

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

Present:

Ms. Justice Kazi Zinat Hoque

And

Ms. Justice Aynun Nahar Siddiqua

Writ Petition No. 8325 of 2014

In the matter of :

An application under Article 102(2)(a)(i) of the Constitution of the People's Republic of Bangladesh.

-And-

In the matter of :

Bangladesh Environmental Lawyers Association (BELA)

..... Petitioner

-VERSUS-

Government of the People's Republic of Bangladesh represented by the Secretary, Ministry of Land, Bangladesh Secretariat, Dhaka and others

..... Respondents

Mr. M. Ashraf Ali, Senior Advocate with

Mr. S. Hasanul Banna, Advocate

.... For the petitioner

Mr. Md. Asaduzzaman, Attorney General
with

Mr. Nur Muhammad Azami, DAG with

Mr. Md. Ershadul Bari Khandakar, DAG

.... For Respondent Nos. 8-14

Mr. N.M. Ahsanul Haque, Advocate

..... For the respondent No.6

Mr. Mateen Uddin Anwar, with

Mr. Md. Ali Akbar Khan Rigan, Advocates

..... For the respondent Nos. 17-36 and 37-41

**Date of Hearing : 27.05.2025, 28.05.2025
and 20.08.2025.**

Date of Judgment : 24th August, 2025.

Kazi Zinat Hoque, J :

In this application under Article 102 of the Constitution, a Rule Nisi has been issued calling upon the respondents to show cause as to why they should not be directed to declare the Bakkhali River, flowing from Cox's Bazar to the Bay of Bengal, in Cox's Bazar district as Ecological Critical Area and thereby protect the said River by demarcating its boundary as per CS maps and original and present current flows and protect the said river from the hands of the illegal polluters and encroachers and restore/ bring back the coastal forests on both the sides of the said river and also why they should not be directed to ban leasing out any part of the said river for any other purpose, like shrimp and tobacco cultivation, which is contrary to the present laws, relating to free flow of the water and thereby protect all the rivers and the environment of the country and/or pass such other or further order or orders as to this Court may seem fit and proper.

Background

River plays is an important part in human civilization. Bangladesh is a country of Rivers. Bakkhali is one of them. It is situated in Cox's Bazar District. This writ petition has been filed by Bangladesh Environmental Lawyer's Association for protection of the river Bakkhali and declaring the river and adjacent area as ecologically critical area.

The petitioner Bangladesh Environmental Lawyers Association (BELA) has been active since 1992 as one of the organizations with expertise in the regulatory field of environment and ecology. Through its various sincere and devoted endeavors it has protected public interest against environmental anarchies and significantly contributed to promoting environmental justice through a serious of persistent and well-designed activities. Since inception, BELA has undertaken a large number of public interest litigation wherein the beneficiaries have not only been the common people but also their surrounding environment, precious eco-system and natural resources that affect peoples' material and spiritual well-being. There are many evidences of BELA's efforts to

promote a healthy environment using legal mechanism as an effective legitimate tool.

It has already been decided in Mohiuddin Faruqu's Case¹ that BELA has *locus standi* in respect of Public Interest Litigation involving environmental protection. The main concern of the petitioner is that the banks of Bakkhali River have been occupied by illegal occupiers and river has become polluted and as such this writ petition was filed in Public Interest for protection of Bakkhali River.

It is mentionable that Writ Petition No. 5224 of 2023 has been filed by several persons claiming to be owners of the land adjacent to Bakkhali river challenging purported action of respondent Nos 3-9 in evicting them without acquisition or paying compensation under the Acquisition of Immovable Property Act, 2017.

Argument of Learned Counsels:

Mr. M. Ashraf Ali, learned Senior Advocate appearing with Mr. S. Hasanul Banna, learned Advocate for the petitioner, argued that the pollution level in the water of

¹ 49 DLR (AD) (1997)1

Bakkhali River has exceeded the permissible limit and also the banks of the river have been occupied by illegal occupiers and as such the Bakkhali River as well as surrounding area of the rivers should be declared as Ecologically Critical Area under section 5 of Bangladesh Environmental Conservation Act, 1995. He referred our attention to the judgment of the High Court Division in Writ Petition No.3503 of 2009 relating to protection of four rivers namely Buriganga, Turag, Balu and Shitalakkha (বুড়িগঙ্গা, তুরাগ, বালু ও শীতলক্ষ্যা) wherein the Court passed a direction upon the respondents to declare the four rivers and adjacent areas as Ecologically Critical Area and also passed some other directions for protection of the rivers. Similarly, 10703 of 2011 was filed by BELA for protection of Jaflong Dawki river and also for declaration of the said river as Ecologically Critical Area wherein similar directions were passed. Therefore he argued that similar direction is required in this case.

Mr. Md. Asaduzzaman, learned Attorney General, representing respondent Nos.8-14, argued that river is an important part of human civilization. The condition of water of

Bakkhali River is far below the acceptable limit and it has been polluted to such an extent that intervention of this Court is required so that the river and surrounding area are protected through appropriate direction by this Court. He further argued if the said river is declared as Ecologically Critical Area government will take necessary steps as it has earlier taken such steps in case of the aforesaid four rivers namely Buriganga, Turag, Balu and Shitalakkha (বুড়িগঙ্গা, তুরাগ, বালু ও শীতলক্ষ্যা) and also in case of Jaflong Dawki river. He further argued that there are many illegal occupiers in the banks of the river of Bakkhali and in the surrounding area. Therefore a direction is also required to evict them in accordance with law.

The National River Conservation Commission (জাতীয় নদীরক্ষা কমিশন) has also filed an affidavit-in-opposition, Mr. N.M. Ahsanul Haque, learned Advocate representing respondent No.6 (জাতীয় নদীরক্ষা কমিশন), argued that pursuant to the order of this Court the River Conservation Commission has taken different steps and they have inspected the area and indentified the problems and made some recommendations to be implemented by the concerned authority. He further argued

that the River Conservation Commission will take necessary steps to protection of Bakkhali River if any direction is passed by the Court.

Mr. N.M. Ahasanul Haque, learned Advocate representing respondent No.6, argued the respondent No.6 has complied with the Rule issuing order dated 16.09.2014 and physically visited the said river along with other government agencies and prepared report dated 06.01.2015 and appraised all agencies to take appropriate action for keeping free Bakkhali River and Bhulakhal Cannel from pollution and unauthorized occupancy followed by reminders but unfortunately the authority concerned without giving reply maintained silence and as such respondent No.6 has been doing its statutory function most dutifully and acting upon the order of the court with utmost sincerity. He further argued that the writ petitions are matters of record and leasing out process of revenue which is unexpected from these responsible authorities of the Republic.

Mr. Mateen Uddin Anwar, appearing with Mr. Md. Ali Akbar Khan Rigan, learned Advocates representing respondent

Nos.17-36 and 37-41, argued that the respondents are owners through purchase and inheritance. He further argued that the writ court has no jurisdiction to make any decision with regard to record of rights. He also argued that several suits are pending in this regard. Therefore an appropriate direction is required. He further argued that being legal owners of land adjacent to Bakkhali River they have easement right under the Water Act, 2013.

Public Interest Litigation for Protection of Rivers

This is not the first instance that Public Interest Litigation has been filed for protection of river. Even in other parts of the world cases have been filed for protection of river.

Some of the instances are – The Atrato River case and Marañón River case. In the Atrato River case Colombian Constitutional Court (T-622/16, 2016)² recognized the Atrato River as a legal subject with rights to protection, conservation, and restoration Indigenous and Afro-descendant communities brought the case, arguing that government inaction on illegal mining and pollution violated their rights to life, health, food,

² https://www.climatecasechart.com/documents/atrato-river-decision-t-622-16-of-november-10-2016-judgment_8646

and a healthy environment. The Court ordered the government to:

1. Implement a comprehensive action plan to clean up the river.
2. Restore ecosystems in the river basin.
3. Combat illegal mining.
4. Study the health impacts of pollution on local communities.
5. Establish a Commission to safeguard the river's rights

and ensure ongoing protection.

This ruling is significant for recognizing nature as a rights-bearing entity and advancing environmental justice in Colombia

In the case of *Federación Huaynakana Kamatahuara Kana vs. Petroperú SA, Ministry of the Environment, and others*, Superior Court of Justice Loreto, Civil Chamber (29 August 2024)³ recognized the Marañón River as a legal entity with rights, including the right to remain free-flowing and unpolluted. The case was brought by a Kukama Indigenous women's association, highlighting threats from oil spills and pollution.

³ [https://elaw.org/wp-content/uploads/2025/04/Appeals-Court-Spanish-Sentencia-2da-
instancia.-Rio-Maranon.-res_2022000100152331000230940-1.pdf](https://elaw.org/wp-content/uploads/2025/04/Appeals-Court-Spanish-Sentencia-2da-instancia.-Rio-Maranon.-res_2022000100152331000230940-1.pdf)

The Court ruled that the Peruvian state and authorities must protect the river, designating the indigenous community as its guardians. Similarly, in the neighboring countries cases have been filed for protection of rivers.

In our jurisdiction several writ petitions have been filed in the form of Public Interest Litigation for protection of various rivers. Writ Petition No.3503 of 2009 was filed for protection of Buriganga, Turag, Balu and Shitalakkha rivers (বুড়িগঙ্গা, তুরাগ, বালু ও শীতলক্ষ্যা), Writ Petition No.10947 of 2011 for protection of Jaflong Dawki river and Writ Petition 6306 of 2010 for protection of Karnafuli River.

On 1st September, 2009 the Government of Bangladesh, Ministry of Environment and Forest, Environment Section-3 issued a notification declaring Buriganga, Turag, Balu and Shitalakkha rivers and the surrounding areas as Ecologically Critical Area. Similarly on 28th January, 2015 Jaflong Dawki river and some surrounding areas were declared as Ecologically Critical Area.

Bangladesh Environment Conservation Act 1995

Now let us examine section 5 of the Bangladesh Environmental Conservation Act, 1995, relevant portion of the said Act is reproduced below:

- ৫। প্রতি-বশগত সংকটাপন্ন এলাকা ঘোষণা।-(১) সরকার যদি এই ম-র্ম সন্তুষ্ট হয় যে, পরি-ব-শর অবক্ষ-য়র কার-ণ কোন এলাকার প্রতি-বশ ব্যবস্থা (Eco-system) সংকটাপন্ন অবস্থায় উপনীত হইয়া-ছ বা হইবার আশংকা রহিয়া-ছ তাহা হই-ল সরকার, সরকারী গেজেটে প্রজ্ঞাপন দ্বারা, উক্ত এলাকাকে প্রতিবেশগত সংকটাপন্ন এলাকা (Ecologically Critical Area) -ঘাষণা করি-ত পারি-ব এবং অবিলম্বে উক্ত সংকটাপন্ন অবস্থা হইতে উত্তোরণের জন্য প্র-য়োজনীয় পদ-ক্ষপ গ্রহণ করি-ব।
- (২) উপ-ধারা (১) এর অধীন প্রদত্ত সকল প্রজ্ঞাপনে সংশ্লিষ্ট এলাকার সীমানা ও মানচিত্রসহ আইনগত বর্ণনার উল্লেখ থাকিবে এবং এই সকল মানচিত্র ও আইনগত বর্ণনা সংশ্লিষ্ট এলাকাতে প্রদর্শিত হইবে এবং তাহা উক্ত এলাকার দালিলিক বর্ণনা হিসা-ব বি-বচিত হই-ব।
- (৩) -কান এলাকা-ক প্রতি-বশগত সংকটাপন্ন এলাকা ঘোষণার পর সরকার সংশ্লিষ্ট এলাকার জন্য ব্যবস্থাপনা পরিকল্পনা গ্রহণ করি-ব।
- (৪) প্রতি-বশগত সংকটাপন্ন বলিয়া ঘোষিত এলাকায় কোন কোন ক্ষতিকর কর্ম বা প্রক্রিয়া চালু রাখা বা শুরু করা যাইবে না তাহা সরকার উপ-ধারা (১) এ উল্লিখিত প্রজ্ঞাপনে নির্দিষ্ট করিয়া দি-ব।

Section 5 of the Environmental Conservation Act, 1995 empowers the government to declare an area to be Ecologically Critical Area if the government is satisfied that Eco-system of such area has reached a point that it is not in a livable condition or there is apprehension that it may risk certain such stage then the government may in order to protect such area take necessary steps and declared such area as Ecologically Critical Area.

The High Court Division in Writ Petition No.3503 of 2009 and Writ Petition No.10947 of 2011 declared Buriganga, Turag, Balu and Shitalakkha rivers and Jaflong Dawki river respectively as Ecologically Critical Area and pursuant to such decision of the High Court Division the government has issued gazette notification declaring such area as Ecologically Critical Area. The learned Attorney General during his submission before this Court argued that rivers are important part of human civilization and Bangladesh being a country with many rivers our life is more dependant on river than in other countries. Therefore if considering the situation and condition of Bakkhali River the Court passes any order for declaring the

Bakkhali River and its surrounding area as Ecologically Critical Area the government shall take necessary steps in the regard.

Report of National River Conservation Commission (জাতীয় নদীরক্ষা কমিশন).

Now let us examine the report of National River Conservation Commission (জাতীয় নদীরক্ষা কমিশন). Relevant portion the said are reproduced below:

খ. বাঁকখালী নদী

ক্রম	পর্যবেক্ষণ/সমস্যা	সুপারিশ	বাস্তবায়নকারী কর্তৃপক্ষ
১	১। মহামান্য হাইকোর্টের ৩৫০৩/২০০৯ এর রায় অনুযায়ী সি এস ও আরএস ম্যাপ ও রেকর্ড অনুযায়ী নদীর সীমানা চিহ্নিত করার নির্দেশনা থাকলেও কক্সবাজার জেলায় বিএস জরিপ এর ভিত্তিতে নদীর অবৈধ দখল চিহ্নিত করা হয়েছে। ২। ভূমি অফিসের সার্ভেয়ার জানান যে, বাঁকখালী নদী বেশ কয়েকবার গতিপথ পরিবর্তন করেছে। কিন্তু অদ্যাবধি Alluvion-Diluvian (AD) Line টানা না হওয়ার কারণে নদীর সীমানা নির্ধারণে আইনী জটিলতার উদ্ভব হচ্ছে।	১। মহামান্য আদালতের নির্দেশনা মোতাবেক আর এস আর এস ও বি এস রেকর্ড অনুযায়ী বাঁকখালী নদীর বসাতে হবে। রেকর্ড মোতাবেক সীমানা নির্ধারণ করে সীমানা পিলার প্রবাহের সম্পূর্ণ অংশ চিহ্নিতকরণপূর্বক (Area Demarcation) জাতীয় নদী রক্ষা কমিশনকে অবহিত করতে হবে। ২। বাঁকখালী নদীতে এডি লাইন টানার কার্যক্রম অবিলম্বে শুরু করতে হবে।	১। চেয়ারম্যান, বাংলাদেশ অভ্যন্তরীণ নৌ পরিবহন কর্তৃপক্ষ ২। জেলা প্রশাসক, কক্সবাজার ৩। নির্বাহী প্রকৌশলী, বাংলাদেশ পানি উন্নয়ন বোর্ড, কক্সবাজার ৪। উপজেলা নির্বাহী অফিসার, সদর, কক্সবাজার
	৩। বাঁকখালী নদী দখলদারদের তালিকা নিয়মিত হালনাগাদ করা না হওয়ায় দখলদারদের তৎপরতা আশংকাজনকভাবে বৃদ্ধি পাচ্ছে।	৩। মহামান্য হাইকোর্ট বিভাগের নির্দেশনা মোতাবেক বাঁকখালী নদী দখলদারদের তালিকা নিয়মিত	

		হালনাগাদ করতে হবে।	
২	১। সদর উপজেলার ভূমি অফিস কর্তৃক সরবরাহকৃত তালিকায় দেখা যায় যে, বাঁকখালী নদীর জমিতে অবস্থিত অবৈধ দখলদারের সংখ্যা মোট ১৩১ জন। অবৈধ দখলদারের তালিকা প্রণয়নে বিএস রেকর্ড অনুসরণ করা হয়েছে। আরএস রেকর্ড অনুসরণ করা হয়নি। ২। বাংলাদেশ পানি উন্নয়ন বোর্ড, কক্সবাজার কর্তৃক সরবরাহকৃত বাপাউপবো কর্তৃক সদর উপজেলার শহর রক্ষা বাঁধ নির্মাণ প্রকল্পের জমিতে বাঁকখালী নদীর তীরে বাপাউপবো কর্তৃক অধিগ্রহণকৃত জমিতে অবস্থিত অবৈধ দখলদারের সংখ্যা মোট ১০২ জন। উল্লেখ্য যে, বাংলাদেশ পানি উন্নয়ন বোর্ড কর্তৃক শুধু অধিগ্রহণকৃত জায়গার অবৈধ দখলদারের তালিকা প্রণয়ন করা হয়েছে। অবৈধ দখলদারের তালিকা প্রণয়নে কোন রেকর্ড অনুসরণ করা হয়নি। ৩। পর্যটন নগরী কক্সবাজারে প্রতি ইঞ্চি জমিই অমূল্য, ফলে দখলদারদের আগ্রাসনও ভয়াবহভাবে বৃদ্ধি পাচ্ছে। রেকর্ড অনুযায়ী দ্রুততম সময়ের মধ্যে সীমানা পিলার স্থাপন করা না গেলে নদী অস্তিত্ব সংকটে পড়ার আশংকা রয়েছে।	১। মহামান্য আদালতের নির্দেশনা মোতাবেক বাঁকখালী নদীর সম্পূর্ণ অংশে অবৈধ দখলদারের তালিকা প্রস্তুতপূর্বক জাতীয় নদী রক্ষা কমিশনে প্রেরণ করতে হবে। ২। মহামান্য আদালতের নির্দেশনা মোতাবেক বাঁকখালী নদীর জায়গা দখল করে নির্মিত সকল স্থাপনাসমূহ উচ্ছেদের ব্যবস্থা গ্রহণ করতে হবে। ৩। একইসাথে বাংলাদেশ পানি উন্নয়ন বোর্ড কর্তৃক অধিগ্রহণকৃত জায়গায় সকল অবৈধ দখলদারদের উচ্ছেদের ব্যবস্থা গ্রহণ করতে হবে। ৪। দ্রুততম সময়ের মধ্যে সীমানা পিলার স্থাপনের ব্যবস্থা গ্রহণ করতে হবে। নদী হতে দখলদার উচ্ছেদের পাশাপাশি উদ্ধারকৃত জমি জেলা প্রশাসনের তদারকিতে ও কোন কর্তৃপক্ষের জিম্মায় নিতে হবে।	১। চেয়ারম্যান, বাংলাদেশ অভ্যন্তরীণ নৌ পরিবহন কর্তৃপক্ষ ২। জেলা প্রশাসক, কক্সবাজার ৩। নির্বাহী প্রকৌশলী, বাংলাদেশ পানি উন্নয়ন বোর্ড, কক্সবাজার ৪। উপজেলা নির্বাহী অফিসার, সদর, কক্সবাজার ৫। সহকারী কমিশনার (ভূমি), সদর, কক্সবাজার

An organization named Earth Law Center drafted Universal Declaration of the Rights of River⁴ acknowledging certain rights of the rivers. Some of the rights mentioned in the Declaration are the right to flow, the right to perform essential functions of Eco-system, the right to be free from pollution, the right to be free by sustainable occupiers, the right to navigate and right to regeneration and restoration.

In Writ Petition No.10947 of 2011 the High Court Division declared the Jafong Dawki River and surrounding areas Ecologically Critical Area under section 5 of the Bangladesh Environment Conservation Act, 1995. Relevant portion of the judgment is reproduced below:

“In view of the above, it appears that the respondents like the Director General, Department of Environment; the Director General, Bangladesh Water Development and the Deputy Commissioner, Sylhet have totally failed to discharge their respective duties and responsibilities entrusted upon them under the laws

⁴ <https://ecojurisprudence.org/initiatives/universal-declaration-of-the-rights-of-rivers/>

in accordance with law in regulating free flow of the said river and protecting its banks from river erosion, and preventing encroachment over the river and unregulated extraction of stones thereof, and for conservation and improvement of environment of the river and its adjacent areas and also on controlling the environment pollution thereof in order to maintain ecosystem of the said area.”

Writ Petition No. 6306 of 2010 was filed as Public Interest Litigation for protection of Karnafuli River. The High Court Division made the Rule absolute and gave some directions upon the government to evict the illegal occupiers removing illegal installations, building and construction established from the banks of river Karnafuli within 90(ninety) days. In the said Writ Petition the Court also held that the directions of the Court passed in that case shall be treated as continuous mandamus.

In the facts and circumstances stated above as well as the decisions of the Apex Courts cited above we find merit in the Rule.

In the result, the Rule in Writ Petition No.8325 of 2014 is made absolute. The following directions are made:

- I. The concerned authority of the government is directed to declare Bakkhali River and its adjacent area as “Ecologically Critical Area” (ECA) under section 5 of the Bangladesh Environment Conservation Act, 1995.
- II The concerned authority is further directed to take necessary steps within 4 months from the date of receipt of a copy of this judgment.
- III. That further directed to protect the Bakkhali River by demarcating it’s boundary as per R.S, B.S maps taking into consideration the current flow of the river.
- IV. That further directed to protect the said river from the hands of illegal occupiers, polluters and encroachers within 4 months from date of receipt of a copy of this judgment.
- V. The concerned authorities are also directed to

restore the coastal forest on both sides of the river.

After such publication the government shall publish gazette notification as expeditiously as possible.

The respondents shall continue to perform their duties and shall implement the directions given hereinabove until the court direct otherwise.

We further declare that the aforesaid directions shall be treated as continuous mandamus and this Court may suo-moto or on the applications of any of the parties pass such order as may be just and proper as protection of Bakkhali River.

The respondents are directed to file report about the steps that they have taken to a protection of Bakkhali River after every six months i.e. in January and July every year.

Interim order of status quo is recalled and vacated.

There is no order as to cost.

Transmit a copy of this judgment to the concerned respondents at once.

(Kazi Zinat Hoque, J:)

I agree

(Aynun Nahar Siddiqua, J)