

**Comprehensive Law Lecture Speech by the Hon'ble Chief Justice of
Bangladesh Dr Justice Syed Refaat Ahmed
NYU Abu Dhabi**

Title: Climate Justice and the Constitution: Reflections from the Global South

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Mr. Justice Ananda Bhattachary, Retired Judge, Supreme Court of Nepal.

**Moderator of today's event Professor Pavlos Eleftheriadis, Professor of Legal
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Esteemed Faculty,

Learned Jurists,

Distinguished Students,

Ladies and Gentlemen,

It is privilege to be here at NYU Abu Dhabi to share with you the Bangladeshi juridical and constitutional perspective on the climate crisis. It is a truism that we are in the grip of a planetary emergency. The Earth is warming, oceans are rising, biodiversity is eroding, and livelihoods are collapsing. The Intergovernmental Panel on Climate Change confirms that anthropogenic greenhouse gas emissions, primarily from fossil fuel combustion, deforestation, and unsustainable industrial practices, have altered the planet's climate system in irreversible ways.

Yet, this crisis is not equitably borne. In stark contrast to economies that are largely responsible for CO₂ emissions countries of the global south nations such as Bangladesh, Nepal, and Chad, whose people continue to suffer from floods,

droughts, rising sea levels, and food insecurity have contributed insignificantly to the problem.

This is not merely a climate crisis. It is a justice crisis. And this is where the vocabulary of "climate justice" finds its deepest meaning. Climate justice demands a reordering of our moral and legal compass to reflect that those least responsible must not continue to pay the highest price. It asks us to frame environmental degradation as not only a scientific and economic concern, but also as a profound violation of human dignity, of sovereign equality, and of intergenerational responsibility.

Environmental justice first emerged in the 1980s in response to toxic dumping in African-American communities in the United States. The concept evolved to encompass equitable treatment in environmental governance, meaningful public participation, and access to judicial redress. Climate justice has emerged as its natural successor. It calls for equitable responsibility, historical accountability, intergenerational equity, and ecological reparation.

Dear Participants,

The People's Agreement of Cochabamba (2010), the Durban Declaration, and the advocacy by grassroots coalitions such as ***Climate Justice Now!*** have shifted climate discourse from the realm of emissions to the realm of ethics. These instruments and movements converge on principles such as the right to development without degradation, protection of indigenous cultures and knowledge systems, restoration of ecological damage, and rights of nature and the doctrine of ecological trusteeship. The Yasuní-ITT Initiative in Ecuador and the Universal Declaration of the Rights of Mother Earth are both instances where this

shift from anthropocentric to Earth-centric constitutional imagination has gained real traction.

It is within this crucible of advocacy, science, and jurisprudence that constitutionalism must now respond. Constitutions, though products of national sovereignty and being essentially social compacts, are increasingly global in their aspirations. Environmental protection provisions have found their way into over 150 constitutions globally, often under the influence of the Stockholm (1972), Rio (1992), and Johannesburg (2002) Declarations.

In South Asia, this trend is particularly vivid. Bhutan mandates 60% forest cover in perpetuity. Nepal guarantees a right to a clean environment and food sovereignty. India enshrines environmental duties under Article 51A(g), with judicial interpretations reading the right to a healthy environment into the right to life under Article 21. Sri Lanka, Maldives, and Afghanistan have all adopted eco-centric constitutional norms. Bangladesh, I submit, represents both the urgent case for and the transformative potential of constitutional environmentalism in the Global South.

Bangladesh is arguably ground zero for climate vulnerability. With 82 internationally recognized wetlands, the world's largest contiguous mangrove forest—the Sundarbans—and one of the most densely populated deltaic geographies on the planet, our nation exemplifies environmental fragility. We also have a Climate-induced migration which is emerging as a critical challenge in Bangladesh, with rising sea levels and frequent cyclones displacing millions from coastal regions. Research indicates that by 2050, over 13 million Bangladeshis could be forced to migrate internally due to climate-related impacts, particularly salinity intrusion and river erosion.

Bangladesh has introduced Article 18A into its constitution, which reads: “The State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wildlife for the present and future citizens.” Simultaneously, Article 23A mandates the preservation of indigenous cultures intimately connected with nature. These are noble constitutional declarations. But they reside under the constitutional provisions categorized as Fundamental Principles of State Policy, which, under Article 8(2), are declared non-justiciable.

Yet, our judiciary has refused to be deterred by this. In the seminal case of *Dr. Mohiuddin Farooque v. Bangladesh*, the Supreme Court legitimized public interest litigation in environmental matters. Later cases, including *Wahab v. Secretary, Ministry of Land*, and *Major General K.M. Shafiullah v. Bangladesh*, expanded the interpretative reach of environmental principles. The courts have, over time, gradually translated aspirational directives into binding norms, invoking the doctrine of legitimate expectation and the public trust principle as judicial mechanisms of accountability.

The Supreme Court in 2019 reaffirmed this trajectory in a landmark case concerning illegal encroachment and pollution of the Turag River. The court not only invoked the public trust doctrine but also directed executive agencies to update enforcement mechanisms in line with scientific data and climate projections. By treating the rivers as legal entities, the judgment expanded the horizons of environmental law and firmly embedded ecological protection within the fundamental human rights framework, thus setting a transformative precedent for environmental governance in the era of climate crisis.

In another case from 2022, the Court upheld the rights of forest-dwelling communities to participate in environmental impact assessments, reinforcing procedural justice within ecological governance.

In the case of Bangladesh Environmental Lawyers Association (BELA) Vs Bangladesh and Others, being an author Judge I have discussed the critical necessity for Bangladesh to uphold the universal application of internationally competitive rules on environmental protection, particularly in the hazardous and high-risk industry of ship-breaking. As highlighted in the judgment, the legal framework in Bangladesh, including the *Ship-Breaking and Recycling Rules, 2011*, the *Hazardous Wastes and Ship-Breaking Waste Management Rules, 2011*, and obligations under the *Basel Convention* has been designed to mirror and adopt global environmental standards. I have emphasized that any deviation from these stringent norms, especially in the form of regulatory leniency, false declarations, or inadequate enforcement, exposes Bangladesh to becoming a dumping ground for hazardous waste, in violation of Articles 18A, 31[***To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law***], and 32[***No person shall be deprived of life or personal liberty save in accordance with law***] of the Constitution. By insisting on strict compliance with environmental regulations, mandating Inventory of Hazardous Materials prior to import, and condemning the practice of acting with impunity under a lax administrative regime, the Court has reaffirmed the imperative for universal application of environmental standards. Such alignment with global norms is not merely a matter of domestic legal compliance but a

constitutional and humanitarian necessity to safeguard public health, worker safety, and environmental integrity in an increasingly interconnected world.

Bangladesh has enacted robust legislation: the Environment Conservation Act (1995), the Environment Court Act (2010), the Wildlife Conservation and Security Act (2012), and the River Protection Commission Act (2013). Yet enforcement remains uneven, hindered by bureaucratic inertia and lack of adequate environmental tribunals and technical resources.

Esteemed Participants,

Let us now examine comparative experiences. Argentina's Section 41 affirms every inhabitant's right to a balanced environment and obliges polluters to repair environmental damage. Vietnam's 2013 Constitution, Article 43, articulates the right to a clean environment and the duty to protect it, embodying civic environmental responsibility. Indonesia's Article 28H(1) enshrines the right to live in prosperity and enjoy a healthy environment, coupled with affirmative action for equity. South Africa's Constitution affirms in Section 24 that every person has the right "to an environment that is not harmful to their health or well-being."

South Asia's courts have emerged as laboratories of climate jurisprudence. The Indian Supreme Court in *Vellore Citizens Welfare Forum v. Union of India* championed sustainable development. In *Ashgar Leghari v. Federation of Pakistan*, the Lahore High Court held the government liable for non-implementation of its climate adaptation framework. Nepal's courts have invoked the precautionary principle to halt development projects that jeopardize ecological balance. Sri Lanka's judiciary has intervened in deforestation-related disputes and in safeguarding wetland ecosystems.

Bangladesh judiciary has broadened Article 32 'the right to life' to include environmental rights. Recent rulings have addressed industrial waste dumping, river encroachments, and air pollution in Dhaka. In a 2021 case, the High Court Division of the Supreme Court imposed strict liability on a multinational corporation for mercury contamination in groundwater, recognizing the linkage between ecological harm and fundamental rights.

Dear Participants,

The Paris Agreement (2015), though ambitious, is constrained by weak enforceability. Articles 2 and 4 speak of nationally determined contributions, but the use of “should” in Article 4.4, instead of “shall,” waters down legal obligations. Financial flows, technology transfer, and adaptation support remain ambiguous.

Post-2015, successive COPs have aimed to operationalize the Paris framework. COP26 (Glasgow, 2021) where countries agreed to “phase down” coal and double adaptation finance. COP27 (Sharm el-Sheikh, 2022) achieved a historic breakthrough in establishing a Loss and Damage Fund, to support countries suffering irreversible climate impacts. COP28 (Dubai, 2023) introduced the Global Stocktake, a mechanism to assess collective progress toward limiting warming to 1.5°C. Yet, implementation lags behind ambition. As of early 2024, the Green Climate Fund remains underfunded, and the operationalization of the Loss and Damage Fund faces institutional delays and political wrangling over eligibility and governance.

Ladies and Gentlemen,

Bangladesh has led regional efforts under the Climate Vulnerable Forum, hosting dialogues and piloting climate litigation models. In November 2016, Bangladesh

hosted the Fifth South Asia Judicial Conference on Environment and Climate Change in Dhaka, co-organized by the Supreme Court of Bangladesh and the Asian Development Bank (ADB). This landmark event convened judges, legal experts, and environmental practitioners from across South Asia to address pressing environmental challenges and the escalating impacts of climate change in the region. The conference emphasized the critical role of judiciaries in promoting environmental adjudication, enforcement, and justice, fostering a collaborative approach to developing legal frameworks and judicial responses to environmental issues. Our judiciary has supported executive commitments under the Climate Prosperity Plan, linking economic recovery to low-carbon development. Bangladesh has submitted an updated NDC (Nationally Determined Contribution), focusing on renewable energy, climate-smart agriculture, and resilient infrastructure.

Institutionally, Bangladesh pioneered South Asia's first Environment Court in 2002. Though restructured under the 2010 Act, the court continues to face structural challenges.

Against this general context, we must reimagine constitutionalism. It must be ecologically literate. Environmental rights must become actionable. Governance must be transparent. Civil society must be empowered.

The climate crisis compels a profound civilizational shift from anthropocentric to eco-centric paradigms, challenging humanity to reconsider its place within the natural world rather than above it. It invites jurists, academics, and policymakers to fundamentally redefine the notions of development, justice, and citizenship through a prism that honors ecological balance as the foundation of human flourishing. In this reimagining, the epistemological richness of indigenous

knowledge systems rooted in stewardship, intergenerational equity, and coexistence emerges as indispensable, offering models of sustainable living that modern frameworks have long marginalized. The crisis simultaneously elevates the role of factors like municipalities, provinces, and grassroots movements as frontline innovators of climate adaptation, resilient urban development, and employment strategies designed for a just transition.

As extreme weather events, sea-level rise, and resource scarcity displace millions, climate-induced migration has become not merely a humanitarian issue but a profound justice challenge, implicating the fundamental right to life enshrined in constitutional and international human rights law. The jurisprudence of life, liberty, and dignity must now accommodate the right to climate-resilient shelter, secure livelihoods, and sustainable urban spaces that can absorb displaced populations without replicating cycles of marginalization. In this evolving order, there is an urgent call for a global fiduciary standard, one that transcends territorial borders, to hold historical and contemporary polluters accountable, and to redistribute obligations in ways that recognize shared but differentiated responsibilities. Without embedding these principles into the heart of law and governance, the promise of climate justice will remain a hollow aspiration rather than a living reality.

Let legal academia especially in cosmopolitan institutions like NYU Abu Dhabi lead this renaissance. Let us cultivate a generation of jurists who will write, argue, and adjudicate for the planet. Let us build legal architectures that will outlast climate denial and withstand political inertia.

Climate justice is no longer a deferred ideal. It is a constitutional imperative. Let us rise to meet it.

I thank you all.