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BANGLADESH LEGAL DECISIONS

APPELLATE DIVISION

Appellate Division

(Civil Jurisdiction)

A.T.M. Afzal, C J; Mustafa Kamal, Latifur Rahman, Mohammad Abdur Rouf and Bimalendu Bikash Roy Chowdhury, J J.

Civil Appeal No. 24 of 1995

Dr. Mohiuddin Farooque....Applellant

Vs

Bangladesh and others....Respondents

Date of Judgment : The 25th of July 1996

Result : Appeal allowed

Constitution of Bangladesh, 1972

Article-102

'Any person aggrieved' and 'Sufficient interest'

The expression 'any person aggrieved' approximates the test of or if the same is capsulized, amounts to, what is broadly called, ''insufficient interest'. Any person other than an officious intervenor or a wayfarer without any interest in the cause beyond the interest of the general people of the country having sufficient interest in the matter in dispute is qualified to be a person aggrieved and can maintain an action for judicial redress of public injury arising from breach of some public duty or for violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. The real test of 'sufficient interest', of course, essentially depends on the co-relation between the matter brought before the Court and the person who is bringing it. **[Per A. T. M. Afzal, C.J;]**

(Para-8]

'Any person aggrieved'

The expression 'any person aggrieved' is not confined to individual affected persons only but it extends to the people in general, as a collective and consolidated personality. If an applicant bona fide espouses a public cause in the public interest he acquires the competency to claim a hearing from the Court. **[Per Mustafa Kamal, J.]**

(Paras-48 and 51)

The appellant as an environmental association of lawyers is 'a person aggrieved' be cause the cause it bona fide exposes, both in respect of fundamental rights and constitutional remedies, is a cause of an indeterminate number of people in respect of a subject-matter of great public concern. **[Per Mustafa Kamal, J.]**

(Para-53)

Beneficial and meaningful interpretation of the language of the Constitution.

The language used by the framers of the Constitution must be given a meaningful interpretation with the evolution and growth of the society. An obligation is cast upon the Constitutional Court, which is the apex Court of the country, to interpret the Constitution in a manner in which social, economic and political justice can be advanced for the welfare of the state and the citizens. **[Per Latifur Rahman, J.]**

(Para –74)

Locus standi

When a person a approaches the Court for redress of a public wrong or public injury, though he may not have any personal interest, must be deemed to have 'sufficient interest' in the matter if he acts bona fide and not for his personal gain or private profits or for any oblique considerations. In such a case he has locus standi to move the High Court Division under Article 102 of the Constitution. **[Per Latifur Rahman, J.]**

(Para-78)

"Person Aggrieved"

The expression 'person aggrieved' means not only any person who is personally aggrieved but also one whose heart bleeds for his less fortunate fellow-beings for a wrong done by the Government or a local authority in not fulfilling its constitutional or statutory obligations. It does not, however, extend to a person who is an interloper and interferes with things which do not concern him. This approach is in keeping with the constitutional principles that are being evolved in the recent times in different countries of the world. **[Per B. B. Roy Choudhury, J.]**

(Para-98)

Article-31 and 32

Although we do not have any provision like article 48-A of the Indian Constitution for protection and improvement of environment, articles 31 and 32 of our Constitution protect right to life as fundamental right. It encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life. **(Per B. B. Roy Choudhury, J)**

(Para-102) CITATIONS.

Bangladesh Sangbad Patra Parishad Case 43 DLR (AD) 126; In the case of Kazi Mukhlesur Rahman, 26 DLR (SC) 44; S.P. Gupta and others, A. I. R. 1982 (SC) 149; Sierra Club Vs. Morton, 401 O.S. 907 (1971) (No. 70-34); 45 S. Cal. L. Rev. 450 (1972); Ex parte Sidebotham (1880) 14 Ch. D. 458; (1887) 19 QBD 174; Durayappah Vs. Fernando, (1967) 2AC337; Md. Giasuddin Bhuiyan Vs. Bangladesh 1 (1981) BCR (AD) 81; [1990] 1 All. E.R. 754; Muntizma Committee Vs. Director Katchi Ahadies, Sindh, PLD 1992 (Karachi) 54; R. Vs. Commissioner of Police, *ex parte* Blackburn. (1968) 2 QB 118; Blackburn Vs. Attorney General (1971) 1 WLR 1037; R Vs. Police commissioner, *ex parte* Blackburn (1973) QB 241; R Vs. GLC ex parte Blackburn (1976) 1 WLR 550; 1RC Vs. National Federation of Self Employed and Small Business Ltd. [1981] 2 All ER 93; R. V. Secretary of State, *ex parte* Rose Theatre Trust Co. [1990] 1 All. E. R. 754 (766); Mian Fazal Din Vs. The Lahore Improvement Trust, 21 DLR (SC) 225; Benazir Bhutto Vs. Federation of Pakistan, PLD 1988 (SC) 416; Shehla Zia Vs. WAPDA. PLD 1994 (SC) 693; The South Asian Environmental Law Reporter, Vol. 13, September, 1994, Colombo, Sri Lanka, PP 113-145; S.P. Gupta and others Vs. Union of India and others, better

known as the Judge's Case (1981) A.I.R. Supreme Court 344; Fertiliser Corporation Kamagar Union Vs. Union of India, (1981) A.I.R. (SC) 344; The Devil's Disciple, (1897), Act II; World Commission on Environment and Development; Our Common Future: World Commission on Environment and Development Published by Oxford University Press in 1987; Virender Gaur Vs. State of Haryana, (1995) 2 SCC 577 (580); Constitution at Law of Bangladesh-Mahmudul Islam; - Cited.

Dr. Mohiuddin Farooque, Advocate, (appeared with the leave of the Court) in strutted by Mr. Shamsul Haque Siddique, Advocate-on-Record, For the appellant.

Mr. A. W. Bhuiyan, Additional Attorney General, instructed by Mr. Sharifuddin Chaklader, Advocate-on-Record, For Respondent Nos. 1, 5 and 6.

Mr. Tofailur Rahman, Advocate, Instructed by Mr. Sharifuddin Chaklader, Advocate-on-Record, For Respondent Nos. 2, 3 and 4.

Judgement:

A. T. M. Afzal, C.J: We all agreed that the appeal shall be allowed and the writ petition be remitted to the High Court Division for hearing on merit. For writing out the judgement, I requested brother Mustafa Kamal, J. who was the author of the decision in the Bangladesh Sangbad Patra Parishad case 43 BLD (AD) 126 which, we felt, we wrongly applied by the High Court Division in the present case. I thought I would have nothing more to contribute except putting a signature to the common judgement. The euphoria, however, became short-lived when I found two extra judgements written by my brothers, Latifur Rahman and Bimalendu Bikash Roy Choudhury, JJ. over and above the exhaustive judgement prepared by Mustafa Kamal, J. I had to go through all these Judgements and have no option now but to write few lines to justify my participation.

2. Facts of the case and the relevant decisions have been noticed fully in the main judgement. I shall therefore avoid repetition.

3. As to the core question in this appeal, whether the expression 'any person aggrieved' occurring in article 102(1) and (2)(a) of the Constitution should be liberated from the traditional an restrictive meaning so far attributed to it in the sense that to get a hearing the person must bring a legal and personal cause only, I should think it will be too late in the day to try and give an answer to the question in the negative. Reasons why? Brother Mustafa Kamal, J. in particular has elaborately set them out in his judgement in the historical and constitutional perspective with which I agree entirely.

4. The liberalized view as expounded by my brother is an update, if I may say so, of the liberalization agenda which was undertaken in the case of Kazi Mukhlesur Rahman, 26 DLR (SC) 44. It is a matter of some pride that quite early in our Constitutional Journey the question of *locus standi* was given a liberal contour in that decision by this Court at a time when the Blackburn cases were just being decided in England which established the principle of "sufficient interest" for a standing and the doctrine of public interest litigation or class action was yet to take roots in the Indian Jurisdiction. The springboard for the liberalization move was the momentous statement made in that case:

> "It appears to us that the question of *locus standi* does not involve the Court's jurisdiction to hear a person but of the competency of the person to claim a hearing, so that the question is one of discretion which the court exercises upon due consideration of the facts and circumstance of each case".

5. The appellant in that case was found to be a person aggrieved not because be brought any personal grievance before the Court but because, to quote from the judgement itself, "we heard him in view of the constitutional issue of grave importance raised in the instant case involving an international treaty affecting the territory of Bangladesh and his complaint as to an impending threat to his certain fundamental rights guaranteed by the constitution, namely, to move freely throughout the territory of Bangladesh, to reside and settle in any place therein as well as his right of franchise. Evidently, these rights attached to a citizen are not local. They pervade and extend to every inch of the territory of Bangladesh stretching up to the continental shelf."

6. Two principles were established in that case,-1) that when there is a threat to a fundamental right of the citizens any one of them can invoke the jurisdiction under article 102 of the Constitution, that any citizen from any part of the country can become a petitioner and 2) that if a constitutional issue of grave importance is raised (in that case it was an international treaty affecting territory of Bangladesh) a petitioner qualifies himself to be a person aggrieved.

7. In the Bangladesh Sangbad Patra Parishad case 43 DLR (AD) 126 although it has been found that the Parishad could not maintain the writ petition in a representative capacity on behalf of its members and approval was given to the decision in the case of Dada Match Workers Union 29 DLR 188 holding that a trade Union cannot maintain an application under article 102 of the Constitution asking for relief for its members, the principles enunciated in Kazi Mukhlesur Rahman's case were not departed from. It was observed that the Parishad was not espousing the cause of a downtrodden and deprived section of the community unable to spend money to establish its fundamental right and enforce its constitutional remedy. The indication was thus broadly given that in case of a violation of any fundamental right of the citizens affecting particularly the weak, downtrodden or deprived section of the community or that if there is a public cause involving public wrong or public injury, any member of the public or an organisation, whether being a sufferer himself/itself or not may become a person aggrieved if it is for the realization of any of the objectives and purposes of the Constitution. In this connection our attention has been drawn to the case of Retired Government Employees, 46 DLR 426 in which the High Court Division held that the petitioner –Bangladesh Retired Government Employees Welfare Association was a person aggrieved within the meaning of clauses (1) (2) of article 102 of the Constitution since the Association has an interest in ventilating the common grievance of all its members who are retired Government Employees. For fulfilling the constitutional promise of economic Justice, the Court can look upon the case of the retired Government employees differently from that of the media magnates and there comes the question of discretion of the Court to hear their representative or not. However, we reserve our final opinion in this matter as, we are told, an appeal is pending before us against the judgement of the High Court Division in that case.

8. The liberal interpretation given to the expression 'any person aggrieved' in the judgements of my learned brothers, in my opinion, approximates the test of or if the same is capsulized, amounts to, what is broadly called, 'sufficient interest'. Any person other than an

officious intervenor or a wayfarer without any interest or concern beyond what belongs to any of the 120 million people of the country or a person with an oblique motive, having sufficient interest in the matter in dispute is qualified to be a person aggrieved and can maintain an action for judicial redress of public injury arising from breach of public duty or for violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. Now what is 'sufficient interest' will essentially depend on the co-relation between the matter brought before the court and the person who is bringing it. It is not possible to lay down any strait-jacket formula for determining sufficient interest which may be applicable in all cases. Of necessity the question has to be decided in the facts of each case as already pointed out in the case of Kazi Mukhlasur Rahman. This topic has been eloquently summed up by the Indian Supreme Court in the case of S. P. Gupta and others, AIR 1982 SC 149 and I fully subscribe to that statement. It reads:

> "What is sufficient interest to give standing to a member of the public would have to be determined by the Court in each individual case. It is not possible for the Court to lay down any hard and fast rule or any strait-jaket formula for the purpose of defining or delimiting 'sufficient interest'. It has necessarily to be left to the discretion of the Court. The reason is that in a modern complex society which is seeking to bring about transformation of its social and economic structure and trying to reach social justice to the vulnerable section of the people by crating new social, collective 'diffuse' rights and interests imposing new public duties on the State and other public authorities infinite number of situations are bound to arise which cannot be imprisoned in a rigid mould or a procrustean formula. The Judge who has the correct social perspective and who is on the same wavelength as the Constitution will be able to decide, without any difficulty and in consonance with the constitutional objectives, whether a member of the public moving the court in a particular case has sufficient interest to initiate the action."

9. A person pleading sufficient interest may be able to cross, what is called, the threshold stage on the averments made in the writ petition but it will always remain open for a prospective respondent to contest the said claim on facts and also to assail the bona fides of even the appropriateness in a particular case of the petitioner for seeking a relief invoking the constitutional jurisdiction of the High Court Division under article 102 of the Constitution. For example, sanding was denied to the Bangladesh Sangbad Patra Parishad to represent its opulent

members, namely, the newspaper owners who were directly affected by the Wage Board Award but even then none of them moved personally, but the consideration would have been different if any organization representing a weaker section of the society had come to complain about a breach of any fundamental right of its members or any public wrong done to the members generally in breach of any provision of the constitution or law. The Court will have to decide in each case, particularly when objection is taken, not only the extent of sufficiency of interest but also the fitness of the person for invoking the discretionary jurisdiction under article 102 of the Constitution. Ordinarily, it is the affected party which is to come to the Court for remedy. The Court in considering the question of standing in a particular case, if the affected party is not before it, will enquire as to why the affected party is not coming before it and if it finds no satisfactory reason for non-appearance of the affected party, it may refuse to entertain the application.

10. As regards the *locus standi* of the appellant in the present case, I agree with my learned brothers that the High Court Division wrongly decided the issue upon wrongly relying on the Sangbad Patra Parishad case which has got no application to the facts of the present case. Facts of the appellant's case have been elaborately noticed in the judgement of Mustafa Kamal, J. and I may state briefly that the appellant is the Secretary General of the Bangladesh Environmental Lawyers Association (BELA) and the said organisation in the field of environment and ecology. In the writ petition that activities of FAP, FAP-20 and the FPCO have been impugned on the ground, *inter alia*, that the said activities would adversely affect more than a million human lives and natural resources and the natural habitat of man and other flora and fauna and that they aroused wide attention for being allegedly anti-environment and anti-people project. The appellant stated in the writ petition that as an environmentally concerned and active organisation, BELA conducted investigations at various times in 1992-93 in the FAP-20 areas. The appellant alleged that no proper environmental impact assessment had been under taken in relation of FAP projects even though the European Parliament declared in its resolution of 24 June 1993 that there was urgent need of changing the FAPs' classification within the World Bank project scheme from category 'B' to category 'A' requiring full environmental assessment for projects which appear to have significant adverse effect on the environment.

11. A group of environmental lawyers possessed of pertinent, bona fide and well-recognized attributes and purposes in the environment and having a provable, sincere, dedicated and

established status is asking for a judicial review of certain activities under a flood action plan undertaken with foreign assistance on the ground, *inter alia*, of a alleged environmental degradation and ecological imbalance and violation of several laws in certain areas of the district of Tangail. The question is: does it have sufficient interest in the matter for a standing under article 102?

12. It is very interesting that Justice Douglas of the U.S. Supreme Court in his minority opinion went so far as to say in Sierra Club Vs. Morton, 401 U.S. 907 (1971) (No. 70-34) that contemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for the their own preservation. The learned Judge further said: Ecology reflects the land ethic; and Aldo Leopold wrote in A Sand County Almanac 204 (1949), "The land ethic simply enlarges the boundaries of the community to include soils, waters, plants, and animals, or collectively, the land." That, as I see it, is the issue of "standing" in the present case and controversy.

13. Justice Douglas referred to a stimulating essay, "Should trees Have Standing? Toward Legal Rights for Natural Objects" by Prof. Christopher D. Stone, 45 S. Cal. L. Rev. 450 (1972). Prof. Stone concluded his essay with a stirring note:

> "How far we are from such a state of affairs, where the law treats "environmental objects" as holders of legal rights, I cannot say. But there is certainly intriguing language in one of Justice Black's last dissents, regarding the Texas highway Department's plan to run a sic-lane expressway through a San antonio Park. Complaining of the Court's refusal to stay the plan, Black observed that "after today's decision, the people of San Antonio and the birds and animals that make their home in the park will share their quiet retreat with an ugly, smelly stream of traffic ... Trees, shrubs, and flowers will be mown down. Elsewhere he speaks of the "burial of public parks", of segments of a highway which "devour park-land," and of the park's heartland. Was he at the end of his great career, on the verge of saying just saying –that "nature has 'rights' on its own account"? Would it be so hard to do?"

14. It is said that any ecological disaster is an economic disaster. Environment and ecology are now matters of universal concern. The World Commission on Environment and Development in its landmark report, "Our Common future', made it clear that the environment,

natural resources and life-support systems of our planet have continued to deteriorate, while global risks like those of climate change and ozone depletion have become more immediate and acute. Yet all the environmental deterioration and risks we have experienced to date have occurred at levels of population and human activity that are much less than they will be in the period ahead. And the underlying conditions that have produced this dilemma remain as dominant driving forces that are shaping our future and threatening our survival (from Statement by the Secy Gen., UNCED, at the opening of the Earth summit at Rio de Janeiro, Brazil, 3 June 1992).

15. The RIO Declaration on Environment and Development containing 27 principles include, among other, it may be noted for the present purpose:

Principle 3: The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

Principle 10: Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. State shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceeding, including redress and remedy, shall be provided.

Principle 10 above seems to be the theoretical foundation for all that have been vindicated in the writ petition and also provides a ground for standing.

16. In the year of the Earth Summit, the Govt. announced the Environment Policy, 1992 in which the Govt. recognized, among others, that ‘since global and regional environment pollution and degradation affect the nature, environment and resource base of Bangladesh, it is essential to have co-ordinate vigilance and undertake necessary action programme to address such issues." In the meantime, The Environment Conservation Act, 1995 (Act No. 1 of 1995) has been promulgated to provide for the conservation, improvement of quality of environment and control and mitigation of the environmental pollution.

17. In this context of engaging concern for the conservation of environment, irrespective of the locality where it is threatened, I am of the view that a national organization like the appellant, which claims to have studied and made research on the disputed project, can and should be attributed a threshold standing as having sufficient interest in the matter, and thereby regarded as a person aggrieved to maintain the writ petition subject to the objection or objections as may be raised by the respondents if a Rule is issued ultimately.

Mustafa Kamal, J: The burning issue of *locus standi* which has become a focal point of attention for South Asian Superior Courts in the dying decades of the twentieth century in preparation for the twenty-first is the only question that has been raised and is to be resolved in this appeal by leave by the petitioner appellant whose Writ Petition No. 998 of 1994 was summarily rejected by a Division Bench of the High Court Division by its judgement and order dated 18-08-94 on the ground that the appellant is not "any person aggrieved" within the meaning of Article 102 of the Constitution, basing its reasonings upon a decision of this Court in the case of Bangladesh Sangbadpatra Parishad, represented by its Secretary General Vs. Government of the People's Republic of Bangladesh, 43DLR(AD) 126, hereinafter referred to as Sangbadpatra Parishad Case.

19. Dr. Mohiuddin Farooque, Secretary General, Bangladesh Environmental Lawyers Association, shortly BELA, filed the writ petition both under Article 102(1) and Article 102(2)(a) of the Constitution praying for issuance of a *Rule Nisi* upon the respondents to show cause as to why all the activities and implementation of FAP-20 undertaken in the District of Tangail should not be declared to have been taken without lawful authority and to be of no legal effect.

20. The cause which the appellant espoused in the writ petition is the apprehended environmental ill-effect of a Flood Control Plan affecting the life, property, livelihood, vocation and environmental security of more than a million people in the district of Tangail.

21. It was alleged that following the two consecutive severe floods of 1987 and 1988 in Bangladesh studies were made in the light of which the Government of Bangladesh established a list of 11 guiding principles on flood control. At a meeting between the Government of Bangladesh and some donors in July, 1989 it was agreed that an action plan will be undertaken

as a first step towards long-term flood control. The World Bank took the responsibility to co-ordinate the work. On December 11, 1989 a document entitled “Bangladesh – Action Plan for Flood Control” was placed before the meeting of foreign donors and lenders in London and the flood Action Plan, hereinafter referred to as the FAP, was born. The Ministry of Irrigation, Water Development and Flood Control created the Flood Plan Co-ordination Organisation, shortly FPCO, to manage the activities under the FAP. The multi-million dollar first phase of the FAP has been under taken initially for 5 years (1990-1995), but the pilot projects under it are to continue beyond 1997. The FAP consists of 26 components of which 11 are main components and 15 are supporting studies which include pilot projects. About 16 donors are funding the various components, Within the first two years the FAP aroused wide attention for being allegedly anti environment, anti-people, discreet, non-transparent and defiant of participatory governance in violation of the 11 guiding principles. These projects of nation-wide impact and significance have never been discussed in the Jatiya Sangsad. Neither the FAP nor the FPCO has been given any legal standing for lawful functioning to ensure accountability. The FAP has become the most controversial programme ever undertaken on this land.

22. The FAP (Component-20), namely, Compartmentalization Pilot Project, shortly FAP20, is one of the 15 supporting studies of the FAP which was approved on 28-09-89 before even the FAP was approved in December, 1989 and was formally commissioned on 21-10-91. It is being funded by the Government of Netherlands and Kreditanstalt fure Wideraufban of Germany amounting to around US$ 27.9 million. It is aimed at experimenting the concept of “compartmentalisation” which has never been tested anywhere on earth and at “controlled flooding” in two areas of the districts of Tangail and Sirajganj. “Compartmentalisation” means surrounding of specific areas by embankments with gated or ungated opening through which in and outflow of flood water can be controlled. Inside the compartment, a system of channels and khals has the function of transporting the water to the sub-compartments. FAP-20 is distinct from other FAP projects in concept and objectives. This concept is to be tested in Tangail in order to produce criteria, guidelines, manuals and a training and demonstration programme for duplicating elsewhere in Bangladesh. The writ petition of FAP-20 relates to the part of the FAP projects being implemented in Tangail Sadar, Delduar and Bashail Thanas of the district of Tangail encircling an area of 13,169 hectares including the Tangail town, within which another 17 sub compartments will be created. It will encompass 12 Unions, 176 villages, 45,252 households (1991 census) and 32 beels. The site is at the direct confluence of the rivers

Dhaleswari, Lohajang, Elanjani and Pungli off the river Jamuna. The FAP-20 was framed under the authority of respondent No. 1, the Ministry of Irrigation, Water Development and Flood Control, and was subsequently entrusted to respondent No. 2, the Chief Engineer of the FPCO, on behalf of respondent No. 1, although respondent No. 3 the Bangladesh Water Development Board has been vested by the Bangladesh Water and Power Development Boards Order, 1972, P. O. No. 59 of 1972, the statutory right of control over the flow of water in all rivers and channels of Bangladesh and the statutory responsibility to prepare a comprehensive plan for the control of flood in, and the development and utilisation of water resources, of Bangladesh. It is the petitioner appellant's contention that FAP-20 is likely to adversely affect and uproot about 3 lakhs of people within the project are and the extent of adverse impact outside the project area may encompass more than a million human lives, natural resources and the natural habitat of man and other flora and fauna. Although the total impact area is large, only 210 hectares of land were being acquired without complying with the legal provisions. The project's impact area includes two mosques, namely, the Attia Mosque (the picture of which appears on Tk. 10/-note) and the Kadim Hamdani Mosque which are on the list of archaeological resources and which are protected against misuse, destruction, damage etc. under the Antiquities Act, 1968 in the spirit of Article 24 of the Constitution. It is the further case of the petitioner appellant that the project is being implemented in violation of the Embankment and Drainage Act, 1952, the Acquisition and Requisition of Immovable Property Ordinance, 1982, the Bangladesh Water and Power Development Boards Order, 1972, the fundamental right to life, property and profession of lakhs of people within and outside the project area, the Water Resources Planning Act, 1992 (Act No. XII of 1992) and the India-Bangladesh Joint Rivers Commission created by the Statute of 1972.

23. As to the locus standi of the petitioner appellant it was stated that the appellant is the Secretary-General of Bangladesh Environmental Lawyers Association, shortly BELA, an Association registered under the Societies Registration Act, 1860. He has been authorised by a resolution of the Executive Committee of BELA dated 16-06-94 to represent the Association and move the High Court Division under Article 102 of the Constitution and to do all other acts and things in connection therewith, BELA has been active since 1991 as one of the leading organisations in the field of environment, ecology and relevant matters of public interest. It has studied policies, surveyed and examined legal, quasi-legal issues, institutional aspects and traditional issues on environment and ecology and actively participated in many government, non government and independent national and regional/international activities and has gained

widespread recognition both at home and a board. BELA being an Association of Lawyers has been raising the legality of the FAP activities on all available occasions, specially as an invited panel speaker in the Second Conference on the Flood Action Plan held at Dhaka in March, 1992, BELA's questioning of the legality of FAP and FPCO evoked derogatory remarks from certain quarters. BELA also received written complaints from a number of aggrieved people from Tangail District seeking legal assistance and other supports after having been frustrated in pursuing their own remedies with the FAP-20 authorities, human rights organisations etc. The media has also repeatedly published the adverse environmental and ecological impact of FAP-20. As an environmentally concerned and active organisation BELA responded to the complaints of the local people and conducted investigations at various times in 1992-93 in the FAP-20 areas. During the local inspection it was found that a significant number of people of the project area was against the project. They alleged that they had no participation in the project and that they were not willing to be the subject of an experiment risking their lives and livelihood. The petitioner-appellant annexed copies of evidence of local complaints as Annexure-F series.

24. Dr. Mohiuddin Farooque, learned Advocate appearing with the leave of the Court, has himself argued the appeal on behalf of the petitioner- appellant. He submits that the words "any person aggrieved" occurring in Article 102 of the Constitution have to be read in the context of the entire Constitution, not isolatedly. Article 102 is an institutional vehicle for ventilating the rights and duties under the Constitution and not a mere procedural device. Article 38 of the Constitution confers on every citizen the right to form association and BELA has been registered as an association under the Societies Registration Act. 1860 with the aims and objects *inter alia* to organise legal measures to protect environmentally sensitive and fragile ecosystems. BELA devoted its time, energy and resources in studying the FAP project ever since its inception, meeting local people, listening to their grievances and carrying a lot of research on their behalf to find out the legal and constitutional infraction that FAP-20 has committed. In view of its dedicated commitment to prevent environmental degradation it has acquired a standing in its own right to represent the legal issues involved in the project in the writ jurisdiction. It can claim a legal relationship with the Court in pursuance of its declared aims objects as the right to form an association also embraces the right to pursue the association's lawful objects as well. Dr. Farooque then referred to Article 21(1) of the Constitution which is as follows:

"21. (1) It is the duty of every citizen to observe the Constitution and the laws, to maintain discipline, to perform public duties and to protect public property".

25. He submits that if one has to require to do a thing, that is standing. He has to have an opportunity to do so. An association of lawyers dedicated to the protection of a healthy environment has a concern when it perceives and studies an environmental hazard which calls for prevention of rectification. As a concerned group it is very much a "person aggrieved" and it must have an opportunity to put its concern at rest by approaching the Court for redress. The denial of *locus standi* to such a group will be not only an unconstitutional bar to the performance of public duty but also a judicial condemnation of the association's dedicated efforts to perform its public duty. Besides, the preamble of the Constitution, which is a pledge taken by the people of Bangladesh, declares that it shall be a fundamental aim of the State to realise a society in which amongst others " the rule of law", fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens". Dr. Farooque quotes from the Bar Council Rules of Professional Etiquette for Lawyers and submits that the lawyers in general and the present association of lawyers in particular are committed to realise the rule of law in the country through Law Courts. The Preamble gives the association a standing. The Preamble and Article 8 also proclaim "the principles of absolute trust and faith in the Almighty Allah" as a Fundamental principle of the Constitution and as a fundamental Principle of State Policy. Absolute trust and faith in the Almighty Allah necessarily mean the duty to protect His creation and environment. The appellant is aggrieve, because Allah's creations and environment are in mortal danger of extinction and degradation. He then refers to Article 102 (4) of the Constitution which provides that the High Court Division will not grant an interim order until it is satisfied, upon hearing the Attorney General, that the interim order is not likely to have the effect of being otherwise harmful to the "public interest". Under Article 106 of the Constitution, the President may refer a question of "public importance" for the opinion of the Appellate Division. If the President, the Appellate Division, the High Court Division and the Attorney General can refer, assist, consider and decide issues of "public interest" and "public importance", then there is no reason why conversely an association of lawyers cannot feel aggrieved on an issue of public interest and why they cannot agitate the same before the Court. The Constitution cannot be so interpreted as to bestow the concern of "public interest" and "public importance" upon only the executive and judicial organs of the State. The vast multitude outside have also a say on matters of public interest and public importance. He further submits that the words "any

person" in Article 102 should be read disjunctively from the word "aggrieved". If so read the appellant is "any person", because in Law Lexicon, "any" means all, each, every, some amongst many. The Constitution uses the words "any person aggrieved" both in Articles 102(1) and 102 (2) (a), but the Bangla version of Article 102 (1) is "কোন সংক্ষুব্ধ ব্যক্তি" whereas the Bangla version of Article 102 (2) (a) is " যে কোন সংক্ষুব্ধ ব্যক্তির" Under the proviso to Article 153 (3), the Bangla version will prevail over the English version and the omission of the word "যে" in Article 102 (1) is not without significance. It means in effect that those whose fundamental rights are being violated need not themselves invoke the jurisdiction under Article 102 (1). Provided the persons aggrieved do not object, Others espousing their cause can also invoke the jurisdiction under Article 102 (1). The appellant is espousing the cause of violation of Fundamental Rights of a large segment of the population in respect of their right to life, property and vocation. It is a কোন সংক্ষুব্ধ ব্যক্তি within the meaning of Article 102 (1). In বঙ্গীয় শব্দকোষ, the word সংক্ষুব্ধ **means বিচলিত,** উদ্বিগ্ন, অশান্ড়ি, ব্যাকুলতা, ক্ষোভিত। It is, therefore, a concern which is enough to attract the word "aggrieved". Dr. Farooque also submits that the beneficiaries of this writ petition are not the members of BELA but the people, including the generation yet to be born for whom the present generation holds the environment as an inter-generational trust. BELA therefore represents not only the present generation but also the generation yet unborn. Every generation has a responsibility to the next to preserve that rhythm and harmony that their inherited environment bequeathed to them. BELA's performance of their obligation is therefore for ensurance of the protection of the right for the generation to come.

26. In reply Mr. A. W. Bhuiyan, learned Additional Attorney General appearing on behalf of Government – respondent Nos. 1, 5 and 6 dourly maintains his submission that the appellant is not a person aggrieved. His submission echoes the traditional view of *locus standi* which found the first classical exposition in the hands of James, L.J. ..in Exparte Sidebotham (1880) 14Ch. D. 458, defining "person aggrieved" as one "who has suffered a legal grievance, a man against whom a decision has been pronounce which has wrongly deprived him of something or wrongly refused him something or wrongly affected his title to something", a definition which was approved by Lord Esher, M.R. in *Re Reed Bowen and Co. (1887) 19QBD 174*, and repeated in numerous cases thereafter including the case of *Durayappah Vs. Fernando, (1967) 2A C337*. He found in our own case of *Md. Giasuddin Bhuiyan Vs. Bangladesh, 1 (1981) BCR (AD)81* a proper reflection of the traditional view and he relies upon the previously – cited Sangbadpatra

Parishad Case as well as upon the case of R V Secretary of State for the Environment, ex parte Rose Theatre Trust Co (QBD) [1990] 1A 11 ER 754 and Muntizma Committee vs. Director Katchi Ahadies, Sindh, PLD 1992 (Karachi) 54. BELA as a registered Association, he submits, has the right to pursue its aims and objects through seminars, discussions etc., but it cannot maintain a writ petition unless its own interest are affected. The writ petition does not disclose that the appellant as an association has suffered any injury by FAP –20 activities. The words "any person aggrieved", if interpreted in the manner urged by the appellant, will be nothing short of legislation and an impermissible rewriting of the Constitution by the Court, he submits.

27. Mr. Tofailur Rahman, learned Advocate appearing for respondent Nos. 2-4 adopts the arguments of the learned Additional Attorney General and submits additional Attorney General and submits additionally that a liberalization of locus standi will open the floodgates to litigation which is least desirable.

28. Having heard the learned Advocates of all sides most extensively we have to mention initially that what is now known as "public interest law" assumed wide currency in the United States in the 1960s. These words convey and sum up the activities of lawyers representing clients and interests still unrepresented or under-represented in the American legal system. With the financial assistance from the Office of Economic Opportunity (OEO) of the Federal Government of the United States, a group of lawyers mobilized law students and social action groups to articulate in the legal arena the diffused interest of several million unorganised people in the lower socio-economic strata to force a change in the system of priorities procedures and policies for the benefit of those who were till then kept outside of it. The result today in the United States is an astounding enlargement of the frontiers of locus standi and the development of a wide-ranging "public interest litigation" embracing the rights and plights of minorities, race and gender relations, ethnic groups, governmental lawlessness, environmental pollution, public health, product safety' consumer protection, social exploitation etc.

29. The wind of charge swept imperceptibly through the shores of England, the mother country of writs in a series of cases, known as the Blackburn cases in the 1970s. Mr. Raymond Blackburn, once a Member of Parliament, came to the Court with four successive cases with issues not of his own but involving the general public. In each of these cases-(1) R. Vs. Commissioner of Police, ex parte Blackburn, (1968) 2QB118, (2) Blackburn Vs. Attorney

General (1971) 1WLR1037, (3) R. Vs. Police Commissioner, ex parte Blackburn(1973) QB241 and (4) R. Vs. GLC exparte Blackburn (1976) 1WLR 550, it came to be established that any one having a "sufficient interest" in the matter in hand acquires locus standi. These decisions were formalised by the Rules of the Supreme Court, Order 53 Rule 3(5), providing that the applicant must have a "sufficient interest" in the matter to which the application relates. Section 31 of the Supreme Court Act, 1981 which was enacted pursuant to the Law Commission's Report on Remedies in Administrative Law (1976) reproduced in statutory form the provisions of Order 53. What is "sufficient interest" came to be ex pounded by five separate judgments by five Law Lords in 1 RC V. National Federation of Self-Employed and Small Business Ltd. [1981] 2A11 ER 93, which was summarised by Schiemann, J. in R.V. Secretary of State, ex parte Rose Theatre Trust Co. [1990] 1 A11ER 754(766).

30. In Bangladesh and unnoticed but quiet revolution took place on the question of locus standi after the introduction of the Constitution of the people's Republic of Bangladesh in 1972 in the case of Kazi Mukhlesur Rahman Vs. Bangladesh, 26DLR(SC) 44, decided on September 3, 1974 and hereinafter referred to as Kazi Mukhlesur Rahman's Case. The appellant challenged the Delhi Treaty signed on the 16th May, 1974 by the Prime Ministers of the Government of Bangladesh and the Republic of India providing therein inter alia that India will retain the southern half of south Berubari Union No. 12 and the adjacent enclaves and in exchange Bangladesh will retain the Dahagram and Angarpota enclaves. The ground of challenge was that the agreement involved cession of Bangladesh territory and was entered into without lawful authority by the executive head of government. The High Court Division summarily dismissed the writ petition holding that the appellant had no locus standi. At the hearing of the certificated appeal before the Appellate Division it was urged by the appellant that since the remedies available under Article 102(2) of our Constitution are discretionary, the words "any person aggrieved" should be construed liberally and given a wide meaning, although in the and circumstances of a particular case the court may regard the personal interest pleaded by a petitioner as being slight or too remote. Reliance was placed by the appellant upon the case of Main Fazal Din Vs. The Lahore Improvement Trust, 21DLR(SC)225 in which Hamoodur Rahman, C.J. had occasion to say that the right considered sufficient for maintaining a proceeding of this nature is not necessarily a right in the strict juristic sense but it is enough if the applicant discloses that he has a personal interest in the matter which involves loss of some personal benefit or advantage or the curtailment of a privilege or liberty of franchise. Upon

considering several American and Indian decision of the time and a lone Australian decision, the Appellate Division held as follows:

> "It appears to us that the question of *locus standi* does not involve the Court's jurisdiction to hear a person But of the competency of the person to claim a hearing, so that the question is one of discretion which the Court exercises upon due consideration of the facts and circumstances of each case".

31. Locus standi was granted to the appellant even though he was not a resident of the southern half of South Berubari Union No. 12 or adjacent enclaves involved in the Delhi Treaty because he had raised a constitutional issue of grave importance involving an international treaty affecting the territory of Bangladesh and posing an impending threat to his fundamental rights under Article 36 of the Constitution and his right of franchise. These rights, attached to a citizen, are not local. They pervade and extend to every inch of the territory of Bangladesh stretching upto the continental shelf.

32. This Court, therefore, settled seven general principles in *Kazi Mukhlesur Rahman's* case, vix. (1) The High Court Division does not suffer from any lack of jurisdiction under Article 102 to hear a person. (2) The High Court Division will grant *locus standi* to a person who agitates a question affecting a constitutional issue of grave importance, posing a threat to his fundamental rights which pervade and extend to the entire territory of Bangladesh. (3) If a fundamental right is involved, the impugned matter need not affect a purely personal right of the applicant touching him alone. It is enough if he shares that right in common with others. (4) In interpreting the words, "any person aggrieved", consideration of "Fundamental Rights" in Part III of the Constitution is a relevant one. (5) It is the competency of the person to claim a hearing which is at the heart of the interpretation of the words "any person aggrieved." (6) It is a question of exercise of discretion by the High Court Division as to whether it will treat that person as a person aggrieved or not. (7) The High Court Division will exercise that jurisdiction upon due consideration of the facts and circumstances of each case.

33. 8 years thereafter we find an echo of some of the above principles in the Indian Supreme Court case of *S.P. Gupta and other Vs. President of India, AIR 1982 (SC) 149*, at paragraph 19A:-

"What is sufficient interest to give standing to a member of the public would have to be determined by the Court in each individual case. It is not possible for the Court to lay down any hard and fast rule or any strait-jacket formula for the purpose of defining or delimiting 'sufficient interest'. It has necessarily to be left to the discretion of the Court. The reason is that in a modern complex society which it seeking to bring about transformation of its social and economic structure and trying to reach social justice to the vulnerable section of the people by creating new social, collective 'diffuse rights and interests imposing new public duties on the State and other public authorities infinite number of situations are bound to arise which cannot be imprisoned in a rigid mould or a procrustean formula. The Judge who has the correct social perspective and who is on the same wave-length as the Constitution will be able to decide, without any difficulty and in consonance with the constitutional objectives, whether a member of the public moving the Court in a particular case has sufficient interest to initiate the action."

34. What happened after Kazi Mukhlesur Rahman's case in Bangladesh was a long period of slumber and inertia owing not to a lack of public spirit on the part of the lawyers and the Bench but owing to frequent interruptions with the working of the Constitution and owing to intermittent de-clothing of the constitutional jurisdiction of the Superior Courts.

35. While a recurring constitutional atrophy continued to thwart the process of progressive interpretation of the Constitution in Bangladesh, significant developments were taking place in neighbouring India. In its report of Legal Services the Rajasthan Law Reform Committee (1975) observed that public interest litigation "can prove to be the glory of our legal and judicial system if it is cautiously and sparingly used after careful study and research". In the same spirit the Bhagwati Committee of Gujrat on Legal Aid (1971) regretted the present style of functioning of the private bar based on the market principle of supply and demand and called for the creation of a public sector in the legal profession. A similar proposal was made by the Krishna Iyer Committee on Processual Justice to the People (1973) by suggesting formation of lawyer's-co-operatives "which should take up causes which concern the public at large." In a series of epochmaking decisions, far too many to cite, the Indian Supreme Court evolved a new philosophy of jurisprudence, breaking away from the right-duty pattern of Anglo Saxon jurisprudence and broadening the ambit of access to justice by adopting the doctrine of

participatory justice with public interest litigation as a prime strategic toll in its hands. It recognised public-spirited individuals, class action, persons in a representative capacity, associations, registered or unregistered, an individual environmental lawyer or a conglomerate of lawyers --- in fact anyone acting bona fide and espousing the causes of the poor and the disadvantaged who are neither aware of their rights nor the capacity to approach the courts, to have "sufficient interest" to maintain an application under Article 32 and 226 of the Indian Constitution. The subject matters were many and various, under-trial or convicted prisoners, women in distress, children in jails and juvenile organisations, bonded and migrant labourers, unorganised labour, slum and pavement dwellers, untouchables, scheduled tribes, landless agricultural labour, victims of extra-judicial executions, degradation of environmental and so on. Like the United States, these cases are also called Public Interest Litigation, but in India, the jurisprudence has extended to procedure as well, treating even a letter as a writ petition. The growth has been a continuous process in which induction of special inquiry by the Court, fact-finding commissions, schematic remedies and post-decision monitoring came to be used as implementational tools.

36. Sri Lanka found difficulty in adopting the new Indian jurisprudence because of the constraints in Articles 17 of Sri Lankan Constitution, providing that "Every person shall be entitled to apply to the Supreme Court, as provided by article 126, in respect of the infringement or imminent infringement, by executive or administrative action, of a fundamental right to which *such person is entitled* under the provisions of this Chapter." (Italics supplied). Article 126 permits "any person" to apply to the Supreme Court by himself or through an attorney-at-law on his behalf, to seek redress of infringement or impending infringement of the fundamental rights "relating to such person." The Sri Lankan Supreme Court has consistently refused to permit third parties to file actions for violation of fundamental rights. Seventeenth amendment to the Sri Lankan Constitution which has been gazettes, but is not known to us to have been formally passed, seeks to confer on third party interventionists a constitutionally entrenched status. The proposed amendment, Article 17(1), runs as follows:

> "Where a person aggrieved is unable or incapable of making an application under Article 126 by reason of physical or social or economic disability, or similar cause, a body of persons shall be entitled to make an application under Article 126 on behalf of such

person, if the application is in the public interest and the aggrieved person raises no objection to such application."

37. But even without the proposed amendment, the Supreme Court of Sri Lanka has of late been extending the scope of standing. Thus it has granted standing to a member of parliament seeking issuance of letters of appointment to 53 persons who were selected to the public service on the basis of competitive examinations but whose letters of appointment were not being issued at the intervention of a Trade Union to which the selected persons did not belong. Standing has also been granted in several cases to The Environmental Foundation Ltd. (EFL), a public interest law firm dealing with environmental issues, to compel administrative agencies to adhere to basic environmental norms.

38. In Pakistan, in the case of Benazir Bhutto Vs. Federation of Pakistan, PLD 1988(SC) 416, referring to Article 184(3) of the Constitution of Pakistan (1973), Muhammad Haleem, C.J.objerved that " the plain language of Article 184(3) shows that it is openended. The Article does not say as to who shall have the right to move the Supreme Court nor does it say by what proceedings the Supreme Court may be so moved or whether it is confined to the enforcement of the Fundamental Rights of an individual which are infracted or extends to the enforcement of the rights of a group as a class of persons whose rights are violated." It was held that the power under Article 184(3) cannot be said to be exercisable only at the instance of an "aggrieved party" in the context of adversary proceedings. The procedure available in public interest litigation can be made use of. The Supreme Court will regulate the proceedings of group or class actions from "case to case". In the case of Shehla Zia vs. WAPDA, PLD 1994(SC) 693, it was held that the Supreme Court in a public interest litigation may grant relief to the extent of stopping the functioning of such units which create pollution and environmental degradation. The procedure in Pakistan has now extended to letters and telegrams, as in India.

39. Coming now to our situation, the Sangbadpatra Parishad case was no authority for the proposition that an environmental lawyers association is not a person aggrieved when it espouses the causes of a large number of people on an environmental issue. The High Court Division's reliance on this decision was misplaced, to say the least, because the ratio decidendi of the said case was that an association of newspaper owners and news organisations, espousing not the causes of the down trodden and the poor who have no access to justice, but the cause of its

members who are opulent enough to seek redress on their own cannot in a representative capacity be a person aggrieved, when the association's own interests are not in issue. That case was not an authority even for the proposition that an association can never be a person aggrieved if it espouses the causes of its members in a representative capacity. The Sangbadpatra Parishad case was decided on the facts of that case and that is how it should be read.

40. We now proceed to say how we interpret Article 102 as a whole. We do not give much importance to the dictionary meaning or punctuation of the words "any person aggrieved". Article 102 of our Constitution is not an isolated island standing above or beyond the sea-level of the other provisions of the constitution. It is a part of the over all scheme, objectives and purposes of the Constitution. And its interpretation is inextricably linked with the (i) emergence of Bangladesh and framing of its Constitution, (ii) the Preamble and Article 7, (iii) Fundamental Principles of State Policy, (iv) Fundamental Rights and (v) the other provisions of the Constitution.

41. As to (i) above, it is wrong to view our Constitution as just a replica with local adaptations of a Constitution of the Westminister model among the Commonwealth countries of Anglo-Saxon legal tradition. This Constitution of ours is not the outcome of a negotiated settlement with a former colonial power. It was not drawn upon the consent, concurrence or approval of any external sovereign power. Nor is it the last of an oft-replaced and oft-substituted Constitution after several Constitutions were tried and failed, although as many as 13 amendments have so far been made to it. It is the fruit of a historic war of independence, achieved with the lives and sacrifice of a telling number of people for a common cause making it a class part from other Constitutions of comparable description. It is a Constitution in which the people features as the dominant actor. It was the people of Bangladesh who in exercise of their own-self proclaimed native power made a clean break from the past unshackling the bondage of a past statehood and adopted a Constitution of its own choosing. The Constitution, historically and in real terms, is a manifestation of what is called "the People's Power" The people of Bangladesh, therefore, are central, as opposed to ornamental, to the framing of the Constitution.

42. As for (ii) the Preamble and Article 7, the Preamble of our Constitution stands on a different footing from that of other Constitutions by the very fact of the essence of its birth which is different from others. It is in our Constitution a real and positive declaration of pledges,

adopted, enacted and given to themselves by the people not by way of a presentation from skilful draftsmen but as reflecting the ethos of their historic war of independence. Among other pledges the high ideals of absolute trust and faith in the Almighty Allah, a pledge to secure for al citizens a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social and the affirmation of the sacred duty to safeguard, protect and defend the Constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh are salutary in indicating the course or path that the people wish to tread in the days to come. Article 7 of the Constitution bestows the powers of the Republic with the people and the exercise of the people's power on behalf of the people shall be effected only under and by the authority of, the Constitution. Article 7 does not contain empty phrases. It means that all the legislative, executive and judicial powers conferred and the Parliament, the Executive and the judiciary respectively are constitutionally the powers of the people themselves are the various functionaries and institutions created by the Constitution exercise not their own indigenous and native powers but the powers of the people on terms expressed by the Constitution. The people, again, is the repository of all power under Article 7.

43. As for (iii) in Part II of the Constitution, containing Fundamental Principles of State Policy, Article 8(2) provides that the principles set out in this Part "shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh". It is constitutionally impermissible to leave out of consideration Part II of our Constitution when an interpretation of Article 102 needs a guidance.

44. As for (iv), Part III of the Constitution bestows Fundamental Rights on the citizens and other residents of Bangladesh. Article 44(1) guarantees the right to move the High Court Division in accordance with Article 102(1) for the enforcement of these rights. Article 102(1) is therefore a mechanism for the enforcement of Fundamental Rights which can be enjoyed by an individual alone in so far as his individual rights are concerned, but which can also be shared by an individual in common with others when the rights pervade and extend to the entire population and territory. Article 102(1) especially cannot be divorced from part III of the Constitution.

45. As for (v), the other provisions of the Constitution which will vary from case to case may also come to play a role in interpreting Article 102 of the Constitution.

46. Article 102 therefore is an instrumentality and a mechanism, containing both substantive and procedural provisions, by means of which the people as a collective personality, and not merely as a conglomerate of individuals, have devised for themselves a method and manner to realise the objectives purposes, policies, rights and duties which they have set out for themselves and which they have strewn over the fabric of the Constitution.

47. With the power of the people looming large behind the constitutional horizon it is difficult to conceive of Article 102 as a vehicle or mechanism for realising exclusively individual rights upon individual complaints. The Supreme Court being vehicle, a medium or mechanism devised by the Constitution for the exercise of the judicial power of the people on behalf of the people, the people will always remain the focal point of concern of the Supreme Court while disposing of justice or propounding any judicial theory or interpreting any provision of the Constitution. Viewed in this context interpreting the words “any person aggrieved” meaning only and exclusively individuals and excluding the consideration of people as a collective and consolidated personality will be stand taken against the Constitution. There is no question of enlarging locus standi or legislation by Court. The enlargement is writ large on the face of the Constitution. In a capitalist laissez faire concept of private ownership of the instruments and means of production and distribution, individual rights carry the only weight and the judiciary exists primarily to protect the capitalist rights of the individuals, but in our Constitution Article 13, a Fundamental Principle of State Policy, provides that the people shall own or control the instruments and means of production and distribution under three forms, namely, (a) state ownership, that is, ownership by the State on behalf of the people: (b) co-operative ownership, that is, ownership by co-operatives on behalf of the members and (c) private ownership, that is, ownership by individuals. When there is a State ownership on behalf of the people of the instruments and means of production and distribution the concept of exclusive personal wrong or injury is hardly appropriate. The High Court Division cannot under the circumstances adhere to the traditional concept that to invoke its jurisdiction under Article 102 only a person who has suffered a legal grievance or injury or an adverse decision or a wrongful deprivation or wrongful refusal of his title to something is a person aggrieved.

48. This is not to say that Article 102 has nationalised each person’s cause as every other person’s cause. The traditional view remains true, valid and effective till today in so far as individual rights and individual infraction thereof are concerned. But when a public injury or

public wrong or infraction of a fundamental right affecting an indeterminate number of people is involved it is not necessary, in the scheme of our Constitution, that the multitude of individuals who have been collectively wronged or injured or whose collective fundamental rights have been invaded are to invoke the jurisdiction under Article 102 in a multitude of individual writ petitions, each representing his own portion of concern. In so far as it concerns public wrong or public injury or invasion of fundamental rights of an indeterminate number of people, any member of the public, being a citizen, suffering the common injury or common invasion in common with others or any citizen or an indigenous association, as distinguished from a local component of a foreign organisation, espousing that particular cause is a person aggrieved and has the right to invoke the jurisdiction under Article 102.

49. It is, therefore, the cause that the citizen-applicant or the indigenous and native association espouses which will determine whether the applicant has the competency to claim a hearing or not. If he espouses a purely individual cause. he is a person aggrieved if his own interests are affected. If he espouses a public cause involving public wrong or public injury, he need not be personally affected. The public wrong or injury is very much a primary concern of the Supreme Court which in the scheme of our Constitution is a constitutional vehicle for exercising the judicial power of the people.

50. The High Court Division will exercise some rules of caution in each case. It will see that the applicant is in fact espousing a public cause, that his interest in the subject matter is real and not in the interest of generating some publicity for himself or to create mere public sensation, that he is acting bona fide, that he is not a busybody or an interloper, that it is in the public interest to grant him standing and that he is not acting for a collateral purpose to achieve a dubious goal, including serving a foreign interest.

51. This writ petition is concerned with an environmental issue. In our Constitution there is no specific fundamental right dealing with environment, nor does it find a place in the Fundamental Principle of State Policy. The Indian Constitution was also originally bereft of any reference to environment. By the Constitution (Forty-second Amendment) Act, 1976, Article 48-A was introduced as a new Directive Principle of State Policy as follows:

48-A. Protection and improvement of environment and safeguarding of forests and wildlife. The state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country."

52. In our country, however, the Bangladesh Water Development Board, a state controlled statutory corporation created under P.O No.59 of 1972, has the responsibility to prepare a comprehensive plan for the control of flood in, and the development and utilisation of water resources, of Bangladesh (Article 9 (1)). This Board shall also have control over the flow of water in all rivers and channels of Bangladesh (Article 14 (a)). Being a public sector subject, flood control and control of river and channel flows are matters of public concern. If we take the averments of the appellants in the writ petition on their face value, and do not entertain any contrary assertions thereto at this stage, it is obvious that the association-appellant as an environmental association of lawyers is a person aggrieved, because the cause it espouses, both in respect of fundamental rights and constitutional remedies, is a cause of an indeterminate number of people in respect of a subject matter of public concern and it appears, on the face of the writ petition itself, that it has devoted its time, energy and resources to the alleged ill-effects of FAP-20, it is acting bona fide and that it does not seek to serve and oblique purpose. It has taken great pains to establish that it is not a busybody. Subject to what emerges after the respondents state their case at the hearing of the writ petition the appellant be denied entry at the threshold stage and the averments made in the writ petition.

53. We have given reasons of our own why the appellant is a person aggrieved, but we have to say specifically that we do not accept Dr. Farooque's submission that the association represents not only the present generation but also the generation yet unborn. this claim is based on a case of Philippines Supreme Court, Juan Antonio Oposa and others Vs. Hon'ble Fulgencio S. Factoran and another in which the twin concepts of "intergenerational responsibility" and "inter-generational justice" were agitated by the plaintiff minors represented by their respective parents to prevent the misappropriation or impairment of Philippine rain forest. The minors asserted that they "represent their generation as well as generation yet unborn". The minor' locus standi was allowed because "the right to a balanced and healthful ecology" was a fundamental right and several laws declaring the policy of the State to conservation of the country's forest "not only for the present generation but for the future generation as well" were guaranteed.

(South Asian Environmental Law Reporter, Vol. 13, September 1994, Colombo, Sri Lanka, pp. 113-145). Our Constitution does not contain any analogous provision.

54. As to the apprehension of floodgate, the people as a whole is no doubt a flood and the Constitution is the sluice –gate through which the people controls its own entry. Our Courts will be prudent enough to recognise the people when the people appears through an applicant as also those who masquerade under the name of the people. Taking up the people's causes at the expense of his own is a rare phenomenon, not a commonplace occurrence.

55. We hold therefore that the association appellant was wrongly held by the High Court Division not to be a "person aggrieved" in the facts and circumstances of the case and we hold further that the appellant is any person aggrieved" within the meaning of both Article 102(1) and Article 102(2) (a) of the Constitution.

56. The appeal is allowed and Writ Petition No. 998 of 1994 is remanded to the High Court Division for hearing on merit. There will be no order as to costs.

Latifur Rahman, J: Agreement with the main judgement of my learned brother Mustafa Kamal, J. I like to add few words of my own as a question of great public importance is involved in this case.

57. Dr. Mohiuddin Farooque, Secretary General, Bangladesh Environmental Lawyers Association filed Writ Petition No. 998 of 1994 before the High Court Division. The said writ petition was summarily rejected by the High Court Division. In the said application, the petitioner stated that Bangladesh Environmental Lawyers Association, briefly, "BELA, an Association registered under the Societies Registration Act, 1860, with the Office of the Registrar of Societies, Government of Bangladesh, bearing Registration No. 1457(17) dated 18-2-92, has been authorised by a resolution of the Executing Committee of "BELA" on 16-06-94 to move the High Court Division of the Supreme Court under Article 102 of the Constitution of the People's Republic of Bangladesh.

58. Dr. Mohiuddin Farooque appearing-in-person submits that "BELA" has been active since 1991 as one of the leading organisations working in the field of environment, ecology and the

relevant matter of public interest connected with the environmental problems. In the writ petition, it has been stated that "BELA" is satisfied that if Flood Action Plan, briefly, FAP-20 is undertaken by the respondents in some areas of the District of Tangail it would damage the soil, destroy the natural habitat of fisheries and other flood plain, flora and fauna, create drainage problem, threaten human health, worsen sanitation and drinking water supplies and will in fact cause degradation to environment inflicting far reach hazardous effects on human health.

59. I will confine myself to the question of locus standi of the appellant to file the writ petition under Article 102 of the Constitution as leave was granted on the question of standing alone.

60. Article 102(1) and (2)(a) of the Constitution read "on the application of "any person aggrieve. ..."

61. From the language used in Article 102(1) of our Constitution, 'any person aggrieved' may move the High Court Division for enforcement of fundamental right conferred by Part III of the Constitution. Under Article 102(2)(a), the High Court Division may make an order on the application of 'any person aggrieved' in the nature of mandamus, prohibition and certiorari except for an application for habeas corpus or quo-warranto.

62. A reading of Articles 32 and 226 of the Indian Constitution shows that nowhere it has been said as to who can move the Supreme Court and the High Courts of India for enforcement of fundamental rights and for any other purpose. The sole object of Article 32 of the Indian Constitution is the enforcement of fundamental right of a person who possesses it. Where no fundamental right has been infringed that person cannot move the Supreme Court of India. In Article 32 and 226 of the Indian Constitution only the authority and power of the Supreme Court and High Courts of India to issue certain writs have been granted. Article 32 of the Indian Constitution provides, inter alia, that the right to move the High Court for enforcement of the fundamental right is itself a fundamental right and empowers the court to issue directions or writs. The corresponding provision for the High Courts in Article 226 is wider than Article 32 as it empower High Court to exercise their writ jurisdiction for the enforcement of fundamental right and for "any other purpose", which will include violation of any legal rights.

63. Article 184(3) of the Constitution of Pakistan gives authority to the Supreme Court of Pakistan for enforcement of any of the fundamental rights conferred by Chapter I of Part II of the Constitution if the Court considers that a question of public importance has arisen and this article as no reference as to the person who can move such an application. In Article 199 conferring jurisdiction to the High Courts of Pakistan, expression used is "aggrieved party". A little comparison will show that the language used in our Constitution in Article 102 is completely different from Articles 32 and 226 of the Constitution of India. So in deciding the true meaning of the expression 'any person aggrieved', we shall have to depend primarily on the language used in our Constitution along with other provisions, scheme and objectives of the Constitution itself.

64. Dr. Mohiuddin Farooque submits that narrow rules about locus standi of a person personally aggrieved should be given a liberal construction as the primary object of this as association is to keep the environment and ecology of the country free from pollution and as such it has sufficient and genuine interest in moving the application under Article 102 of the Constitution.

65. The concept of Public Interest Litigation has had its origin in the United States a country long recognised as being the greatest laboratory for the constitutions of the world. Over the years this process passed through several changes, as it evolved through a series of far reaching judgements handed down by the highest court of America. This concept, as it is known in the U.S.A., has acquired a specific meaning and is connected with a particular kind of development which is peculiarly American.

66. If we look to the evolution and gradual development of the question on locus standi then we find that during the 19th Century the English Courts were reluctant to let a person come before the courts, unless he had a particular grievance of his own which has been infringed. The 20th Century has, however, seen a remarkable development in this area of the public law in England. There has been change in the attitude of the courts. Now in most such cases an ordinary individual can come to court if he has a sufficient interest. The test of sufficient interest is really left with the discretion of the court as the court is the final authority to determine the same in the fact of each case.

68. In this appeal, the doctrine of locus standi and the judicial approach to the question of standing has been elaborately argued by the learned Advocate of the parties.

69. The traditional rule to locus standi is that judicial remedy is available only to a person who is personally aggrieved. This principle is based on the theory that the remedies and rights are correlative and therefore only a person whose own right is violated is entitled to seek remedy. In case of private individual and private law this principle can be applied with some strictness, but in public law this doctrine cannot be applied with the same strictness as that will tantamount to ignoring the good and well being of citizens, more particularly from the view point of public good for whom the State and the Constitution exist.

69. 'BELA' is actively working in the field of environmental problems of the Bangladesh. It is to be kept in mind that "BELA" has got no direct personal interest in the matter. Strictly speaking it is not an aggrieved person if, we just give a grammatical construction to the phrase "aggrieved person" which means person personally aggrieved. In our Constitution nowhere the expression aggrieved person has been defined. An expression appearing in the Constitution must get its light and sustenance from the different provisions of the Constitution and from the scheme and objective of the Constitution itself.

70. In our constitution, preamble provides that the people of Bangladesh proclaimed Independence on the 26th day of March, 1971 and through a historic was for national independence established independent, sovereign Bangladesh. The preamble of our Constitution envisages a socialistic society free from all kinds of exploitation. In other words, the Constitution contemplates a society based on securing all possible benefits to its people, namely, democratic, social, political and equality of justice in accordance with law. The constitution is the supreme embodiment of the will of the people of Bangladesh and as such all actions must be taken for the welfare of the people. For whose benefits all powers of the Republic vest in the people and the exercise of such power shall be effected through the supremacy of the Constitution. If justice is not easily and equally accessible to every citizen there then can hardly be a Rule of Law. It access to justice is limited to the right, the more advantaged and more powerful sections of society, then the poor and the deprived will have no stake in the rule of law and they will be more readily available to turn against it. Ready and equal access to justice is a sine qua non for the maintenance of the Rule of Law. Where there is a written constitution and an independent

judiciary and the wrongs suffered by any section of the people are capable of being raised and ventilated publicly in a Court of law there is bound to be greater respect for the Rule of Law. The preamble of our Constitution really contemplates a society where there will be unflinching respect for the Rule of Law and the welfare of the citizens.

Article 7(1) of our Constitution reads as follows:-

"7 (1) All powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, any by the authority of, this Constitution."

This supremacy of the Constitution is a special and unique feature in our Constitution. Neither in the Constitution of India or in the Constitution of Pakistan there is reassertion of the supremacy of the Constitution. This is a substantive provision which contemplates exercise of all powers in the republic through the authority of the Constitution.

71. Part II of our Constitution relates to fundamental principles of State Policy. Article 8 (2) provides that these principles are not enforceable in any court but nevertheless are fundamental to the governess of the country and it shall be the duty of the State to apply the principle in making the laws. The principles, primarily being social and economic rights, oblige the state, amongst other themselves, to secure a social order for the promotion of welfare of the people, to secure a right to work, to educate, to ensure equitable distribution of resources and to decentralize power to set up local Government Institutions composed of people from different categories of people as unit of self governance. A Constitution of a country is a document of social evolution and it is dynamic in nature. It should encompass in itself the growing demands, needs of people and change of time. A Constitution cannot be morbid at all. The language used by the framers of the Constitution must be given a meaningful interpretation with the evolution and growth of our society. An obligation is cast on the Constitutional Court which is the apex court of the Country to interpret the Constitution in a manner in which social, economic and political justice can be advanced for the welfare of the state and it's citizens. Mr. Mahmudul Islam, author of "Constitutional law of Bangladesh" opined in this book as follows:-

> "An expression occurring in the Constitution cannot be interpreted out of context or only by reference to the decisions of foreign jurisdiction where the constitutional dispensation is different from ours."

The author dealing with the Constitution of Bangladesh has very aptly said that the meaning of the expression "aggrieved person" must be understood keeping in view of the pronounced scheme and objectives of the Constitution. The Constitution is a living document and therefore the interpretation should be liberal to meet the needs of the time and demands of the people. By referring to the various provisions of the Constitution of Bangladesh, I find that it ensure liberties and socio-economic justice exhorted for a purposeful application to all categories of the population.

72. I must refer the case of Kazi Moklesur Rahman Vs. Bangladesh and another, 26 DLR(SC)44. This is perhaps the first case on the question of locus standi in our jurisdiction. The petitioner challenged the Delhi Treaty by which India will retain the southern half of south Berubari Union No. 12 and the adjacent enclaves and in exchange Bangladesh will retain "Dahagram and Angarpota enclaves. The petitioner challenged the agreement as it involved cessation of the territory of Bangladesh. The writ petition was dismissed summarily by the High Court Division. The Supreme Court dismissed the appeal holding that the application before the High Court Division was premature and observed that the appellant had the competency to claim a hearing. In that case, the primary consideration was the impending threat of violation of fundamental rights under section 36 of the Constitution (Freedom of movement) and the petitioner's right to franchise. In the concluding portion of paragraph 18 of that decision it has been observed that "complaint as to an impending threat to his certain fundamental rights guaranteed by the constitution, namely, to move freely throughout the territory of Bangladesh to reside and settle in any place therein as well as his right of franchise. Evidently these right attached to a citizen are not local. They pervade and extend to every inch of the territory of Bangladesh stretching up to the continental shelf." The underlining is by me. Of course, that decision is no authority for the proposition that a person whose own fundamental right has not been infringed has a right to move the court for espousing the cause of other persons whose fundamental rights have been violated. That was a case which decided the question of impending threat of certain fundamental rights of a citizen himself, as fundamental rights are not limited to a local area but pervades through out the entire territory of Bangladesh. The appellant was heard

because of his impending threat of violation of fundamental rights as well as for the exceptional and extra-ordinary constitutional issue of international treaty involved in the case. The petition under Article 102 being competent, the court had no lack of jurisdiction to hear the matter in the facts, circumstances and issues involved in that case. The light I get in the case of Mukhlesur Rahman does not lead me any further to decide the issue specifically raised and argued in the present case.

73. In the case of Miss Benarzir Bhutto Vs. Federation of Pakistan reported in PLD 1988(SC) 416, while interpreting Articles 184(3) and 199 of the Constitution of Pakistan, the Supreme Court held that the exercise of power of Supreme Court under Article 184(3) is not dependent only at the instance of the aggrieved party. Their Lordships held as follows:

> "Traditional rule of locus standi can be dispensed with and procedure available in public interest litigation can be made use of, if it is brought to the Court by the person acting bona fide Provisions of Art. 184(3), therefore, have provided abundant scope for the enforcement of the Fundamental Rights of an individual or a group or class of persons in the event of their infraction and it would be for the Supreme Court to lay down the contours generally in order to regulate the proceedings of group or class actions from case to case."

74. The Constitution of Bangladesh recognises the welfare of the people in unambiguous terms if, we take a traditional restive rule and remain contended with it then the same will be disastrous for the welfare of a poor, uneducated society like ours in the context of social and economic unequal. Time has come when this court must act according to the needs of doing social justice to the large segment of population. This court must liberally construe the question of standing. The relaxation of the strict rules of locus standi can be expanded in two way – First, representative standing and citizen standing. The former relates to the standing in a matter pertaining to a legal wrong or injury caused or threatened to be caused to a person or class of person who by reason of properly helplessness or disability or economic inability cannot move the court for relief. The later relates to standing in a matter in which breach of public duty results in violation of collective right of the public at large. In this case, the appellant is not moving this application as people of the locality being poor and economically crippled cannot file the application before the court, but by this action of the respondents a public wrong or public injury is causing damage to environment and human health in Bangladesh in which specific field

'BELA' is actively associated. This, I find that this organisation has got sufficient interest in the matter and the question of standing must be liberally construed in the context of our Constitutional scheme and objectives as indicated above.

75. I also honestly feel that there is a positive duty on the judiciary to advance and secure the protection of the Fundamental rights of its people as found in our Constitution. Strictly it may be correct to say that only a person whose rights are infringed has a right to make an application to assert his right be it fundamental or otherwise. But it is important to note that there is a constitutional duty on the judiciary to secure and advanced the fundamental rights of its people in view of our Constitutional mandate. In such an event this court is under a duty to act and inquire into allegations of infringement of rights even though technically a perfect application in terms of Article 102 of the Constitution is not before the court. Independence of judiciary and its separation from the executive ensures proper functioning of the Courts. The Court is required to protect and enforce fundamental rights guaranteed to the people, it interprets and protects the Constitution, "enforces the constitutional limitations on the power of the government, decides disputes between the State and it's citizen and between citizen and citizen. Presently, I am concerned with the protection of the rights of the people and will restrict to the same. The people have been guaranteed life, liberty, equality, security, freedom from needs, wants, illiteracy and ignorance, dignity of man and socio-economic and political justice. Any law, action and order made and passed in violation of fundamental right is void. It is the duty of the Court to so declare. The Court thus adopts the role of the Protector of fundamental rights guaranteed to the people. We can thus see how judiciary upholds, protects, and defends the Constitution and effectively enforces the fundamental rights guaranteed by the Constitution itself. The judiciary defends the constitution and attains the pivotal enviable position as the guardian of the people and also the conscience of the people. In the area of economic regulation, control and planning the judiciary has used law as an instrument for the eradication of poverty, inequality and exploitation and strengthened the hands of the State in widening the gamut of its welfare activities. The terms 'welfare State', 'mixed economy', 'socialist republic' etc. have been given the judiciary vast scope for social engineering. Effective access to justice can thus be seen as the most basic requirement, the most basic "human rights" of a system which purports to guarantee legal rights. The types of cases which were considered at the early stages of development of the rule of locus standi are those where there is a specific legal injury either to the applicant or to some other person or persons for whose benefit the action is brought arising from violation of

some constitutional or legal right or legally protected interest. Apart from such cases, there is a category of cases where the State or a public authority may act in violation of a constitutional or statutory obligation, or fail to carry out such obligation resulting in injury to public interest or public injury as distinguished from private injury. Who then in such cases can complain of against such act or omission of the State or public authority? Can any member of the public sue for legal redress? Or is such right or standing limited only to a certain class of persons? Or is there no one who can complain? Must the public injury go unredressed?

76. Thus I hold that a person approaching the court for redress of a public wrong of public injury has sufficient interest (not a personal interest) in the proceedings and is acting bonafide and not for his personal gain or private profits, without any political motivation or other oblique consideration has locus standi to move the High Court Division under Article 102 of the Constitution of Bangladesh.

77**.** The learned Additional Attorney General appearing for the Government put much stress on the case of Bangladesh Sangbadpatra Parishad Vs. Bangladesh reported in 43 D.L.R(AD)-126. Relying on this case, the High Court Division dismissed the petition summarily holding that the said association has no locus standi to file the writ petition. It is to be stated here in uncertain terms that the learned Judges of the High Court Division wrongly relied upon the reported decision of this Division. In that case, public interest litigation was not at all involved. In that decision we held that the newspaper owners had no difficulty in challenging the award themselves without filing the writ petition which is in the nature of a representative suit. The observation that was made in that case must be understood in the facts and circumstance of that case and that case does not at all help the learned Additional Attorney General in deciding the question of locus standi as raised and argued in the present case involving the principles of 'probona publico.'

78. Dr. Mohiuddin Farooque has cited a large number of decisions from Indian jurisdiction to show how the question of locus standi has been considered in the High Courts of India including the Supreme Court for evolution and development of public interest litigation in India. He has cited various decisions from other countries as well in his written argument to show that public interest litigation is a new jurisprudence which the courts in other jurisdictions are

evolving. I will not refer to all those cases as the language of Article 102 of our Constitution is not in Perimeteria with the language of those Constitutions.

79. If we look to the cases recently disposed of by the Supreme Court of India then we find that there is a trend of judicial activism to protect environment through public litigation in environmental cases. In Bangladesh such cases are just knocking at the door of the court for environmental policy making and the court is being involved in this cause. There is a trend to liberalise the rules of standing through out the world in spite of the traditional view of the locus standi. The Supreme Court of India initially took the view that when any member of a public or social organisation so espouse the case of the poor and the down-trodden, such member should be permitted to move the Court even by merely writing a letter without incurring expenditure of his own. In such a case, the letter was regarded as an appropriate proceeding failing within the purview of Article 32 of the Constitution. This was thus the beginning of the exercise of a new jurisdiction in India, known as epistolary jurisdiction.

80. In the case of S.P. Gupta and others V. Union of India and others, better known as the Judges' Case, (1981) A.I.R. Supreme Court –344. Chief Justice Bagwati, after a consideration of the American and English authorises in the field of locus standi formulated his conclusion in this way: "We would therefore hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objective".

81. Chief Justice Bagwati who is the real exponent of Public interest litigation in India has more appropriately termed "Social Action Litigation" rather than public interest litigation. Bagwati has also expressed the view that the substance of Social action Litigation is much wider than that of the Public interest Litigation of the United States.

82. In the case of Fertilizer Corporation Kamagar Union Vs. Union of India (1981)A.I.R. (SC) 344, Krishna Iyer said as follows:

"Restrictive rules about standing are in general inimical to a healthy system of growth of administrative law. If a plaintiff with a good cause is turned away merely because he is not sufficiently affected personally that could mean that some government agency is left free to violate the law. Such situation would be extremely unhealthy and contrary to the public interest. Litigants are likely to spend their time and money unless they have some real interest at stake; and in some cases where they wish to sue merely out of public spirit; to discourage them and thwart their good intentions would be most frustrating and completely demoralising."

83. The operation of Public interest Litigation should not be restricted to the violation of the defined Fundamental Rights alone. In this modern age of technology, scientific advancement, economic progress and industrial growth the socio-economic rights are under phenomenal change. New rights are emerging which call for collective protection and therefore we must act to protect all the constitutional, fundamental and statutory rights as contemplated within the force corners of our Constitution.

84. In conclusion, I hold that the appellant may not have any direct personal interest but it has sufficient and genuine interest in the matter complained of and it has come before the court as a group of public spirited young lawyers to see that the public wrong or public injury is remedied and not merely as a busy body perhaps with a view to gain cheap popularity and publicity.

85. Before parting with the case, I want to mention specifically that any application filed by an individual, group of individuals, associations and social activists must be carefully scrutinized by the court itself to see as to whether the petitioner has got sufficient and genuine interest in the proceeding to focus a public wrong or public injury.

Mohammad Abdur Rouf, J: I have had the privilege of going through the main judgement written by my learned brother Mustafa Kamal, J. As well as the supplements made thereto by my Lord the Chief Justice and my learned brothers Latifur Rahman and B. B. Roy Choudhury JJ. I agree with the decision concurring with the views expressed by Mustafa Kamal, J. as to the meaning of the term "any person aggrieved" provided in Clauses 1 and 2(a) of Article 102 of the Constitution of the People's Republic of Bangladesh.

Bimalendu Bikash Roy Choudhury, J. I have had the advantage of going through the judgement delivered by my learned brother Mustafa Kamal, J. and the supplement made thereto by my learned brother Latifur Rahman, J. While agreeing with the decision and the reasoning ably given by them in support thereof I feel inclined to add a few words of my own.

88. This appeal presents an occasion this Court to consider for the first time whether a group of social workers can make a writ petition on behalf of the public under clauses (1) and (2)(a) of article 102 of our Constitution.

89. Article 102 of the Constitution empowers the High Court Division to issue to a person performing any function in connection with the affairs of the Republic or of a local authority, directions or orders for the enforcement of any of the fundamental rights or of any other statutory rights. In order to seek remedy under clauses (1) and (2)(a) of this article with which we are concerned in this appeal an applicant must be a "person aggrieved". The expression "person aggrieved" has not been defined in the Constitution; nor has it been mentioned therein that the applicant must be a personally aggrieved person. As a logical sequel a question comes up: Who is an "aggrieved person" and what are the qualifications requisite for such a status? Over the years there has been a tendency to construe this expression very restrictively to mean a person who has a personal or individual right in the subject matter of the application which right has either been infringed or threatened to be infringed. In the absence of any definition can such a cast-iron meaning be given to the said expression? The answer would perhaps be a clear 'No'. The expression "person aggrieved" is an elastic concept. For example, there has been a departure from the traditional view to some extent in Fazal Din Vs. Lahore Improvement Trust, 21 DLR (SC) 225. The Supreme Court of Pakistan observed:

> ".... the right considered sufficient for maintaining a proceeding of this nature is not necessarily a right in the strict juristic sense but is enough if the applicant discloses that he had a personal interest in the performance of the legal duty which if not performed or performed in a manner not permitted by law would result in the loss of some personal benefit or advantage or the curtailment of a privilege or liberty of franchise."

Again, in Kazi Mukhlesur Rahman Vs. Bangladesh 26 DLR (SC) 44 this Court took a liberal view as to the meaning of the said expression. It has been stated therein:

> "The fact that the appellant is not a resident of Sourth Berubari Union No. 12 or of the adjacent enclaves involved in the Delhi Treaty need not stand in the way of his claim to be heard in this case. We heard him in view of the constitutional issue of grave importance raised in the instant case involving an international treaty affecting the territory of Bangladesh and his complaint as to an impending threat to his certain fundamental rights guaranteed by the constitution, namely, to move freely throughout the territory of Bangladesh, to reside and settle in any place therein as well as his right to franchise. Evidently, these rights at attached to citizen are not local. They pervade and extend to every inch of the territory of Bangladesh stretching up to the continental shelf".

90. A review of the authorities of this Court, however, indicates that no exhaustive or definitive meaning could have yet been given to the said expression and the courts some times lapsed into the traditional view which originated from the old English decisions. But law does not remain static. It loses its rigidity with the gradual change of the social order to meet the demands of the change.

91. Julian Huxley pointed out in his Essay on "Economic Man and Social Man" long back in poignant words:

> "Many of our old ideas must be retranslated so to speak, into a new language. The democratic idea of freedom, for instance, must lose its nineteenth century meaning of individual liberty in the economic sphere and become adjusted to new conceptions of social duties and responsibilities. When a big employer talks about his democratic right to individual freedom, meaning thereby a claim to socially irresponsible control over a huge industrial concern, and over the lives of tens thousands of human-beings whom it happens to employ, he is talking in a dying language".

Lord Denning echoed the same idea in the following words:

> "Law does not stand still. It moves continually. Once this is recognised, then the task of the Judge is put on a higher plane. He must consciously seek to mould the law so as to serve the needs of the time, must not be a mere mechanic, a mere working ma son, laying brick on brick, without thought to the overall design. He must be an architect- thinking of the structure as a whole building for society a system of law which is strong, durable and just".

A constitution is framed not for a temporary period. It is designed for all time to come. The interpretation of constitutional expressions has necessarily to receive a progressive construction in the light of the scheme and the objectives enshrined in the Constitution.

92. To begin with the Preamble to the Constitution of our country: It appears that the fundamental aim of the State is to realise through the democratic process a socialist
society, free from exploitation a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens.
Part II of it embodies the Fundamental Principles of State Policy. Article 8(2) man dates that the principles set out in this part shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws, but shall not be judicially enforceable. Among other things, article 11 is to the effect that the Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed. Article 14 states that it shall be a fundamental responsibility of the State to emancipate the toiling masses the peasants and workers and through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens the provisions of the basic necessities of life, including food, clothing, shelter, education and medical care; the right to social security, that is to say, to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age, or in other such cases. Articles 16, 17, 18 and 19 likewise impose a duty upon the State to adopt effective measures for rural development and agricultural revolution, free and compulsory education, raising the level of public health and morality and ensuring equality of opportunity to all citizens. Under article 21(1) it is obligatory for all citizens to perform public duties and o protect public property.

93. They are not merely programmes for socio-economic development of the people, but much deeper in content. They firmly recognise human sensitivity for fellow- citizens and State responsibility for protection of human rights enshrined in article 1 of the Universal Declaration of Human Rights (to which Bangladesh is a signatory) that "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".

Indeed, this principle is resounded in the following sage saying of George Bernard Shaw:

"The worst sin towards our fellow creatures is not to hate them, but to be indifferent to them; that's she essence of inhumanity". (The Devil's Disciple, (1897), Act II).

94. Part III of the Constitution has given corresponding Fundamental Rights to the citizens. Articles 27, 31 and 32 are of particular interest. All citizens are equal before law and are entitled to equal protection of law in accordance with article 27. Article 31 gives right to a citizen to enjoy the protection of law and to be treated in accordance with law. In particular it guarantees that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. Article 32 commands that no person shall be deprived of life or personal liberty save in accordance with law. Under article 44(1) the right to move the High Court Division under article 102(1) is itself a fundamental right.

95. In order to ensure that the mandates of the Constitution are obeyed the High Court Division of the Supreme Court is vested with the power of judicial review under article 102 which is contained in Part VI of the Constitution. The power is wide enough to reach any person or place where there is injustice.

96. In this backdrop the meaning of the expression "person aggrieved" occurring in the aforesaid clauses (1) and (2) (a) of article 102 is to be understood and not in an isolated manner. It cannot be conceived that its interpretation should be purged of the sprit of the Constitution as clearly indicated in the Preamble and other provisions of our Constitution, as discussed above. It is unthinkable that the framers of the Constitution had in their mind that the grievances of millions of our people should go undressed, merely be cause they are unable to reach the doors of the court owing to abject poverty, illiteracy, ignorance and

disadvantaged condition. It could never have been the intention of the framers of the Constitution to outclass them. In such .....harrowing conditions of our people in general of socially conscious and public-spirited persons are not allowed to approach the court on behalf of the public a section for enforcement of their rights the very scheme of the Constitution will be frustrated. The inescapable conclusion, therefore, is that the expression "person aggrieved" means not only any person who is personally aggrieved but also one whose heart bleeds for his less fortunate fellow-beings for a wrong done by the Government or a local authority in not fulfilling its constitutional or statutory obligations. It does not, however, extend to a person who is an interloper and interferes with things which do not concern him. This approach is in keeping with the constitutional principles that are being evolved in the recent times in different countries.

97. In the instant case the appellant Dr. Mohiuddin Farooque who happens to be the Secretary- General of Bangladesh Environmental Lawyers Association, briefly BELA, moved a writ petition before the High Court Division both under clauses (1) and (2) (a) of article 102 of the Constitution praying for issuance of a Rule Nisi upon the respondents to show cause why the formation and activities of FAP, FAP-20 and FPCO should not be declared to be mala fide and illegal, and have been under taken without lawful authority on the ground that the said project would adversely affect and injure more than a million people in the district of Tangail by way of displacement, damage to the soil, destruction of natural habitat of fishes, flora and fauna and creating a drainage problem, threatening human health and worsening sanitation and drinking water supplies. These it was alleged, would create environmental hazards and ecological imbalance. BELA which is a registered society and committed to the protection of people from environmental ill-effects thus espoused the cause of the members of the public.

98. As to the ill-effects of environment it would be useful to quote the following passage from the book Top Soil and Civilisation by Tom Dale and Vernon Gill Carter, both highly experienced ecologists:

"Man, whether civilised or savage, is a child of nature-he is not the master of nature, He must conform his action to certain natural laws if he is to maintain his dominance over his environment. When he tries to circumvent the laws of nature, he usually destroys the natural

environment that sustains him. And when his environment deteriorates rapidly, his civilisation de clines.....

The writers of history have seldom noted the importance of land use. They seem not to have recognised that the destinies of most of man's empires and civilisations were determined largely by the way land was used. While recognising the influence of environment on history, they fail to note that man usually changed or de spoiled his environment.

How did civilised man despoil this favourable environment? He did it mainly by depleting or destroying the natural resources. He cut down or burned most of the usable timber from forested hill sides and valleys. He overgrazed and denuded the grasslands that fed his livestock. He killed most of the wildlife and much of the fish and other water life. He permitted erosion to rob his farm land of its productive top soil. He allowed eroded soil to clog the streams and fill his reservoirs, irrigation canal and harbours with silt. In many cases, the used and wasted most of the easily mined metals or other needed minerals. Then his civilisation declined amidst the de spoliation of his own creation or he moved to new land. There have been from ten to thirty different civilisations that have followed this road to ruin (the number depending on who classifies the civilisations)".

99. The report of the "World Commission on Environment and Development" constitution by the United Nations warned the governmental agencies about the importance of maintaining ecological balance in chapter 12 entitled "Towards Common Action: Proposals for Institutional and Legal Change" thus:

"Environmental Protection and sustainable development must be an integral part of the mandated of all agencies of governments, of international organisations, and of major private sector institutions. These must be made responsible and accountable for ensuring that their policies, programmes, and budgets encourage and support activities that are economically and ecologically sustainable both in the short and longer terms." (See the book Our Common Future: World Commission on Environmental and Development published by Oxford University Press in 1987).

100. In the case of Virender Gaur V. State of Haryana, (1995) 2 SCC 577 (580) the Supreme Court of India observed:

"The word 'environment' is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance".

It is therefore not only the duty of the State but also the duty of every citizen to maintain hygienic environment. The State, in particular has duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment".

101. Although we do not have any provision like article 48-A of the Indian Constitution for protection and improvement of environment, articles 31 and 32 of our Constitution protect right to life as fundamental right. It encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right of life.

102. In the face of the statements in the writ petition BELA is concerned with the protection of the people of this country from the ill-effects of environmental hazards and ecological imbalance. It has genuine interest in seeing that the law is enforced and the people likely to be affected by the proposed project are saved. This interest is sufficient enough to bring the appellant within the meaning of the expression "person aggrieved". The appellant should be given **locus standi** to maintain the writ petition on their behalf.

KAK.