

# Writ Jurisdiction of the High Court Division under the Bangladesh Constitution

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## Abstract

The primary object of this article is to offer a systematic study of the “Writ Jurisdiction of the Supreme Court of Bangladesh” under the 1972 Constitution of the People’s Republic of Bangladesh. An attempt has been made to examine the definition of writs, common types of writs, comparison of writs, different types of writs under the Constitution. The article portrays writ jurisdiction of the Supreme Court of Bangladesh, comprising of the High Court Division and the Appellate Division, to be given in the nature of orders under the 1972 Constitution and the Code of Criminal Procedure, 1898. Relevant cases have been cited. Finally, the article summarizes general conclusions making an overall assessment of the writ jurisdiction of the Supreme Court of Bangladesh.

**Key Words:** Writ Jurisdiction, Supreme Court, Constitution, Public Interest Litigation.

## INTRODUCTION

The war of liberation continued for about nine months, at the end of which war broke out between the Pakistan Armed Forces on the one side and the Indian Armed Forces and the Bangladesh Freedom Fighters on the other. On 16<sup>th</sup> December 1971 the Pakistan Armed Forces surrendered and Bangladesh became fully liberated. “Justice without force is impotent; force without justice is tyranny”. A court of law is the only place where a person can seek justice and the Supreme Court being the apex Court of Bangladesh, is the last resort for ensuring justice to the peoples. There are many ways by which a judge administers justice keeping himself within the periphery of the constitution. Amongst all, Writ is one of the most important and effective mechanisms to ensure justice. It is said to be one of the most exceptional power of the court which can be used to ensure justice. A writ is a formal written order issued by a body with administrative or judicial jurisdiction.

In modern usage, this body is generally known as court. Writ practice is administered by a complicated set of rules and specifications that varies by jurisdiction. There are several different kinds of writ petition, but all have one thing in common. They ask an appellate-level court to take some extraordinary action and intervene in another institutions/courts process to institute some higher legal remedy or legal relief. Though the Constitution provides for this special kind of remedy to be exercised by the Court, such kind of remedy is not always available except in case of protecting the violation of fundamental rights. However the situation is changing gradually with the use of writs in Public Interest Litigation and by relaxing the requirements of locus standi in bringing a claim which is of course a result of judicial activism. Such judicial activism is always welcomed and wanted if it is exercised within the purview of the constitution.

## OBJECTIVES OF THE STUDY

The objectives of the Study are as follows:

1. To assess the concept of the writ and writ jurisdiction
2. To find out the power of the Supreme Court of Bangladesh in issuing writ.

## METHODOLOGY OF THE STUDY

The study was documentary analysis type. Data and information were collected from the secondary sources. Data and information were collected from books, research reports, journals, website of Ministry of Law, Justice and Parliamentary Affairs of Bangladesh, internet etc. Constitution of the People’s Republic of Bangladesh has been studied rigorously.

## RESULTS AND DISCUSSION

### Constitution of Bangladesh, 1972:

The Constitution of the People’s Republic of Bangladesh was adopted by the Constituent Assembly on the 4<sup>th</sup> November, 1972 and it came into force on the 16<sup>th</sup> December of the same year.

### The Supreme Court of Bangladesh:

Article 94 of the Constitution provides that there shall be a Supreme Court of Bangladesh comprising the Appellate Division and the High Court Division.

### Constitutional Jurisdiction of the High Court Division:

The Constitution of Bangladesh has conferred on the High Court Division the following three types of jurisdiction:

- (a) Writ jurisdiction; <sup>1</sup>
- (b) Jurisdiction as to Superintendence and Control over courts ; <sup>2</sup>

<sup>1</sup> Art.102

<sup>2</sup> Art.109

(c) Jurisdiction as to Transfer of cases.<sup>3</sup>

## Writ Jurisdiction

### According to Black's Law Dictionary-

Jurisdiction means- A government's general power to exercise authority over all persons and things within its territory; a states' power to create interests that will be recognized under common law principles as a valid in other states. A court's power to decide a case or issue a decree. The Constitution has conferred on the High Court Division (HCD) original jurisdiction in the field of writ matters. The basis of writ jurisdiction is Article 102 of the Constitution of Bangladesh. Writ jurisdiction means the power and jurisdiction of the HCD under the provisions of the Constitution whereby it can enforce fundamental rights as guaranteed in part III of the Constitution and can also exercise its power of judicial review.

Under the constitution, the High Court Division has power under art.102(1) to pass necessary orders to enforce fundamental rights and under article 44(1) the right to move the High Court Division under article 102(1) is itself a fundamental right. In view of the provision of art-44, the High Court Division cannot refuse to entertain an application under article 102 (1) on the ground that the petition involves resolution of disputed question of fact. If necessary in appropriate cases, the court will have to take evidence. The constitution does not stipulate the nature of the relief which may be granted. It has been left to the High Court Division to fashion the relief according to the circumstances of a particular case. The constitution has not stipulated any procedure for the remedy and it is for the court to adopt its own procedure. The high Court Division follows certain rules of procedure and practice in respect of all writ petitions, whether one involves enforcement of fundamental rights or not. A person may apply for enforcement of fundamental right when there is a threat to infringe it and need not wait till the threat is carried out. The threat must be real and the mere apprehension that the petitioner may be deprived of his fundamental right is not sufficient to invoke the jurisdiction of the court. The article further confers upon the High Court Division power to issue writs or orders not only for the enforcement of the fundamental rights but also for any other purpose.

There are some other provisions of law which also empowers the Court to issue writ such as Section-491 of the Code of Criminal Procedure empowers the Court to issue directions in the nature of a Habeas Corpus. Limitation on the jurisdiction of high court Division The constitution has imposed restriction on the exercise of the writ jurisdiction of the high court division of the Supreme Court thus: Firstly, the High Court division cannot pass any interim or other order in relation to any law to which article 47 applies. Secondly, when a writ petition praying for prohibition, Mandamus, or Certiorari is filed along with a prayer for an interim order which is likely to have the effect of prejudicing or interfering with any measure designed to implement any development program, or any development work or be otherwise harmful to the public interest such interim order cannot be issued without notifying and hearing the Attorney General as per provisions of the constitution and unless the high court division is satisfied that such interim order will not have any of the above mentioned effects.

The writ jurisdiction usually does not extend to authorities specifically excluded by the constitution under article 105 (5) thus a court or tribunal established under a law relating to the defense service of Bangladesh or any disciplined force or a tribunal to which Article 117 applies are beyond the purview of the writ jurisdiction of the High Court Division.

### Writ Jurisdiction:

The basis of writ jurisdiction is Article 102 of the Constitution. Writ jurisdiction means the power and jurisdiction of the High Court Division under the provisions of the constitution whereby it can enforce fundamental rights as guaranteed in part III of the constitution and can exercise its power of judicial review. The present Article gives to the High Court Division the jurisdiction to issue writs of prohibition,<sup>4</sup> mandamus,<sup>5</sup> certiorari,<sup>6</sup> habeas corpus<sup>7</sup> and quo warranto<sup>8</sup> without using their technical terms. Following the instance of the Pakistan 1962 Constitution the constitution makers of Bangladesh also did not incorporated the specific names of various writs in Article 102 of the constitution but the true contents of each of the writs have been set out in self-contained propositions.

Article 102 read:

102. Powers of High Court Division to issue certain orders and directions, etc.

(1) The High Court Division on the application of any person aggrieved may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of this Constitution.

(2) The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law—

(a) On the application of any person aggrieved, make an order—

- (i) directing a person performing in the any functions in connection with the affairs of the Republic or of a local authority to refrain from doing that which he is not permitted by law to do, or to do that which he is required by law to do ; or
- (ii) declaring that any act done or proceeding taken by a person performing functions, in connection with the affairs of the Republic or of a local authority has been done or taken without lawful authority, and is of no legal effect ; or

(b) on the application of any person, make an order—

- (i) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

<sup>3</sup> Art.110

<sup>4</sup> Art. 102(2)(a)(i)

<sup>5</sup> Art.102 (2) (a) (i)

<sup>6</sup> Art.102(2)(a)(ii)

<sup>7</sup> Art.102(2)(b)(i)

<sup>8</sup> Art.102(2)(b)(ii)

(ii) requiring a person holding or purporting to hold a public office to show under what authority he claims to hold that office.

(3) Notwithstanding anything contained in the foregoing clauses, the High Court Division shall have no power under this article to pass any interim or other order in relation to any law to which article 47 applies.

(4) Whereon an application made under clause (1) or sub-clause (a) of clause (2), an interim order is prayed for and such interim order is likely to have the effect of--

- (a) prejudicing or interfering with any measure designed to implement any development programme, or any development work; or
- (b) being otherwise harmful to the public interest, the High Court Division shall not make an interim order unless the Attorney-General has been given reasonable notice of the application and he (or an advocate authorized by him in that behalf) has been given an opportunity of being heard, and the High Court Division is satisfied that the interim order would not have the effect referred to in sub-clause (a) or sub-clause (b).

(5) In this article, unless the Context otherwise requires, "person" includes a statutory public authority and any court or tribunal, than other than a court or tribunal established under a law relating to the defence services of Bangladesh or any disciplined force or a tribunal to which article 117 applies.

### Writ Jurisdiction of the Appellate Division

Article 104 of the Constitution of Bangladesh empowers the Appellate Division to issue such directions, orders, decrees or writs as may be necessary for doing complete justice in any cause or matter pending before it. In exercising its appellate jurisdiction only, the Appellate Division can interfere if it can be shown that the exercise of the writ jurisdiction under Article 102 of the Bangladesh Constitution by the High court Division is plainly arbitrary or unreasonable or is not in accord with the accepted principles governing its exercise.

### Writ Respondents

Writ of Certiorari, Mandamus and prohibition lie against 'any person' performing functions in connection with the affairs of the Republic or of a local authority and not against a private individual or body. Thus the 'person' must be a public functionary. A writ petition will not lie even against a public functionary in respect of functions performed not in connection with the affairs of the Republic or a local authority, but in his private capacity. Writ of Habeas Corpus lies against any person, be he a public functionary or private person, while Quo Warranto lies against a person holding or purporting to hold a public office. Article 102(5) stipulates that the expression person in art 102 includes a statutory authority and any court or tribunal except (i) a court or tribunal established under a law relating to defense service or any discipline force and (ii) a tribunal to which art. 117 is applicable. The definition of person is both inclusionary and exclusionary. Person thus includes all statutory authorities and courts and tribunals except the ones excluded. Statutory public authorities are defined in article 152 as the authorities whose activities are authorized by statutes or instruments having statutory force. It must also include all authorities whose activities are authorized by the Constitution. The definition of person given in art.102 (5) is inclusive and not exhaustive. By virtue of article 152, the definition of person and local authorities given in General clauses Act will be attracted. However in following circumstances no writ shall lie before Court. For instance because of the reason of exclusionary clause, no writ shall lie against a court or tribunal established under a law relating to the defense services or any disciplined force or a tribunal to which art.117 applies. However, writ petition will lie against the military authorities other than a court or tribunal of the specified kind.

### Writ and Fundamental Rights

Under the constitution, the High Court division has the power under article 102(1) to pass necessary orders to enforce fundamental rights and under article 44(1) the right to move the high court division under article 102(1) is itself a fundamental right. The position of the high court division in respect of enforcement of fundamental rights is the same as that of the Indian Supreme Court with the difference that its decision is not final and is subject to appeal under article 103. Thus it is not discretionary with the high court division to grant relief under article 102(1). Once it finds that a fundamental right has been violated, it is under constitutional obligation to grant the necessary relief.

Under article 32, the Indian Supreme Court entertains only disputes involving breach of the fundamental rights. If a person wants to challenge any state action on various grounds including breach of the fundamental rights, he shall have to seek the remedy under article 226 which is discretionary. Under the constitutional dispensation of Bangladesh, a petitioner does not have this problem, he can by one petition enforce his right under article 44 and at the same time press other ground of ultra vires in respect of a state action. Article 102(1) of the Constitution empowers the High Court Division to give appropriate directions or orders to any person or authority for the enforcement of any of the fundamental rights. Persons performing functions in connection with the affairs of the Republic are also amenable to this jurisdiction of the High Court Division.

However, there must be an application by an aggrieved person so that the High Court Division may pass an order or direction for the enforcement of a fundamental right. In the case of Md. Shoib vs. Bangladesh the petitioner, one of the three partners of a partnership firm, filed a writ petition at the High Court Division challenging the validity of a government order staying a proceeding for release and handing over possession of the said partnership to the petitioners which affected the petitioners fundamental right to freedom of profession or occupation contained in Article 40 of the Constitution. While disposing of the writ petition D.C. Bhattacharya J. observed: "Any person aggrieved by any order or act may move this court for relief against such order or act and the petitioner being very much affected by the impugned order has every right to move this Court for necessary orders." If the infringement of fundamental right is established, the enforcement of the fundamental right becomes obligatory upon the High Court Division and exhaustion of all other equally efficacious remedy provided by law is not necessary.



The Constitution does not mention the relief which may be granted to redress the violation of fundamental rights. It has been left to the High Court Division to fashion the relief according to the circumstances of particular cases. It may be one injunctive relief preventing the infringement of fundamental right or it may be a direction or order including an order in the nature of various kinds of writs. In this

context, the observations made by M.A. Jabir, J., in *Bangladesh vs. Ahmed Nazir* to direct relevance: “We have, accordingly, no doubt that the framers of the Constitution intended to empower the High Court Division to pass appropriate orders .... and the power to do so is not at all fettered because of the absence of nomenclature of the nature of writ in the Constitution”. It can be seen from the above discussion that the High Court either by an application by any aggrieved party or in its own initiative can issue writ to ensure proper protection of fundamental rights as enunciated in the constitution.

### **Writ jurisdiction, Public Interest Litigation (PIL) and the Concept of “Aggrieved Party”:**

Of the five writs two can be invoked by any person according to the provisions of Article 102 Of the Bangladesh Constitution. These are writ of habeas corpus and quo-warranto. But other three writs (prohibition, certiorari and mandamus) can be invoked only by an “aggrieved person”. It is important to mention here that in one sense these latter three writs are most important. Because most of the public authorities, bodies and officials frequently violate law and act in excess of jurisdiction causing repeated sufferings to the people and giving rise to huge grounds of application for these three writs. But any one cannot apply for these writs due to the following two barricades:

Firstly, writ powers of the High Court Division is not any discretionary power as the Article 44(1) of the Constitution provides that the right to move the High Court Division in accordance with Clause (1) of article 102, for the enforcement of the fundamental rights is guaranteed. As a result, it cannot issue writs suo motu against any public bodies.

Secondly, any person cannot apply for these three writs; only an ‘aggrieved person’ has locus standi (right to use).

A person is said to have locus standi when he is aggrieved by actions or inactions of a public servant or official or authority. Now when a person is said to be aggrieved? A person is said to be aggrieved –

- (i) when he has suffered a legal injury by reason of violation of his legal right or interest<sup>9</sup>; and
- (ii) when he has shown that he has a direct personal interest in the act which he challenges.<sup>10</sup>

If these two conditions are not fulfilled, the High Court Division will not

Allow writ petition. Thus is why in Bangladesh it is not possible to file public interest litigation (PIL).<sup>11</sup> This barricade of ‘aggrieved person’ does not, of course, exist in India.

Because under Articles 32 and 226 of the Indian Constitution the writ jurisdiction of the Supreme Court and High Courts depends on their discretion. As a result, they can issue suo motu writs even on the basis of a letter or information of a newspaper. Again unlike Bangladesh Constitution in Indian Constitution it is not mentioned who can apply for enforcement of fundamental rights and constitutional remedies. As a result, any person may file petition for any of the writs and this has made PIL a great success in India. Following the footsteps of the Indian Supreme Court, both the SriLankan and Pakistan Supreme Courts, despite the constitutional limitation, are widely allowing PIL.

### **Conditions for Public Interest Litigation**

Public Interest Litigation is not meant for enforcement of individual specific rights. The Supreme Court has also held that a person filing Public Interest Litigation should act bonafide and not for personal or private profit. Public Interest Litigation can also not be moved with political or other oblique motivation. Thus for filing Public Interest Litigation, it is necessary that a personal filing a petition should not have private personal interest. It should be for general, social good and not for political gains or motives.

### **Relevance of Public Interest Litigation**

The emergence of the principles of Public Interest Litigation is justified on the basis of illiteracy, poverty, social and economic backwardness and lack of awareness of a large section of our population. These have denied millions of our people access to justice. Accordingly, the courts have been pronouncing on social issues. Through social action and litigation, the legal and judicial process is becoming a vehicle for providing remedy to those who are struggling to find protection of their interest.

### **Who Can File Public Interest Litigation?**

Earlier it was only a person whose interest was directly affected along with others, whereby his fundamental right is affected used to file such litigation. Now, the trend has changed, and, any Public-spirited person can file a case (Public Interest Litigation) on behalf of a group of person, whose rights are affected. It is not necessary, that the person filing a case should have a direct interest in this Public Interest Litigation. A Public Interest Litigation can be filed against the State, Municipal Authorities, and not against any private party. However, “Private party” can be included in the PIL as “Respondent”, after making concerned state authority, a party.

The rule of locus standi have been relaxed and a person acting bonafide and having sufficient interest in the proceeding of Public Interest Litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and

<sup>9</sup> *S.P. Gupta v India* AIR 1982 SC 149 at Para 14-16

<sup>10</sup> *Tariq Transport v. Sargodha-Vera Bus Services* 11 DLR (SC) 140

<sup>11</sup> PIL: It means litigation in the interest of public and not in the interest of the litigant himself. PIL is a concept of recent origin evolved by the Indian Supreme Court on the plinth of equal justice by giving liberal interpretation to the long standing rigid concept of *locus standi*. Ref. AIR 1983 SC 1477.

genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration...court has to strike balance between two conflicting interests.

### Writ as Public Interest Litigation

The formal exposition of PIL for which the activists were waiting for a long time came from the appellate division in 1996. The standing of the petitioner was seriously contested by the government in the appeal of Dr. Mohiuddin Farooque V Bangladesh / Sikander Ali Mondol V Bangladesh (FAP20). In the FAP 20, PIL was recognized as a special type of constitutional litigation under the Bangladeshi legal system. The activists greeted the positive outcome of the FAP20 judgment with much enthusiasm. It opened the gate for PIL and removed all doubts and confusions about the validity of PIL cases.

Since then various cases were filed such as in the matters relating to the functioning of the democratic process- Md. Idrisur rahman V Shahid Uddin Ahmed and Others, Ziaur Rahman Khan v Bangladesh, Saiful Islam Dildar V Bangladesh and others. In the area of detention- Bilkis Akter Hussain V Bangladesh and others, Md. Shahnewaz v Bangladesh, in the genuine social interest matters- Sultana Nahar V Bangladesh and Others, Dr. Mohiuddin Farooque V Bangladesh, The number and variety of cases indicate the progression of PIL towards maturity as PIL has become a permanent feature of the Bangladeshi Legal System. It is pertinent to mention here that these PIL cases were filed in the format of a writ petition and the remedies sought were under the nature of Habeas Corpus, Mandamus, Certiorari, Quo Warranto and prohibition. Hence it can be said that it is a new dimension of seeking relief using the old format so that the right of the people can be protected more expeditiously.

**Breaking the Barricade:** As to the issue of locus standi and aggrieved person which were issues knocking the door of the Supreme Court of a decade lastly Bangladesh Supreme Court has come forward to untie the knots of procedural technicalities in respect of locus standi and respond to the loudly raised voice for access to justice. It was the case of Dr. Mahiuddin Farooque V. Bangladesh<sup>12</sup> where the Supreme Court extended scope of writ jurisdiction through which voluntary society, representative organizations, trade unions and constitutional activists and individuals having no personal interest in the case would be able to test the validity of a law or an action of the executive affecting public interest. It is, of course, pertinent to mention here that in Bangladesh the first challenge to the concept of locus standi was thrown in the case of Kazi Mukhlesur Rahman V. Bangladesh.<sup>13</sup> But the implications of this decision have not yet been fully grasped.

### Writs under the Article 102:

Clause (2) (a) (i): Prohibition: Clause (2) (a) (i) of art. 102 confers a jurisdiction roughly corresponding to the jurisdiction of issuing writs of prohibition. Writ of prohibition lies against judicial and quasi-judicial bodies. But because of the formulation of the jurisdiction in art.102 (2) a writ in the nature of prohibition under Bangladesh constitutional dispensation lies against any person (other than those mentioned in clause (5)) "performing any function in connection with the affairs of the Republic or of a local authority", whether or not he performs a judicial or quasi judicial function.

Clause (2) (a) (i): Mandamus: The second part of clause (2) (a) (i) of art. 102 confers power on the High Court Division to issue writs in the nature of mandamus. Art.102 (2) does not require that the applicant for mandamus must have a specific legal right; the only requirement is that he must be an aggrieved party. Mandamus may issue on any person performing functions in connection with the affairs of the Republic or of a local authority. Thus mandamus may issue on the government to implement its own decision under certain circumstances<sup>14</sup>, to pay leave salary, or allowance, or future salary, to restore seniority of government servant<sup>15</sup>, to issue necessary clearance for delivery of imported goods<sup>16</sup>.

Clause (2) (a) (ii) : Certiorari : This clause empowers the High Court Division to issue an order declaring an act done or proceeding taken to be without lawful authority and of no legal effect. In other words the High Court Division can interfere only when the person proceeded against has committed an error going to jurisdiction that is, when the act done or proceeding taken is vitiated by lack of jurisdiction or by being in excess of jurisdiction.<sup>17</sup>

Clause (2) (b) (i): Habeas Corpus: The clause invests the High Court Division with power and obligation to issue a writ in the nature of habeas corpus when a case of unlawful detention is made out. The expression "custody" is not confined to executive custody<sup>18</sup> and includes custody of private person also.<sup>19</sup> The High Court Division has power to issue the order of a release of a person in custody under s.491 of the Code of Criminal Procedure and this power can be exercised suo motu.<sup>20</sup> But this power is hedged with limitation.<sup>21</sup> Clause (2) (b) (ii): Quo warranto: This writ is used to ensure that no one can hold any public office without having a valid claim to that office. In order that this writ may issue, the office must be a public office of a substantive character created by the Constitution, statute or statutory power. This clause does not require that the applicant for a writ of quo warranto must be an aggrieved party. Any person may apply as the inquiry relates to a matter in which the public are interested.

### High Court

High Court originated historically from the High Court's Act of 1861. During the Company rule there was a Supreme Court in Calcutta representing the British crown with its jurisdiction over all Europeans living in Bengal and all native citizens of Calcutta

<sup>12</sup> Civil Appeal No.24 of 1995.

<sup>13</sup> 26 DLR (AD) 44.

<sup>14</sup> Bangladesh v. Amir Hossain, 48 DLR (AD) 75

<sup>15</sup> Pakistan v. Abdul hamid. 13 DLR (SC) 100

<sup>16</sup> Green Pharmacy v. Bangladesh, 42 DLR 307

<sup>17</sup> Hosne Ara Begum v. Court of Settlement, 46 DLR (AD) 9

<sup>18</sup> Bangladesh v. Ahmed Nazir 27 DLR(AD) 41

<sup>19</sup> Abdul Jalil v. Sharon Laily, 50 DLR (AD) 55

<sup>20</sup> State v. D.C. Satkhira, 45 DLR 643

<sup>21</sup> Sultanara Begum v. Secy.Ministry of Home, 38 DLR 93

only. The highest court of the company's Bengal kingdom was the Sadar Adalat which had two divisions, Sadar Diwani Adalat and Sadar Nizamat Adalat. The Sadar Adalat represented the Company. The judges of the Sadar Adalat were the members of the Covenanted Civil Service. Though the judges of the Adalat consisted of Europeans, the laws that they administered were essentially Indian. The Sadar Adalat had no jurisdiction over the Europeans nor the Supreme Court over the natives outside of Calcutta. Such a duality of jurisdiction was abolished with the abolition of the East India Company in 1858 when the Crown took over the responsibility of administering British India.

The High Courts Act of 1861 provided for one High Court at each presidency of British India. The former Supreme Court and Sadar Adalat were replaced by the High Court. The High Court dispensed justice according to a uniform system of civil procedure code, criminal procedure code and Penal Code. The High Court of Calcutta had all Bengal jurisdictions even after the partition of Bengal in 1905. Under the Government of India Act of 1935 every province got a High Court and a Federal Court at the centre. After the partition of India (1947) a high court was established in Dhaka under the Pakistan (Provisional Constitution) Order 1947. Under the Indian Independence Act, the constituent got the powers and functions of the Indian central legislature under the Government of India Act (1935). This Act, which became the Pakistan (Provisional Constitution) Order, provided a High Court in each of the provinces of British India. Now East Bengal, as a province of Pakistan, got a High Court in Dhaka, the capital of the province. The Constituent Assembly amended the Act of 1935 in 1954 and provided that every High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases any government within these territories writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari or any of them (Section 223A). The jurisdiction, power and functions of the High Court as laid down under the Constitution of 1956 changed considerably under the Constitution of 1962.

Under the constitution of the People's Republic of Bangladesh there is no provision for any separate High Court as it was during Pakistan period. Bangladesh Constitution provided that there shall be a Supreme Court for Bangladesh (to be known as the Supreme Court of Bangladesh) comprising the Appellate Division and the High Court Division. The High Court Division shall have such original, appellate and other jurisdiction, power and functions as are or may be conferred upon it by the Constitution of Bangladesh.

## CONCLUSIONS AND RECOMMENDATION

After the emergence of Bangladesh in 1971, Article 102 of the Constitution of the People's Republic of Bangladesh, 1972 empowered the High Court Division of the Supreme Court of Bangladesh to exercise writ jurisdiction similar to that which had been conferred on the High Courts of Pakistan under Article 98 of the Constitution of Pakistan 1962. Although the contents of the writ have been embodied in the Constitution it is basically a legacy of the English Writs and still the Judges of the Supreme Court of Bangladesh look back to the English and sub continental case laws while exercising the writ jurisdiction. Like other Superior Courts of the subcontinent the Supreme Court of Bangladesh has been able to fashion a writ system tailored to meet the needs of the present era. However, it should be stressed here that even after the lapse of a quarter of a century no rules have been framed for the exercise of writ jurisdiction by the High Court Division under Article 107 of the 1972 Constitution of Bangladesh. Rules regarding writ petitions framed under Article 170 of 1956 Constitution of the Islamic Republic of Pakistan are still followed by the Supreme Court of Bangladesh to deal with writ petitions filed under Article 102 of the Constitution of the People's Republic of Bangladesh, 1972. Furthermore, the Constitution of Bangladesh under Article 105 has only empowered the Appellate Division of the Supreme Court to review any judgment pronounced or order made by it. No power has been given to the High Court Division to review any judgment or order passed by it in exercise of its writ jurisdiction.

The judicial power of the Republic is vested in the judiciary consisting of the Supreme Court and the Subordinate courts. The guardianship of the Constitution is vested upon the Supreme Court, which is invested with the power of judicial review. The High Court Division of the Supreme Court is overburdened with all kinds of civil/criminal suits, including writ cases. In our country the writ petition can be filed only in the High Court Division which is situated in Dhaka. But it is troublesome for the people who live in rural area to come to Dhaka and file a writ petition in the High Court division. So it would be better to confer the writ jurisdiction to every District Judge Court like as India. This will not be unconstitutional as Article-44(2) declares, without prejudice to the powers of the Supreme Court under Article-102, Parliament may by law empower any other court, within the local limits of its jurisdiction, to exercise all or any of these powers. Some of the Writs of Habeas Corpus can be delegated to District Judges. Many of the Writs of Habeas Corpus are simple, such as the case of Sardar Begum v. Habib Shah Khan [42]. A person can be arrested in remote areas outside the capital. In such situation, it will be better if a District Judge, where a person is arrested, issues the writ of Habeas Corpus. Some of the Jurisdiction of Writ of Mandamus can be delegated to District Judges when the case is simpler and when it involves an order upon any statutory public authority of a lesser status or of any inferior tribunal such as the case of Md. Abdul Mannan Bhuiyan v. University of Rajshahi & Others. Some jurisdiction regarding Writ of Prohibition can be delegated to District Judges, where it involves an order upon a statutory public authority of a lesser status such as the case of Abdul Latif v. Govt. of West Pakistan.

At present the writ petition can be filed only against the Government/public bodies. It will be more effective to protect the fundamental rights if Writ Petitions can be filed against individuals as well. Article 102 of our Constitution uses the term 'any person aggrieved'. It does not use the expression as "aggrieved party" or "any person personally aggrieved". So, the Supreme Court of Bangladesh should expressly come forward to allow PIL. Sri Lanka and Pakistan—these two neighboring countries have, although they have same Constitutional constraints as we have in our Constitution, already overcome the barricade of 'aggrieved person' and they are now widely allowing PIL. The approach of the court about PIL requires rethinking and restructuring. Overuse and abuse of PIL will make it ineffective. Hence, any change to improve it further should be encouraged and welcomed. The PIL should not be merely a cloak for attaining private ends of a third party or of the party bringing the petition. The court should examine the previous record of public service rendered by the organization bringing PIL. Before entertaining a writ petition and passing any interim orders in such petitions, the court must carefully weigh conflicting public interests. Only when it

comes to a conclusion that there is overwhelming public interest in entertaining the petition, the court should intervene. Even when public interest litigation is entertained, the court must be careful to weigh conflicting public interests before intervening.

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