

## Chapter 1

### INTRODUCTION

*“The Constitution has built a structure which has its own balance, beauty and grace.”<sup>1</sup>*  
—Syed Ishtiaq Ahmed

Life, according to Aristotle, is not merely living but living well.<sup>2</sup> Living well is one of the ultimate objectives as well as an important ground of filing a writ petition. It has wider meaning, i.e. right to speech, right to religion, right to freedom, right to self-defense, right to property, right to occupation etc. The above rights are within the definition of the term ‘living well’ and these rights in the Bangladesh Constitution have been highlighted as fundamental rights.

In order to preserve the democratic way of life, the Supreme Court has powers to issue writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of the fundamental rights. When our fundamental rights are infringed then we file an application to the High Court Division. In other words, a writ is a formal written document, which must specify who is an aggrieved person and how the said person is aggrieved and has to mention the disputed question of fact.

For enforcement of fundamental rights the person aggrieved have to apply and it is the obligation of the High Court Division to look into the disputed matter. An allegation must be specific, clear and unambiguous. Where there has been a breach of a public duty or breach of some constitutional provisions, causing injury to the general public, any person who is not a mere busybody, would be allowed to bring a petition under article 102 to seek enforcement of such a public duty and such provision of the Constitution.<sup>3</sup>

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<sup>1</sup> *Anwar Hossain Choudhury v. Bangladesh*, 41 DLR 1989 (AD) 190.

<sup>2</sup> Farhana Reza, ‘Fundamental rights in South Asia’, *Stanford Journal of Law*, vol. I (2008), p.213.

<sup>3</sup> *Dr. Mohiuddin Farooque v. Bangladesh*, 48 DLR 438.

An aggrieved person must show that he has a legal right, accrued to him under a law which right has been taken away by an order of some executive authority performing a function in the affairs of the state. Public Interest Litigation can be initiated and maintained by a public spirited person or body of persons with regard to public injury, though such a person or a body of persons may not be seemingly hurt by a public injury. A person acting bonafide and having sufficient interest and tears of the poor has been recognized in the proceeding of the writ petition as an 'aggrieved person' in public interest litigation.

In 2000, a development of PIL has been seen in the writ petition *Prof. Nurul Islam v. Bangladesh*.<sup>4</sup> Subsequently, in 2009 it has been confirmed the scope of *locus standi* in some important cases like in Bangladesh National Women Lawyers Association (BNWLA) *v. Bangladesh*,<sup>5</sup> Human Rights and Peace for Bangladesh (HRPB) *v. Bangladesh*.<sup>6</sup> The intent of the judicial review is to keep administrative authorities within the bounds of their powers under the law.

In *Jamil Huq v. Bangladesh*,<sup>7</sup> a combined reading of the provisions set out above indicates that full judicial power have been conferred by Bangladesh Constitution on the supreme judiciary as an independent organ of the state. It has power to declare a law passed by the legislature inconsistent with the Constitution or with the fundamental rights *ultra vires*. In a lecture Dr. Salimullah Khan on *Anwar Hossain Chowdhury* case, one hears as follows:

Can the parliament ( legislature ) amend all articles and words in the Constitution? This question has been disputed in *Anwar Hossain Chowdhury v. Bangladesh*,<sup>8</sup> the sort answer given by the majority judged is 'no'. Another question arises, can the parliament amend article 100? If 'no', why not? The Appellate Division verdict that by a majority of 3:1, 'no' on the ground that amending article 100 implies you are amending article 1 and preamble of the

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<sup>4</sup> 52 DLR (2000) 413.

<sup>5</sup> Judgement on 14. 05. 2009, Writ Petition No. 5916 of 2008.

<sup>6</sup> Judgment on 25 & 26<sup>th</sup> June, 2009, Writ Petition No. 3509/09.

<sup>7</sup> 34 DLR (AD) 165.

<sup>8</sup> 41 DLR (AD)165.

Constitution and the amended article 100 had thus destroyed the unitary character of the Republic which cannot be demolished by amendment process.<sup>9</sup>

In *Kazi Mukhlesur Rahman v. Bangladesh*,<sup>10</sup> the appellant challenged the Delhi treaty, although he was not a resident of the Southern half of the South of the adjacent enclaves involved in the Delhi treaty (i.e. Berubari) and as such his *locus standi* was in question. The Supreme Court found that Kazi Mukhlesur Rahman has *locus standi* to challenge the transfer of the territory.

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<sup>9</sup> Salimullah Khan, a lecture in the classes of *Interpretation of Statute and General Clauses Act, 1897* on 17.08.2008 in view of *Anwar Hossain Chowdhury* case.

<sup>10</sup> 26 DLR SC 44.