

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1. Introduction

An individual can simultaneously occupy multiple social positions or identities. For instance, a disabled black Muslim woman possesses at least four distinct identities 1) disabled, 2) black, 3) Muslim, 4) woman, each of which may independently or in combination with others attract adverse treatment. It is to address this compound phenomenon that the concept of intersectionality was developed. Intersectional discrimination refers to the discrimination faced by a person based on multiple identities. As Kimberlé Crenshaw demonstrated in her landmark work, antidiscrimination principle structured around single identity categories such as race or sex systematically fails to capture the particular and qualitatively distinct disadvantage experienced at their intersection.[1]

Shreya Atrey has further demonstrated that the foundational idea of human rights itself demands an intersectional elaboration that moves beyond the traditional claim to universality.[2] As a comparatively recent doctrinal development, intersectional discrimination has not yet been incorporated into the positive law of most jurisdictions.[3] Bangladesh is not an exception to this practice, as will be shown in the later section. Nonetheless, international treaty bodies, regional human rights institutions, and certain national courts have made significant initiatives through interpretive and jurisprudential development. Likewise, the Supreme Court of Bangladesh (SCB), as the authoritative interpreter and custodian of the Constitution, has adjudicated a significant number of cases raising questions of discrimination.

This article employs a mixed methodology consisting of the doctrinal and normative analysis of the existing anti-discrimination legal frameworks and judicial decision from the critical and theoretical lens of intersectionality. Intersectionality emerged as a theoretical expansion and

[1] Kimberlé Williams Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" (1989) *University of Chicago Legal Forum* 139, 140.

[2] Shreya Atrey, "Beyond Universality: An Intersectional Justification of Human Rights" in Shreya Atrey and Peter Dunne (eds), Intersectionality and Human Rights Law (Hart Publishing 2020) 67.

[3] Shreya Atrey, *Intersectional Discrimination* (OUP 2019) 1.

critique of feminist legal thought,[4] this analysis is conducted through a feminist theoretical lens. In addition, a comparative method has been employed to take lessons from the jurisdictions that have properly addressed the issue. The comparative methodology adopted is the 'bricolage' approach, which justifies the transplantation of ideas from diverse jurisdictional resources that are available at hand without requiring contextual or functional similarity.[5] Thus, the selection of South Africa, India, UK, etc. is well-justified by the bricolage methodology. Besides, as a global south and common law country Bangladesh can take lessons from the practices of India, South Africa, and UK as well.

The article proceeds as follows. Section II conceptualizes intersectional discrimination and distinguishes it from related doctrinal categories including direct and indirect discrimination. Section III examines how international human rights law has developed an intersectional framework. Section IV analyses Bangladesh's constitutional and statutory anti-discrimination framework. Section V examines key judicial decisions of the SCB. Section VI undertakes a gap analysis. Section VII advances a feminist critique. Section VIII draws comparative lessons from South Africa, India, and the United Kingdom. Section IX proposes reforms and concludes.

2. Conceptual Framework: Intersectionality as a Form of Discrimination

The term intersectionality was first coined by Kimberlé W Crenshaw in 1989.[6] Since its introduction, the concept has expanded gradually across academic, legal, and policy domains worldwide.[7] In her subsequent work, Crenshaw articulated a threefold positive definition of intersectionality. Structural intersectionality explains how different forms of oppression, such as those based on race, gender, or class, etc., work together to shape the real-life conditions of people who face multiple disadvantages. Political intersectionality shows how these people are often ignored in political discussions because issues are treated separately rather than as

[4] Crenshaw (n 1) 139. Intersectionality emerged as a critique of both antidiscrimination doctrine and mainstream feminist theory, each of which rested on single-axis assumptions that rendered the compounded disadvantage of multiply-marginalised groups invisible.

[5] The "bricolage" approach draws upon worldwide comparative resources irrespective of functional or contextual similarity. See Mark Tushnet, "The Possibilities of Comparative Constitutional Law" (1999) 108(6) *Yale Law Journal* 1225, 1228.

[6] Crenshaw (n 1) 140.

[7] Atrey (n 3) 1.

overlapping. Representational intersectionality focuses on how media and culture create and reinforce combined stereotypes about people who belong to more than one marginalized group.[8] The theory was animated by the lived experience of Black women in the United States, whose compounded disadvantage was captured neither by race-based antidiscrimination frameworks focused on Black men nor by sex-based frameworks focused on white women.[9]

As Crenshaw demonstrated, the structural invisibility of Black women in discrimination litigation arose directly from antidiscrimination law's insistence on disaggregating the grounds of discrimination.[10] MacKinnon later observed that intersectionality as method reveals how law systematically under-protects those most severely harmed by the compounding of multiple systems of inequality.[11] Building upon these foundations, Shreya Atrey developed a systematic legal framework for intersectional discrimination and aligned it with the normative architecture of international human rights law.[12] Atrey argues that intersectional discrimination must be understood as qualitatively distinct: its harms are not the sum or aggregate of individual identity-based disadvantages, but arise from the distinctive and mutually reinforcing way in which multiple identity characteristics interact.[13]

A further doctrinal distinction of critical importance is that between direct and indirect discrimination. Direct discrimination occurs where a person is treated less favourably than a comparator is, or would be, treated on account of a protected characteristic.[14] Indirect discrimination occurs where a *prima facie* neutral provision, criterion or practice places persons sharing a protected characteristic at a particular disadvantage compared with those who do not share it.[15] Intersectional discrimination may assume either form. Where a rule expressly targets

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[8] Kimbere W Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color" (1991) 43(6) *Stanford Law Review* 1241, 1245-52.

[9] Ibid 1245-46; Anna Carastathis, "The Concept of Intersectionality in Feminist Theory" (2014) 9(5) *Philosophy Compass* 304, 306.

[10] Crenshaw (n 1) 139.

[11] Catherine A MacKinnon, "Intersectionality as Method: A Note" (2013) 38 *Signs* 1019, 1028.

[12] Atrey (n 3) 33.

[13] Ibid. The term "intersectionality" denotes the theoretical framework; "intersectional discrimination" refers to the discriminatory experience produced by the interaction of multiple identity grounds, qualitatively distinct from either ground operating in isolation.

[14] Sandra Fredman, *Discrimination Law* (3rd edn., OUP 2022) 157. Direct discrimination occurs where a person is treated less favourably than a comparator is, or would be, treated because of a protected characteristic.

[15] Ibid, 175.

people who possess a specific combination of identity characteristics, as in the Biman Corporation regulations examined below, the discrimination is direct. Where a *prima facie* neutral rule disproportionately burdens a particular intersection of identities, the discrimination is indirect. A legal framework that operates on a single-axis model will fail to apprehend the intersectional dimension in either case.[16]

3. International Human Rights Framework on Intersectional Discrimination

Before analyzing the domestic framework, this section investigates the international human rights framework from intersectional approach. Core treaties like CEDAW, ICCPR, CERD that have dealt with discrimination have been selected for the purpose of analysis in this section.

3.1. CEDAW and ICCPR: Treaty Body Developments

Although the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW) and the International Covenant on Civil and Political Rights 1966 (ICCPR) do not explicitly reference intersectional discrimination, the treaty bodies charged with their implementation have made significant doctrinal advances. To illustrate, CEDAW General Recommendation No 28 declares that intersectionality is a basic concept for understanding the scope of the general obligations of States parties, and explicitly requires States parties to recognise the ways in which discrimination on the basis of sex and gender intersects with other forms of discrimination.[17] CEDAW General Recommendation No 25 on temporary special measures further acknowledges that certain groups of women face multiple forms of discrimination requiring targeted measures.[18]

The Human Rights Committee, the treaty body responsible for monitoring the ICCPR, engaged with intersectional discrimination in *Hebbadj v France*,[19] holding that France's criminal prohibition on face-covering in public spaces triggered simultaneous discrimination on grounds of gender and religion, constituting a form of intersectional discrimination against Muslim

[16] Atrey (n 3) 48.

[17] CEDAW Committee, General Recommendation No 28: Core Obligations of States Parties under Article 2, UN Doc CEDAW/C/GC/28 (2010) para 18 https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CEDAW_General_Recommendation_28_en.pdf accessed 1 May 2024.

[18] CEDAW Committee, General Recommendation No 25: Temporary Special Measures, UN Doc HRI/GEN/1/Rev.7 (2004) para 12.

[19] *Hebbadj v France* CCPR/C/123/D/2807/2016.

women. The CEDAW Committee confronted compound discrimination in *Alyne da Silva Pimentel Teixeira v Brazil*,[20] in which it acknowledged that the victim had experienced both common and unique forms of discrimination arising from the intersection of her gender, race, and socio-economic class. The Committee characterized this as compounded or multiple discrimination, moving materially in the direction of intersectional recognition.[21]

3.2. The CRPD: The Most Explicit Treaty Recognizing Intersectionality

Among the major international human rights treaties, the Convention on the Rights of Persons with Disabilities 2006 (CRPD) provides the most explicit textual recognition of intersectional disadvantages. Article 6(1) of the CRPD expressly acknowledges that women and girls with disabilities are subject to multiple discrimination and requires States parties to take measures to ensure their full and equal enjoyment of all human rights and fundamental freedoms.[22] The CRPD Committee's General Comment No 3 (2016) on women and girls with disabilities elaborates that women with disabilities face intersecting discrimination on grounds of gender and disability, frequently compounded by poverty, ethnicity, indigenous origin, migrant status, age, and other characteristics.[23] The Committee expressly states that existing frameworks, both on disability and on gender, have historically neglected the specific situation of women with disabilities, precisely because each framework operates on a single axis.

Bangladesh ratified the CRPD on 30 November 2007. However, its domestic implementing instrument, the Persons with Disabilities Rights and Protection Act 2013, does not reflect the CRPD's intersectional framework. The Act treats disability as a single-axis characteristic, without addressing the compounded vulnerability of women with disabilities or of disabled members of ethnic or religious minority communities, in direct tension with the CRPD obligations that Bangladesh has assumed.

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[20] *Alyne da Silva Pimentel Teixeira v Brazil*, CEDAW Committee, Communication No 17/2008, UN Doc CEDAW/C/49/D/17/2008.

[21] Ibid, para 7.6. See also *Kell v Canada*, CEDAW Committee, *Communication No 19/2008* (2012); *RPB v Philippines*, CEDAW Committee, *Communication No 34/2011* (2014).

[22] Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3, art 6(1).

[23] CRPD Committee, General Comment No 3 (2016): Article 6 - Women and Girls with Disabilities, UN Doc CRPD/C/GC/3 (25 November 2016) para 4 https://www.refworld.org/legal/general/crpd/2016/en/112078 accessed 25 March 2026.

4. The Anti-Discrimination Legal Frameworks in Bangladesh

As the heart of this article, this section critically analyzes the existing anti-discrimination legal regime in Bangladesh demonstrating the constitutional loopholes and pertinent limitations from intersectional approach.

4.1. Constitutional Provisions: Promise and Structural Limitation

Articles 27, 28, and 29 of the Constitution of the People's Republic of Bangladesh 1972 constitute the primary constitutional guarantees of equality and non-discrimination. Article 28(1) specifies the prohibited grounds of discrimination, providing that the State shall not discriminate against any person on grounds only of religion, race, caste, sex or place of birth.[24] Article 27 guarantees equality before the law and equal protection of the law for all citizens.[25] Article 29(2) extends the principle of non-discrimination to public employment and office in the service of the Republic, prohibiting discrimination against citizens on the same enumerated grounds.[26]

These constitutional provisions are subject to two interrelated and fundamental critiques from an intersectional standpoint. First, the enumerated grounds of discrimination in Articles 28 and 29 seem to be exhaustive rather than illustrative. Grounds such as marital status, pregnancy, age, disability, belief, culture, language, and ethnicity find no place in Bangladesh's constitutional catalogue. This enumerative rigidity produces structural reluctance among courts to engage with novel or compounded grounds of discrimination. Second, and more fundamentally, the constitutional guarantee does not recognize intersectional discrimination. The phrase 'on one or more grounds', which Atrey has argued renders the South African equality guarantee truly intersectional in its reach,[27] is clearly absent. Section 9(3) of the Constitution of the Republic of South Africa 1996 expressly prohibits unfair discrimination on one or more grounds, followed by a non-exhaustive list of protected characteristics.[28]

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[24] Constitution of the People's Republic of Bangladesh 1972, art 28(1).

[25] Ibid art 27.

[26] Ibid art 29(2).

[27] Atrey (n 3) 15.

[28] Constitution of the Republic of South Africa 1996, s 9(3). The section reads: "The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy,

The Bangladesh Constitution authorizes special measures in favor of women under Articles 19(3), 28(4), 29(3), and 65(3).[29] However, the scope of the non-discrimination guarantee is largely confined to the public sphere, leaving private sphere discrimination, the domain in which women most frequently experience compounded disadvantage, with limited constitutional protection.[30] Protecting women against intersectional discrimination, which is most common in the home, workplace, and community, is structurally hampered by this public/private gap.

4.2. Statutory Framework: Fragmentation and the Absence of an Intersectional Lens

Bangladesh has enacted several statutes addressing specific dimensions of discrimination, but these instruments operate in a fragmented, domain-specific manner. None adopts an intersectional framework, and none is designed with awareness of the compounded vulnerability of multiply-marginalized groups.

For instance, the Persons with Disabilities Rights and Protection Act 2013, enacted in implementation of Bangladesh's CRPD obligations, provides a dedicated framework for the protection of persons with disabilities.[31] However, it fails to address the compounded disadvantage experienced by women with disabilities, the subgroup specifically targeted by CRPD Article 6 and CRPD General Comment No 3, or by disabled members of indigenous, ethnic, or religious minority communities. The Act treats disability as a single-axis characteristic in direct tension with the intersectional obligations Bangladesh has assumed under the CRPD. The, the Women and Children Repression Prevention Act 2000 (as amended in 2003) is a criminal statute directed at specific acts of violence and exploitation.[32] It makes

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marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."

[29] See arts 19, 28(4), 29(3), 65(3) of the Constitution of the People's Republic of Bangladesh 1972.

[30] Constitution of the People's Republic of Bangladesh 1972, arts 19(3), 28(4), 29(3). See also Psymhe Wadud, "Locating Women within We the People in the Constitution" in Ridwanul Haque and Rokeya Chowdhury (eds), *A History of the Constitution of Bangladesh: The Founding, Development, and Way Ahead* (Routledge 2024) 193, 199.

[31] Persons with Disabilities Rights and Protection Act 2013 (Bangladesh), s 2(13) (definition of disability); s 16 (non-discrimination in education); s 17 (non-discrimination in employment).

[32] Women and Children Repression Prevention Act 2000 (Bangladesh) (as amended 2003), preamble. The Act is a criminal statute directed at specific acts of violence and exploitation. It makes no provision for structural or intersectional analysis.

no provisions for structural or intersectional analysis. It does not engage with the structural conditions that produce compounded vulnerability to violence experienced by women who are additionally identified by caste, class, disability, or religious minority status. Besides, the Bangladesh Labour Act 2006 contains provisions on maternity benefits and prohibits discriminatory dismissal,[33] but addresses sex-based discrimination in isolation from other identity characteristics.

Bangladesh has also enacted no comprehensive, unified anti-discrimination statute. No equality commission or analogous institution exists with a mandate to receive, investigate, and adjudicate intersectional discrimination complaints.[34] Therefore, it is submitted that a separate discrimination statute can be enacted to address intersectional discrimination as well. If a separate statute is not possible to enact, the relevant provisions of different statutes dealing with discrimination should be amended to deal with intersectional discrimination.

5. Judicial Decisions of SCB relating to Discrimination: Analyzing the Possibility of Intersectionality

This section explains the available constitutional decisions delivered by the Supreme Court of Bangladesh (SCB) relating to the discrimination provision in the Constitution. It eventually shows that the SCB has not yet properly addressed the issue of intersectionality even after the chance to create a jurisprudence in this regard.

5.1. The Biman Trilogy: Three Cases, One Partial Breakthrough

The most instructive series of discrimination cases adjudicated by the SCB arose from challenges to the Bangladesh Biman Corporation Employee (Service) Regulation 1979, as amended in 1984. Regulation 11(2) prescribed differential ages of retirement for male and female cabin crew: male flight stewards were required to retire at 45 years, while female flight stewardesses were compelled to retire at 35 years.[35] Regulation 11(3) further provided that a

[33] Bangladesh Labour Act 2006, ss 44-46 (maternity leave and benefits); s 345 (general prohibition on dismissal for discriminatory reasons).

[34] Sayeeda Anju, "A Study of Positive Discrimination of Women in Laws of Bangladesh" (2011) 53(3) *Journal of the Indian Law Institute* 491, 496.

[35] Regulation 11(2) of the Bangladesh Biman Corporation Employee (Service) Regulation 1979 (as amended by SRO of 5 February 1984) prescribed the following retirement ages: Flight Steward (Male) 45 years; Flight

female cabin crew member who already had two surviving children would, upon becoming pregnant for a third time, cease to be an employee of the Corporation.[36]

The first two challenges, *Jonaba Dalia Parveen v Bangladesh Biman Corporation*[37] and *Bangladesh Biman Corporation v Rabia Bashri Irene*,[38] concerned the constitutionality of the differential retirement ages under Regulation 11(2). The High Court Division held that setting the retirement age at 45 for stewards and 35 for stewardesses violated Article 28 of the Bangladesh Constitution. The reasoning deployed was a conventional single-axis sex-discrimination analysis. However, what remained entirely unexplored, by either counsel or the Court, was a further and analytically distinct dimension of Regulation 11(2): female pursers were required to retire at 40, while female stewardesses faced retirement at 35. This differential treatment between two categories of female employees, distinguished by occupational rank rather than sex alone, created a form of direct discrimination simultaneously grounded in sex and occupational position. This intersectional claim, self-evident from the face of the Regulation, went entirely unnoticed.

The third case, *Marzia Touhida v Biman Bangladesh Airlines*,[39] represented the most significant, though still incomplete, judicial engagement with intersectional discrimination in Bangladesh's legal history. The High Court Division held that Regulation 11(3) discriminated against female cabin crew in two analytically distinct respects: first, as between male cabin crew and female cabin crew; and second, between female cabin crew members who had no children or fewer than two surviving children, and those who were pregnant for a third time having already had two surviving children. The Court stated:

Stewardess 35 years; Purser and Chief Purser (Male) 50 years; Purser and Chief Purser (Female) 40 years; Junior Purser (Male) 45 years; Junior Purser (Female) 35 years.

[36] Regulation 11(3) of the Bangladesh Biman Corporation Employee (Service) Regulation 1979 (as amended 1984): "Notwithstanding anything contained in these regulations a female cabin crew having two surviving children shall, upon her becoming pregnant for third child, cease to be an employee of the Corporation."

[37] *Jonaba Dalia Parveen v Bangladesh Biman Corporation* (1996) 16 BLD (HCD) 357.

[38] *Bangladesh Biman Corporation represented by Managing Director v Rabia Bashri Irene* (2003) 55 DLR (AD) 132.

[39] *Marzia Touhida v Biman Bangladesh Airlines*, Writ Petition No 5157 of 2010 https://www.lawyersnjurists.com/article/high-court-division-hasan-foez-siddique-w-p-no-5157-2010/ accessed 30 April 2024.

> "[T]he impugned provision has made discrimination between the male and female cabin crews and in between the female cabin crews as well. This discrimination has been made between female cabin crews having two surviving children and female cabin crews having two surviving children and thereafter upon her becoming pregnant for third child."[40]

While the Court did not expressly invoke the language of intersectional discrimination, its reasoning implicitly engaged with the concept. The disadvantage identified was not reducible to sex alone: it arose from the compound identity of being female and possessing a specific reproductive history. This is a paradigmatic instance of intersectional direct discrimination. The decision represents a modest but genuinely important doctrinal advance over the earlier Biman cases, demonstrating that intersectional reasoning is achievable within the existing constitutional framework.

5.2. Employment and Marital Status: *Mosammat Nasrin Akhter v Bangladesh*

A further illustration of the potential for intersectional reasoning in Bangladeshi courts is furnished by *Mosammat Nasrin Akhter v Bangladesh*.[41] In this case, a job circular for government health assistants required female candidates to produce a marriage certificate but imposed no equivalent requirement on male candidates. The High Court Division, finding this violative of Articles 27, 28, and 29 of the Constitution, directed the re-advertisement of the post without the discriminatory clause. The discrimination arose simultaneously from sex and marital status, an intersectional dimension that the Court's single-axis analysis did not fully articulate, though the outcome was consistent with intersectional reasoning.

5.3. The Indian Contrast: *Air India v Nargesh Meerza*

The Indian Supreme Court's decision in *Air India v Nargesh Meerza*[42] provides an illuminating comparative contrast. That case concerned regulations requiring air hostesses to retire at 35, or upon first pregnancy, or upon marriage within four years of service. Despite the evidently intersectional nature of the discrimination alleged, combining sex, marital status, and reproductive status, the Court declined to consider the grounds in combination. This outcome

[40] *Marzia Touhida* (n 39) para 17.

[41] *Mosammat Nasrin Akhter v Bangladesh*, Writ Petition No 6309 of 2003 (HCD).

[42] *Air India v Nargesh Meerza* (1982) SCR (1) 438.

was driven by the textual constraint of Article 15(1) of the Indian Constitution,[43] which, in its use of the phrase on grounds only of, mirrors Article 28(1) of the Bangladesh Constitution. Atrey has described this as producing a bizarre outcome when measured against intersectional theory.[44] In this specific respect, the approach of the High Court Division in *Marzia Touhida* is appreciably more receptive to intersectional reasoning than the approach taken by the Indian Supreme Court in *Nargesh Meerza*.

5.4. Affirmative Action and Its Limits: Missed opportunities in *Shamima Sultana Seema*, *Farida Akhter*, and *BNWLA*

The SCB has affirmed the constitutional mandate of positive discrimination for women in several cases.[45] In *Shamima Sultana Seema v Bangladesh*,[46] the High Court Division held that ward commissioners elected to reserved seats had been assigned diminished powers compared with commissioners elected from general seats and found this discriminatory. The Court affirmed the legitimacy of affirmative action but did not examine how such measures interact with, or may fail to address, the intersecting grounds of disadvantage facing, for example, women with disabilities or women from ethnic minority communities in reserved seat schemes.[47]

In *Farida Akhter v Bangladesh*,[48] the Court similarly missed an opportunity to analyze the structural complexities of reserved seat arrangements through an intersectional lens.[49] In *Bangladesh National Women Lawyers' Association (BNWLA) v Bangladesh*,[50] the High Court Division issued guidelines for the prevention of sexual harassment in educational institutions and workplaces, drawing upon the extended definition of discrimination in CEDAW Article 1 to encompass gender-based violence.[51] The guidelines represent an important development but

[43] Constitution of India 1950, art 15(1): "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

[44] Atrey (n 3) 87.

[45] Anju (n 34) 496.

[46] *Shamima Sultana Seema v Bangladesh* (2005) 57 DLR (HCD) 201.

[47] Wadud (n 30) 199.

[48] *Farida Akhter v Bangladesh* (2006) 11 MLR (AD) 237.

[49] Ibid; Wadud (n 30) 199.

[50] *Bangladesh National Women Lawyers' Association (BNWLA) v Bangladesh* (2009) BLD (HCD) 415.

[51] CEDAW Committee, General Recommendation No 19: Violence against Women (1992) para 6 <https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> accessed 30 April 2024.

fail to account for the heightened vulnerability to harassment of women who additionally belong to minority religious, ethnic, or disability communities. A framework that does not recognize compound vulnerability is likely to prove inapplicable in precisely those cases where protection is most urgently needed.

6. Analyzing the Structural Deficiencies in Bangladesh's Anti-Discrimination Framework

The foregoing analysis reveals five structural gaps in Bangladesh's anti-discrimination framework, each of which systematically undermines the protection of multiply-marginalised groups.

6.1. Single-Axis Model of Discrimination

The foundational deficiency is the reliance on a single-axis model of discrimination that adjudicates claims along one protected characteristic at a time.[52] A complainant who suffers discrimination as a disabled Muslim woman cannot articulate her claim within a framework that recognizes only sex-based discrimination, or only disability-based discrimination, in isolation. The particular form of her disadvantage, arising from the interaction of gender, religion, and disability, is rendered legally invisible by a legal framework that compels disaggregation.

6.2. Formal Rather than Substantive Equality

The formal equality model embedded in Article 28, treating like cases alike, is structurally insufficient to address disadvantage rooted in the compound effect of multiple identity characteristics.[53] Crenshaw showed that treating everyone "equally" in a formal way can actually keep inequality in place. This happens because the situation of the most disadvantaged people is often compared with that of the most privileged, making the privileged position seem like the normal standard.[54] The SCB's reliance on formal equality analysis in the Biman cases is a direct illustration: by focusing on male stewards as the appropriate comparator for female

[52] Atrey (n 3) 33-48.

[53] Fredman (n 14) 183-184.

[54] Crenshaw (n 8) 1249.

stewardesses, the courts masked the additional dimension of discrimination between different categories of female employees.

6.3. The Inflexible Comparator Test

The comparator test employed by Bangladeshi courts asks whether a person of a different sex would have been treated more favorably. This test is structurally ill-adapted to intersectional claims. Atrey suggests a more flexible way of comparing cases. [55] Instead of looking at just one identity (like only gender or only race), it asks whether a person without the same combination of identities would have been treated better. This approach helps identify discrimination that happens because of multiple overlapping identities, which the usual single-factor comparison often misses.

6.4. Fragmented Statutory Protection and Institutional Absence

The fragmentation of statutory protection across domain-specific instruments, the absence of a unified anti-discrimination law with intersectional reach, and the non-existence of an equality commission leave large categories of intersectional discrimination claims without institutional recourse. As Bond has argued, the reconstruction of the legal architecture of human rights, including at the domestic level, is a prerequisite for the effective realization of intersectionality theory.[56]

6.5. Lack of Judicial Intersectional Framework

Without explicit constitutional mandate or statutory guidance, courts are unlikely to develop robust intersectional jurisprudence independently. The nuanced reasoning of *Marzia Touhida* remains isolated and has not been built upon in subsequent decisions. The absence of a doctrinal framework means that intersectional claims depend on the will of individual judges rather than on principled legal development.

7. Another Critique from Feminist Perspective

Feminist theory in human rights challenges the assumption that human rights are always neutral and equally responsive to the experiences of women and men. It examines how laws and

[55] Atrey (n 3) 95.

[56] Johanna E Bond, "International Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations" (2003) 52 *Emory Law Journal* 71, 185.

institutions may reproduce gender inequality and argues for an approach that recognizes women's diverse experiences and structural disadvantages. A feminist critique therefore shows that formal equality may fail to address the different forms of disadvantage experienced by women. It calls for an approach that goes beyond comparison with men and considers the intersecting social conditions that shape women's experiences of discrimination. This section critiques and puts the legal frameworks and judicial decisions analyzed above under the feminist lens.

7.1 The Male-Norm Comparator and Its Limits

A feminist analysis of the framework reveals a foundational conceptual error: the construct of discrimination operative in Bangladeshi law is essentially comparative and male-referential. Women are guaranteed equality to the extent that they are treated no worse than comparable men. As Timothy Macklem has argued, discrimination is not simply a matter of treating women less favorably than men, but of denying women the conditions necessary to live successful and fulfilling lives as women.[57] There are meaningful, morally significant differences between men and women that a responsible equality law cannot ignore.[58] The male-norm comparator model is structurally incapable of recognizing harms that are specific to women's experience precisely because it treats male experience as the universal normative standard against which deviation is assessed.[59]

The cultural feminist stand of feminist legal theory affirms that there are meaningful differences between the sexes and argues that the law should respond to those differences not as deviations from a male norm but as legitimate bases for differentiated and enabling legal treatment, designed to allow women to live successful lives as women.[60] MacKinnon has further observed that by exposing the inadequacy of single-axis legal analysis, intersectionality

[57] Timothy Macklem, *Beyond Comparison: Sex and Discrimination* (CUP 2003) 1.

[58] Ibid, 2.

[59] Ibid, 1. Macklem argues that equality law's reliance on the male comparator as the normative standard of treatment is self-undermining: it grants women equality to the extent that they resemble men, rather than ensuring the conditions for women to live successfully as women.

[60] Eva Brems, "Enemies or Allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse" (1997) 19 *Human Rights Quarterly* 136, 138.

as method reveals how law systematically under-protects those most severely harmed by compounding systems of structural inequality.[61]

7.2. Intersectionality as the Necessary Corrective

A concrete illustration of the feminist critique's force arises when intersectionality is applied to the Bangladeshi context.[62] Two women in Bangladesh may both be Black, but one may be Hindu and the other Muslim. Although they share a racial characteristic, their respective religious identities generate distinct vulnerability patterns. If laws treat all women as the same group, without recognizing their different backgrounds, they may not protect everyone equally. As a result, both groups can face unequal outcomes, and in some situations, a Hindu woman may be affected more seriously due to her specific social and institutional circumstances. The feminist critique thus converges with the intersectional analysis: genuine equality demands attention not only to sex but to the full matrix of identity characteristics that determine each woman's specific social position and the particular risks of discrimination she faces.

The judicial decisions examined in Section V illustrate the practical consequences of this theoretical deficit. By constraining discrimination analysis to a single axis, courts have repeatedly failed to apprehend the lived reality of women whose vulnerability is compounded by disability, religion, ethnicity, or reproductive status. Intersectionality offers the doctrinal means of shifting judicial analysis from formal to substantive equality: from the question of whether women are treated the same as men to the question of whether women are afforded the conditions necessary for meaningful and dignified lives as women in all their social diversity.

8. Comparative Practices: Lessons for Bangladesh

[61] MacKinnon (n 11) 1028.

[62] A concrete illustration: in Bangladesh, a Black woman and a Hindu Black woman face differently patterned vulnerabilities. Although both share a racial characteristic, the added religious identity of the latter generates distinct risks of compound discrimination on grounds of sex, religion, and ethnicity simultaneously. Equality measures designed for "women" as an undifferentiated class will produce unequal outcomes for both and will structurally under-protect the latter.

This section analyzes two national constitutional court's views in dealing with intersectional discrimination and finally finds the South African and UK's approach towards intersectional discrimination useful for learning and transplanting the idea in Bangladesh.

8.1. South African Approach

At the national level, the Constitutional Court of South Africa has developed the most sophisticated national jurisprudence on intersectional discrimination. In *Hassam v Jacobs*,[63] the Court held that the exclusion of Muslim women in polygynous marriages from the operation of the Intestate Succession Act constituted unfair discrimination on the intersecting grounds of marital status, religion, and gender. The discrimination arose from the confluence of patriarchal norms governing polygynous marriages, the subordinated legal recognition accorded to Islamic marriages, and a historical pattern of discrimination against Muslims. No single ground, considered in isolation, would have captured the particular form of disadvantage experienced by these women.

In *Minister of Finance v Van Heerden*,[64] the Constitutional Court elaborated that substantive equality, as mandated by the South African Constitution, requires account to be taken of past patterns of disadvantage when assessing discrimination claims. Together, these decisions demonstrate a judicial model in which the interaction of multiple identity characteristics produces qualitatively distinct and irreducible forms of disadvantage that formal equality analysis cannot address.

8.2. The UK's Approach

The United Kingdom's Equality Act 2010 represents an advanced statutory model for the recognition of combined discrimination. Section 14 of the Act, which would have extended protection to combined discrimination based on two protected characteristics, was enacted but never brought into force.[65] The UK Supreme Court in *Essop v Home Office*[66] decided that, in cases of indirect discrimination, a person does not need to prove why a rule or practice causes disadvantage to a group. It is enough to show that the group is actually disadvantaged. This

[63] *Hassam v Jacobs* 2009 (5) SA 572 (CC).

[64] *Minister of Finance v Van Heerden* 2004 (6) SA 121 (CC) [2004] ZACC 3, para 29.

[65] Equality Act 2010 (UK), s 14. Section 14 was enacted but never brought into force by a commencement order. The coalition government announced in 2011 that it would not be commenced. See Fredman (n 14) 185.

[66] *Essop v Home Office* (UK Border Agency) [2017] UKSC 27, [2017] 1 WLR 1343, paras 24-27 (Lady Hale).

approach is useful for Bangladesh, where strict requirements to prove the exact cause of discrimination often make it harder for people to bring successful claims.

9. Suggestions

In light of the foregoing analysis, this article advances the following five reform suggestions for Bangladesh. First, the Bangladesh Constitution should be amended to replace the strict enumeration of prohibited grounds in Articles 28(1), 28(2) and 29(2) with an illustrative list accompanied by an open-ended residual clause, and to incorporate the phrase 'on one or more grounds' so as to bring intersectional discrimination expressly within the constitutional guarantee of non-discrimination. This amendment would provide the textual foundation necessary for the development of intersectional jurisprudence by the SCB.

Second, a comprehensive unified anti-discrimination statute should be enacted, providing a single statutory basis for claims of intersectional discrimination across both public and private spheres. Such legislation should incorporate: (a) a flexible intersectional comparator test, asking whether a person who did not possess the relevant combination of identity characteristics would have been treated more favourably;[67] (b) a burden-shifting provision placing the evidential burden on the respondent upon the establishment by the complainant of a *prima facie* case of intersectional disadvantage; (c) explicit recognition of indirect intersectional discrimination; and (d) a power to award transformative and structural remedies as well as individual compensation.[68]

Third, an independent National Equality Commission should be established, following the unified anti-discrimination statute with a mandate to receive and investigate intersectional discrimination complaints, conduct public interest inquiries, develop binding guidance on intersectional discrimination, and engage in strategic litigation in cases that may generate doctrinal development.

Fourth, judges of the SCB should engage themselves in intersectionality theory and comparative equality jurisprudence. The reasoning in *Marzia Touhida* demonstrates that intersectional analysis is within the capability of Bangladeshi courts. With structured doctrinal guidance and exposure to the international and comparative jurisprudence examined above, the

[67] Atrey (n 3) 188-194.

[68] Ibid, 91.

SCB could develop a coherent intersectional framework within the existing constitutional text, pending constitutional reform.

Fifth, the Persons with Disabilities Rights and Protection Act 2013 should be substantively amended to incorporate the intersectional obligations flowing from CRPD Article 6 and CRPD General Comment No 3. The amendments should expressly recognize the compounded disadvantage experienced by women with disabilities and by disabled members of minority communities, require intersectional approaches in disability policy design and implementation, and create specific causes of action for intersectional disability discrimination.

10. Conclusion

This article has demonstrated that Bangladesh's current anti-discrimination legal framework is structurally incapable of recognizing or redressing intersectional discrimination. The constitutional guarantee in Article 28(1) provides a fixed list of prohibited grounds and lacks the 'on one or more grounds' formulation that would render it genuinely intersectional in reach. The statutory landscape is fragmented, domain-specific, and correspondingly unresponsive to compound disadvantage. The judiciary, while showing emerging statement to intersectional considerations in *Marzia Touhida*, has not developed a coherent doctrinal framework. Across all three branches, the framework is anchored to a formal equality model that measures women's rights against a male comparator rather than asking whether the conditions necessary for women's genuine flourishing are in place. As Bond has argued, the reconstruction of the normative and institutional architecture of human rights law is a prerequisite for the effective realization of intersectionality theory.[69] In the context of Bangladeshi constitutionalism, the constitutional placement of women has historically been shaped by assumptions that fail to account for women's diverse and compound social positions.[70] The five reforms proposed above constitute together the programme for legal reconstruction that substantive intersectional equality demands. The ultimate objective of this reconstruction is not formal equalization but substantive transformation: to ensure that women, persons with disabilities, and other multiply-marginalised groups in Bangladesh are afforded the legal conditions necessary to lead meaningful, self-determining, and dignified lives. Intersectionality is not merely a theoretical aspiration; it is the irreducible minimum requirement of genuine equality.

[69] Bond (n 56) 185.

[70] Wadud (n 30) 199.

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Understanding the Social Impact of the Government Legal Aid Program in Bangladesh: A Study of Students at the University of Rajshahi

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ABSTRACT: The Government Legal Aid Services is one of the largest welfare programs in Bangladesh, created for helping disadvantaged groups access to justice. The program provides mediation and legal support to resolve disputes quickly and fairly. Despite its importance, there has been little research on its effectiveness or its impact on society. This paper looks at the social impact and efficiency of the Government Legal Aid Program by focusing on how students at the University of Rajshahi perceive and understand it. The researcher surveyed 265 students from 13 faculties, using convenience sampling. The results show that just over half of the students had previously heard of Legal Aid Services, suggesting that low public awareness remains a major challenge for the program. Alongside the survey, the study used case studies, interviews with key informants, and fieldwork at Rajshahi Court to identify the program's strengths and weaknesses. The findings show that while the program provides important support, its mediation process is not free of flaws. Although the Legal Aid (Amendment) Act, 2025 has made the mediation orders enforceable through the civil courts, the legal aid officers lack authoritative powers in case of its breach. To ensure a co-operative and effective governmental legal aid service, this study suggests some structural changes in the Act. Moreover, it also recommends running stronger awareness campaigns to make the program more accessible and better known. These changes could help to reduce unnecessary lawsuits, ease the burden on courts, and improve access to justice.

KEYWORDS: Legal Aid Services, Mediation, Access to Justice, Public-awareness, Rajshahi University.

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1. Introduction

In developing nations such as Bangladesh, a substantial segment of the population remains deprived of adequate legal assistance, with systemic poverty serving as the primary driver of this marginalization. Initiating formal judicial proceedings requires mandatory court fees, while the vast majority of indigent individuals lack the financial means to retain experienced legal representation. This structural barrier creates a deeply discriminatory socio-legal landscape. Conversely, Article 27 of the Constitution of Bangladesh guarantees equality before the law for all citizens, while Article 28 explicitly authorizes the state to enact special provisions for the advancement of backward sections of society. To bridge this constitutional promise and socioeconomic reality, the government introduced the Legal Aid Program, a state-funded initiative designed to deliver accessible legal support to economically vulnerable populations. Under Section 2(a) of the Legal Aid Services Act (LASA) of 2000, legal aid is formally defined as the provision of assistance to litigants who are hindered from seeking justice due to financial insolvency, destitution, helplessness, or other compounding socioeconomic factors.

Specifically, under Section 2(a) of the Legal Aid Services Act 2000, this statutory definition encompasses several crucial forms of support, including legal counsel and active assistance for cases that are about to be commenced, already initiated, or currently pending before a court. Furthermore, it covers the remuneration of mediators or arbitrators engaged to settle disputes through alternative dispute resolution mechanisms pursuant to Sections 89A and 89B of the Code of Civil Procedure, 1908, alongside any necessary supplementary assistance and comprehensive financial coverage for case-related expenditures. Finally, it ensures the formal payment of appointed attorneys in accordance with standard fee rates established under the rules governing subsections (i) through (iii).[1]

Under LASA, 2000, the **National Legal Aid Services Organization (NLASO)** is formed. It is working under the Ministry of Law, Justice, and Parliamentary Affairs. This organization has framed several policies to help the poor in getting proper legal assistance. Amidst these functions, mediation is worth mentioning. This mediation process is conducted by a number of **Legal Aid Officers** appointed by the government.[2] Besides, the whole team, forming the legal

[1] The Legal Aid Services Act 2000, s 2(a)
[2] The Legal Aid Services Act 2000, s 21A

aid office, conducts the great work to provide this benevolent service to the people who need it.

People often fail to take advantage of opportunities to get free legal advice due to a lack of awareness. It is intensely connected to the effectiveness of this governmental program. If a significant number of people are kept unaware of this service, the notion of this program will come into question. So, it is important to get a clear picture of the level of awareness among people in Bangladesh about Legal Aid services. As a conscious segment of our population, university students can significantly increase awareness among their friends, family, and acquaintances. Therefore, it is necessary to determine the students' level of awareness about Legal Aid facilities. This study focuses on the activities of the Legal Aid Officer for the benefit of people. It also aims to reveal the level of students' awareness at the University of Rajshahi (RU) regarding this governmental facility.

Moreover, identifying loopholes in the existing program is an important part of the process to improve it further. This study sought to identify the backlogs that are hindering the Government Legal Aid Program from achieving its expected goals. It also provides recommendations that could improve its effectiveness. To explore these matters, this study first visits the constitutional promises and laws bringing legal support to life in Bangladesh, then examines the practical hurdles within the mediation process on the ground. To ground these discussions, it weaves together survey insights from university students, real case files, and perspectives from judges handling these matters daily. Finally, it offers practical recommendations and educational steps aimed at narrowing the awareness gap to make justice truly accessible.

2. Statement of the Problem

National Legal Aid Services Organization (NLASO) provides an appreciable support to ensure access to justice by providing legal assistance towards the needy individuals through dedicated Legal Aid Officers. While these officers successfully resolve many disputes through mediation without court interference, historical frameworks lacked a binding rule to commit parties to the verdict. This created a gap in its effectiveness, forcing aggrieved parties to seek court intervention. Eventually, it lasted into the increasing the number of lawsuits. Addressing this issue, the Legal Aid Services (Amendment) Ordinance 2025 made mediation decrees binding and added provisions for executing them in formal courts under Section 21(C). Yet, the proper

functioning of the legal aid system is facing some hurdles, hampering its overall effectiveness. This leaves a barrier to getting justice

Beyond these legal difficulties, the success of the program depends heavily on accessibility, the time required, and public awareness. Unfortunately, most people in Bangladesh remain unaware of NLASO's services, even though knowing about them is the first step toward using them. Because university students come from various regions across Bangladesh, looking at their awareness levels gives a clear picture of the overall situation in the country. This research examines the efficiency of the government legal aid program, evaluates the effectiveness of its mediation process, and measures the awareness of students at the University of Rajshahi.

3. Literature Review

Some books, articles from journals and newspapers relevant to the Legal Aid Services are reviewed in this section.

Md. Atickus Samad in his book 'A Text Book on ADR and Legal Aid' strategically described about the implementation and operational rules of the existing legal aid structure of Bangladesh. Here, the author emphasized on the essentiality of exercising this informal resolution procedure, along with a demarcation of its prevailing flaws. The book offers a theoretical basis on ADR and Legal Aid, combining with some effective strategies through which this initiative can be more accessible to the people.[3]

In the research article titled 'Legal Aid in Bangladesh: Application and commitment,' the author, Esrat Jahan, portrayed the structure of the NLASO.[4] Here, she focused on the different committees of this organization and their functions. This article examines the role of various government and non-governmental organizations in providing free legal assistance. She upheld the right of disadvantaged people to receive logistical support in times of need. Besides, she recognized the lack of awareness among people about Legal Aid Services.

In the research article 'A Critical Analysis of Legal Aid in Bangladesh', the author termed the Legal Aid Services a crying need to ensure social justice.[5] Due to poverty and lack of legal knowledge, many citizens are deprived of legal assistance. Legal Aid can solve this problem to

[3] Md. Atickus Samad, A Text Book on ADR and Legal Aid (National Law Publications 2013)

[4] Esrat Jahan, 'Legal Aid in Bangladesh: Application and Commitment' (2015) 4(2) International Journal of Humanities and Social Science Invention, version-3, 1 https://www.ijhssi.org/papers/v4(2)/Version-3/A04230109.pdf accessed 22 January 2024.

[5] Nannu Mian, 'A Critical Analysis of Legal Aid in Bangladesh' (2014) 2 *International Journal of Social Science Research* <https://www.researchgate.net/publication/272026513_A_Critical_Analysis_of_Legal_Aid_in_Bangladesh/citation/download> accessed 22 January 2024.

a great extent. The author found some weaknesses and loopholes in the Legal Aid Sector. The procedural complexities made people unwilling to avail this facility. So, the ultimate goal of the Legal Aid Service cannot be adequately implemented. This article focused on the procedural shortcomings of the Legal Aid Service and offered recommendations to improve the sector.

The article titled ‘Overview of Government Legal Aid System’ included the overall functions of the National Legal Aid Services Organization (NLASO).[6] According to the author, the right to get Legal Aid is not a mercy to the poor; instead, it is a constitutional right. He focused on the activities of this governmental organization to help disadvantaged people. The article also includes the structure of NLASO and the different committees under it. It described the awareness measures taken by the Legal Aid Authority. Besides, the article portrays the role of a Legal Aid Officer to conduct these services smoothly. Lastly, the author mentioned some of the successful outcomes of NLASO's various policies.

Another article titled ‘Legal Aid Empowers the Critically Disadvantaged People of Bangladesh’ describes the importance of the implementation and awareness of the Legal Aid Services.[7] It focused on the fundamental principles of Government Legal Aid. According to the author, this poorly-focused program ensures accessible, accountable, high-quality, equitable, and collaborative legal services. With help from other non-governmental organizations, this program extends its activities to the people. Legal Aid Services can help disadvantaged people understand their rights and achieve justice.

The research article 'Free Access to Justice for the Poor through Legal Aid’ contains a brief description of the framework and strategies of the Legal Aid Services.[8] This paper provides an in-depth discussion of the structure and functions of NLASO. The article focused on the steps for taking legal help from this organization. It included several case studies to reveal the success rate of the mediation process. Besides, the author described the functions of NGOs in spreading Legal Aid Services across the country.

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[6] Syed Afzal Hossain Islam, 'Overview of Government Legal Aid System' The Daily Star (Dhaka, 29 April 2013) <https://www.thedailystar.net/news/overview-of-government-legal-aid-system>accessed 29 January 2025

[7] Bisheswar Singha, 'Legal Aid Empowers the Critically Disadvantaged People of Bangladesh' (NLASO Publication) <http://nlaso.portal.gov.bd/sites/default/files/files/nlaso.portal.gov.bd/publications/9b8d5bde_e471_4708_997f_168f9db5cf05/Legal%20Aid%20Empowers%20the%20Critically%20Disadvantaged%20People%20of%20Bangladesh.pdf> accessed 26 February 2025

8 ‘Free Access to Justice for the Poor through Legal Aid: Bangladesh Perspective’ The Lawyers and Jurists https://www.lawyersnjurists.com/article/free-access-justice-poor-legal-aid-bangladesh-perspective/ accessed 22 January 2024.

The next article reviewed is ‘Legal Aid for Ensuring Access to Justice in Bangladesh: A Paradox?’ This article stated the drawbacks of this governmental facility.[9] The author described the Legal Aid Service as a paradox and highlighted shortcomings in its implementation. The Government has a structure in place to provide legal assistance to the needy, but the outcomes are not satisfactory. The author has recommended some policies to develop this service and ensure justice.

The Daily Star has published a law review on the Legal Aid Services (Amendment) Ordinance 2025, discussing the ins and outs of the instrument. This write-up specifically focused on the existing anomalies in the mediation process, even after the changes, and concluded that the outcome remains inadequate. It is claimed by the author Satirtha Chakma that, though there is an official claim of resolving 90% of disputes through this process, there is no verifiable data to validate these results. Moreover, the study described this governmental process as quite unsuccessful at generating public awareness.[10]

4. Research Gap

In this research, the researcher examines the literature gaps to address aspects of the Government Legal Aid Program in Bangladesh, including its effectiveness, public awareness, and procedural issues.

Although there is existing literature explaining the setup and activities of the National Legal Aid Services Organization (NLASO), there is limited empirical research on how it has been effective in serving disadvantaged populations. Previous research mainly analyzes legal aid as a model and does not critically examine its impact on access to justice.

The awareness gap in Legal Aid Services has been identified in some studies, but none have examined university students' awareness, especially at Rajshahi University (RU). Further detailed research is required to determine how students are aware of their civil rights and the available services.

Although procedural complexities have been identified in the legal aid process, including mediation, little research has been examined specific backlogs and inefficiencies in mediation.

[9] Farzana Akter, 'Legal Aid for Ensuring Access to Justice in Bangladesh: A Paradox?' (2017) Asian Journal of Law and Society <https://www.cambridge.org/core/journals/asian-journal-of-law-and-society/article/legal-aid-for-ensuring-access-to-justice-in-bangladesh-a-paradox/6502B651208873A83ED88184E8DDCEE1> accessed 22 January 2024.

[10] Satirtha Chakma, 'Legal Aid Services (Amendment) Ordinance 2025' The Daily Star (Dhaka, 22 July 2025) <https://www.thedailystar.net/law-our-rights/news/legal-aid-services-amendment-ordinance-2025-3945886>accessed 17 January 2026

The literature identifies general gaps but fails to provide a comprehensive review of the barriers to mediation that influence its application.

5. Objectives

This study has been conducted with three specific objectives. These are-

1. To understand the effectiveness of the Government Legal Aid Program;
2. To discover the awareness level regarding the Legal Aid Services among RU students; and
3. To reveal the backlogs of the existing mediation process in the Government Legal Aid Program.

6. Methodology

(a) Basic Research Method: The research has been conducted using both qualitative (document study and Key Informant Interviews (KII)) and quantitative (questionnaire survey) research methods. Thus, a mixed research design has been adopted.

(b) Study Population: For the questionnaire survey, students of the University of Rajshahi comprised the population of this study.

(c) Sampling: A total of 265 respondents (both male and female) from thirteen faculties of the university have been selected through convenience sampling.

(d) Primary and Secondary Data: Primary data has been collected using questionnaires and in-depth interviews. The information derived from books, articles, case studies, Acts, and Rules has been used as secondary data.

(e) Data Collecting, Processing, and Analysis: The quantitative data have been collected using Google Forms. The collected data has been processed automatically using the same software. The KII data has been processed and analyzed manually by the researcher. Simple statistical tools such as frequency distributions, percentages, and graphs have been used to analyze the data.

7. Scope and Limitation

This research is divided mainly into two parts. Firstly, the Legal Aid Office of Rajshahi District has been selected to provide a brief overview of the effectiveness of the Legal Aid Services

provided here by the Legal Aid Officers. Secondly, a questionnaire survey is conducted among students of the University of Rajshahi to gauge their knowledge about Legal Aid Services.

However, this study is subject to certain limitations. Firstly, it was not possible to include all students of the University of Rajshahi in the questionnaire survey due to structural constraints. Besides, the research was conducted under tight time limitations, and it was restricted to case studies from the Legal Aid Office of the Rajshahi district, excluding offices from other regions.

8. Establishment of Legal Aid Program in Bangladesh

The constitution of Bangladesh declares equal rights among people under Article 27. Providing legal aid to the underprivileged people is a wonderful way to establish this equality. The Supreme Court of Bangladesh also emphasized the importance of providing legal assistance to the poor to give them equal standing. In many cases, marginalized people cannot get the chance to secure proper legal assistance, and as a result, they are deprived of justice. In *Dr. Neelima Ibrahim Vs. Bangladesh*[11] case, the Supreme Court opined that, unless otherwise excluded by law, the principle of *Audi Alterum Partem* should be implied to have been proved in every statute. This case has highlighted the importance of providing governmental funding to help poverty-stricken people so they are not left unheard.

In the *Hamidul Huq Chowdhury v Bangladesh*[12] case, the Supreme Court also focused on establishing equality and equal protection of law among people. It can largely be achieved when everyone has the same opportunities to deal with their legal matters. The Supreme Court mentioned in *Dr. Nurul Islam v, Bangladesh*[13]case that if there is a classification in legislation, it must be made for a valid reason. It should contain all reasonable relations to the objects and to the public purpose sought to be achieved by the legislation. So, it is clear that the judicial organ of Bangladesh has been focusing on establishing equality among people, keeping in mind that all should have proper legal assistance.

With a view to ensuring equal legal rights for people of all walks of life, the Government of Bangladesh took a formal initiative in 1994 to enact laws relating to legal aid. A National Legal Aid Committee was formed by a Resolution. However, it proved ineffective and was repealed

[11] *Dr Neelima Ibrahim v Bangladesh* 32 DLR 201.
[12] *Hamidul Huq Chowdhury v Bangladesh* 34 DLR 190.
[13] *Dr Nurul Islam v Bangladesh* 33 DLR (AD) 205.

by another Resolution in 1996. At last, in 2000, the Legal Aid Services Act was passed. It contains some structured, state-funded schemes that are greatly beneficial to poor litigants. A statutory body, the National Legal Aid Services Organization (NLASO), has been established under this Act to implement its provisions nationwide. Obviously, the Legal Aid Services program is doing a great job of making impoverished people feel they have equal opportunities. Still, some loopholes in the system are diminishing the expected outcome of this benevolent service.

9. Analysis of the Facilities Provided by the Government Legal Aid Program

The main vision of the Legal Aid Services program is to ensure equal legal rights for the people of Bangladesh, as guaranteed by the Constitution. To achieve this goal, it aims to ensure access to justice for all. This governmental service has been serving the poverty-stricken people with the same legal facilities that the rich people can easily get. In this way, class discrimination is being reduced. Besides, Legal Aid Services ensure easy access to legal representation, removing the hassle for illiterate poor people. In every District Court of Bangladesh, there is a Legal Aid Office. In most cases, the office is situated on the ground floor of the building so that people can easily find it.

The Legal Aid Services Program serves a large number of facilities and provides services to people entitled by law. In addition, poor litigants can fully represent their cases using government funds through the program. Furthermore, they can receive any kind of legal advice from the service.

One of the most remarkable services of this program is its ability to resolve problems between parties through mediation. This method is conducted by the Legal Aid Officer. The post of the Legal Aid Officer has been created under section 21A of the Legal Aid Services Act, 2000. Rules 4-10 of the Legal Aid Services (Legal Advice and Alternative Dispute Resolution) Rules, 2015 outline the mediation process followed here. The parties seeking legal aid may apply to resolve the dispute outside the court. Here, the Legal Aid Officer plays a vital role in helping the parties reach a peaceful agreement. Then he will record the results. However, the result is not binding on the parties.

Historically, this non-binding nature of ADR method created a procedural bar that forced aggrieved parties back into formal courts upon breach. Now, the recent Legal Aid Services (Amendment) Ordinance, 2025 introduced progressive structural changes, such as formalizing pre-case and post-case mediation options. In some specified areas like family matters, cheque dishonor, house rend dispute, partition claims, parental maintenance, pre-emption suits and dowry issues, pre-case mediation is now made compulsory.[14] The most remarkable change in this area is, if the parties come to an agreement, the final mediation order is made binding upon the parties under section 21C of the Act, and it can be enforced as a formal civil decree. In this way, the current legal framework incorporated the pathways to a hassle-free execution of mediation decrees. This order is final, leaving no scope for appeal to the civil court. However, despite all these positive sides, the procedural difficulties are not fully swiped off by this amendment. Specifically, the mediator (the Legal Aid Officer) is still vested with no direct penal or coercive power to punish parties who violate the agreement, meaning enforcement relies entirely on subsequent judicial intervention.

Some other notable services provided by the Legal Aid Services Program are-

(i) Rendering free legal advice;
(ii) Providing free vokalatnama;
(iii) Helping the litigants to appoint panel lawyers;
(iv) Providing the fees of the arbitrators or lawyers;
(v) Supplying free copies of judgments, decrees, etc.;
(vi) Paying any other expenses relating to CR or GR cases and so on.

However, the lack of accountability among the program's higher authorities often undermines its effectiveness. On the other hand, the members of the Legal Aid Committees, who belong to the upper class of the society, often fail to properly realize the depth of the misery of those people and thus cannot fulfill their requirements.[15]

10. Effectiveness of the Government Legal Aid Services Program

The present study primarily focused on the effectiveness of the various steps taken by the government's Legal Aid Services. To determine this, a questionnaire survey was conducted among students at the University of Rajshahi regarding their awareness of this service. Proper

[14] Legal Aid Services (Amendment) Ordinance, 2025, Schedule
[15] Mahfuz Alam, 'Implementation of Legal Aid Act 2000: Problems and Prospect' (2018) Academia.edu <https://www.academia.edu/38206011/Implementation_of_Legal_Aid_Act_2000_problems_and_prospect_docx> accessed 22 January 2024

awareness and knowledge of this governmental service are basic elements for making it effective. As the responsible representatives of the people of Bangladesh, the students of RU have been chosen as the study population. So, their awareness rate offers a glimpse of the actual condition of our country by indicating the availability of Legal Aid facilities.

Secondly, to provide a clearer understanding of the research process, this study includes case studies to determine the effectiveness of the mediation process in resolving disputes between parties seeking support from Legal Aid Services.

And lastly, the study includes vital information collected from Legal Aid Officers, both former and current, of the Rajshahi District Court, which significantly enriches the overall analysis and strengthens the study's conclusions.

10.1 Findings from the field Survey

For the questionnaire survey, 265 students from 13 faculties of RU were selected through convenience sampling. Students from the 1st year (Honors) to the Master's took part in it. About half of these students belong to middle-class families. More than thirty six percent are from lower-middle-class families, and about thirteen percent of the respondents are from lower-class families. They answered some crucial questions relevant to this study.

About 52% of the respondents in this research came from rural areas. The proportion of students living in district towns was about 31%, and the remaining respondents live in Upazilla areas.

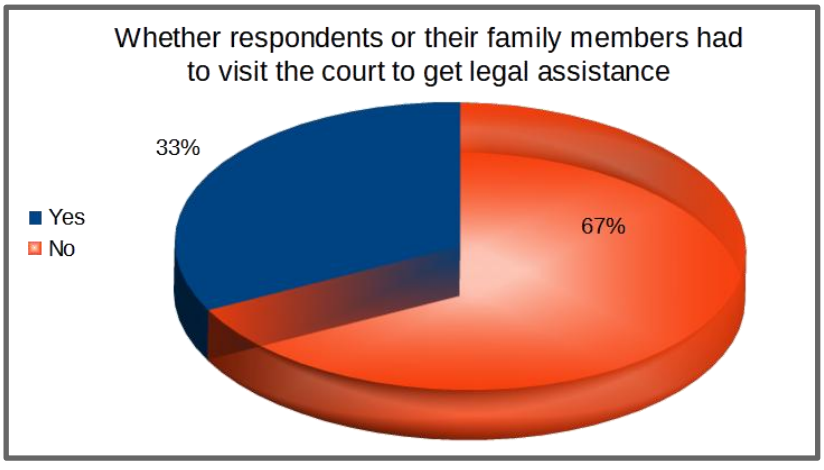


Chart 1

Regarding whether students or their families have ever visited a court for legal assistance, about 33% replied in the affirmative, while the rest responded in the negative (Chart 1).

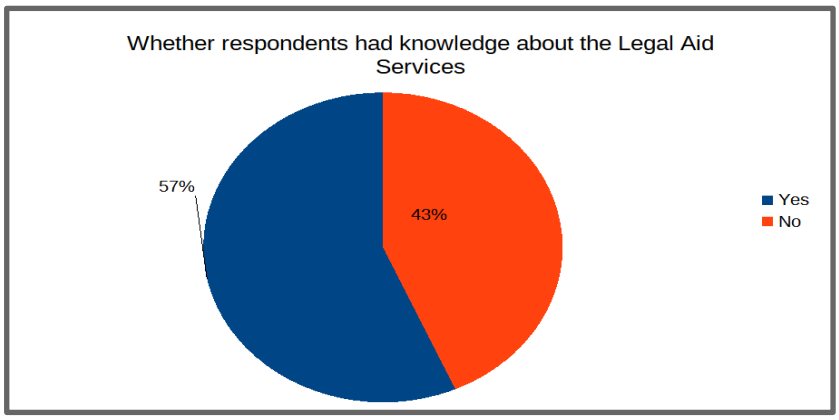


Chart 2

Responding to the question about their knowledge of Legal Aid Services of Bangladesh, more than 57% of respondents reported being aware of the program. The remaining 43% had never heard of this government facility (Chart 2).

Diversified replies are found to the question on the source of their knowledge of Legal Aid Services. The most significant portion of the students (36.8%) has learned about this service from the internet. The second-largest group (28.3%) has learned about it through newspapers, books, or other written materials. Only 4% of them learned about this service through the governmental awareness campaign.

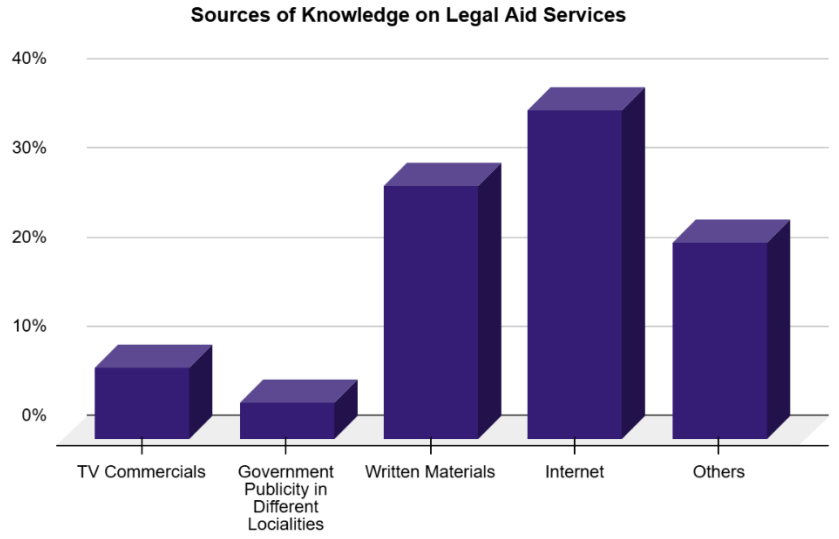


Chart 3

programs conducted in their home areas. The rest of the students have known this matter from other sources (Chart 3).

The respondents also answered whether any governmental awareness program concerned with the Legal Aid Services had occurred in their home areas.

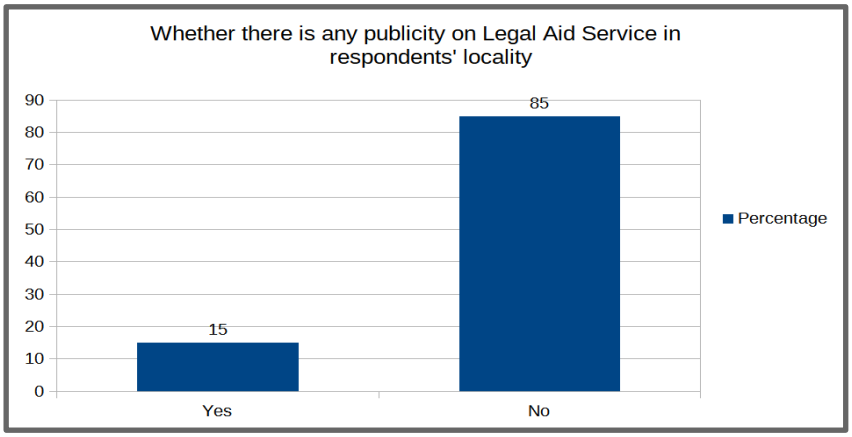


Chart 4

Only 15% of the respondents said that such awareness programs were held in their regions. The majority of them replied in the negative (Chart 4). This raises a question about the government's initiatives to raise awareness of this vital matter.

While answering the question on whether the respondents or any person known to them has availed any service from the Legal Aid Officer, only 19.6% responded in the affirmative. More than 80% do not know anyone who has availed this service. (Chart 5)

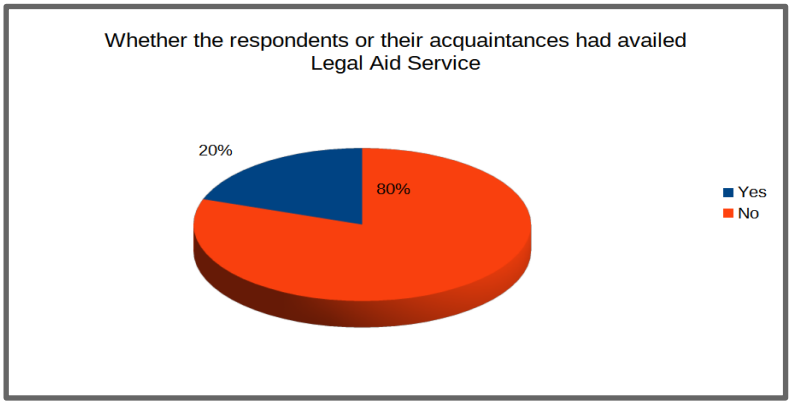


Chart 5

These statistical data help to provide an idea of the level of awareness among RU students regarding the Government Legal Aid Services.

10.2 Case Studies

Three cases relating to Legal Aid Services and the application of the mediation process are included here. It helped the researcher gain an idea of the outcome of the mediation process undertaken by the Legal Aid Officers.

Case 1

The Applicant Sumi Lakra applied for legal assistance from the Legal Aid Officer. The dispute was found eligible for mediation. The matter of conflict in this case was recovering post-divorce maintenance from her ex-husband, Md. Halim Ding. The Legal Aid Officer heard the statements of both parties and tried to settle the dispute. After the mediation process, the parties reach an agreement. Halim agreed to pay Sumi the dower of 70,000 Taka. The payment of this amount was conducted instantly before the court. And Sumi voluntarily agreed to remit the rest of her dower (80,000/-). It was an instance of peaceful resolution of a family dispute under the supervision of the Legal Aid Officer.[16]

Case 2

Another dispute on a family matter had been reported to the Legal Aid Officer for mediation. Applicant Fulsurat Khatun claimed an informal arrangement with her husband, Md. Saker Ali Babu, to obtain maintenance. The concerned Legal Aid Officer found this matter eligible for Mediation. He heard both parties and tried to convince them to reach a peaceful solution. Upon agreement of both parties, the defendant was ordered to pay a daily maintenance of Taka 250 to his wife and three children.

After seven months of this order, Babu stopped paying the required money. Fulsurat again came to the Legal Aid Office to get a remedy. This time, the Officer advised her to file a case in court against Babu and selected a lawyer from the panel of lawyers to handle the case. This situation illustrates the Legal Aid Officers' lack of power to punish parties who violate the agreement. Also, the absence of the binding effect of the Legal Aid Officer’s order makes this process less effective, as the aggrieved party must again take the case to a formal court.[17]

Case 3

This case also dealt with a family issue. Here, the applicant, Farzana Yasmin, accused her husband, Md. Mominul Islam, of domestic violence. She applied to the Legal Aid Officer to

[16] Sumi Khatun (Sumi Lakra) vs Md. Halim Ding, ADR 13, 2021 (Pre-Case), Legal Aid Office, Rajshahi
[17] Fulsurat Khatun vs Md Saker Ali Babu, ADR 75, 2021 (Pre-Case), Legal Aid Office, Rajshahi

mediate the matter. Farzana wanted *talaq* from her husband. She also demanded maintenance for herself and her three children. After the mediation, the two parties agreed to dissolve their marriage. The Legal Aid Officer ordered Mominul to pay 70,000/= as maintenance, and their *talaq (Talaq e Khula)* was enforced. The custody of their children was given to their mother. Mominul could visit the children twice a month, and the applicant party would make the necessary arrangements. In this way, the parties came to an agreement to resolve their dispute with the help of the Legal Aid Officer.[18]

The case studies show that it is up to the parties whether they choose to abide by the order issued by the Legal Aid Officer. In the event of a breach of the agreement, the Legal Aid Officer has no power to punish; he can at most provide legal assistance to the victim in filing a case in a formal court. This creates a huge barrier to ensure justice.

10.3. Key Informant Interviews (KII)

An informal interview was conducted to assess the effectiveness of Legal Aid Services. Two senior assistant judges, both former Legal Aid officers in Rajshahi District, provided key insights regarding this government initiative.

Md. Ariful Islam, the current Legal Aid Officer (2026) of Rajshahi District, demonstrates this government service as a pioneer in access to justice. It mainly focuses on rendering legal advice and facilities to the applicants. Besides, this method plays an important role in reducing the rate of multiplicity of suits. However, in some cases, publicity for this program seems inadequate, and to address this, institutional public hearings and courtyard meetings are held. There is a legal aid hotline for every district to serve the people. Also, if any panel lawyer shows a non-cooperative attitude towards the parties, the office can take remedial action against him. Moreover, the mediator can exercise the flexibility to collect evidence through a field visit if needed. There is also an option to file a *suo-motu* case under this governmental program. The recent amendment inserted the process for executing the mediation decree, making the system more effective. Overall, the interviewee expressed his satisfaction with the existing legal aid service.

Luna Ferdous, the former Legal Aid Officer of the Rajshahi District, stated that the mediation process of the Legal Aid Services is a milestone in the pursuit of justice. She opined that by

[18] Farzana Yasmin vs Md. Mominul Islam, ADR 7, 2021 (Pre-Case), Legal Aid Office, Rajshahi

taking legal assistance from Legal Aid Officers, disadvantaged people in Bangladesh have an opportunity to resolve their disputes. The mediation process can settle the conflict peacefully without the court's intervention. It made people willing to take advantage of the Government. According to Luna Ferdous, about 90% of her cases were resolved appropriately, and both parties agreed. The government has undertaken awareness programs in remote areas to inform people about Legal Aid Services and increase their success rate. She mentioned that if these government programs reach more people, they will know their right to legal assistance.

Tanzim Alam, the former Legal Aid Officer of the District of Rajshahi (2022), mentioned that the services provided by the Legal Aid Program are quite satisfactory. However, it has not yet reached the estimated goal. Mostly, she found that family-related disputes of the impoverished people are resolved through the mediation system. The order of mediation is not binding upon the parties. When a party violates the agreement, the Legal Aid Officer has no power to punish them. She can only refer the case to a panel lawyer for court proceedings. Here, the government will bear the litigation costs. This non-binding nature often decreases the effectiveness of the Legal Aid Services Program. Moreover, in many cases, the panel lawyers and advocates are not very cooperative in handling Legal Aid cases. It causes harm to the parties. She also mentioned that the Legal Aid Office of Rajshahi is located on the 7th floor of the Chief Judicial Magistrate's Court Building in Rajshahi. So, in some cases, it becomes difficult for underprivileged people to find the location. It would be easier to find if it were located on the ground floor of the building. Furthermore, awareness programs should be expanded at the grassroots level so that eligible individuals can learn about this government legal assistance.

11. Summary of the Findings

Firstly, this study shows that various renowned case references of the Bangladesh Supreme Court helped to initiate the provision of Legal Aid in Bangladesh. Cases like *Dr. Neelima Ibrahim Vs. Bangladesh, Hamidul Huq Chowdhury v, Bangladesh,* and *Dr. Nurul Islam v, Bangladesh* have paved the way to ensure equal legal rights to all people of our country in order to fulfill the mandate of Article 27 of the Bangladesh Constitution. Gradually, the National Legal Aid Services Organization (NLASO) has been established under the Legal Aid Services Act, 2000, to serve the underprivileged persons.

Secondly, the research highlighted some of the main services provided by Legal Aid Services. It includes free legal assistance to the impoverished people along with other legal expenses. The Legal Aid Program also includes resolving disputes between the parties through mediation.

However, due to a lack of accountability among higher authorities, Legal Aid seekers are not receiving the full benefits of this program. The inability to recognize the actual miseries of those people leads to reluctance among the authorities, which, in turn, undermines the effectiveness of the Legal Aid Services.

Thirdly, this study gives an idea about the knowledge of RU students on Legal Aid Services. The survey results show that about 33% of the respondents (or their families) have taken legal assistance from the court. About 56% of them knew about this service. It proves a comparatively low rate of awareness among the students. Most of these students learned about Legal Aid through the internet, books, newspapers, and other written materials. A very few respondents were informed that the government had undertaken awareness programs on Legal Aid in their home areas. Again, only 19.6% of the respondents or any person known to them have taken the benefit of the Legal Aid Services. It shows that the awareness regarding the benefits of Legal Aid Services and their use among the general public is relatively low. The rate should be increased in order to increase the effectiveness of the Legal Aid Services Program.

Fourthly, the case studies focused on the outcome of the mediation processes undertaken by the Legal Aid Officers. Two of these cases show the successful development of these processes. In the other case, the defendant disobeyed the order of the Officer after a particular period of time. In that case, the Legal Aid officer advised the applicant to file a lawsuit in the concerned court and referred a panel lawyer to deal with that case.

The mediation program included in this service does not have any binding effect on any party. The Legal Aid Officer also has no power to punish the person who breaches the order. So, he has to refer the case to the formal court. In such a case, it causes multiplicity of suits. It is obviously a drawback in the procedure of the Legal Aid Services. There is no list of cases mentioning those that should be resolved through mediation. If it were specified, it would be more effective along with the binding effect of the order towards the parties.

Lastly, the current Legal Aid Officer of Rajshahi District, Md. Ariful Islam noted that the program has been effective in providing legal advice, minimizing suit multiplicity, and proposing solutions, such as taking suo motu measures. He observed that publicity is not always sufficient, but recent gains, such as public outreach activities and the amendment to allow the execution of mediation decrees in formal courts, have strengthened the system and made it more effective. One of the former officers, Luna Ferdous, has made a positive comment

about the mediation process, which amicably resolves conflicts and benefits the underprivileged with a 90 percent success rate. Other former officer Tanzim Alam admitted that the program is satisfying, but noted its weaknesses, such as non-binding mediation agreements, uncooperative panel lawyers, and inaccessibility because the office was located. She highlighted that there should be greater awareness at the grassroots level.

12. Suggestions

Reviewing the findings, some suggestions can be made to overcome the current limitations of the mediation process and to increase awareness among people on this matter-

(i) The Legal Aid Committees should contain a representative from the legal aid seekers so that they can adequately understand the problems of the underprivileged people and take measures to solve them.

(ii) A handsome honorarium should be fixed for the panel lawyers and other staff of the Legal Aid Office to increase their commitment to this service.

(iii) Legal Aid Officers should have a minimum power to punish the parties violating the conditions of the mediation agreement.

(iv) Accountability should be maintained regarding complain of undue wastage of time to resolve a dispute. Because, if mediation fails, ultimately the parties have face the civil court, making the whole process far lengthier.

(v) Awareness programs should be increased all over Bangladesh to make people know about this free legal assistance service.

(vi) The concept of Legal Aid should be included in the textbooks of the secondary levels so that children will be conscious of it from an early age and also share the knowledge with their friends and families.

(vii) The success rate of the mediation programs should be disseminated widely to make people willing to avail themselves of this service.

13. Conclusion

Legal Aid Services is one of the best initiatives taken by the Government of Bangladesh to ensure equality of all citizens before the law. By availing this service, the poor and disadvantaged were able to exercise their legal rights. However, some drawbacks of this service

include keeping it from reaching the expected goal. If the effectiveness of the Legal Aid program can be expanded, it would be a great leap towards the human rights conditions of our country. Increasing awareness among people across the country will enhance its effectiveness. This is because the more people know about this service, the more willing they are to avail of it. The awareness level of people in Bangladesh, including students, should be raised to increase the popularity of the Legal Aid Services program. The Government has taken many initiatives to extend this legal opportunity to people across the country. However, as the steps taken are not reaching a large portion of our population, their awareness levels remain low. Provisions must be made so that disadvantaged people feel encouraged to avail themselves of the facilities of the Legal Aid Services.